

IDAHO ADMINISTRATIVE BULLETIN

Table of Contents

August 6, 2003 -- Volume 03-8

TABLE OF CONTENTS	1
PREFACE	5
<u>IDAPA 02 - DEPARTMENT OF AGRICULTURE</u>	
02.01.04 - Rules Governing The Idaho Preferred™ Promotion Program	
Docket No. 02-0104-0301 (Fee Rule)	
Notice of Rulemaking - Temporary and Proposed Rule	14
<u>IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL</u>	
04.20.01 - Rules Implementing The Idaho Tobacco Master Settlement Agreement Complementary Act	
Docket No. 04-2001-0301	
Notice of Rulemaking - Temporary and Proposed Rule	21
<u>IDAPA 07 - DIVISION OF BUILDING SAFETY</u>	
07.02.01 - Rules Governing Repeal Of Existing Plumbing Permit Rules	
Docket No. 07-0201-0301 (Chapter Repeal)	
Notice of Rulemaking - Proposed Rule.....	26
07.02.07 - Rules Governing Readoption Of Rules Of Plumbing Division	
Docket No. 07-0207-0301 (Chapter Repeal)	
Notice of Rulemaking - Proposed Rule.....	27
<u>IDAPA 08 - IDAHO STATE BOARD OF EDUCATION</u>	
08.02.02 - Rules Governing Uniformity	
Docket No. 08-0202-0301	
Notice of Rulemaking - Proposed Rulemaking.....	28
<u>IDAPA 10 - IDAHO BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS</u>	
10.01.01 - Rules Of Procedure	
Docket No. 10-0101-0301	
Notice of Rulemaking - Proposed Rule.....	31
10.01.02 - Rules Of Professional Responsibility	
Docket No. 10-0102-0301	
Notice of Rulemaking - Proposed Rule.....	36
<u>IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE</u>	
16.02.19 - Rules Governing Food Safety And Sanitation Standards For Food Establishments	
Docket No. 16-0219-0301 (Chapter Repeal)	
Notice of Rulemaking - Proposed Rulemaking.....	38

Docket No. 16-0219-0302 (Rewrite) Notice of Rulemaking - Proposed Rulemaking.....	39
16.03.01 - Rules Governing Eligibility For Medicaid For Families And Children	
Docket No. 16-0301-0301 Notice of Rulemaking - Temporary and Proposed Rule	54
16.03.05 - Rules Governing Eligibility For Aid To The Aged, Blind And Disabled	
Docket No. 16-0305-0301 Notice of Rulemaking - Temporary and Proposed Rule	58
16.03.08 - Rules Governing Temporary Assistance For Families In Idaho (TAFI)	
Docket No. 16-0308-0301 Notice of Rulemaking - Temporary and Proposed Rule	62
16.03.09 - Rules Governing Medical Assistance Program	
Docket No. 16-0309-0302 Rescission of Temporary Rule and Vacation of Proposed Rulemaking	66
Docket No. 16-0309-0303 Notice of Rulemaking - Temporary and Proposed Rule	67
Docket No. 16-0309-0304 Notice of Rulemaking - Temporary and Proposed Rule	69
Docket No. 16-0309-0305 Notice of Rulemaking - Temporary and Proposed Rule	92
16.03.10 - Rules Governing Medicaid Provider Reimbursement In Idaho	
Docket No. 16-0310-0302 Notice of Rulemaking - Temporary and Proposed Rule	95
16.03.20 - Rules Governing Electronic Payments Of Public Assistance, Food Stamps, And Child Support	
Docket No. 16-0320-0301 Notice of Rulemaking - Temporary and Proposed Rule	98
16.06.01 - Rules Governing Family And Children's Services	
Docket No. 16-0601-0301 Pending Rule and Amendment to Temporary Rule	100
16.06.03 - Rules And Minimum Standards Governing Alcohol/Drug Abuse Prevention And Treatment Programs	
Docket No. 16-0603-0301 Pending Rule and Amendment to Temporary Rule	107
<u>IDAPA 18 - DEPARTMENT OF INSURANCE</u>	
18.01.15 - Fingerprinting Of Agents, Solicitors And Brokers	
Docket No. 18-0115-0301 Notice of Rulemaking - Temporary and Proposed Rule	109

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - Rules Of The Outfitters And Guides Licensing Board

Docket No. 25-0101-0201

Notice of Rulemaking - Expiration of Temporary Rule.....111

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - Rules Governing The Administration Of Park And Recreation Areas And Facilities

Docket No. 26-0120-0202

Notice of Rulemaking - Final Rule112

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - Rules Of The Idaho Board Of Pharmacy

Docket No. 27-0101-0302

Notice of Rulemaking - Pending Fee Rule.....113

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

**37.03.03 - Rules And Minimum Standards For The Construction And
use Of Injection Wells In The State Of Idaho**

Docket No. 37-0303-0201

Notice of Rescission of Temporary Rule114

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.22 - Rules Governing Overlegal Permits For Extra-Length Vehicle Combinations

Docket No. 39-0322-0301

Notice of Rulemaking - Temporary and Proposed Rule115

39.03.41 - Rules Governing Traffic Control Devices

Docket No. 39-0341-0201

Notice of Rulemaking - Pending Rule.....120

39.03.46 - Rules Governing Studded Tires

Docket No. 39-0346-0301 (Chapter Repeal)

Notice of Rulemaking - Proposed Rule.....121

39.03.63 - Rules Governing Traffic Accident Memorials

Docket No. 39-0363-0201

Notice of Rulemaking - Pending Rule.....122

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0000-0301

Notice of Final Decision on the Snake River Hells Canyon TMDL.....123

58.01.01 - Rules For The Control Of Air Pollution In Idaho

Docket No. 58-0101-0301

Notice of Rulemaking - Proposed Rule.....124

58.01.02 - Water Quality Standards And Wastewater Treatment Requirements

Docket No. 58-0102-0301

Notice of Rulemaking - Temporary and Proposed Rule130

58.01.05 - Rules And Standards For Hazardous Waste
Docket No. 58-0105-0301
Notice of Rulemaking - Proposed Rule..... 133

58.01.08 - Idaho Rules For Public Drinking Water Systems
Docket No. 58-0108-0301 (Fee Rule)
Notice of Rulemaking - Proposed Rule..... 140

58.01.08 - Idaho Rules For Public Drinking Water Systems
Docket No. 58-0108-0303 - Fee Rule
Notice of Rulemaking - Temporary Rule..... 159

58.01.23 - Rules Of Administrative Procedure Before The Board Of Environmental Quality
Docket No. 58-0123-0301
Notice of Rulemaking - Proposed Rule..... 162

SUBJECTS AFFECTED INDEX 168

LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS 174

**ABRIDGED EDITION OF THE CUMULATIVE RULEMAKING INDEX
OF IDAHO ADMINISTRATIVE RULES 177**

SUBJECT INDEX 184

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 Bulletins are cited by year and volume number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002, 03-1 refers to the first Bulletin issued in calendar year 2003. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No.02-1 refers to January 2002; Volume No. 02-2 refers to February 2002; 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, etc.

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, governed by the Administrative Procedure Act, comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings include 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, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a Notice of Intent to Promulgate a Rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

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. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

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.

State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. 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. Combining the rulemaking allows for a single publication of the text.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

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

When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of 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 procedures and is in effect and enforceable.

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 may be adopted to reject the rulemaking 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 or FAX (208) 332-1896.

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. 38-0501-0301"

"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).

"0301" 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 2003.

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	January 1, 2003	February 5, 2003	February 26, 2003
03-3	March, 2003	February 5, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	March 5, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	April 2, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 30, 2003	June 4, 2003	June 25, 2003
03-7	July, 2003	June 4, 2003	July 2, 2003	July 23, 2003
03-8	August, 2003	July 2, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 30, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	October 1, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 29, 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 19, 2003	January 7, 2004	January 28, 2004
04-2	February, 2004	January 7, 2002	February 4, 2004	February 25, 2004
04-3	March, 2004	February 4, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	March 3, 2004	April 4, 2004	April 25, 2004
04-5	May, 2004	March 31, 2004	May 5, 2004	May 26, 2004
04-6	June, 2004	May 5, 2004	June 2, 2004	June 22, 2004
04-7	July, 2004	June 2, 2004	July 7, 2004	July 28, 2004
04-8	August, 2004	June 30, 2004	August 4, 2004	August 25, 2004
04-9	September, 2004	July 28, 2004	September 1, 2004	September 22, 2004
04-10	October, 2004	**August 25, 2004	October 6, 2004	October 27, 2004
04-11	November, 2004	October 6, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	November 3, 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.***

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS		
IDAPA 01	ACCOUNTANCY , Board of	VOLUME 1
IDAPA 38	ADMINISTRATION , Department of	VOLUME 8
IDAPA 44	ADMINISTRATIVE RULES COORDINATOR , Office of the	VOLUME 8
IDAPA 02	AGRICULTURE , Idaho Department of	VOLUME 1
IDAPA 40	ARTS , Idaho Commission on the	VOLUME 8
IDAPA 03	ATHLETIC COMMISSION	VOLUME 1
IDAPA 04	ATTORNEY GENERAL , Office of the	VOLUME 1
IDAPA 53	BARLEY COMMISSION , Idaho	VOLUME 9
IDAPA 51	BEEF COUNCIL , Idaho	VOLUME 9
IDAPA 07	BUILDING SAFETY , Division of Electrical Board Plumbing Board Building Code Advisory Board Public Works Contractors License Board	VOLUME 1
IDAPA 43	CANOLA AND RAPESEED COMMISSION , Idaho	VOLUME 8
IDAPA 48	COMMERCE , Idaho Department of	VOLUME 8
IDAPA 06	CORRECTION , Board of	VOLUME 1
IDAPA 19	DENTISTRY , Board of	VOLUME 6
IDAPA 08	EDUCATION , Board of	VOLUME 2
IDAPA 10	ENGINEERS AND LAND SURVEYORS , Board of Professional	VOLUME 2
IDAPA 58	ENVIRONMENTAL QUALITY , Department of	VOLUME 9
IDAPA 12	FINANCE , Department of	VOLUME 2
IDAPA 13	FISH AND GAME , Department of	VOLUME 2
IDAPA 14	GEOLOGISTS , Board of Registration of Professional	VOLUME 2
IDAPA 15	GOVERNOR , Office of the Idaho Commission on Aging Idaho Commission for the Blind Idaho Forest Products Commission Division of Human Resources and Personnel Commission Idaho Liquor Dispensary Emergency Response Commission	VOLUME 3

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS		
IDAPA 16	HEALTH AND WELFARE , Department of	VOLUMES 3, 4, & 5
IDAPA 45	HUMAN RIGHTS COMMISSION	VOLUME 8
IDAPA 30	IDAHO STATE LIBRARY	VOLUME 7
IDAPA 11	IDAHO STATE POLICE	VOLUME 2
IDAPA 17	INDUSTRIAL COMMISSION	VOLUME 5
IDAPA 18	INSURANCE , Department of	VOLUME 5
IDAPA 05	JUVENILE CORRECTIONS , Department of	VOLUME 1
IDAPA 09	LABOR , Idaho Department of	VOLUME 2
IDAPA 20	LANDS , Department of	VOLUME 6
IDAPA 52	LOTTERY COMMISSION , Idaho State	VOLUME 9
IDAPA 22	MEDICINE , Board of	VOLUME 6
IDAPA 23	NURSING , Board of	VOLUME 6
IDAPA 24	OCCUPATIONAL LICENSES , Board of Board of Architectural Examiners Board of Barber Examiners Board of Chiropractic Physicians Board of Cosmetology Board of Environmental Health Specialist Examiners Board of Hearing Aid Dealers and Fitters Board of Landscape Architects Board of Morticians Board of Examiners of Nursing Home Administrators Board of Optometry Board of Podiatry Board of Psychologist Examiners Board of Social Work Examiners Idaho Counselor Board Board of Dentistry Board of Acupuncture Real Estate Appraiser Board Board of Residential Care Facility Administrators	VOLUME 6
IDAPA 25	OUTFITTERS AND GUIDES LICENSING BOARD	VOLUME 6
IDAPA 50	PARDONS AND PAROLE , Commission for	VOLUME 9
IDAPA 26	PARKS AND RECREATION , Department of	VOLUME 6
IDAPA 59	PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO - PERSI	VOLUME 9
IDAPA 27	PHARMACY , Board of	VOLUME 6

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS AND THE 2002 ADMINISTRATIVE CODE VOLUME NUMBERS		
IDAPA 29	POTATO COMMISSION, Idaho	VOLUME 7
IDAPA 31	PUBLIC UTILITIES COMMISSION	VOLUME 7
IDAPA 41	PUBLIC HEALTH DISTRICTS	VOLUME 8
IDAPA 33	REAL ESTATE COMMISSION	VOLUME 7
IDAPA 56	RANGELAND RESOURCES COMMISSION, Idaho	VOLUME 9
IDAPA 34	SECRETARY OF STATE, Office of the	VOLUME 7
IDAPA 49	SHORTHAND REPORTERS, Board of Certified	VOLUME 8
IDAPA 36	TAX APPEALS, Idaho Board of	VOLUME 7
IDAPA 35	TAX COMMISSION, State	VOLUME 7
IDAPA 39	TRANSPORTATION, Department of	VOLUME 8
IDAPA 54	TREASURER, Office of the State	VOLUME 9
IDAPA 21	VETERANS SERVICES, Division of	
IDAPA 46	VETERINARY MEDICAL EXAMINERS, Board of	VOLUME 8
IDAPA 55	VOCATIONAL AND TECHNICAL EDUCATION, Division of	VOLUME 9
IDAPA 47	VOCATIONAL REHABILITATION, Division of	VOLUME 8
IDAPA 37	WATER RESOURCES, Department of	VOLUME 8
IDAPA 42	WHEAT COMMISSION, Idaho	VOLUME 8

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED™ PROMOTION PROGRAM

DOCKET NO. 02-0104-0301 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 22-112, Idaho Code.

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

Wednesday, August 13th, 2003 - 7 p.m. - 9 p.m.
Nampa Civic Center
311 Third Street South, Nampa, ID 83651

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

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

The rule is needed to implement the provisions of HB 298, passed into law by the 2003 Idaho Legislature, which authorizes the Department of Agriculture to promulgate rules for voluntary promotion programs. The Department has subsequently developed the Idaho Preferred™ program to promote Idaho food and agricultural products. These rules establish the requirements for use of the Idaho Preferred™ logo and define eligible products, application procedures and participation fees.

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

This rule is needed to implement the provisions of House Bill 298 passed by the 2003 Legislature and signed into law by the Governor on March 27th, 2003.

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

The rule is necessary to comply with federal grant funding deadlines. Any delay in implementation poses a danger of losing the grant funding for launching the voluntary promotion program. Section 22-112, Idaho Code authorizes the the assessment of fees for the voluntary programs. Fees will be set annually by the Director and shall not exceed \$1,000 per year.

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted by the Department. This included an agriculture industry rules advisory committee which met three times. The rules were directly mailed to over 1,400 producers, processors, and shippers in the Department's marketing database and an open meeting was held on June 23rd, 2003.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Laura Johnson (208-332-8533) or Peter Mundt (208-332-8684).

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 August 27th, 2003.

DATED this 25th of June, 2003.

Mike Everett, Deputy Director
Department of Agriculture
2270 Old Penitentiary Road, Boise, Idaho 83712
PO Box 790, Boise, Idaho 83701
Phone: 208-332-8500 / Fax: 208-334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0104-0301

IDAPA 02, TITLE 01, CHAPTER 04

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED™ PROMOTION PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 1, Section 22-112, Idaho Code. (7-1-03)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.04, "Rules Governing the Idaho Preferred™ Promotion Program.. (7-1-03)T

02. Scope. These rules shall govern the participation in, and product selection criteria for the Idaho Preferred™ program. The program was developed by the Idaho State Department of Agriculture to identify and promote food and agricultural products from the state of Idaho, elevate consumer awareness of such products, and assist in developing opportunities for sale of such products. These rules establish the requirements for the use of the Idaho Preferred™ logo and will define eligible products, application procedures, and participation fees. (7-1-03)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (7-1-03)T

003. ADMINISTRATIVE APPEAL.

Persons are entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (7-1-03)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (7-1-03)T

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-8298. (7-1-03)T

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays as designated by the State of Idaho. (7-1-03)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. (7-1-03)T

04. Telephone Number. The telephone number for the central office is (208) 332-8500. (7-1-03)T

05. Fax Number. The fax number for the central office is (208) 334-2170. (7-1-03)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (7-1-03)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (7-1-03)T

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (7-1-03)T

02. Apicultural Product. Products produced from or related to honey bees or honey. (7-1-03)T

03. Aquacultural Product. Products produced from or related to fish, reptiles, or other aquatic animals. (7-1-03)T

04. Avicultural Product. Products produced from or related to birds, including but not limited to, ratites or poultry. (7-1-03)T

05. Beverage. Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (7-1-03)T

06. Broker. A sales and marketing agent employed to make bargains and contracts for compensation. (7-1-03)T

07. Cervidae Product. Products produced from or related to fallow deer, elk, or reindeer owned by a person. (7-1-03)T

08. Dairy Product. Products produced from or related to milk from cattle, goats, or sheep. (7-1-03)T

09. Department. The Idaho State Department of Agriculture. (7-1-03)T

10. Director. The Director of the Idaho State Department of Agriculture or his designated agent. (7-1-03)T

11. Florist Stock. All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (7-1-03)T

12. Foodservice. A person engaged in or related to the practice of commercial food preparation and service. (7-1-03)T

13. Fresh Produce, Commodities, And Fresh Meat. Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (7-1-03)T

14. Horticultural Products. Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (7-1-03)T

15. Livestock. Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (7-1-03)T

- 16. Livestock Product.** Products produced from or related to livestock. (7-1-03)T
- 17. Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (7-1-03)T
- 18. Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred™ program. (7-1-03)T
- 19. Nursery Stock.** All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (7-1-03)T
- 20. Packer/Shipper.** A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (7-1-03)T
- 21. Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred™ program. (7-1-03)T
- 22. Person.** An individual, firm, partnership, corporation, commission, association, cooperative, business, governmental subdivision or agency, or other business entity. (7-1-03)T
- 23. Processed Food.** Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (7-1-03)T
- 24. Processor.** A person engaged in the manufacturing of processed food. (7-1-03)T
- 25. Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (7-1-03)T
- 26. Retailer.** A person engaged in making sales directly to consumers. (7-1-03)T
- 27. Viticultural Products.** Products produced from or related to grapes and wine. (7-1-03)T
- 28. Wholesaler.** A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (7-1-03)T
- 011. -- 014. (RESERVED).**
- 015. VOLUNTARY PROGRAM.**
The Idaho Preferred™ program is a voluntary promotion program. (7-1-03)T
- 017. -- 099. (RESERVED).**
- 100. APPLICATION FOR PARTICIPATION.**
- 01. Application Requirement.** Persons interested in becoming a participant in the Idaho Preferred™ program shall do so by making application to the Department on forms established by the Director. New applications may be submitted at any time throughout the year. (7-1-03)T
- 02. Application Review And Compliance Verification.** The Director, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The Director will notify the applicant in writing of the approval or denial. (7-1-03)T
- 101. PARTICIPATION DURATION AND RENEWAL.**

01. Duration. Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (7-1-03)T

02. Renewing Participation. Renewals shall be submitted on forms established by the Director and will be due June 30. (7-1-03)T

03. Reporting On Use Of Logo. Participants renewing with the Department will report their use of the Idaho Preferred™ logo from the concluding program year. The report will include, but may not be limited to, data regarding the number of times the Idaho Preferred™ logo was used. (7-1-03)T

102. -- 109. (RESERVED).

110. PARTICIPATION FEES.

01. Annual Fee. The Director shall annually establish participation fees for each participation category by April first for the following program year. Participation fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000). Fees for the first program year will be set by July 1, 2003. (7-1-03)T

02. Participation Categories: (7-1-03)T

a. Producer. (7-1-03)T

b. Packer/Shipper/Processor. (7-1-03)T

c. Supporting Organization. (7-1-03)T

d. Retail/Foodservice. (7-1-03)T

e. Broker/Distributor. (7-1-03)T

03. Pro-Rated Fees. New participation agreements issued during the program year will be assessed a fee pro-rated on a monthly basis for the duration of the program year. (7-1-03)T

04. Participation In Multiple Categories. Persons qualifying in multiple participation categories shall be assessed the greater of participation fees. (7-1-03)T

111. PARTICIPATION PRIVILEGES.

Participants will benefit from privileges including: (7-1-03)T

01. Use Of The Idaho Preferred™ Logo. Use of the Idaho Preferred™ Logo on product labels, advertising, signage, or other promotional materials as allowed by the department. (7-1-03)T

02. Listing. Listing In Idaho Preferred™ Product Directories. (7-1-03)T

03. Promotion. promotion through the Idaho Preferred™ website. (7-1-03)T

04. Visibility. Visibility from the department's promotion activities. (7-1-03)T

05. Other Privileges. Other privileges as established by the Director. (7-1-03)T

112. -- 199. (RESERVED).

200. PRODUCT QUALIFICATION.

01. Authority Of Determination. The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (7-1-03)T

02. General Product Qualifications. Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (7-1-03)T

a. Fresh produce, commodities, and meat bearing the Idaho Preferred™ logo shall be one hundred percent (100%) Idaho grown or raised. (7-1-03)T

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content that has been grown or raised in Idaho. The percentage of Idaho agricultural content and the percentage of value added to the product in the state of Idaho, shall total no less than eighty percent (80%) of the total value of the product. Value is determined as a percentage of the wholesale price. (7-1-03)T

c. Non-food agricultural products must be at least fifty percent (50%) agricultural content by weight and that agricultural content must have been grown or raised in Idaho. (7-1-03)T

03. Potatoes. Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred™ program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (7-1-03)T

04. Exceptions. The Director shall have the authority to establish product qualification requirements specific to individual products and commodities by written order. (7-1-03)T

201. -- 299. (RESERVED).

300. LOGO.

The Idaho Preferred™ logo has been registered or filed for registration by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Director will establish by written order a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred™ logo. (7-1-03)T

01. Description Of The Idaho Preferred™ Logo. The Idaho Preferred™ logo is an oval background containing a snow-capped mountain range topped with a sunburst. The word "IDAHO" appears in Brand Idaho logotype, and a banner emblazoned with the word "PREFERRED" scrolls across the bottom of the logo. (7-1-03)T

02. Graphic Depiction Of The Idaho Preferred™ Logo: (7-1-03)T



TM (7-1-03)T

301. SPECIAL PROMOTIONAL ACTIVITIES.

01. Activities. The Department may engage in special promotional activities including, but not limited to, advertising, product demonstrations, events, publicity, and cooperative activities. The Department may invite participants in the Idaho Preferred™ program to participate in any activities. (7-1-03)T

02. Fees. The Department may assess a separate fee for any special promotional activity. This fee will not exceed the actual cost of conducting the activity. (7-1-03)T

302. OTHER IDAHO PROMOTION PROGRAMS.

01. Commodity-Specific Promotion Programs. Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. (7-1-03)T

02. Ownership Of Marks. Any trademarks, certification marks, brands, seals, logos or other identification marks, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property. Any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization. (7-1-03)T

303. DISTRIBUTION OF PROMOTIONAL MATERIAL.

The Idaho Preferred™ program shall have the authority to provide retail and food service outlets, farmers' markets, schools, media, fairs, and other such businesses, organizations, and venues the opportunity to promote Idaho food and agricultural products using the program logo and promotional materials. Open distribution of any and all point-of-sale materials, signage, advertising, identification placards, and other such promotional material, in accordance with this chapter and other applicable laws and precedent, is acceptable use and not considered an infringement on the ownership rights of any mark or seal of an organization as defined in this chapter. (7-1-03)T

304. -- 309. (RESERVED).

310. SELF-CERTIFICATION.

All participants shall self-certify that all products marked with the Idaho Preferred™ logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance process. (7-1-03)T

311. COMPLIANCE.

01. Authority Of Director. The Director shall have the authority to enter upon the premises of any participant to examine and copy any of the following items: (7-1-03)T

a. Books, papers, records, ledgers, journals, electronically or magnetically recorded data; (7-1-03)T

b. Computers and computer records or memoranda bearing on the usage of the Idaho Preferred™ logo; and (7-1-03)T

c. To secure all other information concerned in the enforcement of these rules. (7-1-03)T

02. Random Compliance Inspection. The Director shall annually perform random compliance inspections. (7-1-03)T

03. Samples. The participant shall, upon the request of the Director, provide samples of the participant's labels, packaging, merchandising, and promotional materials featuring the Idaho Preferred™ logo. (7-1-03)T

312. -- 314. (RESERVED).

315. VIOLATION.

Any person found in violation of these rules is subject to termination of participation privileges. (7-1-03)T

316. -- 999. (RESERVED).

IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL

04.20.01 - RULES IMPLEMENTING THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

DOCKET NO. 04-2001-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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) 39-8407(4), Idaho Code.

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

**August 21, 2003
10 a.m. to 12 noon and 1 p.m. to 3 p.m.
LBJ Building Conference Room located in the basement
650 W State St., Boise, Idaho**

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

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

This rule is necessary to effectively enforce Idaho's Tobacco Master Settlement Agreement Complementary Act, effective July 1, 2003. Failure to adopt this rule will jeopardize our ability to realize the purposes for which the Legislature adopted this Act.

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

Immediate implementation of Idaho's Tobacco Master Settlement Agreement Complementary Act is necessary to effectuate its purposes as provided by the Legislature.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because temporary rulemaking was necessary and this rule is necessary to comply with Idaho's Tobacco Master Settlement Agreement Complementary Act, effective July 1, 2003.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brett T. DeLange, Deputy Attorney General at 334-4114.

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 August 28, 2003.

DATED this 16th day of June, 2003.

Brett T. DeLange, Deputy Attorney General
Office of the Attorney General
Consumer Protection Unit
P.O. Box 83720, Boise, Idaho 83720-0010

THE FOLLOWING IS THE TEXT OF DOCKET NO. 04-2001-0301

IDAPA 04, TITLE 20, CHAPTER 01

**04.20.01 - RULES IMPLEMENTING THE IDAHO TOBACCO MASTER
SETTLEMENT AGREEMENT COMPLEMENTARY ACT**

**Subchapter A -- General Provisions and Definitions
(Rules 0 through 99)**

000. LEGAL AUTHORITY (Rule 0).

This chapter is adopted under the legal authority of Title 39, Chapter 84, Idaho Code. (7-1-03)T

001. TITLE AND SCOPE (Rule 1).

01. Title. The title of this chapter is “Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act”. (7-1-03)T

02. Scope. This chapter has the following scope: (7-1-03)T

a. These rules govern compliance with, and seek to implement, Idaho’s Tobacco Master Settlement Agreement Complementary Act. (7-1-03)T

b. These rules pertain to the sale, stamping and reporting of cigarettes in Idaho. (7-1-03)T

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (Rule 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General’s policies concerning administration of these rules will be maintained for public inspection. (7-1-03)T

003. PUBLIC RECORDS ACT COMPLIANCE (Rule 3).

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General’s policies concerning administration of these rules are public records available for inspection. (7-1-03)T

004. ADMINISTRATIVE APPEALS (Rule 4).

There is no provision for administrative appeals. (7-1-03)T

005. INCORPORATION BY REFERENCE (Rule 5).

No documents are incorporated by reference in this chapter. (7-1-03)T

006. CITATION (Rule 6).

The official citation of this chapter is IDAPA 04.20.01.000 et seq. For example, this section’s citation is IDAPA 04.20.01.006. In documents submitted to the Attorney General or issued by the Attorney General, these rules may be cited as CAR (Complementary Act Rules) and rule number less leading zeroes. For example, this rule may be cited as CAR 6. (7-1-03)T

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (Rule 7).

01. Address. The Attorney General's mailing address is Attorney General, Room 210, Statehouse, Boise, Idaho 83720-0010. The Attorney General's street address is 700 West Jefferson, Room 210 of the Idaho Statehouse. (7-1-03)T

02. Telephone. The Attorney General's telephone number is (208) 334-2424. (7-1-03)T

03. FAX. The Attorney General's facsimile telephone number is (208) 334-2830. (7-1-03)T

04. Office Hours. The Attorney General's office hours for accepting filings under this chapter are from 8 a.m. through 5 p.m., Monday through Friday, except state holidays. (7-1-03)T

008. DEFINITIONS (Rule 8).
As used in this chapter: (7-1-03)T

01. Brand Family. Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes. (7-1-03)T

02. Cigarette. Cigarette has the same meaning as that term is defined in Section 39-7802(d), Idaho Code. (7-1-03)T

03. Directory. Directory means the Directory of Compliant Tobacco Product Manufacturers and Brands, as provided for by Section 39-8403(2), Idaho Code. (7-1-03)T

04. Master Settlement Agreement. Master settlement agreement has the same meaning as that term is defined in Section 39-7802(e), Idaho Code. (7-1-03)T

05. Nonparticipating Manufacturer. Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer. (7-1-03)T

06. Participating Manufacturer. Participating manufacturer has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto. (7-1-03)T

07. Qualified Escrow Fund. Qualified escrow fund has the same meaning as that term is defined in Section 39-7802(f), Idaho Code. (7-1-03)T

08. Stamping Agent. Stamping agent means a person that is authorized or required to affix tax stamps to packages or other containers of cigarettes under Title 63, Chapter 25, Idaho Code. (7-1-03)T

09. Tobacco Product Manufacturer. Tobacco product manufacturer has the same meaning as that term is defined in Section 39-7802(i), Idaho Code. (7-1-03)T

009. EFFECTIVE DATE (Rule 9).
Unless otherwise indicated, the effective date of every rule in this chapter is July 1, 2003. (7-1-03)T

010. -- 099. (RESERVED).

**Subchapter B -- Quarterly Reports
(Rules 100 through 199)**

100. QUARTERLY REPORTS (Rule 100).
To promote compliance with Section 39-7803(b), Idaho Code, the Attorney General may require nonparticipating manufacturers to make the escrow payments required by Section 39-7803(b), Idaho Code, in quarterly installments

during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria: (7-1-03)T

01. No Previous Escrow Deposit. Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Idaho; (7-1-03)T

02. No Escrow Deposit For More Than One Year. Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year; (7-1-03)T

03. Untimely Or Incomplete Deposits. Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year; and (7-1-03)T

04. Outstanding Judgments. Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty. (7-1-03)T

101. DEADLINE FOR QUARTERLY REPORTS (Rule 101).
Nonparticipating manufacturers who are required to submit quarterly reports must do so no later than thirty (30) days after the end of the quarter in which the sales are made. (7-1-03)T

102. -- 199. (RESERVED).

**Subchapter C -- Review of Decisions to Exclude or Remove from the Directory
(Rules 200 through 299)**

200. REVIEW OF ATTORNEY GENERAL DECISIONS RELATED TO EXCLUDING OR REMOVING FROM THE DIRECTORY (Rule 200).

A determination of the Attorney General to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act, Title 67, Chapter 52, Idaho Code. (7-1-03)T

201. -- 299. (RESERVED).

**Subchapter D -- Directory
(Rules 300 through 399)**

300. DIRECTORY (Rule 300).

The directory shall list all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 39-8403(1), Idaho Code, and all brand families that are listed in such certifications; provided, however, (7-1-03)T

01. Missing Or Noncompliant Certification. The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with Section 39-8403(1)(b) and (c), Idaho Code, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General. (7-1-03)T

02. Inadequate Escrow Deposit And Outstanding Judgments. Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that: (7-1-03)T

a. Any escrow payment required pursuant to Section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(7-1-03)T

b. Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer. (7-1-03)T

301. PUBLICATION OF DIRECTORY (Rule 301).

The directory will be developed and published by September 1, 2003. The directory will be available on the Internet at the Attorney General's website. The homepage address for the Attorney General's website is: <http://www2.state.id.us/ag/> (7-1-03)T

302. DIRECTORY FOR JULY 1, 2003 TO SEPTEMBER 1, 2003 (Rule 302).

For the time period July 1, 2003 to September 1, 2003, the directory shall be deemed to be every participating manufacturer and every nonparticipating manufacturer who has established and properly funded a qualified escrow fund for Idaho. (7-1-03)T

01. Participating Manufacturers In Directory. The list located at: http://www.naag.org/upload/1054832000_PM_list.pdf identifies every participating manufacturer. (7-1-03)T

02. Nonparticipating Manufacturers In Directory. The list located at: <http://www2.state.id.us/ag/consumer/tobacco/escrowlist.pdf> identifies every nonparticipating manufacturer who has established and properly funded a qualified escrow fund for Idaho. (7-1-03)T

303. DIRECTORY UPDATES (Rule 303).

The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter. The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family. (7-1-03)T

304. -- 999. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.01 - RULES GOVERNING REPEAL OF EXISTING PLUMBING PERMIT RULES

DOCKET NO. 07-0201-0301 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 54-2605(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 21, 2003.

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

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

The proposed rule change repeals IDAPA 07.02.01 - Rules Governing Repeal of Existing Plumbing Permit Rules, Division of Building Safety as the chapter is no longer of any force or effect.

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

There are no fees being charged or imposed in this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is housekeeping in nature and the chapter being repealed is no longer of any force or effect.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ted Hogander, Plumbing Bureau Chief, 332-7154.

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 August 27, 2003.

DATED this 27th day of June, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

IDAPA 07.02.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.07 - RULES GOVERNING READOPTION OF RULES OF PLUMBING DIVISION

DOCKET NO. 07-0207-0301 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 54-2605(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 21, 2003.

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

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

The proposed rule change repeals IDAPA 07.02.07 - Rules governing readoption of rules of plumbing division, Division of Building Safety as the chapter is no longer of any force or effect.

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

There are no fees being charged or imposed in this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is housekeeping in nature and the chapter being repealed is no longer of any force or effect.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ted Hogander, Plumbing Bureau Chief, 332-7154.

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 August 27, 2003.

DATED this 27th day of June, 2003.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

IDAPA 07.02.07 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0301

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 33-1501 through 33-1512 and 33-1006, Idaho Code.

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

August 27, 2003 - 9 a.m. - 11 a.m.
Idaho State Department of Education
LBJ Building - 2nd floor Conference Room
650 State St., Boise, ID 83720-0027

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting. For arrangements, contact the undersigned at (208) 332-6811.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended rulemaking and the principle issues involved:

Current administrative rules related to Idaho's pupil transportation support program became effective July 1, 2002. Changes in administrative rule and Standards for Idaho School Buses and Operations related to new school bus construction standards, operations and bus purchasing are anticipated in response to a national advisory, legislative inquiries, legislation and concerns expressed by the State Board of Education.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the May 2003 Idaho Administrative Bulletin, Volume 03-5, Page 12. Following SBE approval of the negotiated rulemaking process, SDE disseminated information to superintendents, transportation supervisors, contractors and technicians throughout the state. Staff members from the State Department of Education presented suggested language at regional superintendents' meetings and the Idaho Pupil Transportation Summer Conference. A public hearing was held on May 28, 2003. Following input from various stakeholders, the Standards for Idaho School Buses and Operations – October 2, 2003 document has been drafted as part of the Administrative Procedures Act process. A SISBO draft, as well as a proposed rule draft, can be accessed at <http://www.sde.state.id.us/finance/transport/regulations.htm>; "Notice of Negotiated/Proposed Rulemaking".

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this rulemaking or to obtain a copy of the draft of the text of the proposed rule, contact Rodney D. McKnight, State Department of Education, Finance and Transportation, P.O. Box 83720, Boise, Idaho, (208) 332-6851 or fax to (208) 334-3484.

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 August 28, 2003.

DATED this 26th day of June, 2003.

Dr. Marilyn Howard
Superintendent of Public Instruction
State Department of Education
650 West State Street - P.O. Box 83720
Boise, Idaho 83720-0027
(208) 332-6811
(208) 332-6836 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0301

004. INCORPORATION BY REFERENCE.

The State Board of Education adopts and incorporates into its rules: (4-5-00)

01. Incorporated Document. The Idaho Department of Education Certification Standards and Code of Ethics for the Idaho Teaching Profession as approved on October 19, 2000. (3-30-01)

02. Document Availability. The Idaho Department of Education Certification Standards and Code of Ethics for the Idaho Teaching Profession are available at the Idaho State Department of Education at 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0027. (3-30-01)

03. Incorporated Document. The Idaho Standards for the Initial Certification of Professional School Personnel as approved on October 19, 2000. (3-30-01)

04. Document Availability. The Standards are available at the Office of the State Board of Education, 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0037, and can also be accessed electronically at <http://www.sde.state.id.us/osbe>. (3-30-01)

05. Incorporated Document. The Standards for Idaho School Buses and Operations as approved on ~~November 15~~ October 2, 2004. (~~7-1-02~~)()

06. Document Availability. The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (7-1-02)

07. Incorporated Document. The Idaho Standards for Public School Driver Education and Training as approved on November 22, 2002. (5-3-03)

08. Document Availability. The Idaho Standards for Public School Driver Education and Training are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (5-3-03)

09. Incorporated Document. The Idaho Driver Education Administrative Manual as approved on October 17, 1996. (5-3-03)

10. Document Availability. The Idaho Driver Education Administrative Manual is available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

150. TRANSPORTATION.

Minimum School Bus Construction Standards. All new school bus chassis and bodies must meet or exceed Standards for Idaho School Buses and Operations as approved on ~~November 15~~ October 2, 2004, as authorized in Section 33-1511, Idaho Code. (~~7-1-02~~)()

151. -- 159. (RESERVED).

160. MAINTENANCE STANDARDS AND INSPECTIONS.

01. Safety. School buses will be maintained in a safe operating condition at all times. Certain equipment or parts of a school bus that are critical to its safe operation must be maintained at prescribed standards.

When routine maintenance checks reveal any unsafe condition identified in the Standards for Idaho School Buses and Operations as approved on ~~November 15~~ October 2, 2004, the school district will eliminate the deficiency before returning the vehicle to service. (7-1-02)()

02. Annual Inspection. After completion of the annual school bus inspection, and if the school bus is approved for operation, an annual inspection sticker, indicating the year and month of inspection, will be placed in the lower, right-hand corner of the right side front windshield. The date indicated on the inspection sticker shall correlate to State Department of Education's annual school bus inspection certification report signed by pupil transportation maintenance personnel and countersigned by the district superintendent. (Section 33-1506, Idaho Code) (7-1-02)

03. Sixty-Day Inspections. At intervals of not more than sixty (60) calendar days, excluding documented out-of-use periods in excess of thirty (30) days, the board of trustees shall cause inspection to be made of each school bus operating under the authority of the board. Except that, no bus with a documented out-of-use period in excess of sixty (60) days shall be returned to service without first completing a documented sixty (60) day inspection. Annual inspections are considered dual purpose and also meet the sixty-day (60) inspection requirement. (Section 33-1506, Idaho Code) ()

034. Documentation Of Inspection. All inspections will be documented in writing. Annual inspections must be documented in writing on the form provided by the State Department of Education. (4-1-97)

045. Unsafe Vehicle. When a bus has been removed from service during a State Department of Education inspection due to an unsafe condition, the district will notify the State Department of Education on the appropriate form before the bus can be returned to service. When a bus has been found to have deficiencies that are not life-threatening, it will be repaired within thirty (30) days and the State Department of Education notified on the appropriate form. If the deficiencies cannot be repaired within thirty (30) days, the bus must be removed from service until the deficiencies have been corrected or an extension granted. (7-1-02)

06. Withdraw From Service Authority. Subsequent to any federal, national, or state advisory with good cause given therefor, the district shall, under the direction of the State Department of Education, withdraw from service any bus determined to be deficient in any prescribed school bus construction standard intended to safeguard life or minimize injury. No bus withdrawn from service under the provisions of this section shall be returned to service or used to transport students unless the district submits to the State Department of Education a certification of compliance specific to the school bus construction standard in question. (Section 33-1506, Idaho Code) ()

161. -- 169. (RESERVED).

170. SCHOOL BUS DRIVERS AND VEHICLE OPERATION.

All school districts and school bus drivers must meet or exceed the training, performance and operation requirements delineated in the Standards for Idaho School Buses and Operations as approved on ~~November 15~~ October 2, 2004. (Section 33-1508; 33-1509, Idaho Code) (7-1-02)()

(BREAK IN CONTINUITY OF SECTIONS)

190. PROGRAM OPERATIONS.

School district fiscal reporting requirements as well as reimbursable and non-reimbursable costs within the Pupil Transportation Support Program, including but not limited to administration, field and activity trips, safety busing, contracting for transportation services, leasing of district-owned buses, insurance, ineligible and non-public school students, ineligible vehicles, capital investments including the purchasing of school buses and equipment, and commercial computerized routing and scheduling software shall be delineated in Standards for Idaho School Buses and Operations as approved on ~~November 15~~ October 2, 2004. (Section 33-1006, Idaho Code) (7-1-02)()

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

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1208, 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 August 27, 2003.

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

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

The proposed rules amendments would clarify that technology programs and related science programs are not the same as engineering programs and would state what courses a technology or related science graduate would need to complete in order to be the equivalent of an engineering graduate. The proposed rule amendments would preclude a failing candidate from reviewing the examination but would allow them access to a diagnostic analysis of their performance if it is available to the Board. The proposed rule amendments would clarify that the Board will proctor an examination for a candidate from another jurisdiction if that candidate would qualify for assignment to the exam in Idaho. The proposed rule amendments would recognize the equivalency of education for a graduate of a program recognized in the Washington Accord, or by ABET as being substantially equivalent. The proposed rule amendments would clarify that comity applicants who have not completed an approved engineering program must complete specific courses in order to be considered equivalent of an engineering graduate.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are primarily housekeeping in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 334-3860.

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 August 27, 2003.

DATED this 18th day of June, 2003.

David L. Curtis, P.E.
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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0101-0301

017. EXAMINATIONS.

01. Semiannually Or Annually; Special Or Oral Examination. Examinations for professional engineer, professional land surveyor, engineer-in-training and land surveyor-in-training will be held annually or semi-annually, the exact time and place to be determined by the Board. Special oral or written examinations during the year may be given by the Board. (7-1-93)

02. Eligibility For Examinations; Educational Requirements. The application for registration for professional engineer, professional land surveyor or certification of engineer-in-training or land surveyor-in-training, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before admittance to any examination. (7-1-93)

a. In regard to educational requirements, the Board will consider as unconditionally approved only those engineering ~~curricula~~ programs which are accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). Non-EAC/ABET accredited engineering ~~curricula~~ programs and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. ~~An approved four-year Bachelor of Technology (B.T.) engineering curriculum is not considered equal to an approved Bachelor of Science engineering curriculum. The Board will require additional experience for applicants with B.T. degrees.~~ (7-1-93)(____)

b. An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a major related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer-in-Training or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer. (5-3-03)(____)

i. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

ii. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

c. In addition to the minimum requirements set forth in Section 54-1212, Idaho Code, a person who desires to be qualified by examination in the field of structural engineering shall meet the following requirements: (4-22-94)

- i.** Be a registered professional engineer in Idaho. (7-1-93)
- ii.** Have two (2) years of work experience in the field of structural engineering after being registered as a professional engineer. The Principles and Practice of Engineering examination for Structural Engineering will

cover the practice of structural engineering to test the applicant's fitness to assume responsibility for engineering work affecting the public health, safety and welfare. The examination shall be sixteen (16) hours. (7-1-93)

d. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree from an U.S. institution which has a bachelor degree program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology in the discipline of the applicant's master's degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)

03. Notification To Applicant By Board. Notification of assignment or non-assignment to the examination will be furnished to the applicant at least thirty (30) days prior to the date of the examination. (4-5-00)

04. Notification To Board By Applicant. The applicant shall, at least fifteen (15) days before an examination, notify the Executive Director of the Board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the Board. (4-5-00)

05. Excused Non-Attendance At Exam. In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

06. Two Examinations For Engineering Registration. The complete examining procedure for registration as a professional engineer consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer-in-training certification, and the second is the Principles and Practice of Engineering for professional engineer registration. Each examination shall be eight (8) hours in length. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering curriculum. A certificate as an Engineer-in-Training will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. (4-22-94)

07. Fundamentals Of Engineering. The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants education. (4-5-00)

08. Principles And Practice of Engineering - Disciplines. The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)

09. Two Examinations For Land Surveying Registration. The complete examining procedure for registration as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Land Surveying examination for land surveyors-in-training certification, and the second is the Principles and Practice of Land Surveying registration. Each examination will be a total of eight (8) hours in length. Having passed the Fundamentals of Land Surveying examination, applicants will be required to take the Principles and Practice of Land Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments.

The Principles and Practice of Land Surveying examination may consist of separate modules, each of which must be passed. (4-5-00)

10. Oral Or Unassembled Examinations. An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

11. Special Examinations. A special examination, written or oral or both, may be required in certain instances where the applicant is seeking registration through comity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or registration in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (7-1-93)

12. Grading. Each land surveyor-in-training, engineer-in-training and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire eight (8) hour examination before being awarded certification or registration. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each section of the examination. (4-5-00)

13. Use Of NCEES Examinations. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineers-in-training, professional land surveyors, and land surveyors-in-training may be used by the Board. The examination for the field of structural engineering shall be the sixteen (16) hour examination as determined by the Board. (7-1-93)

14. Review Of Examination By Examinee. (3-15-02)

~~a- Due to security concerns about the examinations, Examinees who fail an examination which includes any "free response" or "essay" type problems shall not be allowed to review only the "free response" or "essay" type problems on their examination. Examinees who fail an examination will only be allowed to review those questions attempted during the examinee's last taking of the examination. Examinees shall be allowed a review time equal to one-half (1/2) the time originally allowed to take the "free response or "essay" portion of the examination. The review shall be monitored by a Board member or Board representative. Paper will be provided by the Board and may not be taken away from the review site. A hand held calculator not having word processing capabilities and not having a "QWERTY" keyboard may be used by the applicant during the review. Examinees in the Principles and Practice of Engineering examination may submit a rescoring request on the "free response" or "essay" type problems attempted. Examinees who submit a rescoring request may use their own reference materials to complete the rescoring request.~~ (3-15-02)

~~b- Examinees who fail an examination which consists partly of "free response" or "essay" and partly of other type problems shall be provided a diagnostic analysis of their performance on the non "free response" or non "essay" problems, but they will not be allowed to review the non "free response" or non "essay" type problems attempted in the examination if such an analysis is available to the Board.~~ (3-15-02)()

~~c- Examinees who fail an examination which does not contain "free response" or "essay" type problems shall be provided a diagnostic analysis of their performance, but they will not be allowed to review the actual problems attempted in the examination.~~ (3-15-02)

15. Disposal Of Used Examination Pamphlets And Answer Sheets. The Executive Director of the Board is authorized by the Board to dispose of used examination solution pamphlets and answer sheets after the first anniversary date after the examination was given. (3-30-01)

16. Proctoring Of Examinations. The Board will proctor an examination for another jurisdiction if the candidate would qualify under Title 54, Chapter 12, Idaho Code and these rules for assignment to the examination being proctored. ()

(BREAK IN CONTINUITY OF SECTIONS)

019. REGISTRANTS OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.

01. Interstate Registration Evaluation. Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law. Graduates of programs accredited by organizations signatory to the "Washington Accord" and graduates from programs evaluated by ABET as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. Individuals who have passed examinations considered by the Board to be of comparable difficulty and duration as those utilized by the Board shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor. (4-5-00)()

a. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is not pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-5-00)

b. An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a ~~major~~ related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. (3-15-02)()

02. Denials Or Special Examinations. An application from a registrant of another state, territory or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. If the applicant is assigned to examination no additional fee shall be required. (7-1-93)

03. Business Entity Requirements. No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized to practice professional engineering or professional land surveying or both in one (1) or more states, territories or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly registered to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (3-15-02)

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

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-1208, 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 August 27, 2003.

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

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

The proposed rule amendment would require that license holders (1) keep clients reasonably informed about the status of matters pertinent to the client's interest and promptly comply with reasonable requests for information; (2) provide information reasonably necessary to permit the client to make informed decisions regarding matters over which the client has control and responsibility; and (3) exercise independent professional judgment and render candid advice which may include considerations such as moral, economic, social, and political factors that may be relevant to the matters.

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

This action does not impose or increase any fee.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are primarily housekeeping in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David L. Curtis at (208) 334-3860.

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 August 27, 2003.

DATED this 18th day of June, 2003.

David L. Curtis, P.E., 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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 10-0102-0301

005. RESPONSIBILITY TO THE PUBLIC.

01. Primary Obligation. All Registrants and Certificate Holders shall at all times recognize their primary obligation is to protect the safety, health and welfare of the public in the performance of their professional duties. (7-1-93)

02. Standard Of Care. Each Registrant and Certificate Holder shall perform in accordance with the standard of care for the profession and is under duty to the party for whom the service is to be performed to exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances. (7-1-93)

03. Professional Judgement. If any Registrant's or Certificate Holder's professional judgement is overruled under circumstances where the safety, health and welfare of the public are endangered, the Registrant or Certificate Holder shall inform the employer or client of the possible consequences and, where appropriate, notify the Board or such other authority of the situation. (7-1-93)

04. Obligation To Communicate Discovery Of Discrepancy. If a Registrant or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Registrant or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the Registrant or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Registrant or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within sixty (60) calendar days to any question about his work raised by another Registrant or Certificate Holder. Failure to respond on the part of the Registrant or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the Registrant or Certificate Holder to disciplinary action by the Board. The discoverer shall notify the Board in the event a response satisfactory to the discoverer is not obtained within sixty (60) days. (3-30-01)

05. Obligation To Comply With Rules Of Continuing Professional Development. All Registrants licensed to practice professional land surveying shall comply with the requirements contained in IDAPA 10.01.04, "Rules of Continuing Professional Development". (7-1-99)

06. Obligation To Communicate And Be Candid. ()

a. A Registrant shall keep a client reasonably informed about the status of all matters pertinent to the client's interest and promptly comply with reasonable requests for information. ()

b. A Registrant shall provide information reasonably necessary to permit the client to make informed decisions regarding matters over which the client has control and responsibility. ()

c. A Registrant shall exercise independent professional judgment and render candid advice which may include considerations such as moral, economic, social, and political factors that may be relevant to the matters. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.02.19 - RULES GOVERNING FOOD SAFETY AND SANITATION STANDARDS
FOR FOOD ESTABLISHMENTS (UNICODE)**

DOCKET NO. 16-0219-0301 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

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

Monday, August 18, 2003
7:00 - 9:00 p.m.
Holiday Inn Boise
3300 Vista Ave
Boise, ID

Wednesday, August 20, 2003
7:00 - 9:00 p.m.
Holiday Inn Pocatello
1399 Bench Road
Pocatello, ID

Wednesday, August 27, 2003
7:00 - 9:00 p.m.
Shilo Inn Coeur d'Alene
702 Appleway
Coeur d'Alene, ID

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 entire chapter of rules, IDAPA 16.02.19, "Rules Governing Food Safety and Sanitation Standards for Food Establishments (UNICODE)," is being repealed and rewritten under Docket 16-0219-0302. The current standards for the State of Idaho are being repealed to set Idaho standards that will be more consistent with other states standards on food safety.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted by the Department of Health and Welfare by holding meetings and receiving input and agreement from the Idaho Food Safety Advisory Committee. The committee was comprised of representatives of the food industry, academic representatives and regulatory representatives.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Mary Valentine at (208) 334-5936.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before August 27, 2003.

DATED this 23rd day of June, 2003.

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

IDAPA 16.02.19 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS

DOCKET NO. 16-0219-0302 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

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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 rule making:

This chapter of rules is being rewritten to update Idaho's food safety standards that apply to commercial food establishments. The current standards for the State of Idaho are being repealed in Docket 16-0219-0301. This new chapter will set standards to be more consistent with other states on food safety. These rules incorporate the "Food Code, 2001 Recommendations of the United States Public Health Service Food and Drug Administration," with modifications and additions.

The text of the 2001 Food Code may be viewed on line at "<http://www.cfasan.fda.gov>". It is published by the National Technical Information Service, Publication PB 2002-100819. A certified copy of this publication may be reviewed at the main office of the Department of Health and Welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted by the Department of Health and Welfare by holding meetings and receiving input and agreement from the Idaho Food Safety Advisory Committee. The committee was comprised of representatives of the food industry, academic representatives and regulatory representatives.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Mary Valentine at (208) 334-5936.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before August 27, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0219-0302

IDAPA 16, TITLE 02, CHAPTER 19

16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS

000. LEGAL AUTHORITY.

The State of Idaho Board of Health and Welfare is authorized under Sections 37-121 and 39-1603, Idaho Code, to adopt rules for the regulation of food establishments to protect public health. ()

001. TITLE, SCOPE AND APPLICABILITY.

01. Title. The title of this chapter is IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," and may also be known as the Idaho Food Code. ()

02. Scope. The purpose of these rules is to establish standards for the provision of safe, unadulterated and honestly presented food for consumption by the public. These rules provide requirements for licensing, inspections, review of plans, employee restriction, and license suspensions for food establishments and food processing plants. Also included are definitions and set standards for management, personnel, food operations, equipment and facilities. ()

03. These Rules Apply To Food Establishments. Food establishments as defined in Section 39-1602, Idaho Code, must follow these rules. Those facilities include but are not limited to the following: ()

a. Restaurants, catering facilities, taverns, kiosks, vending facilities, commissaries, cafeterias, mobile food facilities, temporary food facilities; and ()

b. Schools, senior centers, hospitals, residential care and treatment facilities, nursing homes, correctional facilities, camps, food banks, and church facilities; and ()

c. Retail markets, meat, fish, delicatessen, bakery and supermarkets, convenience stores, health food stores, and neighborhood markets; and ()

d. Food, water and beverage processing and bottling facilities that manufacture, process and distribute food, water and beverages within the state of Idaho, and are not inspected for food safety by a federal agency. ()

04. These Rules Do Not Apply To These Establishments. These rules do not apply to the following establishments as exempted in Idaho Code. ()

a. Agricultural markets as exempted in Section 39-1602, Idaho Code. ()

b. Bed-and-breakfast operations that prepare and offer food for breakfast only to guests. The number of guest beds must not exceed ten (10) beds as defined in Section 39-1602, Idaho Code. ()

c. Day care facilities regulated by Sections 39-1101 through 39-1119, Idaho Code. ()

d. Licensed outfitters and guides regulated by Sections 36-2101 through 36-2119, Idaho Code. ()

e. Low-risk food establishments, as exempted in Section 39-1602, Idaho Code, which offer only non-potentially hazardous foods. ()

f. Non-profit charitable, fraternal, or benevolent organizations that do not prepare or serve food on a

regular basis as exempted in Section 39-1602, Idaho Code. Food is not considered to be served on a regular basis if it is not served for more than five (5) consecutive days or no more than three (3) occasions per year for foods which are not potentially hazardous. For all other food, it must not be served more than one (1) meal per week. ()

g. Private homes where food is prepared or served for family consumption or receives catered or home-delivered food as exempted by Section 39-1602, Idaho Code. ()

05. How To Use This Chapter Of Rules. The rules in this chapter are modifications, additions or deletions made to the federal publication incorporated by reference in Section 004 of these rules. In order to follow these rules the publication is required. Changes to those standards are listed in this chapter of rules by listing which section of the publication is being modified at the beginning of each section of rule. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department has no written interpretations that apply to rules of this chapter. ()

003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.

01. Administrative Appeals. Administrative appeals including compliance conferences are handled by the regulatory authority. See Sections 860 and 861 of these rules for compliance and revocation issues. ()

02. Contested Cases. Department contested cases and appeals are governed by provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

004. INCORPORATION BY REFERENCE.

The Department is adopting by reference the "Food Code, 2001 Recommendations of the United States Public Health Service Food and Drug Administration," published by National Technical Information Service, Publication PB2002-100819. A certified copy of this publication may be reviewed at the main office of the Department of Health and Welfare. It is also available online at "<http://www.cfsan.fda.gov>". This publication is being adopted with modifications and additions as follows: ()

01. Chapter 1, Purpose And Definitions. Additions and modifications have been made to this chapter. See Sections 100 through 199 of these rules. ()

02. Chapter 2, Management And Personnel. Modifications have been made to this chapter. See Sections 200 through 299 of these rules. ()

03. Chapter 3, Food. Modifications have been made to this chapter. See Sections 300 through 399 of these rules. ()

04. Chapter 4, Equipment, Utensils, And Linens. This chapter has been adopted with no modifications. ()

05. Chapter 5, Water, Plumbing And Waste. This chapter has been adopted with no modifications. ()

06. Chapter 6, Physical Facilities. This chapter has been adopted with no modifications. ()

07. Chapter 7, Poisonous Or Toxic Materials. Modifications have been made in this chapter. See Sections 700 through 799 of these rules. ()

08. Chapter 8, Compliance And Enforcement. Modifications have been made in this chapter. See Sections 800 through 899 of these rules. ()

09. Annexes 1 Through 7 Are Excluded. These sections have not been adopted. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. (208) 334-5500. ()

05. Internet Website. The Department's Internet website is found at "http://www2.state.id.us/dhw/". ()

006. CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions in Title 9, Chapter 3, Idaho Code. Restrictions contained in Section 39-610, Idaho Code, and the Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records," must also be followed. ()

01. Contested Hearing And Appeal Records. All contested case hearings are open to the public, unless ordered closed at the discretion of the hearing officer based on compelling circumstances. A party to a hearing must maintain confidentiality of discussions that warrant closing the hearing to the public. ()

02. Inspection Report. A completed inspection report is a public document and is available for public disclosure to any person who requests the report as provided in Idaho's Public Records Law, Title 9, Chapter 3, Idaho Code. ()

03. Medical Records. Medical information given to the Department or regulatory authority shall be confidential and must follow IDAPA 16.05.01 "Use And Disclosure Of Department Records". ()

04. Plans And Specifications. Plans and specifications submitted to the regulatory authority as required in Chapter 8 of the 2001 Food Code referenced in Section 004 of these rules, must be treated as confidential or trade secret information under Section 9-340D, Idaho Code. ()

007. -- 049. (RESERVED).

050. TRAINING AND INFORMATIONAL MATERIALS.

The Department is authorized under Section 56-1007, Idaho Code, to establish a reasonable charge for training and informational materials that are provided to the public. ()

051. -- 099. (RESERVED).

100. PURPOSES AND DEFINITIONS.

Sections 100 through 199 of these rules will be used for modifications and additions to Chapter 1 of the 2001 Food Code as incorporated in Section 004 of these rules. ()

101. -- 109. (RESERVED).

110. DEFINITIONS AND ABBREVIATIONS.

The definitions defined in this section are modifications or additions to the definitions given in the 2001 Food Code. ()

01. Agricultural Market. Any fixed or mobile retail food establishment engaged in the sale of raw or fresh fruits, vegetables and nuts in the shell. It may also include the sale of factory-sealed non-hazardous foods. ()

- 02. Board.** The State of Idaho Board of Health and Welfare as established in Section 56-1005, Idaho Code. ()
- 03. Consent Order.** A consent order is an enforceable agreement between the regulatory authority and the license holder to correct violations that caused the actions taken by the regulatory authority. ()
- 04. Department.** The Idaho Department of Health and Welfare as established in Section 56-1002, Idaho Code. ()
- 05. Director.** The Director of the Idaho Department of Health and Welfare as established in Section 56-1003, Idaho Code. ()
- 06. Embargo.** An action taken by the regulatory authority that places a food product or equipment used in food production on hold until a determination is made on the product's safety. ()
- 07. Enforcement Inspection.** An inspection conducted by the regulatory authority when compliance with these rules by a food establishment is lacking and violations remain uncorrected after the first follow-up inspection to a routine inspection. ()
- 08. Food Establishment.** Modifications to Section 1-201.10(36) by deleting Section 1-201.10(36)(c)(iii) amends the definition of food establishment. ()
- 09. Food Processing Plant.** Modification to Section 1-201.10(37) by deleting Section 1-201.10(37)(b) amends the definition of food processing plant. ()
- 10. High-Risk Food Establishment.** A high-risk food establishment does the following operations: ()
- a.** Extensive handling of raw ingredients; ()
 - b.** Preparation processes that include the cooking, cooling and reheating of potentially hazardous foods. ()
 - c.** A variety of processes requiring hot and cold holding of potentially hazardous food. ()
- 11. License.** The term "license" is used in these rules the same as the term "permit" is used in the 2001 Food Code. ()
- 12. License Holder.** The term "license holder" is used in these rules the same as the term "permit holder" is used in the 2001 Food Code. ()
- 13. Low-Risk Food Establishment.** A low-risk food establishment provides factory-sealed pre-packaged non-potentially hazardous foods. The establishment may have limited preparation of non-potentially hazardous foods only. ()
- 14. Medium-Risk Food Establishment.** A medium-risk food establishment includes the following: ()
- a.** A limited menu of one (1) or two (2) items; or ()
 - b.** Pre-packaged raw ingredients cooked or prepared to order; or ()
 - c.** Raw ingredients requiring minimal assembly; or ()
 - d.** Most products are cooked or prepared and served immediately; or ()
 - e.** Hot and cold holding of potentially hazardous foods is restricted to single meal service. ()

15. Regulatory Authority. The Department or its designee is the regulatory authority authorized to enforce compliance of these rules. ()

a. The Department is responsible for preparing the rules, rule amendments, standards, policy statements, operational procedures, program assessments and guidelines. ()

b. The seven (7) Public Health Districts and the Bureau of Facility Standards have been designated by the Director as the regulatory authority for the purpose of issuing licenses, collecting fees, conducting inspections, reviewing plans, determining compliance with the rules, investigating complaints and illnesses, examining food, embargoing food and enforcing these rules. ()

16. Risk Control Plan. Is a document describing the specific actions to be taken by the license holder to address and correct a continuing hazard or risk within the food establishment. ()

111. -- 199. (RESERVED).

200. MANAGEMENT AND PERSONNEL.
Sections 200 through 299 of these rules will be used for modifications and additions to Chapter 2 of the 2001 Food Code as incorporated in Section 004 of these rules. ()

201. -- 209. (RESERVED).

210. DEMONSTRATION OF KNOWLEDGE.
Modification to Section 2-102.11(A). The person in charge of a food establishment may demonstrate his knowledge on the risks of foodborne illness or health hazards by complying with this code and not having any critical violations at the time of inspection. ()

211. -- 219. (RESERVED).

220. EMPLOYEE HEALTH.
In addition to Section 2-201.12. The person in charge of a food establishment must notify the regulatory authority to obtain guidance on proper actions needed to protect the public if he has reason to suspect that any employee has a disease that is communicable through food as listed in IDAPA 16.02.10, "Idaho Reportable Diseases," Subsection 025.02. ()

221. -- 299. (RESERVED).

300. FOOD.
Sections 300 through 399 of these rules will be used for modifications and additions to Chapter 3 of the 2001 Food Code as incorporated in Section 004 of these rules. ()

301. -- 319. (RESERVED).

320. MEAT AND POULTRY.

01. Custom Meat. Meat that is processed for individual owner(s) by a custom butcher, under the custom exemption in 9 CFR 303.1 "Mandatory Meat Inspection Exemptions," must be marked "Not For Sale" and may not be sold, served or given away to any member of the public. This meat must be for the use in the household of such owner(s), their families, non-paying guest and employees only. ()

02. Poultry Exemption. Poultry that is exempt in 9 CFR 381.10, Subpart C "Mandatory Poultry Products Inspection Exemptions" may be sold, served or given away in Idaho, if it is processed in a licensed food processing facility and is labeled "Exempt from USDA Inspection per PL 492". ()

321. -- 324. (RESERVED).

325. GAME ANIMALS.

Modification to Section 3-201.17(A)(4), is made by deleting Section 3-201.17(A)(4) and replacing it with Subsections 325.01 through 325.03 of these rules. ()

01. Field Dressed Game Animals. Uninspected wild game animals and wild poultry may be custom processed or prepared and served upon request by an individual having ownership of the animal, and shall be processed for or served to that owner and for the family or guests of that individual animal owner only. ()

02. Processing Game Animals. Game animals and birds are to be completely separated from other food during storage, processing, preparation and service with the use of separate equipment or areas or by scheduling and cleaning, providing by compliance with the following: ()

a. Slaughtering and cleaning of game animals or birds can not be done in the food establishment, except for meat processing establishments with kill floors; and ()

b. Game animals and other animal carcasses are free of any visible dirt, filth, fecal matter or hair before such carcasses enter the food establishment, except for meat processing establishments with kill floors; and ()

c. An identifying tag with the owner's name must be on each carcass or divided parts and packaged or wrapped parts; and ()

d. Each carcass or divided parts and packaged or wrapped parts are marked or tagged with a "Not for sale" label. These may not be sold, given away, or served to any members of the public. ()

03. Uninspected Game Animals. Any uninspected game animals prepared and served in a food establishment may only be prepared and served at the request of the owner of the animals for the owner and invited family or friends at a private dinner. These animals may not be served, sold, or given away to any members of the public. ()

326. -- 349. (RESERVED).

350. TEMPERATURE REQUIREMENTS.

Modifications are being made to the temperature guidelines in the following sections of the 2001 Food Code. ()

01. Specifications For Receiving Potentially Hazardous Food. Modification to Section 3-202.11(D). Food that is cooked to a temperature and for a time specified under Sections 3-401.11 through 3-301.13 and received hot, must be at a temperature of 57°C (135°F) or above. ()

02. Preventing Contamination From In-Use Utensils, Between Use Storage. Modification to Section 3-304.12(F). In a container of water, if the water is maintained at a temperature of at least 57°C (135°F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7). ()

03. Plant Food Cooking For Hot Holding. Modification to Section 3-401.13. Fruits and vegetables that are cooked for hot holding must be cooked to a temperature of 57°C (135°F). ()

04. Reheating For Hot Holding Ready To Eat Food. Modification to Section 3-403.11(C). Food taken from a commercially processed hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction of the plant, must be heated to a temperature of at least 57°C (135°F) for hot holding. ()

05. Cooling Cooked Potentially Hazardous Food. Modification to Section 3-501.14(A). Cooked potentially hazardous food must be cooled: ()

a. Within two (2) hours from 57°C (135°F) to 21°C (70°F); and ()

b. Within six (6) hours from 57°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) or less as specified

under 3-501.16(A)(2)(b) provided the food is cooled from 57°C (135°F) to 21°C (70°F) within the first two (2) hours. ()

06. Potentially Hazardous Food, Hot And Cold Holding. Modification to Section 3-501.16(A)(1). Potentially hazardous food must be maintained at 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified under Section 3-401.11(B) or reheated as specified in Section 3-403.11(E) may be held at a temperature of 54°C (130°F). ()

351. VARIANCE REQUIREMENTS FOR FOOD ESTABLISHMENTS. Modifications to Section 3-502.11. Sections 3-502.11(E) and (F), are not adopted. ()

352. -- 354. (RESERVED).

355. FOOD PROCESSING PLANTS. Food processing plants, establishments, canning factories or operations must meet the requirements in Chapters 1 through 8 of the 2001 Food Code, and Subsections 355.01 through 355.05 of these rules. ()

01. Thermal Processing Of Low-Acid Foods. Low-acid food products processed using thermal methods for canning must meet the requirements of 21 CFR 113. ()

02. Bottled Water Processing. Bottled drinking water processed in Idaho must be from a licensed processing facility that meets the requirements of 21 CFR 129. Bottled drinking water must also meet the quality and monitoring requirements in 21 CFR 165. ()

03. Approval of Process Methods. A variance by the regulatory authority must be approved and granted for specialized processing methods for products listed in Section 3-502.11. ()

04. Labels. Proposed labels must be submitted to the regulatory authority for review and approval before printing. ()

05. Testing. The license holder is responsible for chemical, microbiological or extraneous material testing procedures to identify failures or food contamination of food products being processed or manufactured by the license holder. ()

06. Quality Assurance Program. The license holder or his designated person must develop and submit to the regulatory authority for review and approval a quality assurance program or HACCP plan which covers the food processing operation. The program must include the following: ()

a. An organization chart identifying the person responsible for quality control operations; ()

b. A process flow diagram outlining the processing steps from the receipt of the raw materials to the production and packaging of the finished product(s) or group of related products; ()

c. A list of specific points in the process which are critical control points that must have scheduled monitoring; ()

d. Product codes that establish and identify the production date and batch; ()

e. A manual covering sanitary maintenance of the facility and hygienic practices to be followed by the employees; and ()

f. A records system allowing for review and evaluation of all operations including the quality assurance program results. These records must be kept for a period of time that exceeds the shelf life of the product by six (6) months or for two (2) years, whichever is less. ()

356. -- 359. (RESERVED).

360. ADVISING CONSUMERS OF HEALTH RISK OF RAW OR UNDERCOOKED FOODS.

Modification to Section 3-603.11.

()

01. Consumption Of Animal Foods That Are Raw, Undercooked, Or Not Otherwise Processed To Eliminate Pathogens. Except as specified in Section 3-401.11(C) and Subparagraph 3-401.11(D)(3) and under Section 3-801.11(D), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the license holder must inform the consumers of health risks.

()

02. How To Inform Consumers Of Health Risk. The license holder must use any effective means to inform consumers of potential health risks. Some effective ways that may be used to inform consumers are: brochures, deli case placards, signs or verbal warnings, that state, "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions".

()

361. -- 369. (RESERVED).

370. ADULTERATED OR MISBRANDED FOOD.

The regulatory authority may order the license holder or other person who has custody of misbranded food to destroy, denature or recondition adulterated or misbranded food according to Section 37-118, Idaho Code. See Section 851 of these rules for embargo, tagging, storage and release of adulterated or misbranded food.

()

371. -- 699. (RESERVED).

700. POISONOUS OR TOXIC MATERIALS.

Sections 700 through 799 of these rules will be used for modifications and additions to Chapter 7 of the 2001 Food Code as incorporated in Section 004 of these rules.

()

701. -- 719. (RESERVED).

720. RESTRICTION AND STORAGE OF MEDICINES.

Modifications to Section 7-207.11.

()

01. Medicines Allowed In A Food Establishment. Only those medicines that are necessary for the health of employees, patients or residents in a care facility are allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

()

02. Labeling Of Medicines. Medicines that are in a food establishment for the employees, patients or residents use must be labeled as specified under Section 7-101.11 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

()

721. REFRIGERATED STORAGE OF MEDICINES.

Modification to Section 7-207.12. Medicines belonging to employees, patients or residents in a care facility that requires refrigeration and are stored in a food refrigerator.

()

01. Medicines Stored In A Leak Proof Container. Medicines must be stored in a package or container and kept inside a covered, leak proof container that is identified as a container for the storage of medicines.

()

02. Medicines Stored Are Not Accessible. Medicines must be located so they are not accessible to patients or residents in a care facility.

()

722. -- 799. (RESERVED).

800. COMPLIANCE AND ENFORCEMENT.

Sections 800 through 899 of these rules will be used for modifications and additions to Chapter 8 of the 2001 Food

Code as incorporated in Section 004 of these rules. ()

801. -- 829. (RESERVED).

830. APPLICATION FOR A LICENSE.

01. To Apply For A Food License. To apply for an Idaho food license the application and fee is submitted to the “regulatory authority” as defined in Section 110 of these rules. ()

02. Food License Expiration. The license for an Idaho food establishment expires on December 31st of each year. ()

03. Renewal Of License. A renewal application and a license fee must be submitted to the regulatory authority by December 1st of each year for the next calendar year starting January 1st. ()

04. Summary Suspension Of License. A license may be immediately suspended under Section 831 of these rules. Reinstatement of a license after a summary suspension does not require a new application or fee unless the license is revoked. ()

05. Revocation Of License. When corrections have been made to a food establishment whose license has been revoked under Section 860 of these rules, a new application and fee must be submitted to the regulatory authority. ()

06. License Is Non-Transferable. A license may not be transferred when ownership changes according to Section 8-304.20, of the 2001 Food Code. The new owner must apply for his own license. ()

831. SUMMARY SUSPENSION OF LICENSE.

The regulatory authority may summarily suspend a license to operate a food establishment when it determines an imminent health hazard exists. ()

01. Reasons A Summary Suspension May Be Issued. When a food establishment does not follow the principles of food safety, or a foodborne illness is found, or an environmental health hazard exists and public safety cannot be assured by the continued operation of the food establishment, a summary suspension may be issued. The following are some reasons the regulatory authority may determine a summary suspension is necessary: ()

- a.** Inspection of the food establishment shows uncorrected critical violations; ()
- b.** Examination of food shows the food is unsafe; ()
- c.** Review of records shows that proper steps for food safety have not been met; ()
- d.** An employee working with food is suspected of having a disease that is communicable through food; or ()
- e.** An imminent health hazard exists. ()

02. Prior Notification Is Not Required For A Summary Suspension. Upon providing a written notice of summary suspension to the license holder or person in charge, the regulatory authority may suspend a food establishment’s license without prior warning, notice of hearing, or hearing. ()

03. Written Notice of Summary Suspension. The regulatory authority must give the license holder or person in charge a written notice when suspending a license. The notice must include the following: ()

- a.** The specific reasons or violations the summary suspension is issued for with reference to the specific section of the 2001 Food Code which is in violation; ()
- b.** A statement notifying the food establishment its license is suspended and all food operations are to ()

cease immediately; ()

c. The name and address of the regulatory authority representative to whom a written request for re-inspection can be made and who can certify the reasons for the suspension have been eliminated; ()

d. A statement notifying the food establishment of its right to an informal hearing with the regulatory authority upon submission of a written request within fifteen (15) days of receiving the summary suspension notice; and ()

e. A statement informing the food establishment that proceedings for revocation of its license will be initiated by the regulatory authority, if violations are not corrected. ()

f. The right to appeal to the Department as provided in Section 861 of these rules. ()

04. Length Of Summary Suspension. The suspension will remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority during a re-inspection. ()

05. Re-Inspection Of Food Establishment The regulatory authority will conduct a re-inspection of the food establishment within two (2) working days of receiving a written request stating the condition for the suspension no longer exists. ()

06. Reinstatement Of License. The regulatory authority will immediately reinstate the suspended license if the re-inspection determines the public health hazard no longer exists. The regulatory authority will provide a written notice of reinstatement to the license holder or person in charge. ()

832. -- 839. (RESERVED).

840. INSPECTIONS AND CORRECTION OF VIOLATIONS.

Modification to Section 8-401.10 . ()

01. Inspection Interval Section 8-401.10(A). Except as specified in Section 8-401.10(C), the regulatory authority must inspect a food establishment at least once a year. ()

02. Section 8-401.10(B). This section has not been adopted. ()

03. Section 8-401.10(C). This section is adopted as published. ()

841. INSPECTION SCORES.

The regulatory authority must provide the license holder an inspection report with a total score indicating the number of critical item violations and the number of repeat critical violations added together. Repeat violations are those observed during the last inspection. The inspection report will also score the total the number of non-critical violations and the number of repeat non-critical violations. These scores will be used to determine if a follow-up inspection or a written report of correction is needed to verify corrections have been made. ()

01. Medium-Risk Food Establishment. If the critical violations exceed three (3), or the non-critical violations exceed six (6), an on-site follow-up inspection is required for verification of correction by the regulatory authority. ()

02. High-Risk Food Establishment. If the critical violations exceed five (5), or the non-critical violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. ()

03. Written Violation Correction Report. A written violation correction report by the license holder may be provided to the regulatory authority if the total inspection score of the food establishment does not exceed those listed in Section 845 of these rules. The report must be mailed within five (5) days of the correction date identified on the inspection report. ()

842 -- 844. (RESERVED).

845. VERIFICATION AND DOCUMENTATION OF CORRECTION.

In addition to Section 8-405.20 of the 2001 Food Code, the on-site follow-up inspection may not be required for verification of correction if the regulatory authority chooses to accept a written report of correction from the license holder. ()

01. Written Report Of Correction. The regulatory authority may choose to accept a written report of correction from the license holder stating that specific violations have been corrected. The license holder must submit this report to the regulatory authority within five (5) days after the correction date identified on the inspection report. ()

a. Medium-Risk Food Establishment. If the critical violations do not exceed three (3), or the non-critical violations do not exceed six (6), a follow-up inspection is not required for verification of correction. ()

b. High-Risk Food Establishment. If the critical violations do not exceed five (5), or the non-critical violations do not exceed eight (8), a follow-up inspection is not required for verification of correction. ()

02. Risk Control Plan. The regulatory authority may require the development of a risk control plan as verification of correction. The risk control plan must provide documentation on how the license holder will obtain long term correction of critical violations that are repeated violations, including how control will be monitored and who will be responsible. ()

846. -- 849. (RESERVED)

850. ENFORCEMENT INSPECTIONS.

01. Follow-Up Inspection. If a follow-up inspection reveals that critical or non-critical violations identified on a previous inspection have not been corrected or still exist, an enforcement inspection may be made. ()

02. Written Notice. The license holder will receive written notice on the inspection form of the specific date for an enforcement inspection. This date must be within fifteen (15) days of the current or follow-up inspection. ()

03. Enforcement Inspections On Consent Order. When a compliance conference results in a consent order and includes a compliance schedule to correct violations without further regulatory action, all inspections by the regulatory authority to satisfy the compliance schedule will be considered enforcement inspections until the next annual inspection. ()

04. Regulatory Action. If the violations have not been corrected by the date of the enforcement inspection, regulatory action will be initiated to revoke the license issued to the food establishment. ()

851. ENFORCEMENT PROCEDURES FOR ADULTERATED OR MISBRANDED FOOD.

The regulatory authority may order the license holder or other person who has custody of adulterated or misbranded food to destroy, denature or recondition adulterated or misbranded food according to Section 37-118, Idaho Code. The following procedures apply: ()

01. Serving An Embargo Order. An embargo order must be served by one (1) of the following ways: ()

a. Delivered personally to the license holder or person in charge of the food establishment; or ()

b. Posted at a public entrance to the food establishment, provided a copy of the notice is sent by first-class mail to the license holder or the person in charge of the embargoed food. ()

02. The Embargo Order Is Effective When Served. The embargo order is effective at the time the notice is delivered to the license holder or person in charge, or when the notice is posted. ()

03. Tagging Embargoed Food. The regulatory authority must securely place an official tag or label on food or containers identified as food subject to the hold order. ()

04. Storage Of Embargoed Food. The regulatory authority allows storage of food under conditions specified in the embargo order, unless storage is not possible without risk to the public health. The regulatory authority may order immediate destruction of the adulterated or misbranded food for public safety. ()

05. Removal Of Embargo Tag Or Label. The removal of the embargo tag, label or other identification from food under embargo must be done by the regulatory authority. ()

06. Embargo Release. The issue of release and removal of the embargo tag, label or other identification from the suspected food when it is not adulterated or misbranded must be done by the regulatory authority. ()

852. -- 859. (RESERVED).

860. REVOCATION OF LICENSE.

The regulatory authority may revoke the license issued to a food establishment when the license holder fails to comply with these rules or the operation of the food establishment is a hazard to public health. ()

01. Reasons A License May Be Revoked. ()

a. The license holder violates any term or condition in Section 8-304.11 of the 2001 Food Code. ()

b. Access to the facility is denied or obstructed by an employee, agent, contractor or other representative during the performance of the regulatory authority's duties. It is not necessary for the regulatory authority to seek an inspection order to gain access as permitted in Section 8-402.40 of the 2001 Food Code, before proceeding with revocation. ()

c. A public health hazard or critical violation remains uncorrected after being identified by the regulatory authority and an enforcement inspection confirms the violation or hazard still exists. See Section 850 of these rules on enforcement inspections. ()

d. A non-critical violation remains uncorrected after being identified by the regulatory authority and an enforcement inspection confirms the violation still exists. See Section 845 of these rules on verification and documentation of correction. ()

e. Failure to comply with any consent order issued after a compliance conference. See Section 861 of these rules on compliance conference. ()

f. Failure to comply with a regulatory authority's summary suspension order. See Section 831 of these rules on summary suspension of a license. ()

g. Failure to comply with an embargo order. See Section 851 of these rules on adulterated or misbranded food. ()

h. Failure to comply with a regulatory authority order issued when an employee is suspected of having a communicable disease. See Section 220 of these rules on employee health. ()

02. Notice To Revoke A License. The regulatory authority must notify the license holder of the food establishment in writing of the intended revocation of the license. See Section 861 of these rules for appeal process. The notice must include the Subsections 860.02.a. through 860.02.c. of these rules: ()

a. The specific reasons and sections of the Idaho Food Code which are in violation and the cause for the revocation; and ()

b. The right of the license holder to request in writing a compliance conference with the regulatory authority within fifteen (15) days of the notice; and ()

c. The right of the license holder to appeal in writing to the Department of Health and Welfare. See Subsection 861.02 of these rules. ()

d. The following is sufficient notification of the license holder's appeal rights: "You have the right to request in writing a compliance conference with (name and address of designated health district official) within fifteen (15) days of the receipt of this notice. You may also appeal the revocation of your license to the Director of the Department of Health and Welfare by filing a written appeal with the Department as provided in IDAPA 16.05.03, "Rules Governing Contested Case Proceeding and Declaratory Rulings," within fifteen (15) days of the receipt of this notice, or if a timely request is made for a compliance conference and the matter is not resolved by a consent order, within five (5) working days following the conclusion of the compliance conference." ()

03. Effective Date of Revocation. The revocation will be effective fifteen (15) days following the date of service of notice to the license holder, unless an appeal is filed or a timely request for a compliance conference is made. If a compliance conference is requested and the matter is not resolved by a consent order, the revocation will be effective five (5) working days following the end of the conference, unless an appeal is filed with the Director of the Department of Health and Welfare within that time. See Section 861 of these rules for compliance conference, consent order and appeal process. ()

861. APPEAL PROCESS.

A license holder may appeal a summary suspension, notice of revocation, other action, or failure to act by the regulatory authority which adversely affects the license holder. A summary suspension or other emergency order is not stayed during the appeal process. ()

01. Compliance Conference. The license holder may request in writing a compliance conference with the regulatory authority within fifteen (15) days of receipt of the notice or action by the regulatory authority. If a timely request for a compliance conference is made, a compliance conference will be scheduled within twenty (20) days and conducted in an informal manner by the regulatory authority. At the compliance conference the license holder may explain the circumstances of the alleged violations and propose a resolution for the matter. ()

a. If the compliance conference results in an agreement between the license holder and the regulatory authority to remedy circumstances giving rise to the action and to assure future compliance, the agreement must be put in written form and signed by both parties. This written agreement shall constitute an enforceable consent order. ()

b. Unless otherwise specifically stated in the consent order, the agreement shall be for the duration of the existing license only. ()

02. Appeal To The Director. The license holder may appeal in writing to the Director of the Department of Health and Welfare within fifteen (15) days of receipt of the notice of action by the regulatory authority, or if a timely request for a compliance conference was made, within five (5) working days following the completion of the compliance conference. ()

a. The appeal must be in writing following the procedures in IDAPA 16.05.03 "Rules Governing Contested Case Proceedings and Declaratory Rulings". ()

b. Procedures on appeal to the Director are governed by IDAPA 16.05.03 "Rules Governing Contested Case Proceedings and Declaratory Rulings". ()

862. -- 869. (RESERVED).

870. SERVICE OF NOTICE.

01. Service Of Notice. A notice is considered properly served by any individual, or organization authorized to serve a civil process notice in any of the following ways: ()

a. The notice is personally delivered to the license holder, manager or person in charge of the food establishment. ()

b. The notice is clearly posted at a public entrance to the food establishment and a copy of the notice is also sent by first-class mail to the license holder. ()

c. The notice is sent to the license holder's last known address by registered or certified mail, or by other public means in which a written acknowledgement of receipt is acquired. ()

02. Proof Of Service. Proof of service is determined when the person delivering the notice signs a certificate stating the notice has been served or posted, or by admission of the signed receipt by the license holder or person in charge of the food establishment. ()

871. -- 889. (RESERVED).

890. CRIMINAL AND CIVIL PROCEEDINGS.

The regulatory authority may choose to enforce the provisions of these rules and its administrative orders through the courts. ()

01. Criminal Proceedings. Misdemeanor proceedings to enforce these rules, federal regulations, and the enabling statutes may be instituted as provided in Sections 37-117, 37-119, 37-2103, and 56-1008, Idaho Code. These statutes provide for fines or terms of imprisonment that may be sought through the court of competent jurisdiction. ()

02. Civil Proceedings. Civil enforcement actions may be commenced and prosecuted in the district court in the county where the alleged violation occurred according to Sections 56-1009 and 56-1010, Idaho Code. The person who is alleged to have violated any statute, rule, federal regulation, license or order may be charged in the court proceeding. This action may be brought to compel compliance with these rules, regulations, license or order for relief or remedies authorized in these rules. ()

03. Injunctive Relief. In addition to other remedies provided by law, Section 56-1009, Idaho Code, allows for a search warrant to gain access and injunctions to be issued in the name of the state against any person or entity to enjoin them from violating these rules, regulations, statutes or administrative orders. ()

891. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - RULES GOVERNING ELIGIBILITY FOR MEDICAID FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0301

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 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 August 20, 2003.

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:

Sections 204 and 205 are being deleted with both sections being rewritten. Section 204 will clarify and extend eligibility for Medicaid for Families and Children for citizens and qualified non-citizens in compliance with federal law according to 8 U.S.C. 1641(c). Section 205 will clarify that individuals not meeting the citizenship or qualified non-citizen requirements, when all other conditions are met, may be eligible for medical services.

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, 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 Tiffany Kinzler at (208) 334-6540.

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 August 27, 2003.

DATED this 23rd day of June, 2003.

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
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-0301

~~204. CITIZENSHIP AND LEGAL NON-CITIZEN REQUIREMENT.~~

~~Individuals must be U.S. citizens or nationals or qualified legal non-citizens. Nationals of American Samoa or Swain's Island are the equivalent of U.S. citizens. Only groups of legal non-citizens listed in Subsections 204.01 through 204.09 of this rule may be eligible. (7-1-02)T~~

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

~~a. Legal non-citizens lawfully admitted for permanent residence. (7-1-99)~~

~~b. 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)~~

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

~~a. Who is a 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)~~

~~b. Who has lived in the U.S. for five (5) years and has forty (40) quarters of work. (7-1-99)~~

~~03. Refugees. A refugee admitted under Section 207 of the INA, a Cuban/Haitian entrant as defined in Section 501(c) 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)~~

~~04. 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)~~

~~05. 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)~~

~~06. 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)~~

~~07. 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)~~

~~**08. 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 and 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. 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 five (5) years. (7-1-99)~~

204. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 204.01 through 204.12 of this rule. (4-1-03)T

01. U.S. Citizen. A U.S. Citizen; or (4-1-03)T

02. U.S. National, National Of American Samoa Or Swains Island. A U. S. National, National of American Samoa or Swains Island; or (4-1-03)T

03. Full-Time Active Duty U.S. Armed Forces Member. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (4-1-03)T

04. Veteran Of The U.S. Armed Forces. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (4-1-03)T

05. Non-Citizen Entering The U.S. Before August 22, 1996. A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (4-1-03)T

06. Non-Citizen Entering On Or After August 22, 1996. A non-citizen who entered on or after August 22, 1996, and (4-1-03)T

a. Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (4-1-03)T

b. Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (4-1-03)T

c. Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (4-1-03)T

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be

eligible for seven (7) years from the date of entry; or (4-1-03)T

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (4-1-03)T

07. Legal Permanent Resident (LPR) Entering On Or After August 22, 1996. A legal permanent resident (LPR) entering the U.S. on or after August 22, 1996, who has been living in the U.S. for five (5) years, and has forty (40) quarters of countable work; or (4-1-03)T

08. Qualified Non-Citizen Entering On Or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (4-1-03)T

09. American Indian Born In Canada. An American Indian born in Canada under 8 U.S.C. 1359; or (4-1-03)T

10. American Indian Born Outside The U.S. An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); or (4-1-03)T

11. Qualified Non-Citizen Child Receiving Federal Foster Care. A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; or (4-1-03)T

12. Victim Of Severe Form Of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (4-1-03)T

a. Is under the age of eighteen (18) years; or (4-1-03)T

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (4-1-03)T

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied, or (4-1-03)T

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (4-1-03)T

~~**205. LEGAL NON-CITIZENS ENTERING THE U.S. ON OR AFTER AUGUST 22, 1996.** Legal non-citizens, not described in Section 204, who enter the U.S. on or after August 22, 1996, are prohibited from receiving Medicaid for five (5) years from the date of entry. The individual, if otherwise eligible, can get services for an emergency condition. (7-1-98)~~

205. INDIVIDUALS NOT MEETING THE CITIZENSHIP OR QUALIFIED NON-CITIZEN REQUIREMENTS.

Individuals who do not meet the citizenship or qualified non-citizen requirements in Section 204 of these rules, may be eligible for emergency medical services if they meet all other conditions of eligibility. (4-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-0301

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 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 August 20, 2003.

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:

Section 106 is being amended to clarify and extend eligibility for aid to the aged, blind and disabled to qualified non-citizens in compliance with federal law according to 8 U.S.C. 1641(c).

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, 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 August 27, 2003.

DATED this 23rd day of June, 2003.

Sherri Kovach, Administrative Procedures Coordinator
DHW – Administrative Procedures Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0301

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: (10-1-02)F

a. Be a 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 (10-1-02)F

b. Have lived in the U.S. for at least five (5) years and have forty (40) quarters of work. (10-1-02)F

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)

106. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 106.01 through 106.14 of this rule. (4-1-03)T

01. U.S. Citizen. A U.S. Citizen; or (4-1-03)T

02. U.S. National, National Of American Samoa Or Swains Island. A U. S. National, National of American Samoa or Swains Island; or (4-1-03)T

03. Full-Time Active Duty U.S. Armed Forces Member. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (4-1-03)T

04. Veteran Of The U.S. Armed Forces. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (4-1-03)T

05. Non-Citizen Entering The U.S. Before August 22, 1996. A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (4-1-03)T

06. Non-Citizen Entering On Or After August 22, 1996. A non-citizen who entered on or after August 22, 1996, and (4-1-03)T

a. Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from

their date of entry; or (4-1-03)T

b. Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (4-1-03)T

c. Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (4-1-03)T

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (4-1-03)T

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (4-1-03)T

07. Legal Permanent Resident (LPR) Entering On Or After August 22, 1996. A legal permanent resident (LPR) entering the U.S. on or after August 22, 1996, who has been living in the U.S. for five (5) years, and has forty (40) quarters of countable work; or (4-1-03)T

08. Qualified Non-Citizen Entering On Or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (4-1-03)T

09. American Indian Born In Canada. An American Indian born in Canada under 8 U.S.C. 1359; or (4-1-03)T

10. American Indian Born Outside The U.S. An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); or (4-1-03)T

11. Qualified Non-Citizen Child Receiving Federal Foster Care. A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; or (4-1-03)T

12. Victim Of Severe Form Of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (4-1-03)T

a. Is under the age of eighteen (18) years; or (4-1-03)T

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (4-1-03)T

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (4-1-03)T

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons; or (4-1-03)T

13. Qualified Non-Citizen Receiving Supplement Security Income (SSI). A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (4-1-03)T

14. Permanent Resident Receiving AABD Cash On August 22, 1996. A permanent resident receiving AABD cash on August 22, 1996. (4-1-03)T

15. Individuals Not Meeting The Citizenship Or Qualified Non-Citizen Requirements. Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 106.01 through 106.14 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. (4-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI)

DOCKET NO. 16-0308-0301

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 a temporary rule, and proposed 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 August 20, 2003.

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:

Section 131 is being deleted and rewritten. Section 131 will clarify and extend eligibility for Temporary Assistance for Families in Idaho for citizens and qualified non-citizens in compliance with federal law according to 8 U.S.C. 1641(c). This section will also clarify individuals not meeting the citizenship or qualified non-citizens when all other conditions are met, may be eligible for medical services.

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, 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 Tiffany Kinzler at (208) 334-6540.

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 August 27, 2003.

DATED this 23rd day of June, 2003.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0301

~~131. CITIZENSHIP AND LEGAL NON-CITIZEN CRITERIA.~~

~~Individuals must be citizens of the United States or be qualified legal non-citizens. Nationals of American Samoa or Swain's Island are the equivalent of U.S. citizens. Only the groups of legal non-citizens listed in Subsections 131.01 through 131.09 may be eligible. (7-1-99)~~

~~01. Permanent Residents Admitted Before August 22, 1996. A non-citizen lawfully admitted to the United States for permanent residence before August 22, 1996. (7-1-99)~~

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

~~a. Who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. armed forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty; or (7-1-99)~~

~~b. Who has lived in the United States for five (5) years and has forty (40) quarters of work. (7-1-99)~~

~~03. Refugees. A refugee admitted under Section 207 of the Immigration and Nationality Act, a Cuban/Haitian entrant as defined in Section 501(e) of the Refugee Assistance Act of 1980, or an Amerasian admitted under Section 584 of Public Law 100-202 and amended by Public Law 100-461, is eligible: (7-1-99)~~

~~a. For five (5) years from their 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)~~

~~04. Asylees. An asylee admitted under Section 208 of the Immigration and Nationality Act is eligible: (7-1-99)~~

~~a. For five (5) 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, or spouse or unmarried dependent of the veteran or person on active duty. (7-1-99)~~

~~05. Deportation Withheld. An individual whose deportation has been withheld under Section 241(b)(3) or 243(h) of the Immigration and Nationality Act is eligible: (7-1-99)~~

~~a. For five (5) 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)~~

~~06. Conditional Entrants. A conditional entrant admitted under Section 203(a)(7) of the Immigration and Nationality Act and 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)~~

~~07. Parolees. A person paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of at least one (1) year and 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)

~~**08. Battered Non-Citizen Admitted Before August 22, 1996.** A legal non-citizen admitted to the United States before August 22, 1996, as a battered non-citizen under Section 204(a)(1)(A), 204(a)(1)(B), as a non-citizen whose deportation is suspended under Section 244(a)(3) of the Immigration and Nationality Act and 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. Battered Non-Citizen Admitted On Or After August 22, 1996.** A legal non-citizen admitted to the United States on or after August 22, 1996, as a battered non-citizen under Section 204(a)(1)(A), 204(a)(1)(B), or as a non-citizen whose deportation is suspended under Section 244(a)(3) of the Immigration and Nationality Act.~~ (7-1-99)

~~**a.** Who is a veteran honorably discharged for a reason other than alienage or on active duty in the U.S. armed forces for other than training, or the spouse or unmarried dependent of the veteran or person on active duty; or~~ (7-1-99)

~~**b.** Who has lived in the United States for five (5) years.~~ (7-1-99)

131. CITIZENSHIP AND QUALIFIED NON-CITIZEN CRITERIA.

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 131.01 through 131.09 of this rule. (4-1-03)T

01. U.S. Citizen. A U.S. Citizen; or (4-1-03)T

02. U.S. National, National Of American Samoa Or Swains Island. A U. S. National, National of American Samoa or Swains Island; or (4-1-03)T

03. Full-Time Active Duty U.S. Armed Forces Member. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (4-1-03)T

04. Veteran Of The U.S. Armed Forces. A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (4-1-03)T

05. Non-Citizen Entering The U.S. Before August 22, 1996. A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (4-1-03)T

06. Non-Citizen Entering On Or After August 22, 1996. A non-citizen who entered on or after August 22, 1996, and (4-1-03)T

a. Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (4-1-03)T

b. Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (4-1-03)T

c. Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (4-1-03)T

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be

eligible for seven (7) years from the date of entry; or (4-1-03)T

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (4-1-03)T

07. Legal Permanent Resident (LPR) Entering On Or After August 22, 1996. A legal permanent resident (LPR) entering the U.S. on or after August 22, 1996, who has been living in the U.S. for five (5) years, and has forty (40) quarters of countable work; or (4-1-03)T

08. Qualified Non-Citizen Entering On Or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (4-1-03)T

09. Victim Of Severe Form Of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (4-1-03)T

a. Is under the age of eighteen (18) years; or (4-1-03)T

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (4-1-03)T

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (4-1-03)T

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (4-1-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0302
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 rulemaking previously initiated under this docket. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for rescinding the temporary rule and vacating the proposed rulemaking:

This docket included temporary and proposed rules adopted by the Department and published in the June Administrative Bulletin, Volume 03-6, pages 48 through 71. These rules were required to comply with legislative intent when the 2003 Senate Concurrent Resolution 110 rejected the rules for the adult dental program. These rules were adopted to comply with the 2003 Legislative Budget set by the Legislature. The proposed rulemaking published in this docket is being vacated and a new docket is being published to comply with legislative intent language for the 2004 Department's Appropriations Bill. The temporary rule was effective on April 2, 2003 and is being rescinded effective June 30, 2003. The new temporary and proposed rules are being published under Docket No. 16-0309-0304 published in this Bulletin (August 6, 2003, Volume 03-8).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the rescission and vacation, contact Arla Farmer (208) 364-1958.

DATED this 25th day of June, 2003.

Sherri Kovach
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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0303
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective May 12, 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 August 20, 2003.

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:

Two new sections are added to the Medical Assistance rules dealing with pharmacy issues. The new sections provide guidelines for a Pharmacy and Therapeutics Committee and supplemental drug rebates.

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, 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 because information was obtained during other rule hearings pertaining to this rule subject and discussion during the 2003 Legislative session added to the formation of this new docket.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Chris Baylis at (208) 361-1831.

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 August 27, 2003.

DATED this 12th day of June, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0303

~~814. — 815. (RESERVED).~~

814. PHARMACY AND THERAPEUTICS COMMITTEE (P&T Committee).

01. Membership. The P&T Committee is composed of practicing pharmacists, physicians and other licensed health care professionals with authority to prescribe medications. (5-12-03)T

02. Function. The P&T Committee will serve in an advisory capacity to the Department for the prior authorization of drugs under Subsection 810.01.e. of these rules and will recommend to the Department the classes of medications to be reviewed through an evidence-based evaluation. (5-12-03)T

03. Meetings. The P&T Committee meetings will be open to the public and a portion of each meeting will be set aside to hear and review public comment. (5-12-03)T

815. SUPPLEMENTAL REBATES.

01. Purpose. The purpose of supplemental rebates is to enable the Department to purchase prescription drugs provided to Medicaid beneficiaries in a cost effective manner, whether or not these drugs are subject to prior authorization by the Department. The supplemental rebate may be one factor considered in exempting a prescription drug from prior authorization, but is secondary to considerations of the safety, effectiveness, and clinical outcomes of the drug in comparison with other therapeutically interchangeable alternative drugs, and the net economic impact of inclusion or exclusion of the drug from prior authorization. (5-12-03)T

02. Rebate Amount. The Department or its designee may negotiate with manufacturers supplemental rebates for prescription drugs that are in addition to those required by Title XIX of the Social Security Act. There is no upper limit on the dollar amounts of the supplemental rebates the Department may negotiate. (5-12-03)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0304
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 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 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 August 20, 2003.

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 2003 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). Rule changes were initially completed in Docket 16-0309-0302, however, these rules were temporary rules for the 2003 Budget. After conferring with Legislative Committees, Medicaid's dental consultants and working with the Idaho Dental Association, the Legislative Intent for the 2004 Budget was to remove the requirement that clients must be considered high risk or in need of emergency dental services.

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, 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 through the 2003 Legislative Committee hearings.

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 rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 27, 2003.

DATED this 23rd day of June, 2003.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0304

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. Covered Dental ~~Covered Benefits And Limitations~~ Services. Dental services are covered by Medicaid ~~with specific limitations and exclusions~~ as described in Subsections 900.02.a. through 900.02.c. of these rules. Idaho uses the procedure codes contained in the ~~most recent~~ Current Dental Terminology (CDT) handbook published by the American Dental Association. (~~3-15-02~~)(7-1-03)T

a. Covered dental services for children (through the month of their twenty-first birthday) are covered in Sections 900 through 914 and Section 916 of these rules. (7-1-03)T

b. Dental services for women on the Pregnant Women and Children (PWC) Program are listed in Section 912 of these rules. (7-1-03)T

c. Covered dental services for Medicaid eligible adults (persons who are past the month of their twenty-first birthday) who are not eligible under PWC or Qualified Medicare Beneficiary (QMB) are listed in Section 915 of these rules. (7-1-03)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 for the service, and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (~~3-15-02~~)(7-1-03)T

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~~)(7-1-03)T

901. DENTAL DIAGNOSTIC PROCEDURES.

The following examinations are not allowed in combination of the same day:

:

TABLE 901 - DENTAL DIAGNOSTIC PROCEDURES	
Dental Code	Description
01. General Oral Evaluations. <u>The following evaluations are not allowed in combination of the same day:</u>	
D0120	Periodic oral evaluation. <u>Includes periodontal screening.</u> One (1) periodic examination is allowed every six (6) months.
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. One (1) comprehensive examination is allowed every twelve (12) months. Six (6) months must elapse before a periodic exam can be paid.

TABLE 901 - DENTAL DIAGNOSTIC PROCEDURES	
Dental Code	Description
D0160	Detailed and extensive oral evaluation. A detailed and extensive problem focused evaluation that entails extensive diagnostic and cognitive modalities based on the findings of a comprehensive oral evaluation. One (1) detailed and extensive oral evaluation is allowed every twelve (12) months.
D0170	Re-evaluation, limited, problem focused. Established client, not post-operative visit.
02. Radiographs/Diagnostic Images.	
D0210	Intraoral - complete series (including bitewings). Complete series x-rays are allowed only once in a three-year period. A complete intraoral series consists of fourteen (14) periapicals and one (1) series of four (4) bitewings.
D0220	Intraoral periapical - first film.
D0230	Intraoral periapical - each additional film.
D0240	Intraoral occlusal film.
D0270	Bitewing - single film. Total of four (4) bitewings allowed every six (6) months.
D0272	Bitewings - two (2) films. Total of four (4) bitewings allowed every six (6) months.
D0274	Bitewings - four (4) films. Total of four (4) bitewings allowed every six (6) months.
D0277	Vertical bitewings. Total of four (4) bitewings Seven (7) to eight (8) films. Allowed every six (6) months.
D0330	Panoramic film. Panorex, panelipse or orthopantograph are also allowed under this code. Panoramic-type films are allowed once in a thirty-six-month period. This time limitation does not apply to preoperative or postoperative surgery cases. Doing both a panoramic film and an intraoral complete series is not allowed. Up to four bitewings or periapicals are allowed in addition to a panoramic film.
D0340	Cephalometric film. Allowed once in a twelve-month period.
03. Test And Laboratory Examination.	
D0460	Pulp vitality tests. Includes multiple teeth and contralateral comparison(s) as indicated. Allowed once per visit per day. Limited to six (6) teeth per visit.
D0470	Diagnostic casts.
D0501	Histopathologic examinations.
04. Diagnostic.	
D0999	Unspecified diagnostic procedure, by report. Narrative required when prior authorizing.

(3-15-02)(7-1-03)T

902. DENTAL PREVENTIVE PROCEDURES.

Medicaid provides no additional allowance for a cavitron or ultrasonic prophylaxis.

TABLE 902 - DENTAL PREVENTIVE PROCEDURES	
Dental Code	Description
01. Dental Prophylaxis.	

TABLE 902 - DENTAL PREVENTIVE PROCEDURES	
Dental Code	Description
D1110	Prophylaxis - Adult (twelve (12) years of age and older). A prophylaxis is allowed once every six (6) months. <u>Includes polishing procedures to remove coronal plaque, calculus, and stains.</u>
D1120	Prophylaxis - Children/young adult (under age twelve (12)). A prophylaxis is allowed once every six (6) months.
02. Fluoride Treatments.	
D1203	Topical application of fluoride - one (1) treatment. Prophylaxis not included. Allowed once every six (6) months for clients under <u>age</u> twenty (21).
D1204	Topical application of fluoride - adult, twenty-one (21) years of age and over. Prophylaxis not included. Allowed once every six (6) months.
03. Other Preventive Services.	
D1351	Sealant - per tooth. Mechanically and/or chemically prepared enamel surface. Allowed for clients under twenty-one (21) years of age. Limited to once per tooth every three (3) years. Tooth designation required.
04. Space Management Therapy.	
Space maintainers are allowed to hold space for missing teeth for clients under age twenty-one (21). No reimbursement is allowed for removing maintainers, unless by dentist other than providing dentist. Vertical space maintainers are not covered.	
D1510	Space maintainer - fixed - unilateral. Limited up to age twenty-one (21). Only allowed once per tooth space. Tooth space designation required.
D1515	Space maintainer - fixed - bilateral. Limited up to age twenty-one (21). Only allowed once per arch. Arch designation required.
D1520	Space maintainer, removable - unilateral. Allowed once every two (2) years up to twenty-one (21) years of age. Arch designation required.
D1525	Space maintainer, removable - bilateral. Allowed once every two (2) years up to twenty-one (21) years of age. Arch designation required.
D1550	Re-cementation of space maintainer. Limited up to age twenty-one (21). Only allowed once per quadrant or arch. Quadrant or arch designation required.

(3-15-02)(7-1-03)T

903. DENTAL RESTORATIVE PROCEDURES.

All restorations must be documented in the client's record to include: procedure, surface, and tooth number (if applicable). This record must be maintained for a period of five (5) years. (3-15-02)

01. Posterior Restoration. (3-15-02)

a. A one (1) surface posterior restoration is one in which the restoration involves only one (1) of the five (5) surface classifications: mesial, distal, occlusal, lingual, or facial (including buccal or labial). (3-15-02)

b. A two (2) surface posterior restoration is one in which the restoration extends to two (2) of the five (5) surface classifications. (3-15-02)

c. A three (3) surface posterior restoration is one in which the restoration extends to three (3) of the five (5) surface classification surface classifications. (3-15-02)

d. A four (4) or more surface posterior restoration is one in which the restoration extends to four (4) or more of the five (5) surface classifications. (3-15-02)

02. Anterior Proximal Restoration. (3-15-02)

a. A one (1) surface anterior proximal restoration is one in which neither the lingual nor facial margin of the restoration extends beyond the line angle. (3-15-02)

b. A two (2) surface anterior proximal restoration is one in which either the lingual or facial margin of the restoration extends beyond the line angle. (3-15-02)

c. A three (3) surface anterior proximal restoration is one in which both the lingual and facial margins of the restorations extend beyond the line angle. (3-15-02)

d. A four (4) or more surface anterior restoration is one in which both the lingual and facial margins extend beyond the line angle and the incisal angle is involved. (3-15-02)

03. Amalgams And Resin Restoration. (3-15-02)

a. Reimbursement for pit restoration is allowed as a one (1) surface restoration. (3-15-02)

b. Adhesives (bonding agents), bases, and the adjustment and/or polishing of sealant and restorations are included in the allowance for the major restoration. (3-15-02)

c. Liners and bases are included as part of the restoration. If pins are used, they should be reported separately. (3-15-02)

04. Crowns. (3-15-02)

a. When submitting for prior authorization, either an x-ray showing the root canal or an x-ray with a justification detailing the reason for the crown is required. (3-15-02)

b. Requests for re-doing crowns must be submitted for prior approval and include x-ray and justification. (3-15-02)

e. ~~Prostodontics, fixed, procedure codes 06210 through 06920 are not Medicaid covered benefits.~~ (3-15-02)

05. Restorations By Codes. (3-15-02)

TABLE 903.05.a. RESTORATION BY CODES	
Dental Code	Description
a. Amalgam Restorations.	
D2110	Amalgam - one (1) surface, primary. Tooth designation required.
D2120	Amalgam - two (2) surfaces, primary. Tooth designation required.
D2130	Amalgam - three (3) surfaces, primary. Tooth designation required.
D2134	Amalgam - four (4) or more surfaces, primary. Tooth designation required.
D2140	Amalgam - one (1) surface, <u>primary or</u> permanent. Tooth designation required.
D2150	Amalgam - two (2) surfaces, <u>primary or</u> permanent. Tooth designation required.
D2160	Amalgam - three (3) surfaces, <u>primary or</u> permanent. Tooth designation required.
D2161	Amalgam - four (4) or more surfaces, <u>primary or</u> permanent. Tooth designation required.

TABLE 903.05.a. – RESTORATION BY CODES	
Dental Code	Description
TABLE 903.05.b. – RESIN RESTORATIONS	
<p>b. Resin Restorations. Resin refers to a broad category of materials including but not limited to composites. May include bonded composite, light-cured composite, etc. Light-curing, acid-etching, and adhesives (including resin bonding agents) are part of the restoration. Report glass ionomers when used as restorations. If pins are used, report them separately.</p>	
D2330	Resin - one (1) surface, anterior. Tooth designation required.
D2331	Resin - two (2) surfaces, anterior. Tooth designation required.
D2332	Resin - three (3) surfaces, anterior. Tooth designation required.
D2335	Resin - four (4) or more surfaces or involving incisal angle, anterior. Tooth designation required.
D2337	Resin based composite crown, anterior – permanent. Tooth designation required.
D2380	Resin – one (1) surface, posterior – primary. Tooth designation required. Not a preventive procedure.
D2381	Resin – two (2) surfaces, posterior – primary. Tooth designation required.
D2382	Resin – three (3) or more surfaces, posterior – primary. Tooth designation required.
D2385	Resin – one (1) surface, posterior – permanent. Tooth designation required. Not a preventive procedure.
D2386	Resin – two (2) surfaces, posterior – permanent. Tooth designation required.
D2387	Resin – three (3) surfaces, posterior – permanent. Tooth designation required.
D2388	Resin based composite – four (4) or more surfaces, posterior – permanent. Tooth designation required.
D2390	Resin based composite crown, anterior, primary or permanent. Tooth designation required.
D2391	Resin based composite - one (1) surface, posterior, primary or permanent.
D2392	Resin based composite - two (2) surfaces, posterior, primary or permanent.
D2393	Resin based composite - three (3) surfaces, posterior, primary or permanent.
D2394	Resin based composite - four (4) surfaces, posterior, primary or permanent.
TABLE 903.05.c. – CROWNS	
<p>c. Crowns.</p>	
D2710	Crown resin (laboratory) indirect. Tooth designation required. Prior authorization required.
D2721	Crown resin with predominantly base metal. Tooth designation required. Prior authorization required.
D2750	Crown, porcelain fused to high noble metal. Tooth designation required. Prior authorization required.
D2751	Crown porcelain fused too predominantly base metal. Tooth designation required. Prior authorization required.
D2752	Crown, porcelain fused to noble metal. Tooth designation required. Prior authorization required.
D2790	Crown, full cast, high noble metal. Tooth designation required. Prior authorization required.
D2791	Crown full cast predominantly base metal. Tooth designation required. Prior authorization required.

TABLE 903.05.d. -- RESTORATION BY CODES	
Dental Code	Description
D2792	Crown, full cast noble metal. Tooth designation required. Prior authorization required.
TABLE 903.05.d. -- OTHER RESTORATIVE SERVICES	
d. Other Restorative Services.	
D2920	Re-cement crown. Tooth designation required.
D2930	Prefabricated stainless steel crown - primary tooth. Tooth designation required.
D2931	Prefabricated stainless steel crown - permanent tooth. Tooth designation required.
D2932	Prefabricated resin crown. Tooth designation required.
D2940	Sedative filling. Tooth designation required. Surface is not required.
D2950	Core buildup, including any pins. Tooth designation required. Limited to two (2) pins per tooth.
D2951	Pin retention - per tooth, in addition to restoration. Tooth designation required. Limited to two (2) pins per tooth.
D2954	Prefabricated post and core in addition to crown. Tooth designation required.
D2955	Post removal. Tooth designation required.
D2980	Crown repair. Tooth designation required..
D2999	Unspecified restorative procedure, by report. Narrative and tooth designation required when prior authorizing. Requires prior authorization.

(3-15-02)(7-1-03)T

904. ENDODONTICS.

Pulpotomies and root canal procedures cannot be paid with the same date of service for the same tooth.

TABLE 904 - ENDODONTICS	
Dental Code	Description
01. Pulp Capping.	
D3110	Pulp cap - direct (excluding final restoration). Tooth designation required.
02. Pulpotomy.	
D3220	Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required. Not to be construed as the first step <u>stage</u> of root canal therapy.
D3221	Gross p Pulpal debridement, primary & permanent teeth. For relief of acute pain prior to conventional <u>not to be construed as the first stage of root canal therapy.</u> <u>Not allowed same day as endodontic therapy.</u> Tooth designation required.
03. Root Canal Therapy.	
Pulpectomy is part of root canal therapy. Includes all appointments necessary to complete treatment; also includes intra-operative radiographs. Does not include diagnostic evaluation and necessary radiographs/diagnostic images. Root canal therapy (includes treatment plan, x-rays, clinical procedures and follow-up care) is for permanent teeth only. Separate charges are allowable for open and drain if the procedure is done on different days.	
D3310	Anterior (excluding final restoration). Tooth designation required.

TABLE 904 - ENDODONTICS	
Dental Code	Description
D3320	Bicuspid (excluding final restoration). Tooth designation required.
D3330	Molar (excluding final restoration). Tooth designation required.
D3346	Retreatment of previous root canal therapy, anterior. Tooth designation required.
D3347	Retreatment of previous root canal therapy, bicuspid. Tooth designation required.
D3348	Retreatment of previous root canal therapy, molar. Tooth designation required.
04. Apicoectomy/Periradicular Services.	
D3410	Apicoectomy/Periradicular surgery-anterior surgery or root of anterior tooth. Does not include placement of retrograde filling material. Tooth designation required.
D3421	Apicoectomy/Periradicular surgery-bicuspid (first root). Surgery on one root of a bicuspid does not include placement of retrograde filling material. Tooth designation required.
D3425	Apicoectomy/Periradicular surgery-Molar (first root). Does not include placement of retrograde filling material. Tooth designation required.
D3426	Apicoectomy/Periradicular surgery (each additional root). For molar surgeries when more than one root is being treated during the same procedure. Does not include retrograde filling material placement. Tooth designation required.
D3430	Retrograde filling - per root. For placement of retrograde filling material during Periradicular surgery procedures. Tooth designation required.
D3999	Unspecified restorative procedure, by report. Narrative and tooth designation required. Requires prior authorization.

(3-15-02)(7-1-03)T

905. PERIODONTICS.

TABLE 905 - PERIODONTICS	
Dental Code	Description
01. Surgical Services.	
D4210	Gingivectomy or gingivoplasty - <u>four (4) or more contiguous teeth in quadrant</u> . Quadrant designation required.
D4211	Gingivectomy or gingivoplasty - per tooth <u>one (1) to three (3) teeth in quadrant</u> . Tooth <u>Quadrant</u> designation required.
D4220	Gingival curettage, surgical, per quadrant. Designate quadrant.
02. Non-surgical Periodontal Services.	
D4320	Provisional splinting - intracoronal.
D4321	Provisional splinting - extracoronal.
D4341	Periodontal scaling and root planing <u>four (4) or more contiguous teeth</u> (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.

TABLE 905 - PERIODONTICS	
Dental Code	Description
D4342	Periodontal scaling and root planing one (1) to three (3) teeth 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. Allowed once in a twelve (12) month period. The removal of subgingival and/or supragingival plaque and calculus. This is a preliminary procedure and does not preclude the need for other procedures.
03. Other Periodontal Services.	
D4910	Periodontal maintenance procedures (following active therapy) . Allowed once in a three (3) month period. This procedure is for clients who have completed periodontal treatment (surgical and/or non-surgical periodontal therapies exclusive of D4355) and includes removal of the bacterial flora from crevicular and pocket areas, scaling and polishing of the teeth, periodontal evaluation, and a review of the client's plaque control efficiency.
D4999	Unspecified periodontal procedure. Narrative required when prior authorizing. Requires prior authorization.

(3-15-02)(7-1-03)T

906. PROSTHODONTICS.

01. Removable Prosthodontics.

(3-15-02)

a. The Medicaid dental program covers only one (1) set of full dentures in a five (5) year period. Full dentures placed immediately must be of structure and quality to be considered the final set. Transitional or interim treatment dentures are not covered. No additional reimbursements are allowed for denture insertions. (3-15-02)

b. If full dentures are inserted during a month when the client is not eligible, but other work, including laboratory work, is completed during an eligible period, the claim for the dentures is allowed. (3-15-02)

c. Medicaid pays for partial dentures once every five (5) years. Partial dentures are limited to clients age twelve (12) and older. One (1) partial per arch is covered. When a partial is inserted during a month when the client is not eligible but all other work, including laboratory work, is completed during an eligible period, the claim for the partial is allowed. (3-15-02)(7-1-03)T

~~**d.** Laboratory and professional fees may be paid for a partial or complete denture if the client: Decides not to complete the partial or complete denture; Leaves the state; Cannot be located; Expires. An invoice listing lab and professional fees is required when prior authorizing. (3-15-02)~~

02. Removable Prosthodontics By Codes.

TABLE 906.02 - PROSTHODONTICS	
Dental Code	Description
a. Complete Dentures. This includes six (6) months of adjustments following placement.	
D5110	Complete denture - maxillary.
D5120	Complete denture - mandibular.
D5130	Immediate denture - maxillary.
D5140	Immediate denture - mandibular.

TABLE 906.02 - PROSTHODONTICS	
Dental Code	Description
b. Partial Dentures. This includes six (6) months of care following placement. Limited to twelve (12) years and older.	
D5211	Maxillary partial denture - resin base. Includes any conventional clasps, rests, and teeth.
D5212	Mandibular partial denture - resin base. Includes any conventional clasps, rests, and teeth.
D5213	Maxillary partial denture - cast metal framework with resin denture bases. Includes any conventional clasps, rests, and teeth.
D5214	Mandibular partial denture - cast metal framework with resin denture bases. Includes any conventional clasps, rests, and teeth.
c. Adjustments To Complete And Partial Dentures. No allowance for adjustments for six (6) months following placement. Adjustments done during this period are included in complete/partial allowance.	
D5410	Adjust complete denture - maxillary.
D5411	Adjust complete denture - mandibular.
D5421	Adjust partial denture - maxillary.
D5422	Adjust partial denture - mandibular.
d. Repairs To Complete Dentures.	
D5510	Repair broken complete denture base. Arch designation required.
D5520	Replace missing or broken teeth - complete denture (each tooth) - six (6) tooth maximum. Tooth designation required.
e. Repairs To Partial Dentures.	
D5610	Repair resin denture base. Arch designation required.
D5620	Repair cast framework. Arch designation required.
D5630	Repair or replace broken clasp. Arch designation required.
D5640	Replace broken teeth, per tooth. Tooth designation required.
D5650	Add tooth to existing partial denture. Does not involve clasp or abutment tooth. Tooth designation required.
D5660	Add clasp to existing partial denture. Involves clasp or abutment tooth.
<u>D5670</u>	<u>Replace all teeth and acrylic on cast metal framework (maxillary).</u>
<u>D5671</u>	<u>Replace all teeth and acrylic on cast metal framework (mandibular).</u>
f. Denture Relining. Relines will not be allowed for six (6) months following placement of denture and then only once every two (2) years.	
D5730	Reline complete maxillary denture (chairside).
D5731	Reline complete mandibular denture (chairside).
D5740	Reline maxillary partial denture (chairside).
D5741	Reline mandibular partial denture (chairside).
D5750	Reline complete maxillary denture (laboratory).

TABLE 906.02 - PROSTHODONTICS	
Dental Code	Description
D5751	Reline complete mandibular denture (laboratory).
D5760	Reline maxillary partial denture (laboratory).
D5761	Reline mandibular partial denture (laboratory).
g. Other Removable Prosthetic Services.	
D5850	Tissue conditioning, maxillary - per denture unit.
D5851	Tissue conditioning, mandibular per denture unit.
D5899	Unspecified removable prosthetic procedure, by report. Narrative required when prior authorizing. Requires prior authorization.
0515D	Unable to deliver full or partial denture. Laboratory cost may be paid. An Prior authorization required. <u>If the client does not complete the process for the denture; leaves the state; cannot be located; or dies; the laboratory and professional fees may be billed to Medicaid with an invoice listing lab fees and arch designation</u> required when prior authorizing.

(3-15-02)(7-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

909. ORAL SURGERY.

Extraction codes include services for local anesthesia and routine preoperative and postoperative care.

TABLE 909 - ORAL SURGERY	
Dental Code	Description
01. Simple Extraction.	
D7110	Single tooth. Tooth designation required.
D7111	Extraction, coronal remnants - deciduous tooth. Including soft-tissue retained coronal remnants.
D7120	Each additional tooth. Tooth designation required.
D7130	Root removal - exposed roots. Tooth designation required.
D7140	Extraction, erupted tooth or exposed root, routine removal.
02. Surgical Extractions.	
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.

TABLE 909 - ORAL SURGERY	
Dental Code	Description
D7240	Removal of impacted tooth - completely bony. Most or all of crown covered by bone; requires mucoperiosteal flap elevation, bone removal, and may require segmentalization of tooth. Tooth designation required.
D7241	Removal of impacted tooth - completely bony, with unusual surgical complications. Most or all of crown covered by bone; usually difficult or complicated due to factors such as nerve dissection required, separate closure of maxillary sinus required or aberrant tooth position. Allowed only when pathology is present. 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.
03. Other Surgical Procedures.	
D7270	Tooth reimplantation and/or stabilization of accidentally avulsed or displaced tooth and/or alveolus. Permanent teeth only. Tooth designation required. Includes splinting and/or stabilization.
D7280	Surgical exposure of impacted or unerupted tooth for orthodontic reasons. Includes orthodontic attachments. Tooth designation required. Limited to clients under twenty-one (21) years of age.
D7281	Surgical exposure of impacted or unerupted tooth to aid eruption. Tooth designation required. Limited to clients under twenty-one (21) years of age.
D7286	Biopsy of oral tissue - soft. <u>For surgical removal of specimen only.</u>
<u>D7287</u>	<u>Cytology sample collection via mild scraping of oral mucosa.</u>
04. Alveoloplasty.	
D7320	Alveoloplasty not in conjunction with extractions - per quadrant. Quadrant designation is required.
05. Excision Of Bone Tissue.	
D7471	Removal of <u>lateral</u> exostosis. Maxilla or mandible. Arch designation required.
06. Surgical Incision.	
D7510	Incision and drainage of abscess - intraoral soft tissue, <u>including periodontal origins.</u>
07. Repair Of Traumatic Wounds.	
D7910	Suture of recent small wounds up to five (5) cm.
08. Other Repair Procedures.	
D7960	Frenulectomy (frenectomy or frenotomy) - separate procedure. The frenum may be excised when the tongue has limited mobility; for large diastema between teeth; or when the frenum interferes with a prosthetic appliance; or when it is the etiology of periodontal tissue disease.
D7970	Excision of hyperplastic tissue - per arch. Arch designation required.
D7971	Excision of pericoronal gingiva. Arch designation required.
D7999	Unspecified oral surgery, by report. Narrative required when prior authorizing. Requires prior authorization.

(3-15-02)(7-1-03)T

910. ORTHODONTICS.

01. Orthodontics. Limited to clients age zero (0) to twenty-one (21) years who meet the eligibility requirements, and the Handicapping Malocclusion Index as evaluated by the State Medicaid dental consultant. ~~Transfers:~~ Clients already in orthodontic treatment who transfer to Idaho Medicaid must have their continuing treatment justified and authorized by the State Medicaid dental consultants. (3-15-02)(7-1-03)T

TABLE 910.02 - LIMITED ORTHODONTICS	
Dental Code	Description
02. Limited Orthodontics. Orthodontic treatment with a limited objective, not involving the entire dentition may be directed at the only existing problem, or one aspect of a larger problem in which a decision is made to defer or forgo more comprehensive therapy.	
D8010	Limited orthodontic treatment of primary dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
D8020	Limited orthodontic treatment of transitional dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
D8030	Limited orthodontic treatment of adolescent dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
D8040	Limited orthodontic treatment of adult dentition. Justification and treatment plan required when prior authorizing. Requires prior authorization.
03. Interceptive Orthodontics. Treatment, using codes for interceptive orthodontic treatment, is for procedures to lessen the severity of future effects of a malformation and to eliminate its cause. An extension of preventive orthodontics that may include localized tooth movement in an otherwise normal dentition. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental crossbite, or recovery of recent minor space loss where overall space is adequate.	
TABLE 910.03 INTERCEPTIVE ORTHODONTICS	
D8050	Interceptive orthodontic treatment of primary dentition, per arch. Justification, treatment plan and arch designation required when prior authorizing. Upper and lower arch may be billed separately. Indicate arch. Requires prior authorization.
D8060	Interceptive orthodontic treatment of transition dentition, per arch. Justification, treatment plan and arch designation required when prior authorizing. Upper and lower arch may be billed separately. Indicate arch. Requires prior authorization.
04. Comprehensive Orthodontic Treatment. The coordinated diagnosis and treatment leading to the improvement of a client's craniofacial dysfunction and/or dentofacial deformity including anatomical, functional, and aesthetic relationships. Treatment usually, but not necessarily, utilizes fixed orthodontic appliances, and can also include removable appliances, headgear, and maxillary expansion procedures. Must score at least eight (8) points on the State's Handicapping Malocclusion Index.	
TABLE 910.04 - COMPREHENSIVE ORTHODONTIC TREATMENT	
D8070	Comprehensive orthodontic treatment of transition dentition. Models, panorex, and treatment plan are required when prior authorizing. Requires prior authorization.
D8080	Comprehensive orthodontic treatment of adolescent dentition, up to sixteen (16) years of age. Models, panorex, and treatment plan are required when prior authorizing. Requires prior authorization.

TABLE 910.02 - LIMITED ORTHODONTICS	
Dental Code	Description
D8090	Comprehensive orthodontic treatment of adult dentition. Justification required. Models, panoramic film, and treatment plan are required when prior authorizing. Requires prior authorization.
054. Minor Treatment To Control Harmful Habits.	
TABLE 910.05 - MINOR TREATMENT TO CONTROL ORTHODONTIC TREATMENT	
D8210	Removable appliance therapy. Removable indicates client can remove; includes appliances for thumb sucking and tongue thrusting. Justification required when prior authorizing. Will be allowed up to two (2) adjustments when prior authorizing. Replacement appliances are not covered. Requires prior authorization.
D8220	Fixed appliance therapy. Fixed indicates client cannot remove appliance; includes appliances for thumb sucking and tongue thrusting. Justification required when prior authorizing. Will be allowed up to two (2) adjustments when prior authorizing. Replacement appliances are not covered. Requires prior authorization.
065. Other Services.	
TABLE 910.06 - OTHER SERVICES	
D8670	Adjustments monthly. When utilizing treatment codes D8050, D8060, D8070, D8080 or D8090 a maximum of 24 adjustments over two (2) years will be allowed (twelve (12) per year) when prior authorizing. When utilizing treatment codes D8210 or D8220, two (2) adjustments will be allowed per treatment when prior authorizing. Requires prior authorization.
D8680	Orthodontic retention, removal of appliances, construction and placement of retainer(s). Replacement appliances are not covered. Includes both upper and lower retainer if applicable.
D8691	Repair of orthodontic appliance. Limited to one (1) occurrence.
D8999	Unspecified orthodontics. Narrative required when prior authorizing. No payment for lost or destroyed appliances. Requires prior authorization.

(3-15-02)(7-1-03)T

911. ADJUNCTIVE GENERAL SERVICES.

TABLE 911 - ADJUNCTIVE GENERAL SERVICES	
Dental Code	Description
01. Unclassified Treatment.	
D9110	Palliative (emergency) treatment of dental pain - minor procedure (open and drain abscess, etc.). Open and drain is included in the fee for root canal when performed during the same sitting. Tooth or quadrant designation required.
02. Anesthesia.	
D9220	Deep sedation/ 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.
D9221	Deep sedation/ General anesthesia - each additional fifteen (15) minutes.

TABLE 911 - ADJUNCTIVE GENERAL SERVICES	
Dental Code	Description
D9230	Analgesia - includes nitrous oxide.
D9241	Intravenous <u>conscious</u> sedation/analgesia - first thirty (30) minutes. Provider certification required.
D9242	Intravenous <u>conscious</u> sedation/analgesia - each additional fifteen (15) minutes. Provider certification required.
03. 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.
04. Professional Visits.	
D9410	House/Extended Care Facility Calls. Includes visits to nursing homes, long-term care facilities, hospice sites, institutions, etc. Report in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per client. To be used when client's health restrictions require treatment at the house/extended care facility. If procedures are done in the hospital, use procedure code D9420.
D9420	Hospital Calls. May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited once per day per client. Not covered for routine preoperative and postoperative. If procedures are done in other than hospital or surgery center use procedure code D9410 found in this table.
D9430	Office visit for observation (during regularly scheduled hours). No other services performed.
D9440	Office visit after regularly scheduled hours.
05. Miscellaneous Service.	
D9920	Behavior Management. May be reported in addition to treatment provided when the client is developmentally disabled, mentally ill, or is especially uncooperative and difficult to manage, resulting in the dental staff providing additional time, skill and/or assistance to render treatment. Notation and justification must be written in the client's record identifying the specific behavior problem and the technique used to manage it. Allowed once per client per day.
D9930	Treatment of complication (post-surgical) - unusual circumstances.
D9940	Occlusal guards - removable dental appliances which are designed to minimize the effects of bruxism (tooth grinding) and other occlusal factors. No payment for replacement of lost or destroyed appliances.
D9951	Occlusal adjustment, limited. May also be known as equilibration; reshaping the occlusal surfaces of teeth to create harmonious contact relationships between the maxillary and mandibular teeth. Presently includes discing/odontoplasty/enamoplasty. Typically reported on a per-visit basis. Allowed once every twelve (12) months.

TABLE 911 - ADJUNCTIVE GENERAL SERVICES	
Dental Code	Description
D9952	Occlusal adjustment, complete. Occlusal adjustment may require several appointments of varying length and sedation may be necessary to attain adequate relaxation of the musculature. Study casts mounted on an articulating instrument may be used for analysis of occlusal disharmony. It is designed to achieve functional relationships and masticatory efficiency in conjunction with restorative treatment, orthodontics, orthognathic surgery, or jaw trauma, when indicated. Occlusal adjustment enhances the healing potential of tissues affected by the lesions of occlusal trauma. Justification required when prior authorizing. Requires prior authorization.
D9999	Unspecified adjunctive procedure, by report. Narrative required when prior authorizing. Requires prior authorization.

(3-15-02)(7-1-03)T

912. PREGNANT WOMEN AND CHILDREN (PWC) CODES.

The following are the only codes covered for women on the Pregnant Women and Children (PWC) program.

TABLE 912 - PREGNANT WOMEN AND CHILDREN (PWC) CODES	
Dental Code	Description
01. Clinical Oral Examinations.	
D0140	Limited oral evaluation. <u>An evaluation or re-evaluation limited to a specific oral health problem.</u>
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 planing, <u>four (4) or more contiguous teeth</u> per quadrant. Allowed once in a twelve-month period. This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.
D4342	Periodontal scaling and root planing one (1) to three (3) teeth per quadrant. Allowed once in a twelve-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.

TABLE 912 - PREGNANT WOMEN AND CHILDREN (PWC) CODES	
Dental Code	Description
D7111	Extraction, coronal remnants - deciduous tooth. Including soft-tissue retained coronal remnants.
D7120	Each additional tooth. Tooth designation required.
D7130	Root removal - exposed roots. Tooth designation required.
D7140	Extraction, erupted tooth or exposed root, routine removal.
07. Surgical. Extractions - includes local anesthesia and routine postoperative care.	
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, including periodontal origins.
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)(7-1-03)T

913. 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 code for Idaho licensed denturists.

(3-15-02)

02. Client Eligibility. ~~Clients without eligibility restrictions are eligible for denturist services.~~ Clients eligible for the Pregnant Women and Children (PWC) program or who have only QMB eligibility are not eligible for denturist services. (3-15-02)(7-1-03)T

03. Prior Authorization. Prior authorization is not required for the denturist procedures except for dental code 0515D found in Section ~~83914~~ of these rules. ~~Eligibility must be checked with VRS.~~ (3-15-02)(7-1-03)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 for that service, and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (3-15-02)(7-1-03)T

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. (3-15-02)

914. DENTURIST PROCEDURE CODES.

The following codes are valid denturist procedure codes:

TABLE 83914 - 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 does not to complete the process for the denture; b) leaves the state; c) cannot be located; d) expires or dies; laboratory and professional fees may be billed to Medicaid with an invoice listing lab fees and arch designation.
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.

TABLE 83914 - DENTURIST PROCEDURE CODES	
Dental Code	Description
5730D	Reline complete upper denture (chairside)
5731D	Reline complete lower denture (chairside)
5740D	Reline upper partial denture (chairside)
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)(7-1-03)T

915. DENTAL CODES FOR ADULT SERVICES.

The following dental codes are covered for adults after the month of their twenty-first birthday.

TABLE 915 - DENTAL CODES FOR ADULTS	
Dental Code	Description
01. Dental Diagnostic Procedures. The definitions for these codes are in Section 901 of these rules.	
a. General Oral Evaluations.	
D0120	Periodic oral evaluation.
D0140	Limited oral evaluation.
D0150	Comprehensive oral evaluation.
b. Radiographs/Diagnostic Images.	
D0210	Intraoral - complete series.
D0220	Intraoral periapical - first film.
D0230	Intraoral periapical - each additional film.
D0270	Bitewing - single film.
D0272	Bitewings - two (2) films.
D0274	Bitewings - four (4) films.
D0277	Vertical bitewings - seven (7) to eight (8) films.
D0330	Panoramic film.
02. Dental Preventive Procedures. The definitions for these codes are in Section 902 of these rules.	
a. Dental Prophylaxis.	
D1110	Prophylaxis - adult.
b. Fluoride Treatments.	

TABLE 915 - DENTAL CODES FOR ADULTS	
Dental Code	Description
D1204	Topical application of fluoride - prophylaxis not included - adult.
03. Dental Restorative Procedures. The definitions for these codes are in Section 903.05 of these rules.	
a. Amalgam Restorations.	
D2140	Amalgam - one (1) surface, primary or permanent.
D2150	Amalgam - two (2) surfaces, primary or permanent.
D2160	Amalgam - three (3) surfaces, primary or permanent.
D2161	Amalgam - four (4) or more surfaces, primary or permanent.
b. Resin Restorations.	
D2330	Resin - one (1) surface, anterior.
D2331	Resin - two (2) surfaces, anterior.
D2332	Resin - three (3) surfaces, anterior.
D2335	Resin - four (4) or more surfaces or involving incisal angle, anterior.
D2390	Resin based composite crown, anterior, primary or permanent.
D2391	Resin based composite - one (1) surface, posterior, primary or permanent.
D2392	Resin based composite - two (2) surfaces, posterior, primary or permanent.
D2393	Resin based composite - three (3) surfaces, posterior, primary or permanent.
D2394	Resin based composite - four (4) surfaces, posterior, primary or permanent.
c. Other Restorative Services.	
D2920	Re-cement crown. Tooth designation required.
D2931	Prefabricated stainless steel crown - permanent tooth.
D2940	Sedative filling.
04. Endodontics. The definitions for these codes are in Section 904 of these rules.	
D3220	Therapeutic pulpotomy.
D3221	Pulpal debridement, permanent teeth.
05. Periodontics. The definitions for these codes are in Section 905 of these rules.	
a. Non-Surgical Periodontal Service.	
D4341	Periodontal scaling and root planing - four (4) or more contiguous teeth (per quadrant).
D4342	Periodontal scaling and root planing one (1) to three (3) teeth per quadrant.
D4355	Full mouth debridement.
b. Other Periodontal Services.	
D4910	Periodontal maintenance procedures.

TABLE 915 - DENTAL CODES FOR ADULTS	
Dental Code	Description
06. <u>Prosthodontics.</u> The definitions for these codes are in Section 906 of these rules.	
a. <u>Complete Dentures.</u>	
D5110	Complete denture - maxillary.
D5120	Complete denture - mandibular.
D5130	Immediate denture - maxillary.
D5140	Immediate denture - mandibular.
b. <u>Partial Dentures.</u>	
D5211	Maxillary partial denture - resin base.
D5212	Mandibular partial denture - resin base.
c. <u>Adjustments to Dentures.</u>	
D5410	Adjust complete denture - maxillary.
D5411	Adjust complete denture - mandibular.
D5421	Adjust partial denture - maxillary.
D5422	Adjust partial denture - mandibular.
d. <u>Repairs to Complete Dentures.</u>	
D5510	Repair broken complete denture base.
D5520	Replace missing or broken teeth - complete denture, each tooth.
e. <u>Repairs to Partial Dentures.</u>	
D5610	Repair resin denture base.
D5620	Repair cast framework.
D5630	Repair or replace broken clasp.
D5640	Replace broken teeth, per tooth.
D5650	Add tooth to existing partial denture.
D5660	Add clasp to existing partial denture.
D5670	Replace all teeth and acrylic on cast metal framework (maxillary).
D5671	Replace all teeth and acrylic on cast metal framework (mandibular).
f. <u>Denture Relining.</u>	
D5730	Reline complete maxillary denture (chairside).
D5731	Reline complete mandibular denture (chairside).
D5740	Reline maxillary partial denture (chairside).
D5741	Reline mandibular partial denture (chairside).
D5750	Reline complete maxillary denture (laboratory).

TABLE 915 - DENTAL CODES FOR ADULTS	
Dental Code	Description
D5751	Reline complete mandibular denture (laboratory).
D5760	Reline maxillary partial denture (laboratory).
D5761	Reline mandibular partial denture (laboratory).
07. Oral Surgery. The definitions for these codes are in Section 909 of these rules.	
a. Extractions.	
D7111	Extraction, coronal remnants - deciduous tooth.
D7140	Extraction, erupted tooth or exposed root, routine removal.
b. Surgical Extractions	
D7210	Surgical removal of erupted tooth.
D7220	Removal of impacted tooth - soft tissue.
D7230	Removal of impacted tooth -- partially bony.
D7240	Removal of impacted tooth - completely bony.
D7241	Removal of impacted tooth - completely bony, with unusual surgical complications.
D7250	Surgical removal of residual tooth roots.
c. Other Surgical Procedures.	
D7286	Biopsy of oral tissue - soft. For surgical removal of specimen only.
d. Surgical Incision.	
D7510	Incision and drainage of abscess - including periodontal origins.
e. Repair of Traumatic Wounds.	
D7910	Suture of recent small wounds up to five (5) cm.
f. Other Repair Procedures.	
D7970	Excision of hyperplastic tissue.
D7971	Excision of pericoronal gingiva.
08. Adjunctive General Services. The definitions for these codes are in Section 911 of these rules.	
a. Unclassified Treatment.	
D9110	Palliative (emergency) treatment of dental pain.
b. Anesthesia.	
D9220	Deep sedation/general anesthesia - first thirty (30) minutes.
D9221	Deep sedation/general anesthesia - each additional fifteen (15) minutes.
D9230	Analgesia - includes nitrous oxide.
D9241	Intravenous conscious sedation/analgesia - first thirty (30) minutes.
D9242	Intravenous conscious sedation/analgesia - each additional fifteen (15) minutes.

TABLE 915 - DENTAL CODES FOR ADULTS	
Dental Code	Description
c. Professional Consultation.	
D9310	Consultation requested by other dentist or physician.
d. Professional Visits.	
D9410	House, institutional, or extended care facility calls.house/extended care facility.
D9420	Hospital calls.
D9440	Office visit after regularly scheduled hours.
D9930	Treatment of complication (post-surgical) - unusual circumstances.

(7-1-03)T

09. Clients Eligible For Other Programs. Clients who are eligible for the Pregnant Women and Children (PWC) program or have only Qualified Medicare Beneficiary (QMB) eligibility are not covered under this section of rule. (7-1-03)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 MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0305
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 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 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 August 20, 2003.

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:

Section 506 is being amended to delete a level of care scoring system on supervision that is not consistent with the Uniform Assessment Instrument that is currently being used. These changes will reflect current practices and assure services identified on the UAI are appropriate to the individual's need.

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, 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 not conducted because the changes follow the Uniform Assessment Instrument which is the standard assessment being used.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Christine Baylis at (208) 364-1891.

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 August 27, 2003.

DATED this 23rd day of June, 2003.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0305

506. CRITERIA FOR DETERMINING NEED FOR NF CARE.

The recipient requires NF level of care when an adult meets or exceeds the functional level described in Subsection 506.06, or when a child meets one (1) or more of the criteria described in Subsections 506.07, 506.08, 506.09 or 506.10. A child is an individual from age zero (0) through eighteen (18) years; an adult is an individual more than eighteen (18) years. (3-15-02)

01. Required Assessment, Adults. A standard assessment will be administered by the Department or its designee to all adults requesting services with requirements for Nursing Facility (NF) level of care. The Department will specify the instrument to be used. (3-30-01)

02. Functional Level, Adults. Based on the results of the assessment, the level of impairment of the individual will be established by the Department or its designee. In determining need for NF care an adult must require the level of assistance listed in Subsections 506.03 through 506.05, according to the formula described in Subsection 506.06: (3-15-02)

03. Critical Indicator (Twelve (12) Points Each). (3-30-01)

a. Total assistance with preparing or eating meals. (3-15-02)

b. Total or extensive assistance in toileting. (3-30-01)

c. Total or extensive assistance with medications which require decision making prior to taking, or assessment of efficacy after taking. (3-30-01)

04. High Indicator (Six (6) Points Each). (3-30-01)

a. Extensive assistance with preparing or eating meals. (3-15-02)

b. Total or extensive assistance with routine medications. (3-30-01)

c. Total, extensive or moderate assistance with transferring. (3-30-01)

d. Total or extensive assistance with mobility. (3-30-01)

e. Total or extensive assistance with personal hygiene. (3-30-01)

f. Total assistance with supervision from Section II of the Uniform Assessment Instrument (UAI). (3-30-01)

05. Medium Indicator (Three (3) points each). (3-30-01)

a. Moderate assistance with personal hygiene. (3-30-01)

b. Moderate assistance with preparing or eating meals. (3-15-02)

c. Moderate assistance with mobility. (3-30-01)

d. Moderate assistance with medications. (3-30-01)

e. Moderate assistance with toileting. (3-30-01)

f. Total, extensive, or moderate assistance with dressing. (3-30-01)

- g. Total, extensive or moderate assistance with bathing. (3-30-01)
- h. ~~Frequent or continuous supervision in one (1) or more of the following cognitive areas from Section IV of the UAI:~~ Extensive or moderate assistance with supervision from Section II No. 18 of the UAI. ~~(3-30-01)(7-1-03)T~~
- i. ~~Orientation;~~ (3-30-01)
- ii. ~~Memory;~~ (3-30-01)
- iii. ~~Judgement;~~ (3-30-01)
- iv. ~~Wandering;~~ (3-30-01)
- v. ~~Disruptive/socially inappropriate behavior;~~ (3-30-01)
- vi. ~~Assaultive/destructive behavior;~~ (3-30-01)
- vii. ~~Self preservation; or~~ (3-30-01)
- viii. ~~Danger to self.~~ (3-30-01)
- 06. NF Level Of Care, Adults.** In order to qualify for NF level of care, the individual must score twelve (12) or more points in one (1) of the following ways. (3-15-02)
- a. One (1) or more critical indicators = Twelve (12) points (3-30-01)
- b. Two (2) or more high indicators = Twelve (12) points (3-30-01)
- c. One (1) high and two (2) medium indicators = Twelve (12) points (3-30-01)
- d. Four (4) or more medium indicators = Twelve (12) points (3-30-01)
- 07. Supervision Required, Children.** Where the inherent complexity of a service prescribed by the physician is such that it can be safely and effectively performed only by or under the supervision of a licensed nurse or licensed physical or occupational therapist. (3-30-01)
- 08. Preventing Deterioration, Children.** Skilled care is needed to prevent, to the extent possible, deterioration of the child's condition or to sustain current capacities, regardless of the restoration potential of a child, even where full recovery or medical improvement is not possible. (3-30-01)
- 09. Specific Needs, Children.** When the plan of care, risk factors, and aggregate of health care needs is such that the assessments, interventions, or supervision of the child necessitates the skills of a licensed nurse or a licensed physical therapist or licensed occupational therapist. In such cases, the specific needs or activities must be documented by the physician's orders, progress notes, plan of care, and nursing and therapy notes. (3-30-01)
- 10. NF Level Of Care, Children.** Using the criteria found in Subsections 506.07, 506.08, and 506.09, plus consideration of the developmental milestones, based on the age of the child, the Department's RMU will determine NF level of care. (3-30-01)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0302

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 Sections 56-120, 56-202, 56-203, 56-1003(l), and 56-1004(l)(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 August 20, 2003.

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 rule changes are to implement a 3.5% holdback as directed by the Governor in Executive Orders 2002-08 and 2002-09: Reduction Of General Fund Spending Authority and required by the Idaho State Constitution. The annual aggregated interim rate changes are expected to lessen the effect of overpayments and underpayments to hospitals and to result in a cash flow savings for the Department and recoupment of potentially lost interest earnings.

The proposed changes will give the Department the ability to adjust the interim rate used by the Idaho Medicaid program to calculate the reimbursement amount to a hospital when the hospital's most recent cost settlement amount is equal to or greater than 10% of the payments received by the hospital and is equal to or greater than \$100,000. The interim rate will be adjusted to account for half of the difference in the over or under payment. The changes also give the Department the ability to adjust the interim rate of hospitals when the settlement amount is less than 10% of the payments received. In this case, the interim rate will be adjusted to account for half of the difference as well.

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, 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 proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 27, 2003.

DATED this 18th day of June, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0302

453. ADJUSTMENTS TO THE TITLE XIX COST LIMIT.

A hospital's request for review by the Bureau of Medicaid Policy and Reimbursement, or its successor, concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Sections 450 through 499 of this chapter of rules, shall must be granted under the following circumstances (see also Section 500 of this chapter of rules): ~~(7-1-97)~~(11-1-02)T

01. Adjustments. Because of Extraordinary Circumstances. Where a provider's costs exceed the Title XIX limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (7-1-97)

02. Reimbursement To Public Hospitals. A Public Hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (7-1-97)

03. Adjustment To Cost Limits. A hospital shall be entitled to a reasonable increase in its Title XIX Cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the Principal Year. Any hospital making such showing shall be entitled to an increase commensurate with the increase in per diem costs. (7-1-97)

a. The Title XIX operating cost limit may be adjusted by multiplying cost limit by the ratio of the Current Year's Case-Mix Index divided by the Principal Year's Case-Mix Index. (4-5-00)

b. The contested case procedure set for forth in IDAPA 16.05.03.330.02, "Rules Governing Contested Case Proceedings and Declaratory Rulings," shall be available to larger hospitals seeking such adjustments to their Title XIX Cost Limits. (7-1-97)

~~**04. Hospitals With Forty Or Fewer Licensed And Medicare Certified Beds.** Hospitals with forty (40) or fewer licensed and Medicare certified beds, excluding nursery and neonatal intensive care bassinets, will be guaranteed one hundred percent (100%) of their allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (7-1-97)~~

054. Hospitals With More Than Forty Licensed And Medicare Certified Beds Medicaid Operating And Capital And Medical Education Costs. All hospitals with more than forty (40) licensed and Medicare certified beds will be guaranteed at least eighty percent (80%) of their total allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. ~~(7-1-97)~~(11-1-02)T

a. With the exception of Subsection 453.054.b., at the time of final settlement, the allowable Medicaid costs related to each hospital's fiscal year end will be according to the Reimbursement Floor Percentage ~~defined for~~

each state fiscal year end.

~~(7-1-97)~~(11-1-02)T

b. In the event that ~~HCHA~~ CMS informs the Department that total hospital payments under the Inpatient Operating Cost Limits exceed the inpatient Upper Payment Limit, the Department may reduce the guaranteed percentage defined as the Reimbursement Floor Percentage to hospitals ~~with more than forty (40) licensed and Medicare certified beds to the level of the previous year.~~

~~(7-1-97)~~(11-1-02)T

065. Adjustment To The Proration Of Ancillary Costs In The Principal Year. Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Title XIX cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each Title XIX recipient for each type of patient day during each recipient's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect.

(4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

455. ORGAN TRANSPLANT AND PROCUREMENT REIMBURSEMENT.

Organ transplant and procurement services by facilities approved for kidneys, bone marrow, liver, or heart will be reimbursed the lesser of ~~one hundred ninety-six and a half percent (96.5%)~~ of Reasonable Costs under Medicare payment principles or Customary Charges. Follow up care provided to an organ transplant patient by a provider not approved for organ transplants will be reimbursed at the provider's normal reimbursement rates. Reimbursement to Independent Organ Procurement Agencies and Independent Histocompatibility Laboratories will not be covered.

~~(7-1-97)~~(11-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

467. INTERIM REIMBURSEMENT RATES.

The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards.

(7-1-97)

01. Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Title XIX Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage.

~~(7-1-87)~~(11-1-02)T

~~a. For hospitals with more than forty (40) beds, the interim rate will reflect the Title XIX Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage.~~

~~(7-1-97)~~

~~b. For hospitals with forty (40) or fewer beds, the interim rates will reflect one hundred percent (100%) of the Medicaid reasonable costs by determining the Medicaid cost to charge ratio from the most recent Medicare Cost Report submitted to the Department.~~

~~(7-1-97)~~

02. Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider.

(7-1-87)

03. Basis For Adjustments. The Department may make an adjustment based on the Medicare Cost Report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half (1/2) of the difference.

~~(7-1-97)~~(11-1-02)T

04. Unadjusted Rate. The Title XIX interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors.

(7-1-97)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.20 - RULES GOVERNING ELECTRONIC PAYMENTS OF PUBLIC ASSISTANCE, FOOD STAMPS, AND CHILD SUPPORT

DOCKET NO. 16-0320-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 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 56-202, 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 August 20, 2003.

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 is proposed in order to comply with the federal Food and Nutrition Service (FNS) regulations dated July 5, 2000 and documented in 7 CFR 272 through 274.

These changes will give the Department the authority to adjust a Food Stamp account in order to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

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, 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 these amendments are being made to comply with changes in federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Linda Stokes at (208) 334-5734.

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 August 27, 2003.

DATED this 12th day of June, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0320-0301

131. FOOD STAMP ACCOUNT ADJUSTMENTS.

The Department will make adjustments to a Food Stamp account to correct an auditable, out of balance settlement condition that occurs during the redemption process as a result of a system error. A system error is an error resulting from a malfunction at any point in the redemption process. The Department will provide written notice to the household regarding the adjustment. Should the household dispute the adjustment, they must request a hearing within ten (10) days of the date on the notice. If a hearing is requested, the Department must release the hold on the adjustment amount within forty-eight (48) hours of the request by the household, pending resolution of the fair hearing. (7-1-03)T

~~1342.~~ -- 139. RESERVED.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

DOCKET NO. 16-0601-0301

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is July 1, 2002. This pending rule has been adopted by the agency and is now pending review by the 2004 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. The action is authorized pursuant to Section(s), 16-1623, 16-2001, 16-2401, 56-202(b), 56-204(a), 56-204(A), 56-1003(l), 56-1004, 56-1007, 56-803, 16-1822 and 16-1827, 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.

The proposed text for this rule was published in the January 1, 2003 Idaho Administrative Bulletin, Volume 03-1, pages 111 through 130. Section 010 - Definitions is being amended in the pending docket to delete terms that are not referred to in this chapter of rules. Only the subsections of Section 010 that are being deleted, renumbered or modified are printed in this bulletin. Also, Section 642.04 is being amended to delete the reference to Jeff D class members.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, 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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Chuck Halligan at (208) 334-6559.

DATED this 20th day of June, 2003.

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IDAPA 16, TITLE 06, CHAPTER 01

RULES GOVERNING FAMILY AND CHILDREN'S 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 03-1, January 1, 2003, pages 111 through 130.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0601-0301

SUBSECTIONS 010.23 -- 010.78

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of the rules contained in Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services," the following terms and abbreviations are used as defined herein: (3-18-99)

~~23. **Emergency Assistance To Families.** Social services, crisis or crisis avoidance payments and placement services authorized by Department workers for Emergency Assistance eligible families to meet emergency need(s). (5-3-03)~~

243. Extended Family Member Of An Indian Child. As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

~~25. **FFP. Federal Financial Participation.** (3-18-99)~~

264. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

~~275. **Family And Children's Services (FACS).** Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (3-18-99)~~

286. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and/or safety issues that threaten family integrity, unity or the ability to care for their members. (3-18-99)

297. Family Case Record. Electronic and hard copy compilation of all documentation relating to a

family, including, but not limited to, legal documents, identifying information, and evaluations. (3-30-01)

3028. Family Centered Services. An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the safety, well being and permanency of children. (3-30-01)

3129. Family Plan. Also referred to as Service Plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders and/or leaders should be consulted early in the plan development. (3-30-01)

320. Family Services Worker. Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and Children's Services Programs. (7-1-02)T

331. Field Office. A Department of Health and Welfare service delivery site. (3-18-99)

342. Goal. A statement of the long term outcome or plan for the child and family. (3-18-99)

353. Guardianship Assistance. State benefits provided to legal guardian(s) for the support of a child who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (5-3-03)

364. Independent Living. Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. (3-30-01)

375. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

386. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe, or (3-18-99)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

397. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

4038. Indian Child's Tribe. (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

4139. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

420. Information And Referral Services. A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-30-01)

431. Intercountry Adoption Act of 2000 (P.L. 106-279). Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal

government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

442. Interethnic Adoption Provisions Of 1996 (IEPA). IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (5-3-03)

453. Interstate Compact On The Placement Of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative and human rights obligations of interstate placement or transfers of children are protected. (7-1-02)T

464. Issue. Circumstances which brought a child and family to the attention of the Department. These circumstances typically involve safety issues which put the child at risk of harm. (3-30-01)

475. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

486. Kinship Care. Alternative care that is provided by kin. (3-30-01)

497. Legal Guardianship. A judicially created relationship, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (5-3-03)

5048. Licensed. Facilities or programs being licensed in accordance with the provisions of Idaho Department of Health and Welfare Rules IDAPA 16.06.02, "Rules and Standards for Child Care Licensing". (3-18-99)

5149. Licensing. See Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Standards for Child Care Licensing," Section 100. (3-18-99)

520. Medicaid. See "Title XIX". (3-30-01)

531. Multiethnic Placement Act Of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)

542. Objective. Behaviorally specific description of how the family circumstances will look when the risk factors which brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-01)

553. Parent(s). The person(s) who, by birth or through adoption, is considered legally responsible for a child. For purposes of these rules, when it is necessary to be more specific, identifiers will be added to parent(s): birth parent(s), foster parent(s), adoptive parent(s), step-parent(s), and pre-adoptive parent(s). The term "legal guardian(s)" is not included in the definition of parent(s). (7-1-02)T

564. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

575. Personal Care Services (PCS). Services to eligible Medicaid recipients that involve personal and medically oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

- 586.** P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980". (3-30-01)
- 597.** P.L. 105-89. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997", amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)
- 6058.** **Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)
- 6459.** **Prevention.** Programs, services and activities aimed at preventing child abuse and neglect and severe emotional disturbance. (3-30-01)
- 620.** **Protective Services.** To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (3-18-99)
- 631.** **Purchase Of Services.** Provision of services to children and families by local agencies or individuals who contract with DHW. (3-30-01)
- 642.** **Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is:
- a.** A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)
 - b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (3-18-99)
 - c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (3-18-99)
 - d.** An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)
- 653.** **Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)
- 664.** **Reservation.** Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)
- 675.** **Respite Care.** Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual care giver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. (3-30-01)
- 686.** **Risk Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (3-30-01)
- 697.** **SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

~~7068.~~ **Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

~~71.~~ **Self-Reliance Services.** *Supportive social services provided to individuals and their families to increase their ability to obtain and retain employment.* (3-18-99)

~~7269.~~ **Serious Emotional Disturbance (SED).** An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in at least one (1) of the following areas: thought, perception, affect and behavior. A disorder shall be considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment shall be assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). Substantial impairment shall require a full eight (8) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: Self-harmful behavior; Moods/emotions; or thinking. A substance abuse disorder or conduct disorder, and/or developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (7-1-02)T

~~730.~~ **Social Service Block Grant.** The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (3-18-99)

~~741.~~ **TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

~~752.~~ **Target Population.** Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (3-18-99)

~~76.~~ **Title IV-A.** *Title under the Social Security Act which provides public assistance to families with dependent children and is commonly identified as Aid to Families with Dependent Children (AFDC), repealed in 1997 except for eligibility requirements for Title IV-E.* (3-18-99)

~~77.~~ **Title IV-B.** *Title under the Social Security Act which provides Child Welfare Services. This categorical service program is aimed at improving the general welfare of children regardless of income.* (3-18-99)

~~783.~~ **Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance (formerly provided for under Title IV-A of the Social Security Act) and adoption assistance payments for certain eligible children. (3-18-99)(7-1-02)T

~~794.~~ **Title XIX (Medicaid).** Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (3-18-99)

~~8075.~~ **Title XXI.** (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

~~8176.~~ **Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

~~8277.~~ **Unmarried Parents' Services.** Unmarried parent(s) services are aimed at achieving or maintaining self-reliance or self-support for unmarried parent(s). These services include counseling for all unmarried parent(s) who need such service in relation to their plans for their children and arranging for and/or paying for prenatal and confinement care for the well-being of the parent and infant. (5-3-03)

~~8378.~~ **Voluntary Services Agreement.** A written and executed agreement between the Department and

parent(s) or legal guardian(s) regarding the goal, issues, objectives and task responsibility including payment. A children's mental health family services plan is the Voluntary Service Agreement. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

SUBSECTION 642.04

642. ACCESS TO SERVICES.

The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every reasonable effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services. (3-30-01)

04. Use Of Public Funds And Benefits. Public funds and benefits will be used to provide services for children with serious emotional disturbances, ~~including all Jeff D. class members~~ and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources shall be provided to minimize the need for institutional or other residential placement. Services shall be individually planned with the family to meet the unique needs of each child and family. Services shall be provided without requiring that parent(s) or legal guardian(s) relinquish custody of the child. ~~(7-1-02)~~(7-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.03 - RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG ABUSE
PREVENTION AND TREATMENT PROGRAMS

DOCKET NO. 16-0603-0301

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to Section 005 of the temporary rule is November 1, 2001 the effective date of Section 006 is April 14, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 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) 39-311 and 56-1005(8), 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.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, 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. Section 16.06.03.005 is being amended to include the Department of Health and Welfare's (DHW) telephone number and internet address, making this Section consistent with other DHW rules. Section 16.06.03.006 is amended to use the current chapter name of "Use and Disclosure of Department Rules" which was changed and published on April 2, 2003.

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 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 January 1, 2003 Administrative Bulletin, Volume 03-1, pages 137 through 153.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Pharis Stanger at (208) 334-4944.

DATED this 21st day of July, 2003.

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

IDAPA 16, TITLE 06, CHAPTER 03

RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG
ABUSE PREVENTION AND TREATMENT PROGRAMS

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 03-1, January 1, 2003, pages 137 through 153.](#)

This rule has been adopted as a pending rule by the Agency and is now pending
review and approval by the 2004 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0603-0301

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS ~~AND~~ -- STREET ADDRESS -- TELEPHONE
-- AND INTERNET WEBSITE.**

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except
holidays designated by the state of Idaho. (11-1-01)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and
Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (11-1-01)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at
450 West State St., Boise, Idaho 83720-0036. (11-1-01)T

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is ~~(208) 334-~~
~~5500.~~ (11-1-01)T

05. Internet Website. The Department's internet website is found at <http://www.2.state.id.us/dhw/>.
(11-1-01)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter
1, Idaho Code and IDAPA 16.05.01, "~~Rules Governing Protection~~ Use and Disclosure of Department Records".

~~(11-1-01)T~~(4-14-03)T

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.15 - FINGERPRINTING OF AGENTS, SOLICITORS AND BROKERS

DOCKET NO. 18-0115-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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 41-211, 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 August 20, 2003.

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:

Sections 41-1007 and 41-1009, Idaho Code, allow, but do not require the Director to perform a fingerprint background check on applicants for a producer license. In order to provide the Director flexibility to meet requirements for reciprocity with other states for nonresident producer licensing, the temporary and proposed rule will amend IDAPA 18.01.15.016 to eliminate language that required fingerprint background checks on all producer license applicants. This will allow the Director to discontinue performing fingerprint background checks on nonresident producers who have met the licensing requirements of their home state, and remove a possible obstacle to reciprocity for Idaho resident producers who seek to become licensed as nonresident producers in other states. The temporary and proposed rule also eliminates the requirement that the fingerprints be taken by a law enforcement agency and obsolete references to agents, brokers and solicitors.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The rule confers a benefit by easing application requirements on nonresident producers and enhancing the likelihood of reciprocal treatment by other states for Idaho resident producers.

FEE SUMMARY: The rule does not impose a fee.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 03.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Genetti at (208) 334-4250.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before August 27, 2003.

Dated this 17th day of June, 2003.

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
Facsimile No. (208) 334-4298

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0115-0301

IDAPA 18, TITLE 01, CHAPTER 15

**18.01.15 - FINGERPRINTING OF ~~AGENTS, SOLICITORS AND BROKERS~~
PRODUCER LICENSE APPLICANTS**

016. FINGERPRINTING REQUIREMENTS.

“All ~~agents, brokers and solicitors shall be finger-printed by a duly authorized law enforcement officer and~~ producer license applicants who are required by the director to submit fingerprints shall file a set of their fingerprints with the Department of Insurance in a form acceptable to the Federal Bureau of Investigation for the purpose of determining whether the qualifications as set forth in the Idaho Code are fulfilled. The fee, if any, charged ~~by the law enforcement agency~~ for ~~this~~ the fingerprinting service must be paid by the applicant. These fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division, for processing. ~~This rule shall apply to all agents, brokers and solicitors and this requirement shall be completed before issuance or renewal of any license or company appointment.~~” (7-1-93)(7-1-03)T

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0201

NOTICE OF RULEMAKING - EXPIRATION OF TEMPORARY RULE

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that the temporary rule previously adopted under this docket has expired. The action is authorized pursuant to Section 36-2107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement for the expiration of the temporary rule.

The temporary rule has been replaced by a permanent rule, Docket No. 25-0101-0202, which was adopted to permit an outfitter the benefit of reducing the number of guides required to one guide for six (6) through twelve (12) snowmachines on non-groomed trails and one guide for sixteen (16) through thirty (30) snowmachines on non-groomed trails and one guide for sixteen (16) through thirty (30) snowmachines on groomed trails if the guide has electronic communication for assistance at all times during the excursion. The permanent rule became final and effective March 10, 2003. The temporary rule adopted under Docket No. 25-0101-0201 was not submitted to the legislature for review and extension during the last legislative session and is null and void and has no force and effect.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the expiration of this temporary rule, contact: Jake Howard, Executive Director, (208) 327-7380 - FAX 327-7382.

DATED this 19th day of June, 2003.

Jake Howard
Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard, Suite 172
Boise, Idaho 83706
(208) 327-7380
Fax (208) 327-73820

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0202

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given legislature has taken action by concurrent resolution on this rulemaking under Docket 26-0120-0202. This agency action for this final rulemaking is authorized pursuant to Sections(s) 22-101 and 22-4903, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the final rules:

Pursuant to House Concurrent Resolution, No. 18, Docket No. 26-0120-0202 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following Subsections are hereby rejected and are being deleted from the final rule:

Subsection 010.04; and
Subsection 200.01.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning these final rules, contact: Dean Sangrey, Division Administrator, Operations, (208) 334-4180 ext. 250.

DATED this 14th day of May, 2003.

Rick Collignon, Director
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise ID 83716
PO Box 83720
Boise, Idaho 83720-0065
(208) 334-4180
Fax (208) 334-5230

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0302

NOTICE OF RULEMAKING - PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 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) 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 complete text of the proposed rule was published in the June 4, 2003 Idaho Administrative Bulletin, Vol. 03-6, pages 84 through 86.

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 67-5226(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. 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 R. K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 26th day of June, 2003.

R.K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise, ID 83720-0067
Phone: (208) 334-2356 / Fax: (208) 334-3536

IDAPA 27, TITLE 01, CHAPTER 03

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 03-6, June 4, 2003, pages 84 through 86.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS IN THE STATE OF IDAHO

DOCKET NO. 37-0303-0201

NOTICE OF RESCISSION OF TEMPORARY RULE

AUTHORITY: In compliance with Sections 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Sections 42-3913, 42-3914, and 42-3915 Idaho Code, and 40 CFR Parts 9, 144, 145, and 146, Underground Injection Control Regulations for Class V Injection Wells, Revision; Final Rule, published in the Federal Register, Tuesday, December 7, 1999.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for rescinding the temporary rule.

The temporary rule is no longer necessary following the conclusion of the 2003 legislative session because it has been replaced by a final rule. The rulemaking promulgated under Docket No. 37-0303-0202 was reviewed as a pending rule and approved as a final rule following the conclusion of the legislation session pursuant to section 67-5224, Idaho Code. The temporary rule adopted under Docket No. 37-0303-0201 was not submitted for extension by the 2003 Legislature and has expired and is hereby rescinded.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the rescission of this temporary rule, contact Mark Slifka at 208-327-7887.

DATED this 27th day of June, 2003.

Jerry R. Rigby, Chairman
Idaho Water Resource Board
1301 North Orchard
Boise, ID 83706
208-327-7880
208-327-7866 (fax)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.22 - RULES GOVERNING OVERLEGAL PERMITS FOR EXTRA-LENGTH VEHICLE COMBINATIONS

DOCKET NO. 39-0322-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 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) 40-312, 49-1004, and 49-1010, 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 August 20, 2003.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: To comply with HB395 and SB1053, 2003 Legislative Session, this rule change increases the maximum vehicle length of 105 feet overall to 115 feet, clarifies that all permitted Longer Combination Vehicles (LCV's) (except triples combinations) are required to have the off-track form completed as part of the permitting requirements, and clarifies the operating and reporting requirements for those vehicles participating in the pilot project. There are also technical corrections to sections 002-006 to meet formatting requirements of the Office of Administrative Rules.

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 reason: Compliance with HB395 and SB1053 from the 2003 Legislative Session, both effective July 1, 2003. SB1053 allows Longer Combination Vehicles (LCV's) up to a maximum overall length of 115 feet. HB395 created a pilot project for qualifying LCV's to operate at weights above 105,500 pounds up to 129,000 pounds on non-interstate highways.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking is necessary to comply with changes to Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Frew, Port of Entry Manager, 334-8694.

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 August 27, 2003.

DATED this first day of July, 2003.

Linda L. Emry, Management Assistant
Budget, Policy, and 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. 39-0322-0301

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter.

(7-1-03)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General".

(7-1-03)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter.

(7-1-03)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 PO Box 7129, Boise ID 83707-1129.

(7-1-03)T

02. Office Hours. Daily office hours are 7 a.m. to 5 p.m. except Saturday, Sunday and state holidays.

(7-1-03)T

03. Telephone And Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419.

(7-1-03)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.

(7-1-03)T

0027. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

200. CONDITIONS AND REQUIREMENTS FOR EXTRA-LENGTH.

Extra-length vehicle combinations shall be subject to the following conditions, limitations, and requirements:

(10-2-89)

01. Extra-Length Vehicle Combinations. Vehicle combinations operating with an overall length in excess of the limits imposed in Section 49-1010, Idaho Code, shall consist of not more than four (4) units, shall not exceed one hundred ~~five~~ fifteen (1015) feet overall and no such vehicle combination shall include more than three (3) cargo units except that a full truck and full trailer may have an overall length in excess of seventy-five (75) feet but not in excess of eighty-five (85) feet including load overhang.

~~(12-26-90)~~(7-1-03)T

02. Routes For Extra-length Operations. Shall be designated in four (4) categories:

(9-4-91)

a. Routes for combinations not exceeding ninety (90) feet in overall length including load overhang (blue-coded routes). An extra-length combination operating on routes designated for ninety (90) foot combinations shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed five point five zero (5.50) feet on a one hundred sixty-five (165) foot radius when computed by the equation developed by Western Highway Institute (WHI) for computation of maximum vehicular off-track.

(3-22-00)

b. Routes for combinations of vehicles not exceeding one hundred ~~five~~ fifteen (1015) feet in overall length including load overhang (red-coded routes). An extra-length combination operating on routes designated for

one hundred ~~five~~ fifteen (10~~15~~) foot combinations shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed six point five zero (6.50) feet on a one hundred sixty-five (165) foot radius when computed by the WHI equation referred to above. (~~3-22-00~~)(7-1-03)T

c. Interstate system routes and specified interchanges providing access to approved breakdown areas located in close proximity to the Interstate system (black-coded routes). An extra-length combination operating on routes in this category shall be designed and assembled in such a manner that its off-tracking may exceed six point five zero (6.50) feet but shall not exceed eight point seventy-five (8.75) feet when computed by the WHI equation referred to above. Specified interchanges providing access to approved breakdown areas are required to be used by combinations that exceed six point five zero (6.50) feet off-tracking. The specified interchanges will be authorized for either combinations in excess of six point five zero (6.50) feet off-tracking, but not in excess of seven (7) feet off-tracking, or for combinations in excess of seven (7) feet off-tracking but not in excess of eight point seventy-five (8.75) feet off-tracking. (3-22-00)

d. Selected state highway routes (green coded routes) for operation of an extra-length combination whereby its maximum off-tracking will not exceed three (3) feet on a one hundred sixty-five (165) foot radius when computed by the WHI equation and its overall length including load overhang does not exceed eighty-five (85) feet. Route approval shall be subject to analysis of pavement condition, bridge capacity, safety considerations, pavement width, curvature, traffic volumes and traffic operations. (8-25-94)

03. Power Unit. The power unit of extra-length combinations shall have adequate power and traction to maintain a minimum of fifteen (15) miles per hour under normal operating conditions on any up-grade over which the combination is operated. (10-2-89)

04. Connecting Devices. Fifth wheel, drawbar, and other coupling devices shall be as specified by Federal Motor Carrier Safety Regulations, Part 393, which shall be considered to be a part of this rule. (10-2-89)

05. Weather Restrictions. Extreme caution in the operation of an extra length vehicle combination shall be exercised when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke adversely affect visibility or traction. Speed shall be reduced when such conditions exist. When conditions become sufficiently dangerous, the company or the operator shall discontinue operations and operations shall not be resumed until the extra length vehicle combination can be safely operated. The state may restrict or prohibit operations during periods when in the state's judgment traffic, weather, or other safety conditions make such operations unsafe or inadvisable. (8-25-94)

06. Trailer Weight Sequence. In any extra-length combination, the respective loading of any trailer shall not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. (Substantially greater shall be defined as more than four thousand (4,000) pounds heavier.) (10-2-89)

07. Operating Restrictions. Operators of all vehicle combinations governed by this rule shall comply with the following operating restrictions: (8-25-94)

a. A minimum distance of five hundred (500) feet shall be maintained between combinations of vehicles except when overtaking and passing. (10-2-89)

b. Except when passing another vehicle traveling in the same direction, the combination shall be driven so as to remain at all times on the right hand side of the centerline of a two (2) lane, two (2) way highway, or on the right hand side of a lane stripe or marker of a highway of four (4) or more lanes. (1-1-90)

c. Be in compliance with all Federal Motor Carrier Safety Regulations. (3-22-00)

08. Insurance Requirements. Every combination operated under this rule shall be covered by insurance of not less than five hundred thousand dollars (\$500,000) combined single limit. The permittee or driver of the permitted vehicle combination shall carry in the vehicle evidence of insurance written by an authorized insurer to certify that insurance in this minimum amount is currently in force. (8-25-94)

09. Tire Limitations. All axles on extra-length vehicle combinations shall be equipped with four (4)

tires except on the steering axle and on axles which are in tandem axle groups or other multiple axle groups. (8-25-94)

201. -- 299. (RESERVED).

300. OVERLEGAL PERMITS FOR EXTRA-LENGTH OPERATIONS.

01. Permit Attachments. All vehicles in extra-length operation shall be allowed to travel under the authority of overlegal permits issued to the power unit. A copy of this rule shall accompany and shall be a part of all annual extra-length permits. An allowable gross loads table shall accompany and be referred to on the face of the permit. Extra-length operations shall be valid only on routes of the state highway system designated for such purposes as set forth on the extra length color coded map of designated routes which shall accompany the permit, and is available at the overlegal permit office, ports of entry, and highway district offices. Combination extra-length and excess weight permits are available. (3-22-00)

02. Permit Requirements And Special Requirements. Permits issued for operations of extra-length combinations shall be subject to the general requirements of Section 200, Conditions and Requirements For Extra-Length, and to the following special conditions. (8-25-94)

a. The operator of any extra-length combination ~~which has an internal dimension between points of articulation of thirty (30) feet or more, or of any doubles combination which has an overall length of ninety (90) feet or more, or a combination which is authorized by Subsection 200.02.d., of this rule to operate on selected state highways, (except triples combinations)~~ shall complete the Off-Track Computation Form to provide internal dimensions of the combination and computation of off-track as evidence of compliance with maximum off-track requirements specified for the designated route being traveled. The completed Off-Track Computation Form, when required, shall be available for inspection by enforcement officers with the permit for the extra-length vehicle combination. When the off-track computation form is required, permit shall be invalid until the form is completed and available for inspection. ~~(8-25-94)~~(7-1-03)T

b. Extra-length permits shall become automatically invalid subject to conditions cited in IDAPA 39.03.23, "Rules Governing Revocation of Special Permits". (3-22-00)

03. Exceeding Allowed Length And/Or Off-Track Limitations. Extra-length vehicle combinations apprehended for exceeding allowed length and/or off-track limitations as set forth in this rule shall be subject to the following course of action: (8-25-94)

a. The vehicle combination will be escorted by the apprehending officer to the first safe parking location; and (8-25-94)

b. The driver of the extra length vehicle combination will be issued a single trip, one (1) day permit via a specified route to the nearest permitted route. The condition of this permit shall require an advance pilot/escort vehicle to escort the extra-length vehicle combination, and the pilot/escort vehicle shall meet the pilot/escort vehicle requirements as set forth in IDAPA 39.03.12, "Rules Governing Safety Requirements of Overlegal Permits". (3-22-00)

301. -- 399. (RESERVED).

400. PILOT PROJECT TO EXCEED ONE HUNDRED FIVE THOUSAND, FIVE HUNDRED POUNDS UP TO ONE HUNDRED TWENTY-NINE THOUSAND POUNDS.

In addition to the previously stated requirements that must be met, vehicles operating at weights in excess of one hundred five thousand five hundred (105,500) pounds, must also meet the following requirements: (3-22-00)

01. Brakes. All axles must be equipped with brakes. (3-22-00)

02. Permits. Permits will be vehicle specific and will list the axle spacings, number of axles and the gross weight. The state issued permit must be displayed in the lower right hand corner of the windshield. ~~(3-22-00)~~(7-1-03)T

03. Trip Logs. Trip logs will be required to be submitted quarterly in a standard format and submitted electronically with the following information: ~~(3-22-00)~~(7-1-03)T

- a. Each trip must be listed (a trip is defined as each way unladen or laden); (3-22-00)
- b. Date trip occurred; (3-22-00)
- c. Origin; (3-22-00)
- d. Destination; (3-22-00)
- e. Route (list each highway traveled); ~~and~~ ~~(3-22-00)~~(7-1-03)T
- f. Gross weight of vehicle configuration (unladen or laden); and ~~(3-22-00)~~(7-1-03)T
- g. Unit number. (7-1-03)T

04. Failure To Comply. The motor carrier's failure to provide this information submit trip logs quarterly, as required by Subsection 400.03, will ~~invalidate your permit~~ result in the revocation of all pilot project permits issued to the carrier. Upon submission of all delinquent trip logs, new permits may be issued. ~~(3-22-00)~~(7-1-03)T

401. -- 999. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.41 - RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 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) 40-313, 49-201(3), and 67-5203A, 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 02-12, pages 192 through 198.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lance Johnson, Traffic Engineer, 334-8557.

DATED this 17th day of June, 2003.

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 41

RULES GOVERNING TRAFFIC CONTROL DEVICES

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 02-12, December 4, 2002, pages 191 through 198.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.46 - RULES GOVERNING STUDED TIRES

DOCKET NO. 39-0346-0301 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 49-201 and 49-948 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 August 20, 2003.

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:

HB231, effective July 1, 2003, incorporates the provisions of IDAPA 39.03.46 into Idaho Code, eliminating the need for this rule. The purpose of this rulemaking is to repeal this Administrative Rule.

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

This rulemaking does not impose or increase a fee or charge.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the provisions of this administrative rule are now duplicated in code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Greg Laragan, Assistant Chief Engineer, Operations, 334-8535.

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 August 27, 2003.

DATED this first day of July, 2003.

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

IDAPA 39.03.46 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.63 - RULES GOVERNING TRAFFIC ACCIDENT MEMORIALS

DOCKET NO. 39-0363-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 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) 49-1316 and 55-2201 through 2210, 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 02-12, pages 201 through 205.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Holland, Transportation Staff Engineering Assistant, 334-8565.

DATED this 17th day of June, 2003.

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 63

RULES GOVERNING TRAFFIC ACCIDENT MEMORIALS

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 02-12, December 4, 2002, pages 201 through 205.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0301

NOTICE OF FINAL DECISION ON THE SNAKE RIVER HELLS CANYON TMDL

EFFECTIVE DATE: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Snake River Hells Canyon Total Maximum Daily Load (SR-HC TMDL).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the SR-HC TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the SR-HC TMDL (Hydrologic Unit Codes 17050115, 17050201 and 17060101, and a small corner of 17050103) is limited to the Snake River from river mile 409 to river mile 188. The SR-HC TMDL addresses seven (7) water body segments on Idaho's 1998 § 303(d) list in the Brownlee Reservoir subbasin of the Lower Snake River Basin. DEQ has submitted this TMDL to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at www.deq.state.id.us/water/tmdls/snakeriver_hellscanyon/snakeriver_hellscanyon_tmdl_final.htm or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, mbridges@deq.state.id.us.

Dated this 6th day of August, 2003.

Paula J. Gradwohl
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

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

September 8, 2003, 5:15 p.m.
Department of Environmental
Quality Conference Center
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The Rules for Control of Air Pollution in Idaho are updated annually in order to maintain conformance with EPA's regulations as well as fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act and 40 CFR Part 70. This proposed rule updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2003. This update includes the Maximum Achievable Control Technology (MACT) Standards promulgated as National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Access to federal regulations is no longer available at the physical address for the U.S. Government Bookstore as provided in Subsection 107.02; however, the web site address for obtaining federal regulations on line has been added.

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

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Phyllis Heitman at (208) 373-0502 or pheitman@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 9, 2003.

DATED this 25th day of June, 2003.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0301

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)
- h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

08. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a "serious" particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a "serious" carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is "marginal" or "moderate", one hundred (100) tpy or more, if the area is "serious", fifty (50) tpy or more, if the area is "severe", twenty-five (25) tpy or more, and if the area is "extreme", ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant listed in Subsections 006.84.a. through 006.84.e. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-5-00)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

11. Part 70. Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2002~~3~~, are hereby incorporated by reference. (~~5-3-03~~)()

12. Permit Revision. Any permit modification, administrative amendment or reopening. (3-19-99)

13. Phase II Source. A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

14. Phase II Unit. A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

15. Proposed Permit. The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)

16. Section 502(b)(10) Changes. Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)

17. Tier I Operating Permit. Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability Of Referenced Material. Copies of the documents incorporated by reference into

these rules are available at the following locations: (5-1-94)

a. All federal publications: ~~Superintendent of Documents~~, U.S. Government Printing Office, Washington, D.C. 20402 at (202) 783-3238 <http://www.gpoaccess.gov/index.html>; and (5-1-94)()

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated By Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Parts 51 and 52 revised as of July 1, 2002~~3~~. (5-3-03)()

b. Implementation Plan for the Control of Air Pollution in the State of Idaho (SIP), Department of Environmental Quality, November 1996. (3-19-99)

c. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2002~~3~~. (5-3-03)()

d. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, Identification of Integral Vistas, Subsection a, 40 CFR Part 51.304(a), revised as of July 1, 2002~~3~~. (5-3-03)()

e. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, revised as of July 1, 2002~~3~~. (5-3-03)()

f. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2002~~3~~. (5-3-03)()

g. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2002~~3~~. (5-3-03)()

h. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2002~~3~~. (5-3-03)()

i. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2002~~3~~. (5-3-03)()

j. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2002~~3~~. (5-3-03)()

k. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2002~~3~~. (5-3-03)()

l. Permits, 40 CFR Part 72, revised as of July 1, 2002~~3~~. (5-3-03)()

m. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2002~~3~~. (5-3-03)()

n. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2002~~3~~. (5-3-03)()

o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

p. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 200~~23~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. ~~(5-3-03)~~(_____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective June 20, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 22, 2003.

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. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to meet the requirements of 40 CFR 131.10(b) by setting water quality standards that protect designated uses in, and ensure attainment and maintenance of the water quality standards of, downstream waters in Oregon and to meet the schedule for development of TMDLs. New Section 285 has been added to the water quality standards to provide for a site-specific standard for water-column dissolved oxygen in the Snake River along the Idaho/Oregon border. In addition, the description of water body unit SW-1 in Subsection 140.13 is being changed to correct an oversight as to the actual boundaries.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2003 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: Section 39-107D, Idaho Code, provides that certain rulemaking requirements must be met if DEQ formulates and recommends to the Board a rule that is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government. Section 39-107D, Idaho Code, does not apply to the proposed site-specific criteria for dissolved oxygen because the adoption of the criteria are necessary to meet, but not exceed, federal law or regulations.

The Clean Water Act requires states to adopt water quality standards that must be submitted to and approved by the U.S. Environmental Protection Agency (EPA). EPA's Clean Water Act regulations at 40 CFR 131.10(b) provide that a state, in designating uses and criteria for those uses, shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

The state of Idaho and Oregon share, as a boundary, the Snake River. The state of Oregon water quality standards that apply to the Snake River differ from the applicable Idaho water quality standards for dissolved oxygen. As noted above, federal regulations require that Idaho's water quality standards ensure the attainment and maintenance of water quality standards of downstream waters, such as the Snake River in Oregon. In order to meet this federal requirement, DEQ has proposed to adopt, as site-specific criteria, standards for dissolved oxygen that reflect Oregon's water quality standards. Because DEQ's proposed rule meets, but does not exceed, the requirements of federal law, the provisions of Section 39-107D, Idaho Code, do not apply.

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.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the temporary rulemaking schedule did not allow for the timing of it.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Susan Burke at (208)373-0502 or sburke@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 5, 2003.

DATED this 25th day of June, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
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(208)373-0418/Fax No. (208)373-0481
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0301

285. SNAKE RIVER, SUBSECTION 130.01, HUC 17060101, UNIT S1, S2, AND S3; SUBSECTION 140.13, HUC 17050115, UNIT SW1; AND SUBSECTION 140.19, HUC 17050201, UNITS SW1, SW2, SW3 AND SW4, SITE-SPECIFIC CRITERIA FOR WATER-COLUMN DISSOLVED OXYGEN.

The following criteria are to be met in the Snake River at the locations and time periods set forth below. (6-20-03)T

01. Hell's Canyon Dam To Salmon River. A minimum of eight (8) mg/l, or where conditions of barometric pressure, altitude, and temperature preclude attainment of eight (8) mg/l, dissolved oxygen levels shall not be less than ninety percent (90%) of saturation. At the discretion of the Department, when the Department determines that adequate information exists, dissolved oxygen shall not fall below a minimum of eight (8) mg/l as a thirty (30)-day mean, a minimum of six and five-tenths (6.5) mg/l as a seven (7) day mean of daily minimums, and six (6.0) mg/l as an absolute minimum. (6-20-03)T

02. Hell's Canyon Dam To Salmon River During October 23 Through April 15, Where Salmonid Spawning Occurs. A minimum of eleven (11) mg/l or nine (9) mg/l when the minimum intergravel dissolved oxygen, measured as a spatial median, is eight (8) mg/l or greater; provided, however, where conditions of barometric pressure, altitude, and temperature preclude attainment of eleven (11) mg/l or nine (9) mg/l, dissolved oxygen levels shall not be less than ninety-five percent (95%) of saturation. (6-20-03)T

03. Idaho/Oregon Border To Hell's Canyon Dam. A minimum of six and five-tenths (6.5) mg/l. (6-20-03)T

2856. -- 299. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

140. SOUTHWEST IDAHO BASIN.

Surface waters found within the Southwest basin total nineteen (19) subbasins and are designated as follows: (4-5-00)

Subsections 140.01 Through 140.12 Have No Changes

13. Middle Snake-Payette Subbasin. The Middle Snake-Payette Subbasin, HUC 17050115, is comprised of five (5) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
SW-1	Snake River - Boise River the Idaho/Oregon border to Weiser River	COLD	PCR	DWS
SW-2	Homestead Gulch - source to mouth			
SW-3	Ashlock Gulch - source to mouth			
SW-4	Hurd Gulch - source to mouth			
SW-5	Sand Hollow - source to mouth			

(4-5-00)(6-20-03)T

Subsections 140.14 Through 140.19 Have No Changes

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 20, 2003. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community, who must only comply with one set of regulations. This proposed rule updates citations to the federal regulations incorporated by reference to include those revised as of July 1, 2003. Additional changes include technical corrections to corresponding federal regulations in Sections 005, 009, and 011 and clarification of the definition of Director in Subsection 015.01. Access to federal regulations is no longer available at the physical address for the U.S. Government Bookstore as provided in Subsection 002.02; however, the web site address for obtaining federal regulations on line has been added.

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

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.state.id.us.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or jbrueck@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 3, 2003.

Dated this 25th day of June, 2003.

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Environmental Quality Section
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(208)373-0418/Fax No. (208)373-0481
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-0301

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2002~~3~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. (~~5-3-03~~)()

01. Exceptions. Nothing in 40 CFR Parts 260 - 266, 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (7-2-97)

02. Availability Of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. ~~Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206)553-4270~~ <http://www.gpoaccess.gov/index.html>; and (~~7-2-97~~)()

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (~~5-3-03~~)()

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), except remanded waste codes "K064, K065, K066, K090 and K091" listed in 40 CFR Part 261 Appendix VII, except "49 CFR 173.300" in 40 CFR 261.21(a)(3) as replaced with "49 CFR 173.115 or equivalent test methods in Chapter 7 of SW-846," except "49 CFR 173.151" in 40 CFR 261.21(a)(4) as replaced with "49 CFR 173.127" and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of

July 1, 2002~~3~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-3-03)~~(____)

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the

CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

d. Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06
arsenic	0.50
barium	7.60
beryllium	0.010
cadmium	0.050
chromium	0.33
lead	0.15
mercury	0.009
nickel	1
selenium	0.16
silver	0.30
thallium	0.020
vanadium	2
zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

- e. Modification of Treatment Process. (3-16-96)
- i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)
- ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)
- iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)
- iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)
- f. Records and Data Retention and Submittal. (3-16-96)
- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)
- g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation By Reference. 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002³. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51, 262.53, 262.54(g)(1), and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR

262.41(a)(4), "United States or U.S." shall be defined as the United States.

(~~5-3-03~~)()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report.

(3-15-02)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States.

(~~5-3-03~~)()

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~5-3-03~~)()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, "The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part.", are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~5-3-03~~)()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts (~~excluding Subparts A and B~~) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~.

(~~5-3-03~~)()

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), "D009" is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) In 40 CFR 268.48(a), the entry for "2,4,6-Tribromophenol" is excluded.

(~~5-3-03~~)()

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively.

(~~5-3-03~~)()

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A and B are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~, except that the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(5-3-03)~~(_____)

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation By Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(5-3-03)~~(_____)

02. Used Oil As A Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-3-03)~~(_____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0301 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code.

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

August 27, 2003, 5:30 p.m.
Department of Environmental
Quality Conference Center
1410 N. Hilton, Boise, Idaho.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the following changes to the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08, Sections 003 (Definitions) and 553 through 562 (Drinking Water Operator Certification Rules).

Conform to Section 39-119, Idaho Code, which requires that established fee standards be included in rule text wherever a fee is going to be imposed. The proposed changes will include the standards by which fees will be imposed for operator applications, certification exams, certification renewals, and course evaluations for continuing education units (CEUs).

Make the Drinking Water Operator Certification Rules consistent, where applicable, with the recently adopted changes to the Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, Sections 403 through 413 (Wastewater Operator Certification Rules). These proposed changes include making rule language consistent with the Wastewater Operator Certification Rules for the following: definitions, certification requirements for systems, addition of optional voluntary certification, separate eligibility criteria for certifying treatment operators and distribution operators, length of certification renewal cycle, number of CEUs required per certification renewal cycle, and certificate signatures.

It is equally important that federal requirements already in place in the Idaho Rules for Public Drinking Water Systems related to drinking water operator certification not be changed. Federal baseline standards were required for inclusion in the state rule by Section 1419 (b) of the federal Safe Drinking Water Act. Failure to comply with the federal provisions will result in the loss of 20% of the state's annual Drinking Water Revolving Loan Fund capitalization grant from the federal government.

Public drinking water system treatment and distribution operators, owners of public drinking water systems, water purveyors, Association of Idaho Cities, Idaho Water/Wastewater Operator Certification Board, operator training providers, industry associations, and the general public may be interested in this rulemaking.

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

After consideration of public comments, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

FEE SUMMARY: Pursuant to federal law, the state took over certification of drinking water operators in 2002. Previously, application and examination were voluntary. The rule which transferred certification authority to the state did not include fee provisions for application and testing. The program currently operates partially on fees collected for the testing and renewals and is subsidized by general fund and other program moneys. If the state is unable to collect fees for testing, the public health is placed at risk because the Department of Environmental Quality (DEQ)

will not be able to certify current and new operators and verify that they are qualified to perform their duties. Imposition of the fee is authorized by Section 39-119, Idaho Code.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule regulates an activity not regulated by the federal government. The federal government does not regulate certification of drinking water system operators.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812 - 815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, May 7, 2003, Volume 03-5, pages 26 and 27.

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 AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Chris Lavelle at (208) 373-0502 or clavelle@deq.state.id.us.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before September 3, 2003.

Dated this 25th day of June, 2003.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0301

003. DEFINITIONS.

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2002, are herein incorporated by reference except for the definition of the terms "action level," "disinfection," "noncommunity water system," and "person". (5-3-03)

01. ABC. The abbreviation for "Association of Boards of Certification for Operating Personnel," an international organization representing water utility and pollution control certification boards. (4-5-00)

02. Action Level. The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, or undertake a public education program. (12-10-92)

03. Administrator. The Administrator of the United States Environmental Protection Agency. (4-5-00)

04. Annual Samples. Samples that are required once per calendar year. (12-10-92)

- 05. Aquifer.** A geological formation of permeable saturated material, such as rock, sand, gravel, etc., capable of yielding an economic quantity of water to wells and springs. (5-3-03)
- 06. Available.** Based on system size, complexity, and source water quality, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner. (4-5-00)
- 07. Average Daily Demand.** The volume of water used by a system on an average day based on a one (1) year period. (12-10-92)
- 08. Backflow.** The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. (12-10-92)
- 09. Board.** The Idaho Board of Environmental Quality. (5-3-03)
- 10. Capacity.** The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: (4-5-00)
- a.** Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Certification and training of the operator(s) is required, as appropriate, for the system size and complexity. (4-5-00)
- b.** Financial capacity means the financial resources of the water system, including an appropriate budget, rate structure, cash reserves sufficient for future needs and emergency situations, and adequate fiscal controls. (4-5-00)
- c.** Managerial capacity means that the management structure of the water system embodies the aspects of water treatment operations, including, but not limited to; (4-5-00)
- i. Short and long range planning; (4-5-00)
- ii. Personnel management; (4-5-00)
- iii. Fiduciary responsibility; (4-5-00)
- iv. Emergency response; (4-5-00)
- v. Customer responsiveness; (4-5-00)
- vi. Source water protection; (4-5-00)
- vii. Administrative functions such as billing and consumer awareness; and (4-5-00)
- viii. Ability to meet the intent of the federal Safe Drinking Water Act. (4-5-00)
- 11. Certificate.** Documentation of competency issued by the Director stating that the person (to be certified) has met requirements for a specific classification of the certification program. (4-5-00)
- 12. Community Water System.** A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (12-10-92)
- 13. Composite Correction Program (CCP).** A systematic approach to identifying opportunities for improving the performance of water treatment and implementing changes that will capitalize on these opportunities. The CCP consists of two (2) elements: (4-5-00)

a. Comprehensive Performance Evaluation (CPE). A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. (4-5-00)

b. Comprehensive Technical Assistance (CTA). The implementation phase that is carried out if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. (4-5-00)

14. Compositing Of Samples. The mixing of up to five (5) samples by the laboratory. (4-5-00)

15. Confining Layer. A nearly impermeable subsurface stratum which is located adjacent to one (1) or more aquifers and does not yield a significant quantity of water to a well. (5-3-03)

16. Confirmation Sample. A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. (12-10-92)

17. Connection. Each structure, facility, or single family residence which is connected to a water system, and which is or could be used for domestic purposes, is considered a single connection. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. (10-1-93)

18. Consumer. Any person served by a public water system. (12-10-92)

19. Consumer Confidence Report (CCR). An annual report that community water systems must deliver to their customers. The reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. (4-5-00)

20. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (12-10-92)

21. Continuing Education Unit (CEU). An alternate unit (to semester or quarter systems) of formal credit assignment to post-secondary training activities, which is based upon regionally or nationally established and recognized education criteria. (4-5-00)

22. Cross Connection. Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. (10-1-93)

23. Department. The Idaho Department of Environmental Quality. (12-10-92)

24. Director. The Director of the Department of Environmental Quality or his designee. (12-10-92)

25. Disinfection. Introduction of chlorine or other agent or process approved by the Department, in sufficient concentration and for the time required to kill or inactivate pathogenic and indicator organisms. (5-3-03)

- 26. Disinfection Profile.** A summary of daily Giardia lamblia inactivation through the drinking water treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172 and 40 CFR 141.530-141.536. (5-3-03)
- 27. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ~~(4-5-00)~~()
- 28. Drinking Water System.** All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. (12-10-92)
- 29. DWIMS.** Idaho Department of Environmental Quality Drinking Water Information Management System. Replaced by SDWISS April 2001. (3-15-02)
- 30. Enhanced Coagulation.** The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment. Conventional filtration treatment is defined in 40 CFR 141.2. (5-3-03)
- 31. Enhanced Softening.** The improved removal of disinfection byproduct precursors by precipitative softening. (4-5-00)
- 32. Exemption.** A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. (12-10-92)
- 33. Fee Assessment.** A charge assessed on public drinking water systems based on a rate structure calculated by system size. (10-1-93)
- 34. Filter Profile.** A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed. (4-5-00)
- 35. GAC10.** Granular activated carbon filter beds with an empty bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days. (4-5-00)
- 36. Groundwater System.** A public water system which is supplied exclusively by a groundwater source or sources. (12-10-92)
- 37. Groundwater Under The Direct Influence Of Surface Water.** Any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as Giardia lamblia or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation. (5-3-03)
- 38. Haloacetic Acids (Five) (HAA5).** The sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) rounded to two (2) significant figures after addition. (4-5-00)
- 39. Health Hazards.** Any condition which creates, or may create, a danger to the consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. See also the definition of Significant Deficiency, which refers to a health hazard identified during a sanitary survey. (5-3-03)

- 40. Inorganic.** Generally refers to compounds that do not contain carbon and hydrogen. (12-10-92)
- 41. Laboratory Certification Reciprocity.** Acceptance of a laboratory certification made by another state. Laboratory reciprocity may be granted to laboratories outside of Idaho after application, proof of home state certification, and EPA performance evaluation results are submitted and reviewed. Reciprocity must be renewed after a time specified by the Idaho Laboratory Certification Officer to remain valid. (4-5-00)
- 42. Log.** Logarithm to the base ten (10). (12-10-92)
- 43. Maximum Daily Consumption Rate.** The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest on record. (12-10-92)
- 44. Maximum Hourly Demand.** The greatest volume of water used in any hour during a one (1) year period. (12-10-92)
- 45. Maximum Residual Disinfectant Level (MRDL).** A level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. (4-5-00)
- 46. Maximum Residual Disinfectant Level Goal (MRDLG).** The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. (4-5-00)
- 47. Method Detection Limit (MDL).** The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)
- 48. New System.** Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. (4-5-00)
- 49. Noncommunity Water System.** A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (4-5-00)
- 50. Nontransient Noncommunity Water System.** A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (12-10-92)
- 51. Nuclear Facility.** Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)
- 52. Operator Certifying Entity.** An organization that contracts with the Department to provide public drinking water operator certification services. (4-5-00)
- 53. Operating Experience.** The number of years spent at a drinking water system in performance of

duties. (4-5-00)

54. Operating Shift. That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. (4-5-00)

55. Operator/Owner/Purveyor Of Water/Supplier Of Water. The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers and/or is ultimately responsible for the public water system operation. (4-5-00)

56. Operator Reciprocity. Means on a case by case basis the acceptance of certificates issued by other certification programs, which satisfy the state of Idaho requirements for operator certification. (4-5-00)

57. Peak Hourly Flow. The highest hourly flow during any day. (12-10-92)

58. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)

59. Pesticides. Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algaecides. (12-10-92)

60. Public Notice. The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)

61. Public Drinking Water System. (4-5-00)

a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system". (4-5-00)

b. Connections. (4-5-00)

i. In General. For purposes of paragraph a. of this Subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if: (5-3-03)

(1) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses); (4-5-00)

(2) The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or (4-5-00)

(3) The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. (4-5-00)

ii. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with paragraphs b.i.(2) and b.i.(3) of this Subsection. (5-3-03)

c. **Transition Period.** A supplier of water that would be a public drinking water system only as a result of modifications made to the definition of a public drinking water system by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public drinking water system for purposes of the Safe Drinking Water Act until the date that is two (2) years after the date of enactment of the Safe Drinking Water Act Amendments of 1996. If a supplier of water does not serve fifteen (15) service connections (as set forth in paragraphs a. and b. of this Subsection) or twenty-five (25) people at any time after the conclusion of the two (2) year period, the supplier of water shall not be considered a public drinking water system. (5-3-03)

62. Public Water System/Water System/System. Means “public drinking water system”. (4-5-00)

63. Reciprocity. A system by which certificates issued by any other certification program are recognized as valid and equal to Idaho’s Certification Program provision. (4-5-00)

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

65. Responsible Charge (RC). Responsible Charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants. (4-5-00)

66. Responsible Charge Operator. An operator of a public drinking water system, designated by the system owner, who holds a valid certificate at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. ()

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

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

689. Sanitary Survey. An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: (4-5-00)

- a. Source; (4-5-00)
- b. Treatment; (4-5-00)
- c. Distribution system; (4-5-00)
- d. Finished water storage; (4-5-00)
- e. Pumps, pump facilities, and controls; (4-5-00)
- f. Monitoring and reporting and data verification; (4-5-00)
- g. System management and operation; and (4-5-00)
- h. Operator compliance with state requirements. (4-5-00)

6970. SDWIS-State. An acronym that stands for “Safe Drinking Water Information System-State Version”. It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. See also the definition of DWIMS. (5-3-03)

701. Significant Deficiency. As identified during a sanitary survey, any defect in a system’s design,

operation, maintenance, or administration, as well as any failure or malfunction of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. (5-3-03)

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

73. **Substitute Responsible Charge Operator.** An operator of a public drinking water system who holds a valid certificate at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. ()

724. **Surface Water System.** A public water system which is supplied by one (1) or more surface water sources or groundwater sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. (4-5-00)

735. **Specific Ultraviolet Absorption (SUVA).** SUVA means Specific Ultraviolet Absorption at two hundred fifty-four (254) nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wave length of two hundred fifty-four (254) nm (UV254) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/l). (4-5-00)

746. **Total Organic Carbon (TOC).** Total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. (4-5-00)

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

768. **Treatment Facility.** Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. (4-5-00)

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

780. **Uncovered Finished Water Storage Facility.** An uncovered tank, reservoir, or other facility that is used to store water that will undergo no further treatment except residual disinfection. (5-3-03)

7981. **Unregulated Contaminant.** Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. (12-10-92)

82. **Validated Examination.** An exam that is independently reviewed by subject matter experts to ensure that the exam is based on an operator job analysis and is relevant and related to the classification of the system or facility. ()

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

844. **Very Small Public Drinking Water System.** A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion

exchangers). (4-5-00)

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

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

847. Waiver. (12-10-92)

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

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

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

d. For purposes of Subsection 5589.092 (Professional Growth Requirement), "waiver" means the deferral of the ~~annual~~ continuing education units (CEU) required for ~~annual~~ operator certification renewal for any certified operator deployed out of state or country due to active military service, when such deployment makes it impossible for the operator to accrue the required units by the ~~annual~~ certification renewal date (March 1). (5-3-03)()

858. Water For Human Consumption. Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms "culinary water", "drinking water," and "potable water" are frequently used as synonyms. (5-3-03)

869. Water Main. A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections. The collection of water mains within a given water supply is called the distribution system. (5-3-03)

8790. Water System Distribution Operator. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public drinking water distribution system in order to safeguard the public health and environment. (4-5-00)()

91. Water Treatment Operator. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public drinking water treatment facility in order to safeguard the public health and environment. ()

(BREAK IN CONTINUITY OF SECTIONS)

553. CLASSIFICATION OF WATER SYSTEMS.

01. Classification Requirement. All community and nontransient noncommunity public drinking water systems will be classified based on indicators of potential health risks. (4-5-00)

a. ~~Classification of systems will be completed for every community and nontransient noncommunity public drinking water system using rating forms developed in accordance with~~ The Department shall develop classification criteria rating forms designed to obtain details about criteria in Subsection 553.02. (4-5-00)()

i. The owner or designee of every community and nontransient noncommunity public drinking water

system shall complete the classification criteria rating form(s) for the distribution system. ()

ii. For any community or nontransient noncommunity public drinking water system utilizing a treatment facility(ies), the owner or designee must also complete the classification criteria rating form(s) provided by the Department for the drinking water treatment system(s). ()

b. The Department shall review the classification criteria rating forms and classify the systems.()

~~bc.~~ The Department shall review ~~system~~ classifications ~~will be reviewed~~ at least every five (5) years ~~intervals~~ and ~~revised~~ ~~make revisions~~ to reflect changed conditions, if any. (4-5-00)()

02. Classification Criteria. Community and nontransient noncommunity public drinking water treatment facilities and distribution systems shall be classified under a system that uses the following criteria: (4-5-00)()

a. Complexity, size, and type of source water for treatment facilities, ~~(as determined by the guidelines established by the operator certifying entity).~~ (4-5-00)()

b. Complexity and size of distribution systems. (4-5-00)

c. Other criteria deemed necessary to completely classify systems. (4-5-00)

d. The Department shall develop guidelines for applying the criteria set forth in Section 553. ()

554. CERTIFICATION OF WATER SYSTEM OPERATORS.

01. System Operator Certification Requirement. Owners of all community and nontransient noncommunity public drinking water systems must place the direct supervision of their drinking water system, including each treatment facility and/or distribution system, under the responsible charge of an operator ~~holding a valid certification equal to or greater than the classification of the drinking water system and/or distribution system.~~ (3-10-00)()

02. Responsible Charge Operator Certification Requirement. ~~An~~ ~~Operator~~s in responsible charge ~~or equivalent~~ of a community ~~and~~ or a nontransient noncommunity public drinking water systems in Idaho must hold a valid certification equal to or greater than the classification of their water system, including each treatment facility, where present, and distribution system as determined by the Department. (3-10-00)()

03. Substitute Responsible Charge Operator Requirement. At such times as the responsible charge operator is not available, a substitute responsible charge operator shall be designated to replace the responsible charge operator. ()

034. Shift Operator Requirement. Any community or nontransient noncommunity public drinking water system with multiple operating shifts must have ~~A~~ a designated certified public drinking water system operator ~~must be~~ available for each operating shift. ~~An on-duty designated shift operator does not replace the requirements in Subsections 554.01 and 554.03 for responsible charge operator coverage during all operating shifts.~~ (3-10-00)()

045. Minimum Water Operator Certification Requirement. All operating personnel at community and nontransient noncommunity public drinking water systems making process control/ system integrity decisions about water quality or quantity that affect public health must ~~be certified~~ hold a valid and current certificate. (3-10-00)()

056. Compliance Deadline. All community and nontransient noncommunity public drinking water systems addressed in these rules shall be in compliance with these rules within two (2) years of April 15, 2000. (3-10-00)

067. Qualifications For Certification. To qualify for a certificate an applicant must meet requirements of employment, education, experience and examination as described in Sections 556 and 557. Applicants may also

receive certification through reciprocity ~~upon evaluation of his or her qualifications and comparison of Idaho certification rules to those of another state on a case-by-case basis~~ as provided in Section 558. (3-10-00)()

078. Administration Of The Certification Program. Administration of all aspects of the drinking water system operator certification program in Idaho shall be the responsibility of the Department. All administrative activities except enforcement may be contracted to an operator certifying entity. (3-10-00)

089. Contractor Activities. All administrative activities contracted to an operator certifying entity will be carried out in accordance with these rules. (3-10-00)

555. GRANDPARENTING.

01. Grandparenting Certificate. ~~A grandparenting certificate may only be issued to an existing operator in responsible charge of an existing public drinking water system. The grandparenting certificate will be site specific and non-transferable and can only be issued to an operator of a system that has demonstrated their competency to the director and which, because of state law changes to meet these guidelines, must have a certified operator for the first time.~~ Effective April 15, 2002, the Department shall not accept applications for grandparent certification. Operators holding an existing grandparent certificate must comply with all applicable provisions of these rules in order to maintain their certification. If an operator's grandparent certification lapses, is revoked, or is otherwise not renewed, the operator will be required to meet the current standards for certification set out in these rules. (4-5-00)()

02. Application Limitations. ~~The system must apply for grandparenting within (2) two years of April 15, 2000.~~ **Grandparent Professional Growth Requirement.** In order to maintain an existing grandparent certification, grandparented operators must: (4-5-00)()

a. In the first certification renewal cycle, complete a one (1) time training that covers all information included by the qualifying certification exam for the certification class the operator holds; ()

b. Submit proof of completion of the required one (1) time training; and ()

c. Following the first renewal cycle, the operator must meet the professional growth requirements in Subsection 559.02. ()

03. Certification Limitations. ~~Upon receiving a grandparenting certificate the operator shall be required to meet renewal requirements including but not limited to continuing education and renewal fee requirements.~~ (4-5-00)

04. Plant Classification Limitations. ~~If the plant classification of the system changes to a higher classification then the grandparenting certification is no longer valid.~~ (4-5-00)

05. Revocation. ~~A grandparenting certification may be suspended, reduced or revoked by the Director if the system remains in non-compliance for a period of time or in the opinion of the Director the operator is not performing their duties in a satisfactory way.~~ (4-5-00)

06. One System Limitation. ~~An operator who is the operator in responsible charge of more than one (1) system shall not be grandparented.~~ (4-5-00)

556. CERTIFICATION REQUIREMENTS FOR ~~CERTIFICATION~~ A WATER TREATMENT OPERATOR.

Individuals requesting certification shall submit an application to the Department and meet the criteria in Section 556 to qualify for a certification classification in water treatment. Applicants shall be subject to an application fee not to exceed two hundred dollars (\$200) plus the actual cost of testing. ()

01. Employment Requirement. Except for ~~OH~~ Operator-In-Training Classification, applicants for certification must be currently employed or working in the drinking water field. (4-5-00)()

02. Examination Requirement. Applicants must pass a written validated examination with a score of seventy percent (70%) or better. The examination will reflect different levels of knowledge, ability and judgement required for the established certification classes. Examinations will be administered in accordance with established examination procedures. (4-5-00)(____)

03. Education And Experience Requirements ~~For Public Drinking Water Operators.~~ (4-5-00)(____)

a. Basic Education and Experience Certification Requirements. (____)

a.i. To qualify for an Operator-In-Training Water Treatment Certificate, an operator must have a high school diploma or GED and pass an Operator-In-Training exam. After passing an Operator-In-Training exam, a "one (1) time" non-renewable certificate of "Operator-In-Training" will be issued. This certificate will be valid for three (3) years only. After working one (1) year in the field and with no further testing required, the Operator-In-Training will be issued a Class I Water Treatment Certificate upon written request to the Director with proof of twelve (12) months of operating experience in a Class I or higher water system and treatment facility. (4-5-00)(____)

~~**b.** To qualify for a Very Small Public Drinking Water System certificate an operator must have a high school diploma or GED and six (6) months of acceptable experience operating a very small water system or a higher system.~~ (4-5-00)

eii. To qualify for a Class I certificate an operator must have a high school diploma or GED and one (1) year of acceptable operating experience ~~of in~~ a Class I or higher ~~system and/or~~ treatment facility. (4-5-00)(____)

eiii. To qualify for a Class II certificate an operator must have a high school diploma or GED and three (3) years of acceptable operating experience ~~of in~~ a Class I or higher ~~system and/or~~ treatment facility. (4-5-00)(____)

eiv. To qualify for a Class III certificate an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience ~~of in~~ a Class II or higher ~~system and/or~~ treatment facility, including two (2) years ~~of responsible charge active, daily, on-site charge of personnel or a major segment of a system in the same or next lower class.~~ (4-5-00)(____)

ev. To qualify for a Class IV certificate an operator must have a high school diploma or GED; ~~and~~ four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience ~~of in~~ a Class III or higher ~~system and/or~~ treatment facility, including two (2) years ~~of responsible charge active, daily, on-site charge of personnel or a major segment of a system in the same or next lower class.~~ (4-5-00)(____)

04b. Substituting Education for Experience. Applicants may substitute education for operating and responsible charge experience as specified below: (4-5-00)

a.i. For ~~Very Small Water System and~~ Class I, no substitution for operating experience shall be permitted. (4-5-00)(____)

bii. For Class II, a maximum of one and one-half (1 ½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1 ½) years of operating experience. (4-5-00)

eiii. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of ~~responsible charge experience active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class.~~ (4-5-00)(____)

eiv. Education ~~applied to~~ substituted for operating experience shall not also be applied to education requirement. (4-5-00)(____)

ev. One (1) year of ~~education above the post high school level~~ education, other than described in Subsections 556.03.b.ii. and 556.03.b.iii. may be substituted for one (1) year experience, up to a maximum of fifty

percent (50%) of ~~the~~ required operating or ~~responsible charge experience~~ active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class. (4-5-00)()

05c. Substituting Experience for Education. Where applicable, operating and responsible charge experience or operating and active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class experience may be substituted for education as specified below: (4-5-00)()

a.i. One (1) year of operating experience may be substituted for two (2) years of grade school with no limitation or one (1) year high school with no limitation. (4-5-00)

b.ii. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = equals one (1) post high school education. (4-5-00)()

ed. ~~Related Substituting e~~Experience ~~may be substituted~~ for ~~e~~Experience. Where applicable, up to one-half (1/2) of the operating experience requirement for Class II, III and IV: may be substituted for Eexperience that ~~may be substituted~~ includes, but is not limited to, the following: (4-5-00)()

- i. Experience as an environmental or operations consultant; (4-5-00)
- ii. Experience in an environmental or engineering branch of federal, state, county, or local government; (4-5-00)
- iii. Experience as a wastewater collection system operator; (4-5-00)
- iv. Experience as a wastewater treatment plant operator; (4-5-00)
- v. Experience as a water distribution system operator and/or manager; (4-5-00)
- vi. Experience as a water treatment plant operator; or (4-5-00)
- vii. Experience in waste treatment operation and maintenance. (4-5-00)

06e. Equivalency Policy for Education or Experience Substitutions. Substitutions for education or experience requirements needed to meet minimum requirements for certification will be evaluated upon the following equivalency policies: (4-5-00)()

a.i. High School – High School diploma, = a GED, or other equivalent = ~~twelve (12) years.~~ (4-5-00)()

b.ii. College – Thirty-five (35) credits = equals one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields). (4-5-00)()

e.iii. Continuing Education Units (CEU) for specialized relevant operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours = equals one (1) CEU; forty-five (45) CEUs = equals one (1) year of college. (4-5-00)()

557. CERTIFICATION REQUIREMENTS FOR A WATER DISTRIBUTION OPERATOR.
Individuals requesting certification shall submit an application to the Department and meet the criteria in Section 557 to qualify for a certification classification in water distribution. Applicants shall be subject to an application fee not to exceed two hundred dollars (\$200) plus the actual cost of testing. ()

01. Employment Requirement. Except for Operator-In-Training Classification, applicants for certification must be currently employed or working in the drinking water field. ()

02. Examination Requirement. Applicants must pass a written validated examination with a score of seventy percent (70%) or better. The examination will reflect different levels of knowledge, ability and judgment

required for the established certification classes. Examinations will be administered in accordance with established examination procedures. ()

03. Education And Experience Requirements. ()

a. Basic Education and Experience Certification Requirements. ()

i. To qualify for an Operator-In-Training Water Distribution Certificate, an operator must have a high school diploma or GED and pass either a Very Small Water System Operator-In-Training exam or a Class I Operator-In-Training exam. ()

(1) After passing a Very Small Water System Operator-In-Training exam, a “one (1) time” non-renewable certificate of “VSWS Operator-In-Training” will be issued. This certificate will be valid for three (3) years only. After working six (6) months in the field and with no further testing required, the VSWS Operator-In-Training will be issued a VSWS Certificate upon written request to the Director with proof of six (6) months of operating experience in a VSWS or higher water distribution system. ()

(2) After passing a Class I Operator-In-Training exam, a “one (1) time” non-renewable certificate of “Class I Operator-In-Training” will be issued. This certificate will be valid for three (3) years only. After working one (1) year in the field and with no further testing required, the Class I Operator-In-Training will be issued a Class I Certificate upon written request to the Director with proof of twelve (12) months of operating experience in a Class I or higher water distribution system. ()

ii. To qualify for a Very Small Public Drinking Water System certificate, an operator must have a high school diploma or GED and six (6) months of acceptable experience operating a very small water system or a higher distribution system. ()

iii. To qualify for a Class I certificate, an operator must have a high school diploma or GED and one (1) year of acceptable operating experience in a Class I or higher distribution system. ()

iv. To qualify for a Class II certificate, an operator must have a high school diploma or GED and three (3) years of acceptable operating experience. ()

v. To qualify for a Class III certificate, an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience. ()

vi. To qualify for a Class IV certificate, an operator must have a high school diploma or GED; four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience. ()

b. Substituting Education for Experience. Applicants may substitute education for operating and responsible charge experience as specified below: ()

i. For Very Small Water System and Class I, no substitution for operating experience shall be permitted. ()

ii. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. ()

iii. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience. ()

iv. Education substituted for operating experience shall not also be applied to education requirement. ()

v. One (1) year of post high school education, other than described in Subsections 557.3.b.ii. and 557.03.b.iii. may be substituted for one (1) year experience, up to a maximum of fifty percent (50%) of the required operating or active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class. ()

c. Substituting Experience for Education. Where applicable, operating and responsible charge experience or operating and active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class experience may be substituted for education as specified below: ()

i. One (1) year of operating experience may be substituted for two (2) years of grade school with no limitation or one (1) year high school with no limitation. ()

ii. For Class III and IV, responsible charge experience may be substituted for post high school education on a two (2) for one (1) basis: two (2) years responsible charge equals one (1) post high school education. ()

d. Substituting Experience for Experience. Where applicable, up to one-half (½) of the operating experience requirement for Class II, III and IV may be substituted for experience that includes, but is not limited to, the following: ()

i. Experience as an environmental or operations consultant; ()

ii. Experience in an environmental or engineering branch of federal, state, county, or local government; ()

iii. Experience as a wastewater collection system operator; ()

iv. Experience as a wastewater treatment facility operator; ()

v. Experience as a water distribution system operator and/or manager; ()

vi. Experience as a water treatment plant operator; or ()

vii. Experience in waste treatment operation and maintenance. ()

e. Equivalency Policy for Education or Experience Substitutions. Substitutions for education or experience requirements needed to meet minimum requirements for certification will be evaluated upon the following equivalency policies: ()

i. High School - High School diploma, a GED, or other equivalent. ()

ii. College - Thirty-five (35) credits equals one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields). ()

iii. Continuing Education Units (CEU) for relevant operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equals one (1) CEU; forty-five (45) CEUs equals one (1) year of college. ()

5578. RECIPROCITY REQUIREMENTS.

Individuals requesting certification by reciprocity shall submit an application to the Department. The Director may waive examination requirements ~~for~~ and issue a certificate to applicants holding certificates or licenses issued by other States which have equivalent certification requirements upon presentation of proof of such licensing and credentials consistent with Idaho certification requirements. ~~A certificate of appropriate class will be issued.~~ Applicants shall be subject to an application certification fee to cover processing costs not to exceed two hundred dollars (\$200). (4-5-00)()

5589. ~~CERTIFICATES~~ ISSUANCE AND RENEWALS REQUIREMENTS.

~~01. Certificate Issuance. A renewal certificate signed by the Director will be issued to the applicant, designating his or her level of operating competency. Upon *satisfying* satisfaction of the requirements of in one (1) or more of the following sections: 556, a certificate will be issued to the applicant designating his level of operating competency.~~ (4-5-00)()

~~a. Section 555, Grandparenting;~~ ()

~~b. Section 556, Certification Requirements for a Water Treatment Operator;~~ ()

~~c. Section 557, Certification Requirements for a Water Distribution Operator;~~ ()

~~d. Section 558, Reciprocity Requirements; and~~ ()

~~e. Section 559, Certificate Issuance and Renewal Requirements.~~ ()

~~02. Certificate Renewal. Certificates shall be subject to payment of annual renewal fees and professional growth requirements. Operators shall be subject to payment of fees and professional growth requirements in accordance with the following criteria, to qualify for certificate renewal:~~ (4-5-00)()

~~a. Renewal fees shall not exceed two hundred dollars (\$200) for each two (2) year period.~~ ()

~~b. Certificates shall be valid for two (2) years, beginning on March 1 of the year of issuance.~~ ()

~~c. An operator shall submit satisfactory evidence of completion of approved training of a minimum of one point two (1.2) CEUs as a condition for renewal of the certificate.~~ ()

~~d. A Water System Operator holding more than one (1) certificate issued under these rules need only complete the training required to satisfy renewal requirements for one (1) of these water certificates.~~ ()

~~03. Attaining Higher Certification Level. Certified Water System Operators who desire to become certified in a higher grade must satisfactorily complete the higher grade requirements before a new certificate will be issued.~~ (4-5-00)

~~043. Invalidation Of Certificates. Certificates for which annual the renewal card applications fees and evidence of completion of approved training, as referenced in Subsection 559.02, are not received within sixty (60) days after the expiration date or which do not satisfy the professional growth requirement of Subsection 558.09 will be are invalid.~~ (4-5-00)()

~~054. Renewal Of Invalidated Certificates. Water System Operators whose certificates are invalidated may be renewed up to the certification by applying for renewal within two (2) years provided of the date of invalidation. The application shall include appropriate proof of competency is presented and applicable reinstatement fees are paid. Certificates that remain invalidated for two (2) years or more shall not be renewed.~~ (4-5-00)()

~~065. Recertification. Water System Operators who have failed to renew or qualify for renewal of invalidated certificate(s) beyond for two (2) years or more are not eligible for renewal and must recertify and provide appropriate proof of competency.~~ (4-5-00)()

~~07. Certificate Issuance. Appropriate classification will be issued to public drinking water system operators, who on the effective date of a mandatory program hold certificates of competency attained by examination under the voluntary program.~~ (4-5-00)

~~08. Certificate Signatures. Certificates shall be signed by the Chairman and Secretary of the operator certifying entity.~~ (4-5-00)

~~09. Professional Growth Requirement. Renewal of a certificate shall be based on demonstrations of~~

~~continued professional growth in the field. A public drinking water system operator shall submit satisfactory evidence of completion of approved training of a minimum point six (0.6) CEUs as a condition for renewal of the certificate. The Water System Operator shall complete the required point six (0.6) CEUs after March 1 of the year preceding the renewal year. It is the obligation of the Water System Operator to present proof of CEUs along with the renewal fee. A Water System Operator holding more than one (1) certificate issued under these rules need only complete the training required to satisfy renewal requirements for one (1) of these certificates.~~ (4-5-00)

~~10. Grandparented Certificate Renewal. In the first annual certification renewal cycle, grandparented operators shall complete and show documentation of completion of training that includes all information covered by the initial certification exam.~~ (4-5-00)

55960. CONTRACTING FOR SERVICES.

Water systems that do not have a certified public drinking water system operator may contract with a certified public drinking water system operator or with a public drinking water system having certified operators to provide supervision. The contracted public drinking water system operator or contracted entity shall ~~be~~ employ an operator certified at the grade classification equal to or greater than the classification of the plant or treatment or distribution system. (4-5-00)(____)

01. **Supervision.** For supervision required in this rule to be sufficient, the contracted certified water system operator or contracted entity shall: (4-5-00)

a. Be available on twenty-four (24) hour call and able to respond onsite upon request. (4-5-00)

b. Report the results of analyses or measurements that indicate maximum contaminant levels have been exceeded or that minimum treatment levels are not maintained and report the results of these analyses to the operator, owner, purveyor or supplier of water. (4-5-00)

c. Recommend corrective action when the results of analyses or measurements indicate maximum contaminant levels have been exceeded or minimum treatment levels are not maintained. (4-5-00)

d. Recommend that all elements of routine operation and maintenance of the water system are completed in accordance with accepted public health practice and these rules. (4-5-00)

02. **Proof Of Contract.** Proof of the contract shall be submitted to the Department. (4-5-00)

5601. PENALTIES.

The Director may assess penalties in accordance with the following provisions: (4-5-00)

01. **General Authority.** ~~Violations of these rules shall be punishable~~ The Department shall enforce these rules and seek those remedies as provided in Title 39, Chapter 1, Idaho Code. (4-5-00)(____)

02. **Falsification And Forgery.** ~~Every~~ Any person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed or registered, or recorded under any law of this state, or of the United States, is guilty of a felony. Section 18-3203, Idaho Code. (4-5-00)(____)

03. **Civil Penalties.** Pursuant to Section 39-108, Idaho Code, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense and for continuing violations, each day's violation is separate and distinct. (4-5-00)

5612. SUSPENSION, ~~REDUCTION~~ OR REVOCATION.

01. **Suspend, ~~Reduce~~ Or Revoke An Operator's Certificate.** The Director may suspend, ~~reduce~~ or revoke ~~the~~ a water operator's certificate of an Operator following notice and pending an opportunity for a hearing before the Board when any of the following conditions are found: (4-5-00)(____)

a. It is found that the Water System Operator The individual holding the water certificate has engaged in misconduct in the performance of his or her operator duties such as fraud, falsification of ~~the~~ an application, or

falsification of operating records.

~~(4-5-00)~~()

b. ~~The Water System Operator is found to be grossly negligent in the performance of his duties~~ individual holding the water certificate has been convicted of a crime involving a violation of any drinking water rule or statute.

~~(4-5-00)~~()

c. ~~It is found that the Water System Operator~~ The individual holding the water certificate has failed to use reasonable care and judgement in the performance of his or her duties as described in the definition of "Water Distribution Operator" or the definition of "Water Treatment Operator" found in Section 003 of these rules, or the application of his or her knowledge and ability in the performance of his or her duties is unsatisfactory.

~~(4-5-00)~~()

d. Operators receiving revocations as provided in Subsection 562.01.a. are not eligible to reapply for certification for a period of five (5) years from the date of revocation. Operators receiving revocations as provided in Subsection 562.01.b. are not eligible to reapply for certification for a period of three (3) years from the date of revocation.

()

02. Appeals. In the event of a decision to suspend, ~~reduce~~ or revoke a certificate under the conditions set forth in this section, the holder of that certificate may appeal the decision as provided for in Sections 39-107(6) and 39-107(7), Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".

~~(3-15-02)~~()

5623. ADVISORY GROUP.

Stakeholder Involvement. Ongoing stakeholder involvement will be provided through the existing drinking water advisory committee at the Department.

(4-5-00)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0303 - FEE RULE

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The temporary rule was effective June 20, 2003.

AUTHORITY: In compliance with Section 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule. The action is authorized by Chapter 1, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to conform to Idaho Code, Section 39-119, which requires that established fee standards be included in rule text wherever a fee is going to be imposed. These changes include the standards by which fees will be imposed for operator applications, certification exams, certification renewals, and course evaluations for continuing education units (CEUs).

Under Docket No. 58-0108-0301, published in this Bulletin, the Department of Environmental Quality (DEQ) has initiated rulemaking to make comprehensive revisions to the drinking water operator certification rules. Proposed Rule Docket No. 58-0108-0301, which also includes fee standards, will become final and effective upon conclusion of the 2004 legislative session if adopted by the Board and then approved by the Legislature. At that time, temporary rule Docket No. 58-0108-0303 will expire.

FEE SUMMARY: Pursuant to federal law, the state took over certification of drinking water operators in 2002. Previously, application and examination were voluntary. The rule which transferred certification authority to the state did not include fee provisions for application and testing. The program currently operates partially on fees collected for the testing and renewals and is subsidized by general fund and other program moneys. If the state is unable to collect fees for testing, the public health is placed at risk because the Department of Environmental Quality (DEQ) will not be able to certify current and new operators and verify that they are qualified to perform their duties. Imposition of the fee is authorized by Section 39-119, Idaho Code.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule is necessary to protect public health and complies with deadlines in amendments to federal law.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule regulates an activity not regulated by the federal government. The federal government does not collect fees for certification of public water system operators.

NEGOTIATED RULEMAKING: Due to the emergency nature of this rulemaking, negotiations were not held.

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 Chris Lavelle at (208) 373-0502 or clavelle@deq.state.id.us.

DATED this 25th day of June, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
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Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481/
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0303

556. REQUIREMENTS FOR CERTIFICATION.

Applicants shall be subject to an application fee not to exceed one hundred dollars (\$100) plus the actual cost of testing. (6-20-03)T

01. Employment Requirement. Except for OIT Classification, applicants for certification must be currently employed or working in the drinking water field. (4-5-00)

02. Examination Requirement. Applicants must pass a written examination with a score of seventy percent (70%) or better. The examination will reflect different levels of knowledge, ability and judgement required for the established certification classes. Examinations will be administered in accordance with established examination procedures. (4-5-00)

03. Education And Experience Requirements For Public Drinking Water Operators. (4-5-00)

a. To qualify for an Operator-In-Training Certificate, an operator must have a high school diploma or GED and pass an Operator-In-Training exam. After passing an Operator-In-Training exam, a "one (1) time" non-renewable certificate of "Operator-In-Training" will be issued. This certificate will be valid for three (3) years only. After working one (1) year in the field and with no further testing required, the Operator-In-Training will be issued a Class I Certificate upon proof of twelve (12) months of operating experience in a Class I or higher water system and treatment facility.. (4-5-00)

b. To qualify for a Very Small Public Drinking Water System certificate an operator must have a high school diploma or GED and six (6) months of acceptable experience operating a very small water system or a higher system. (4-5-00)

c. To qualify for a Class I certificate an operator must have a high school diploma or GED and one (1) year of acceptable operating experience of a Class I or higher system and/or treatment facility. (4-5-00)

d. To qualify for a Class II certificate an operator must have a high school diploma or GED and three (3) years of acceptable operating experience of a Class I or higher system and/or treatment facility. (4-5-00)

e. To qualify for a Class III certificate an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class II or higher system and/or treatment facility, including two (2) years of responsible charge. (4-5-00)

f. To qualify for a Class IV certificate an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class III or higher system and/or treatment facility, including two (2) years of responsible charge. (4-5-00)

04. Substituting Education For Experience. Applicants may substitute education for operating and responsible charge experience as specified below: (4-5-00)

a. For Very Small Water System and Class I, no substitution for operating experience shall be permitted. (4-5-00)

b. For Class II, a maximum of one and one-half (1 ½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1 ½) years of operating experience. (4-5-00)

c. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating

experience; however the applicant must still have one (1) year of responsible charge experience. (4-5-00)

d. Education applied to operating experience shall not also be applied to education requirement. (4-5-00)

e. One (1) year of education above the high school level may be substituted for one (1) year experience, up to maximum of fifty percent (50%) of required operating or responsible charge experience. (4-5-00)

05. Substituting Experience For Education. Where applicable, operating and responsible charge experience may be substituted for education as specified below: (4-5-00)

a. One (1) year of operating experience may be substituted for two (2) years of grade school with no limitation or one (1) year high school with no limitation. (4-5-00)

b. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = one (1) post high school education. (4-5-00)

c. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (4-5-00)

i. Experience as an environmental or operations consultant; (4-5-00)

ii. Experience in an environmental or engineering branch of federal, state, county, or local government; (4-5-00)

iii. Experience as a wastewater collection system operator; (4-5-00)

iv. Experience as a wastewater treatment plant operator; (4-5-00)

v. Experience as a water distribution system operator and/or manager; (4-5-00)

vi. Experience as a water treatment plant operator; or (4-5-00)

vii. Experience in waste treatment operation and maintenance. (4-5-00)

06. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for certification will be evaluated upon the following equivalency policies: (4-5-00)

a. High School – High School diploma = GED or other equivalent = twelve (12) years. (4-5-00)

b. College – Thirty-five (35) credits = one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields). (4-5-00)

c. Continuing Education Units (CEU) for specialized operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours = one (1) CEU; forty-five (45) CEUs = one (1) year of college. (4-5-00)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0123-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized Sections 39-105, 39-107, and 67-5206, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 20, 2003. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The Rules of Administrative Procedure Before the Board of Environmental Quality were first adopted by the Board of Environmental Quality in 2001. Since that time, several petitions to initiate contested cases have been filed with the Board, giving an opportunity to apply the rules to contested case proceedings. Certain difficulties in implementing the rules have been identified. The purpose of this rulemaking is to address those issues. In this rulemaking, public notice requirements have been established and procedures for filing petitions have been modified. This rulemaking also clarifies the procedures for intervention (Sections 351 through 355), review and reconsideration of interlocutory orders (Sections 710 and 711), and Section 101, Department Action Not Stayed. This rulemaking will affect any citizen of the state of Idaho and/or regulated industry appealing an action of the Department of Environmental Quality to the Board of Environmental Quality or having a direct and substantial interest in a proceeding filed with the Board.

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

After consideration of public comments, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

SECTION 39-107D, IDAHO CODE, STATEMENT: This rule regulates an activity not regulated by the federal government. The federal government does not regulate administrative procedures for the state of Idaho.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812 - 815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, May 7, 2003, Vol. 03-5, page 28.

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 AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Paula Gradwohl at (208) 373-0418 or pgradwoh@deq.state.id.us.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before September 3, 2003.

Dated this 25th day of June, 2003.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0123-0301

008. FILING AND SERVICE OF DOCUMENTS.

01. Filing of Documents. (3-15-02)

a. All documents concerning actions governed by these rules shall be filed with the hearing coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, FAX No. (208)373-0481. With the exception of petitions initiating a contested case, declaratory ruling, or rulemaking, pleadings and other documents may be filed by facsimile transmission (FAX). The originating party is responsible for retaining proof of filing by FAX. The documents are deemed to be filed on the date received by the hearing coordinator. Upon receipt of the filed document, the hearing coordinator will provide a conformed copy to the originating party. ~~(3-15-02)~~()

b. Upon receipt of a petition initiating a contested case, rulemaking, or declaratory ruling, the hearing coordinator shall serve the petition upon the Department. In any proceeding involving a permit, the hearing coordinator shall serve upon the permit applicant or permit holder the petition and a notice informing the permit applicant or permit holder that they have twenty-one (21) days after the date of service of the petition to intervene in the proceeding and that they may be bound by any decision rendered in the proceeding. (3-15-02)

02. Service Of Documents. From the time a party files its petition initiating a contested case, rulemaking or, declaratory ruling, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties or representatives designated pursuant to Section 044, unless otherwise directed by order or notice or by the presiding officer. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The parties may serve courtesy copies upon the presiding officer. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

~~046.—047.~~ (RESERVED).

047. PUBLIC NOTICE OF PETITION FOR CONTESTED CASE AND DECLARATORY RULING.

Within ten (10) days of the date a petition for contested case or declaratory ruling is filed with the Board, the Board shall give reasonable notice to the public. The methods for giving notice shall include, at a minimum, the following:

01. Publication. Publishing a one-time legal notice in the newspaper of general circulation in the county in which the petitioner resides or in which the facility or other subject of the petition is located. The legal notice shall describe the nature of the action initiated by the filing of the petition and shall include the date the

petition was filed, the date by which petitions to intervene must be filed, and a method by which interested persons can obtain a copy of the petition. ()

02. Mail. Mailing a copy of the legal notice prepared in accordance with Subsection 047.01 to persons on any mailing list developed by the Department relating to the subject matter of the petition for contested case or declaratory ruling. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS.

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the Department must comply with this rule. (3-15-02)

01. Form. The petition shall: (3-15-02)

a. Identify the petitioner and state the petitioner's interest in the matter; (3-15-02)

b. State the declaratory ruling that the petitioner seeks; and (3-15-02)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (3-15-02)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-15-02)

03. Filing. The petitioner shall file the original and two (2) copies of the petition with the hearing coordinator in accordance with Section 008. ()

~~051. NOTICE OF PETITION FOR DECLARATORY RULING (RESERVED).~~

~~If the Board determines that the subject matter of a petition for declaratory ruling is of interest to the public, notice of receipt of the petition may be issued by the Board pursuant to the requirements of Chapter 1, Title 60, Idaho Code.~~ (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

101. DEPARTMENT ACTION NOT STAYED.

An action or inaction of the Department, or any portion thereof, which is the subject of a proceeding governed by these rules, is not stayed unless, upon a motion filed by a party, it is so ordered by the presiding officer. This section does not apply to Department action governed by Section 67-5254(1), Idaho Code. The stay may be ordered upon appropriate terms. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

211. PETITIONS TO INITIATE CONTESTED CASE -- DEFINED -- FORM AND CONTENTS.

01. Defined. The pleading initiating a contested case is called a "petition". (3-15-02)

02. Form And Contents. The form and contents of a petition initiating contested cases shall: (3-15-02)

- a. Fully state the facts upon which it is based, including the specific alleged action or inaction of the Department; (3-15-02)
 - b. Refer to the particular provisions of statute, rule, order or other controlling law upon which it is based; (3-15-02)
 - c. State the relief sought; and (3-15-02)
 - d. State the name of the person petitioned against (the respondent), if any. (3-15-02)
 - e. State the basis for the petitioner's legal standing to initiate the contested case. (3-15-02)
- 03. Filing.** The petitioner shall file the original and two (2) copies of the petition with the hearing coordinator in accordance with Section 008. ()

212. RESPONSES IN CONTESTED CASES -- DEFINED -- FORM AND CONTENTS.

- 01. Defined.** The pleading filed by the respondent in response to the petition initiating the contested case is called a "response". (3-15-02)
- shall: **02. Form And Contents.** The form and contents of a response to a petition initiating a contested case shall:
- a. Separately admit or deny to each factual averment in the petition; (3-15-02)
 - b. Separately admit or deny the applicability of each legal authority asserted in the petition; (3-15-02)
 - c. Fully state any additional facts necessary to decision of the contested case; (3-15-02)
 - d. Refer to any additional provisions of statute, rule, order or other controlling law upon which it is based; and (3-15-02)
 - e. State the relief sought. (3-15-02)
- 03. Filing And Service.** Responses to petitions must be filed and served on all parties of record within twenty-one (21) days after service of the petition, unless an order or stipulation modifies the time within which a response may be made, or a motion to dismiss is filed within twenty-one (21) days. When a response is not timely filed under this rule, the presiding officer may enter a default order pursuant to Sections 700 through 702. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Sections ~~200 through 349~~ 008, 044, and 300. The petition must set forth the name and address of the potential intervenor, ~~and must~~ state the direct and substantial interest of the potential intervenor in the proceeding, and demonstrate that the intervention would not unduly broaden the issues and cause delay or prejudice to the parties. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (3-15-02)()

352. TIMELY FILING OF PETITIONS TO INTERVENE.

- 01. General.** Petitions to intervene must be filed ~~at least~~ within fourteen (14) days ~~before the date set~~

~~for the prehearing conference~~ of publication of the notice of filing of the petition initiating a contested case or declaratory ruling as provided in Section 047 unless a different time is provided by order or notice. ~~(3-15-02)~~()

02. Proceedings Involving A Permit. In any proceeding involving a permit, petitions to intervene by the permit applicant or permit holder must be filed within twenty-one (21) days after service of the initiating petition as provided in Subsection 008.01.b. (3-15-02)

03. Petitions Not Timely Filed. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor are bound by orders and notices entered earlier in the proceeding. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

354. ORDERS GRANTING INTERVENTION -- OBJECTIONS.

~~No petition to intervene will be acted upon fewer than seven (7) days after its filing.~~ Any party opposing a petition to intervene, must file the objection within seven (7) days after receipt of the petition to intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. Responses shall be filed within seven (7) days after service of the objection. ~~(3-15-02)~~()

355. REVIEW OF ORDERS GRANTING OR DENYING INTERVENTION.

Any party may petition the Board to review an order granting or denying intervention. Petitions for review shall be filed within fourteen (14) days after service of the order. Responses shall be filed within fourteen (14) days after service of the petition for review. The Board may schedule oral argument in the matter before issuing a decision. ()

~~3556.~~ -- 409. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

710. INTERLOCUTORY ORDERS.

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the ~~Board~~ presiding officer may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review ~~by appeal~~, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the statements set forth in Sections 730 or 740 or a statement substantially similar, the order is interlocutory. The following orders are always interlocutory: orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention (an order regarding intervention, however, may be reviewed by the Board as provided in Section 355); orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders limiting, compelling or refusing to compel discovery. ~~(3-15-02)~~()

711. REVIEW RECONSIDERATION OF INTERLOCUTORY ORDERS.

Any party ~~or person affected by an interlocutory order~~ may ~~petition the presiding officer issuing the order to review the~~ file a motion for reconsideration of an interlocutory order within fourteen (14) days after service of the order. The presiding officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the presiding officer's own motion, but will not on the presiding officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. ~~(3-15-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

800. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING.

This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (3-15-02)

01. Requirement. Any person petitioning for initiation of rulemaking must comply with this rule. (3-15-02)

02. Form And Contents. The form and contents of a petition ~~must be filed with the hearing coordinator as set out in Section 008 and~~ to initiate rulemaking shall: (3-15-02)()

a. Identify the petitioner and state the petitioner's interest(s) in the matter; (3-15-02)

b. Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (3-15-02)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-15-02)

03. Filing. The petitioner shall file the original and two (2) copies of the petition with the hearing coordinator in accordance with Section 008. ()

Subjects Affected Index

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.01.04 - Rules Governing The Idaho Preferred™ Promotion Program

Docket No. 02-0104-0301 (Fee Rule)

000. Legal Authority.....	15
001. Title And Scope.....	15
002. Written Interpretations.....	15
003. Administrative Appeal.....	15
004. Incorporation By Reference.....	15
005. Address, Office Hours, Telephone, And Fax Numbers.....	15
006. Public Records Act Compliance.....	16
007. -- 009. (Reserved).....	16
010. Definitions.....	16
011. -- 014. (Reserved).....	17
015. Voluntary Program.....	17
017. -- 099. (Reserved).....	17
100. Application For Participation.....	17
101. Participation Duration And Renewal.....	17
102. -- 109. (Reserved).....	18
110. Participation Fees.....	18
111. Participation Privileges.....	18
112. -- 199. (Reserved).....	18
200. Product Qualification.....	18
201. -- 299. (Reserved).....	19
300. Logo.....	19
301. Special Promotional Activities.....	19
302. Other Idaho Promotion Programs.....	20
303. Distribution Of Promotional Material.....	20
304. -- 309. (Reserved).....	20
310. Self-Certification.....	20
311. Compliance.....	20
312. -- 314. (Reserved).....	20
315. Violation.....	20
316. -- 999. (Reserved).....	20

IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL

04.20.01 - Rules Implementing The Idaho Tobacco Master Settlement Agreement Complementary Act

Docket No. 04-2001-0301

000. Legal Authority (Rule 0).....	22
001. Title And Scope (Rule 1).....	22
002. Written Interpretations -- Agency Guidelines (Rule 2).....	22
003. Public Records Act Compliance (Rule 3).....	22
004. Administrative Appeals (Rule 4).....	22
005. Incorporation By Reference (Rule 5).....	22
006. Citation (Rule 6).....	22
007. Office -- Office Hours -- Mailing Address And Street Address (Rule 7).....	22
008. Definitions (Rule 8).....	23
009. Effective Date (Rule 9).....	23
010. -- 099. (Reserved).....	23
100. Quarterly Reports (Rule 100).....	23

101. Deadline For Quarterly Reports (Rule 101).....	24
102. -- 199. (Reserved).....	24
200. Review Of Attorney General Decisions Related To Excluding Or Removing From The Directory (Rule 200).	24
201. -- 299. (Reserved).....	24
300. Directory (Rule 300).	24
301. Publication Of Directory (Rule 301).....	25
302. Directory For July 1, 2003 To September 1, 2003 (Rule 302).	25
303. Directory Updates (Rule 303).....	25
304. -- 999. (Reserved).....	25

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION**08.02.02 - Rules Governing Uniformity**

Docket No. 08-0202-0301

004. Incorporation By Reference.	29
150. Transportation.	29
151. -- 159. (Reserved).....	29
160. Maintenance Standards And Inspections.	29
161. -- 169. (Reserved).....	30
170. School Bus Drivers And Vehicle Operation.....	30
190. Program Operations.	30

**IDAPA 10 - IDAHO BOARD OF REGISTRATION OF PROFESSIONAL
ENGINEERS AND PROFESSIONAL LAND SURVEYORS****10.01.01 - Rules Of Procedure**

Docket No. 10-0101-0301

017. Examinations.....	32
019. Registrants Or Certificate Holders Of Other States And Boards.	35

10.01.02 - Rules Of Professional Responsibility

Docket No. 10-0102-0301

005. Responsibility To The Public.	37
---	----

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**16.02.19 - Food Safety And Sanitation Standards For Food Establishments**

Docket No. 16-0219-0302 (Rewrite)

000. Legal Authority.....	40
001. Title, Scope And Applicability.	40
002. Written Interpretations.	41
003. Administrative Appeals And Contested Cases.....	41
004. Incorporation By Reference.	41
005. Office -- Office Hours -- Mailing Address -- Street Address.....	41
006. Confidentiality Of Records.	42
007. -- 049. (Reserved).....	42
050. Training And Informational Materials.....	42
051. -- 099. (Reserved).....	42
100. Purposes And Definitions.	42
101. -- 109. (Reserved).....	42
111. -- 199. (Reserved).	44
200. Management And Personnel.....	44
201. -- 209. (Reserved).....	44
210. Demonstration Of Knowledge.	44
211. -- 219. (Reserved).	44
220. Employee Health.	44

221. -- 299. (Reserved).....	44
300. Food.....	44
301. -- 319. (Reserved).....	44
320. Meat And Poultry.....	44
321. -- 324. (Reserved).....	44
325. Game Animals.....	45
326. -- 349. (Reserved).....	45
350. Temperature Requirements.....	45
351. Variance Requirements For Food Establishments.....	46
352. -- 354. (Reserved).....	46
355. Food Processing Plants.....	46
356. -- 359. (Reserved).....	46
360. Advising Consumers Of Health Risk Of Raw Or Undercooked Foods.....	47
361. -- 369. (Reserved).....	47
370. Adulterated Or Misbranded Food.....	47
371. -- 699. (Reserved).....	47
700. Poisonous Or Toxic Materials.....	47
701. -- 719. (Reserved).....	47
720. Restriction And Storage Of Medicines.....	47
721. Refrigerated Storage Of Medicines.....	47
722. -- 799. (Reserved).....	47
800. Compliance And Enforcement.....	47
801. -- 829. (Reserved).....	48
830. Application For A License.....	48
831. Summary Suspension Of License.....	48
832. -- 839. (Reserved).....	49
840. Inspections And Correction Of Violations.....	49
841. Inspection Scores.....	49
842 -- 844. (Reserved).....	50
845. Verification And Documentation Of Correction.....	50
846. -- 849. (Reserved).....	50
850. Enforcement Inspections.....	50
851. Enforcement Procedures For Adulterated Or Misbranded Food.....	50
852. -- 859. (Reserved).....	51
860. Revocation Of License.....	51
861. Appeal Process.....	52
862. -- 869. (Reserved).....	52
870. Service Of Notice.....	52
871. -- 889. (Reserved).....	53
890. Criminal And Civil Proceedings.....	53
891. -- 999. (Reserved).....	53
16.03.01 - Rules Governing Eligibility For Medicaid For Families And Children	
Docket No. 16-0301-0301	
204. Citizenship And Qualified Non-Citizen Requirements.....	56
205. Individuals Not Meeting The Citizenship Or Qualified Non-Citizen Requirements.....	57
16.03.05 - Rules Governing Eligibility For Aid To The Aged, Blind And Disabled	
Docket No. 16-0305-0301	
106. Citizenship And Qualified Non-Citizen Requirements.....	60
16.03.08 - Rules Governing Temporary Assistance For Families In Idaho (TAFI)	
Docket No. 16-0308-0301	

131. Citizenship And Qualified Non-Citizen Criteria.....	64
16.03.09 - Rules Governing Medical Assistance Program	
Docket No. 16-0309-0303	
814. Pharmacy And Therapeutics Committee (P&T Committee).....	68
815. Supplemental Rebates.....	68
Docket No. 16-0309-0304	
900. Dental Services.....	70
901. Dental Diagnostic Procedures.....	70
902. Dental Preventive Procedures.....	71
903. Dental Restorative Procedures.....	72
904. Endodontics.....	75
905. Periodontics.....	76
906. Prosthodontics.....	77
909. Oral Surgery.....	79
910. Orthodontics.....	81
911. Adjunctive General Services.....	83
912. Pregnant Women And Children (PWC) Codes.....	84
913. Denturist Policy Guidelines.....	86
914. Denturist Procedure Codes.....	86
915. Dental Codes For Adult Services.....	87
916. Dental Prior Authorization.....	91
917. -- 995. (Reserved).....	91
Docket No. 16-0309-0305	
506. Criteria For Determining Need For NF Care.....	93
16.03.10 - Rules Governing Medicaid Provider Reimbursement In Idaho	
Docket No. 16-0310-0302	
453. Adjustments To The Title XIX Cost Limit.....	96
455. Organ Transplant And Procurement Reimbursement.....	97
467. Interim Reimbursement Rates.....	97
16.03.20 - Rules Governing Electronic Payments Of Public Assistance, Food Stamps, And Child Support	
Docket No. 16-0320-0301	
131. Food Stamp Account Adjustments.....	99
16.06.01 - Rules Governing Family And Children's Services	
Docket No. 16-0601-0301	
010. Definitions And Abbreviations.....	101
642. Access To Services.....	106
16.06.03 - Rules And Minimum Standards Governing Alcohol/Drug Abuse Prevention And Treatment Programs	
Docket No. 16-0603-0301	
005. Office -- Office Hours -- Mailing Address -- Street Address -- Telephone -- And Internet Website.....	108
006. Public Records Act Compliance.....	108
IDAPA 18 - DEPARTMENT OF INSURANCE	
18.01.15 - Fingerprinting Of Agents, Solicitors And Brokers	
Docket No. 18-0115-0301	
016. Fingerprinting Requirements.....	110

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**39.03.22 - Rules Governing Overlegal Permits For Extra-Length Vehicle Combinations**

Docket No. 39-0322-0301

002. Written Interpretations.....	116
003. Administrative Appeals.....	116
004. Incorporation By Reference.....	116
005. Office -- Office Hours -- Mailing And Street Address -- Phone Numbers.....	116
006. Public Records Act Compliance.....	116
007. -- 009. (Reserved).....	116
200. Conditions And Requirements For Extra-Length.....	116
201. -- 299. (Reserved).....	118
300. Overlegal Permits For Extra-Length Operations.....	118
301. -- 399. (Reserved).....	118
400. Pilot Project To Exceed One Hundred Five Thousand, Five Hundred Pounds Up To One Hundred Twenty-Nine Thousand Pounds.....	118

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**58.01.01 - Rules For The Control Of Air Pollution In Idaho**

Docket No. 58-0101-0301

008. Definitions For The Purposes Of Sections 300 Through 386.....	125
107. Incorporations By Reference.....	127

58.01.02 - Water Quality Standards And Wastewater Treatment Requirements

Docket No. 58-0102-0301

285. Snake River, Subsection 130.01, HUC 17060101, Unit S1, S2, And S3; Subsection 140.13, HUC 17050115, Unit SW1; And Subsection 140.19, HUC 17050201, Units SW1, SW2, SW3 And SW4, Site-Specific Criteria For Water-Column Dissolved Oxygen.....	131
286. -- 299. (Reserved).....	131
140. Southwest Idaho Basin.....	132

58.01.05 - Rules And Standards For Hazardous Waste

Docket No. 58-0105-0301

002. Incorporation By Reference Of Federal Regulations.....	134
004. Hazardous Waste Management System.....	134
005. Identification And Listing Of Hazardous Waste.....	134
006. Standards Applicable To Generators Of Hazardous Waste.....	137
007. Standards Applicable To Transporters Of Hazardous Waste.....	138
008. Standards For Owners And Operators Of Hazardous Waste Treatment, Storage And Disposal Facilities.....	138
009. Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage And Disposal Facilities.....	138
010. Standards For The Management Of Specific Hazardous Wastes And Specific Types Of Hazardous Waste Facilities.....	138
011. Land Disposal Restrictions.....	138
012. Hazardous Waste Permit Program.....	138
013. Procedures For Decision-Making (State Procedures For RCRA Or HWMA Permit Applications).....	139
015. Standards For The Management Of Used Oil.....	139
016. Standards For Universal Waste Management.....	139

58.01.08 - Idaho Rules For Public Drinking Water Systems

Docket No. 58-0108-0301 (Fee Rule)

003. Definitions.....	141
553. Classification Of Water Systems.....	149
554. Certification Of Water System Operators.....	150

555. Grandparenting.....	151
556. Certification Requirements For A Water Treatment Operator.....	151
557. Certification Requirements For A Water Distribution Operator.....	153
558. Reciprocity Requirements.....	155
559. Certificate Issuance And Renewal Requirements.....	156
560. Contracting For Services.....	157
561. Penalties.....	157
562. Suspension Or Revocation.....	157
563. Advisory Group.....	158
58.01.08 - Idaho Rules For Public Drinking Water Systems	
Docket No. 58-0108-0303 - Fee Rule	
556. Requirements For Certification.....	160
58.01.23 - Rules Of Administrative Procedure Before The Board Of Environmental Quality	
Docket No. 58-0123-0301	
008. Filing And Service Of Documents.....	163
046. (Reserved).....	163
047. Public Notice Of Petition For Contested Case And Declaratory Ruling.....	163
050. Form And Contents Of Petition For Declaratory Rulings.....	164
051. (Reserved).....	164
101. Department Action Not Stayed.....	164
211. Petitions To Initiate Contested Case -- Defined -- Form And Contents.....	164
212. Responses In Contested Cases -- Defined -- Form And Contents.....	165
351. Form And Contents Of Petitions To Intervene.....	165
352. Timely Filing Of Petitions To Intervene.....	165
354. Orders Granting Intervention -- Objections.....	166
355. Review Of Orders Granting Or Denying Intervention.....	166
356. -- 409. (Reserved).....	166
710. Interlocutory Orders.....	166
711. Reconsideration Of Interlocutory Orders.....	166
800. Form And Contents Of Petition To Initiate Rulemaking.....	167

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 02 – DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

02-0104-0301, Rules Governing the Idaho Preferred Promotion Program. Establishes voluntary promotion program requirements for use of the Idaho Preferred™ logo, defines eligible products, application procedures and participation fees for promotion of Idaho food and agricultural products. Comment by: 8/27/03.

IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL P.O. Box 83720, Boise, ID 83720-0010

04-2001-0301, Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act. Rules are being adopted to enforce the Act. Comment by: 8/28/03.

IDAPA 07 – DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Meridian, ID 83642

07-0201-0301, Rules Governing Repeal of Existing Plumbing Permit Rules. Repeal of chapter. Comment by: 8/27/03.

07-0207-0301, Rules Governing Readoption of Rules of Plumbing Division. Repeal of chapter. Comment by: 8/27/03.

IDAPA 08 – IDAHO STATE BOARD OF EDUCATION P.O. Box 83720, Boise, ID 83720-0027

08-0202-0301, Rules Governing Uniformity. Changes relate to new school bus construction standards, operations and bus purchasing programs. Comment by: 8/28/03.

IDAPA 10 - IDAHO BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS 600 S. Orchard, Suite A, Boise, ID 83705-1242

10-0101-0301, Rules of Procedure. Clarifies the courses a technology or related science graduate or a comity applicant must complete to be the equivalent of an engineering graduate; would allow a failing candidate access to a diagnostic analysis of his performance if it is available to the Board; clarifies that Board will proctor an exam for a candidate from another jurisdiction if that candidate would qualify for assignment to the exam in Idaho; and recognizes the educational equivalency for a graduate of a program recognized in the Washington Accord or by ABET. Comment by: 8/27/03.

10-0102-0301, Rules of Professional Responsibility. Requires that license holders keep clients reasonably informed about pertinent matters by providing all necessary information and that they exercise independent professional judgment and render candid advice. Comment by: 8/27/03.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

16.02.19, Food Safety and Sanitation Standards for Food Establishments.

16-0219-0301- Repeal of chapter. **16-0219-0302** - Chapter rewrite sets standards to be more consistent with other states on food safety; incorporates by reference the federal 2001 Food Code. Comment by: 8/27/03.

16-0301-0301, Rules Governing Eligibility for Medicaid for Families and Children. Clarifies and extends eligibility for citizens and qualified non-citizens in compliance with federal law; and clarifies that individuals not meeting the citizenship or qualified non-citizen requirements, when all other conditions are met, may be eligible for medical services. Comment by: 8/27/03.

16-0305-0301, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled. Clarifies and extend eligibility for aid to qualified non-citizens in compliance with federal law. Comment by: 8/27/03.

16-0308-0301, Rules Governing Temporary Assistance for Families in Idaho. Clarifies and extends eligibility for assistance for citizens and qualified non-citizens in compliance with federal law; and clarifies that individuals not meeting the citizenship or qualified non-citizen requirements, when all other conditions are met, may be eligible for medical services. Comment by: 8/27/03.

16.03.09, Rules Governing the Medical Assistance Program.

16-0309-0303 - Provides guidelines for a Pharmacy and Therapeutics Committee and supplemental drug rebates.

16-0309-0304 – Changes comply with legislative intent language by removing requirement that adult clients must be considered high risk or in need of emergency dental services for Medicaid dental coverage.

16-0309-0305 – Deletes a level of care scoring system on supervision that is not consistent with the Uniform Assessment Instrument that is currently being used and assure services are appropriate to the individual's need. Comment by: 8/27/03.

16-0310-0302, Rules Governing Medicaid Provider Reimbursement in Idaho. Changes give Department the ability to adjust the interim rate used by the Idaho Medicaid program to calculate the reimbursement amount to a hospital. Comment by: 8/27/03.

16-0320-0301, Rules Governing Electronic Payments of Public Assistance, Food Stamps, and Child Support. Changes comply with the federal 2000 Food and Nutrition Service regulations; and authorizes the Department to adjust a Food Stamp account to correct an auditable, out-of-balance settlement condition that occurs as a result of a system error. Comment by: 8/27/03.

**IDAPA 18- DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043**

18-0115-0301, Fingerprinting of Agents, Solicitors and Brokers. Eliminates language requiring fingerprint background checks on all producer license applicants to allow the Director to discontinue fingerprint background checks on nonresident producers who have met the licensing requirements of their home state thereby removing a possible obstacle to reciprocity for Idaho residents; removes requirement that a law enforcement agency take fingerprints and removes obsolete references to agents, brokers and solicitors. Comment by: 8/27/03.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39-0322-0301, Rules Governing Overlegal Permits for Extra-Length Vehicle Combinations. Increases the maximum vehicle length overall to 115 feet; clarifies that all permitted Longer Combination Vehicles (except triples combinations) are required to have the off-track form completed as part of the permitting requirements; and clarifies operating and reporting requirements for vehicles participating in the pilot project. Comment by: 8/27/03.

39-0346-0301, Rules Governing Studded Tires. Repeal of chapter. Comment by: 8/27/03.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255**

58-0101-0301, Rules for the Control of Air Pollution in Idaho. Updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2003 in accordance with the Clean Air. Comment by: 8/27/03.

58-0102-0301, Water Quality Standards and Wastewater Treatment Requirements. Changes meet federal requirements by setting water quality standards that protect designated uses in, and ensure attainment and maintenance of the water quality standards of, downstream waters in Oregon and to meet the schedule for development of TMDLs. Comment by: 9/5/03.

58-0105-0301, Rules and Standards for Hazardous Waste. Updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2003; makes technical corrections to corresponding federal regulations and clarifies definition of Director. Comment by: 9/3/03.

58-0108-0301, Idaho Rules For Public Drinking Water Systems. Establishes standards by which fees will be imposed for operator applications, certification exams and renewals, and course evaluations for continuing education units; makes language consistent with changes made in IDAPA 58.01.02 that deal with Wastewater Operator Certification. Comment by: 9/3/03.

58-0123-0301, Rules of Administrative Procedure Before the Board of Environmental Quality. Establishes public notice requirements and modifies procedures for filing petitions with the Board; clarifies the procedures for intervention, review and reconsideration of interlocutory orders. Comment by: 9/3/03.

Please refer to the Idaho Administrative Bulletin, **August 6, 2003, Volume 03-8** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

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CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

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**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.**

Subject Index

A

ABC, Association Of Boards Of
Certification For Operating
Personnel 141

Access To Services, Child Mental
Health Services 106

Action Level 141

Activities 19

Adjunctive General Services 83

Adjustment To Cost Limits, Hospitals,
Title XIX 96

Adjustment To The Proration Of
Ancillary Costs In The Principal
Year, Title XIX Cost Limit 97

Adjustments To The Title XIX Cost
Limit 96

Adjustments, Title XIX Cost Limit 96

Administration Of The Certification
Program, Drinking Water
System 151

Adulterated Or Misbranded Food 47

Advising Consumers Of Health Risk Of
Raw Or Undercooked Foods 47

Advisory Group, Drinking Water
System 158

Affected States, Emissions From A Tier
I Source 125

Agricultural Market 42

Agricultural Product 16

Allowance, Phase II Source 125

Amalgams & Resin Restoration, Dental
Restorative Procedures 73

American Indian Born In Canada 57,
61

American Indian Born Outside The
U.S. 57, 61

Annual Adjustments, Interim Rates 97

Annual Fee 18

Annual Inspection, School Buses 30

Annual Samples 141

Anterior Proximal Restoration, Dental
Restorative Procedures 73

Apicultural Product 16

Appeal Process 52

Applicable Requirement, Emissions
Units In A Tier I Source 125

Application For A License 48

Application For Participation 17

Application Requirement 17

Application Review & Compliance
Verification 17

Approval of Process Methods 46

Aquacultural Product 16

Asylees, Eligibility For Medicaid For
Families, Children 55

Authority Of Determination 18

Authority Of Director 20

Availability Of Referenced
Material 134

Average Daily Demand 142

Avicultural Product 16

B

Backflow 142

Battered Non-Citizen Admitted Before
August 22, 1996, Eligibility For
Medicaid For Families, Children 56

Battered Non-Citizen Admitted On Or
After August 22, 1996, Eligibility For
Medicaid For Families, Children 56

Beverage 16

Bottled Water Processing 46

Brakes, Vehicles Operating At Weights
In Excess Of 105,500 Pounds 118

Brand Family 23

Broker 16

C

Capacity, Public Drinking Water
System 142

Certificate Issuance, Drinking Water
System Operators 156

Certificate Renewal, Drinking Water
System Operators 156

Certificates Issuance & Renewal
Requirements 156

Certification Of Water System
Operators, Drinking Water
System 150

Certification Requirements For A Water
Distribution Operator 153

Certification Requirements For A Water
Treatment Operator 151

Cervidae Product 16

Cigarette 23

Citizenship & Legal Non-Citizen
Criteria, TAFI Eligibility 63, 64

Citizenship & Legal Non-Citizen
Requirement, AABD 59

Citizenship & Legal Non-Citizen
Requirement, Eligibility For
Medicaid For Families, Children 55

Citizenship & Qualified Non-Citizen
Requirements, Eligibility For
Medicaid For Families, Children 56

Citizenship & Legal Non-Citizen
Requirement 60

Civil Proceedings 53

Classification Of Water Systems,
Drinking Water System 149

Classification Requirement, Drinking
Water System 149

Client Eligibility, Denturist Policy
Guidelines 86

Clients Eligible For Other Programs 91

Commodity-Specific Promotion
Programs 20

Community Water System 142

Compliance 20

Compliance & Enforcement 47

Compliance Conference 52

Compliance Deadline, Certification Of
Water System Operators, Drinking
Water System 150

Composite Correction Program
(CCP) 142

Composting Of Samples, Public
Drinking Water System 143

Comprehensive Orthodontic
Treatment 82

Conditional Entrants, Eligibility For
Medicaid For Families, Children 55

Conditions & Requirements For Extra-
Length, Overlegal Combination
Vehicle Permits 116

Confirmation Sample, Public Drinking
Water System 143

Connecting Devices, Overlegal
Combination Vehicle Permits 117

Connection, Public Drinking Water
System 143

Consent Order 43

Consumer Confidence Report
(CCR) 143

Consumption Of Animal Foods That
Are Raw, Undercooked, Or Not
Otherwise Processed To Eliminate
Pathogens 47

Contaminant, Public Drinking Water
System 143

Continuing Education Unit (CEU) 143

Contracting For Services, Drinking
Water System Operators 157

Cooling Cooked Potentially Hazardous
Food 45

Criminal & Civil Proceedings 53

Criminal Proceedings 53

Criteria For Determining Need For NF
Care, Medical Assistance 93

Critical Indicator, Criteria For
Determining Need For NF Care 93

Cross Connection, Public Drinking
Water System 143

Crowns, Dental Restorative
Procedures 73

Custom Meat 44

Customary Fees, Dental Services 70

D

DWIMS, Drinking Water Information
Management System 144

Dairy Product 16

Deadline for quarterly reports 24

Definitions For The Purposes Of
Sections 300 Through 387 125
Definitions, IDAPA 02.01.04, rules
Governing The Idaho Preferred
Promotion Program 16
Definitions, IDAPA 04.20.01, Rules
Implementing The Idaho Tobacco
Master Settlement Agreement
Complementary Act 23
Definitions, IDAPA 16.02.19, Food
Safety & Sanitation Standards For
Food Establishments 42
Definitions, IDAPA 16.06.01, Rules
Governing Family & Children's
Services 101
Definitions, IDAPA 58.01.08, Idaho
Rules For Public Drinking Water
Systems 141
Demonstration Of Knowledge 44
Denials/Special Examinations,
Professional Engineer/Land
Surveyor 35
Dental Covered Benefits & Limitations,
Dental Services 70
Dental Diagnostic Procedures 70
Dental Preventive Procedures 71
Dental Prior Authorization 91
Dental Restorative Procedures 72
Dental Services 70
Denturist Policy Guidelines 86
Denturist Procedure Codes 86
Deportation Withheld, Eligibility For
Medicaid For Families, Children 55
Description Of The Idaho Preferred-TM
Logo 19
Designated Representative 126
Directory 23
Directory For July 1, 2003 To
September 1, 2003 25
Directory Updates, Tobacco Product
Manufacturers 25
Directory, Tobacco Product
Manufacturers 24
Disinfection Profile, Public Drinking
Water System 144
Disinfection, Public Drinking Water
System 143
Disposal Of Used Examination
Pamphlets & Answer Sheets,
Professional Engineer/Land
Surveyor 34
Distribution Of Promotional
Material 20
Distribution System 144
Documentation Of Inspection, School
Buses 30
Draft Permit, Tier I 126

Drinking Water System 144
Duration 18

E

Education & Experience
Requirements 152, 154
Education & Experience Requirements
For Public Drinking Water
Operators 160
Effective Date of Revocation 52
Embargo 43
Embargo Order Is Effective When
Served 51
Embargo Release 51
Emergency, Tier I Source 126
Employee Health 44
Employment Requirement 153
Employment Requirement, Drinking
Water System Personnel 151, 160
Endodontics 75
Enforcement Inspection 43
Enforcement Inspections 50
Enforcement Inspections On Consent
Order 50
Enforcement Procedures For
Adulterated Or Misbranded Food 50
Enhanced Coagulation, Public Drinking
Water System 144
Enhanced Softening 144
Equivalency Policy, Drinking Water
System Personnel 153, 161
Examination Requirement 153
Examination Requirement, Drinking
Water System Personnel 152, 160
Examinations, Professional Engineers/
Land Surveyors 32
Exceeding Allowed Length & Off-
Track Limitations, Overlegal
Permits 118
Exceptions 19
Excluded Wastes 135
Extended Family Member Of An Indian
Child 101
Extra-Length Vehicle Combinations,
Overlegal Permits 116

F

Failure To Comply, Vehicles Operating
At Weights In Excess Of 105,500
Pounds 119
Family & Children's Services
(FACS) 101
Family Assessment 101
Family Case Record 101
Family Centered Services 102
Family Plan 102
Family Services Worker 102
Fee Assessment, Public Drinking Water

System 144
Fees 20
Field Dressed Game Animals 45
Filing & Service Of Documents 163
Filing of Documents, Filing & Service
Of Documents 163
Filing, Petition For Declaratory
Rulings 164
Filter Profile, Public Drinking Water
System 144
Final Permit, Tier I 126
Fingerprinting Requirements, Insurance
Agents, Brokers, Solicitors 110
Florist Stock 16
Follow-Up Inspection 50
Food Establishment 43
Food License Expiration 48
Food Processing Plant 43
Food Processing Plants 46
Foodservice 16
Form & Contents Of Petition For
Declaratory Rulings 164
Form & Contents Of Petition To Initiate
RuleMaking 167
Form & Contents Of Petitions To
Intervene 165
Form & Contents, Petition To Initiate
RuleMaking 167
Fresh Produce, Commodities, & Fresh
Meat 16
Full-Time Active Duty U.S. Armed
Forces Member 56, 60, 64
Functional Level, Adults, Determining
Need For NF Care 93

G

GAC10 144
Game Animals 45
General Permit, Tier I 126
General Product Qualifications 19
Generator Emergency Notification 138
Grandparent Professional Growth
Requirement 101
Grandparenting Certificate, Drinking
Water System 151
Grandparenting, Drinking Water
System 151
Graphic Depiction Of The Idaho
Preferred-TM Logo 19
Groundwater System 144
Groundwater Under The Direct
Influence Of Surface Water, Public
Drinking Water System 144
Guardianship Assistance 102

H

Hazardous Waste Management
System 134

Hazardous Waste Permit Program 138
Hell's Canyon Dam To Salmon River 131
Hell's Canyon Dam To Salmon River During October 23 Through April 15, Where Salmonid Spawning Occurs 131
High Indicator, Criteria For Determining Need For NF Care 93
High-Risk Food Establishment 43, 49, 50
Horticultural Products 16
Hospitals With Forty Or Fewer Licensed & Medicare Certified Beds 96
How To Inform Consumers Of Health Risk 47

I

Idaho Promotion Programs 20
Idaho/Oregon Border To Hell's Canyon Dam 131
Identification & Listing Of Hazardous Waste 134
Inadequate Escrow Deposit & Outstanding Judgments, Tobacco Product Manufacturers 24
Incorporation By Reference Of Federal Regulations 134
Incorporations By Reference, IDAPA 58.01.01 127
Independent Living 102
Indian Child 102
Indian Child Welfare Act (ICWA) 102
Indian Child's Tribe 102
Indian Tribe 102
Individuals Not Meeting The Citizenship Or Qualified Non-Citizen Requirements 57, 61
Injunctive Relief 53
Inorganic 145
Inspection Scores 49
Inspections & Correction Of Violations 49
Insurance Requirements, Overlegal Combination Vehicle Permits 117
Interceptive Orthodontics 81
Intercountry Adoption Act of 2000 (P.L. 106-279) 102
Interethnic Adoption Provisions Of 1996 (IEPA) 103
Interim Reimbursement Rates, Medicaid Provider Reimbursement 97
Interim Status Standards For Owners & Operators Of Hazardous Waste Treatment, Storage & Disposal Facilities 138

Interlocutory Orders, Administrative Procedure Before The Board Of Environmental Quality 166
Interstate Compact On The Placement Of Children (ICPC) 103
Interstate Registration Evaluation 35
Invalidation Of Certificates, Drinking Water System Operators 156

K

Kin 103
Kinship Care 103

L

Labeling Of Medicines 47
Laboratory Certification Reciprocity 145
Land Disposal Restrictions 138
Legal Assertions, Petition For Declaratory Rulings 164
Legal Guardianship 103
Legal Permanent Resident (LPR) Entering On Or After August 22, 1996 57, 61, 65
License Holder 43
License Is Non-Transferable 48
Limited Orthodontics 81
Listing In Idaho Preferred™ Product Directories 18
Livestock 16
Livestock Product 17
Log, Public Drinking Water System 145
Logo 19
Low-Risk Food Establishment 43

M

Mail, Public Notice Of Petition For Contested Case & Declaratory Ruling 164
Maintenance Standards & Inspections, School Buses 29
Major Facility 126
Management & Personnel 44
Master Settlement Agreement 23
Maximum Daily Consumption Rate 145
Maximum Hourly Demand, Public Drinking Water System 145
Maximum Residual Disinfectant Level (MRDL) 145
Maximum Residual Disinfectant Level Goal (MRDLG) 145
Meat & Poultry 44
Medicines Allowed In A Food Establishment 47
Medicines Stored Are Not Accessible 47

Medicines Stored In A Leak Proof Container 47
Medium Indicator, Criteria For Determining Need For NF Care 93
Medium-Risk Food Establishment 43, 49, 50
Method Detection Limit (MDL) 145
Middle Snake-Payette Subbasin 132
Minor Treatment To Control Harmful Habits, Orthodontics 82
Missing Or Noncompliant Certification, Tobacco Product Manufacturers 24
Multiethnic Placement Act Of 1994 (MEPA) 103

N

NF Level Of Care, Children 94
NF Level Of Care, Adults, Determining Need For NF Care 94
New System, Drinking Water System 145
No Escrow Deposit For More Than One Year, Quarterly Reports 24
No Previous Escrow Deposit, Quarterly Reports 24
Non-Citizen Entering On Or After August 22, 1996 56, 60, 64
Non-Citizen Entering The U.S. Before August 22, 1996 56, 60, 64
Non-Food Agricultural Products 17
Noncommunity Water System 145
Nonparticipating Manufacturer 23
Nonparticipating Manufacturers In Directory 25
Nontransient Noncommunity Water System 145
Notice To Revoke A License 51
Notification To Board By Applicant, Professional Engineer/Land Surveyor 33
Nuclear Facility, Drinking Water System 145
Nursery Stock 17

O

Obligation To Communicate & Be Candid 37
Obligation To Communicate Discovery Of Discrepancy, Professional Engineers/Land Surveyors 37
Obligation To Comply With Rules Of Continuing Professional Development, Professional Engineers/Land Surveyors 37
Operating Experience, Drinking Water System 145
Operating Restrictions, Overlegal Combination Vehicle Permits 117

- Operating Shift, Drinking Water System 146
- Operator Certifying Entity, Drinking Water System 145
- Operator Reciprocity, Drinking Water System 146
- Operator/Owner/Purveyor Of Water/Supplier Of Water, Drinking Water System 146
- Oral Surgery 79
- Orders Granting Intervention, Opposition 166
- Organ Transplant & Procurement Reimbursement, Medicaid Provider Reimbursement 97
- Orthodontics 81
- Other Privileges As Established By The Director 18
- Outstanding Judgments, Quarterly Reports 24
- Overlegal Permits For Extra-Length Operations 118
- Overview, Denturist Policy Guidelines 86
- Ownership Of Marks 20
- P**
- Packer/Shipper 17
- Parolees, Eligibility For Medicaid For Families, Children 55
- Part 70, Unless Specified Otherwise, 40 CFR Part 70 Incorporated By Reference 127
- Participant 17
- Participating Manufacturer 23
- Participating Manufacturers In Directory 25
- Participation Categories 18
- Participation Duration & Renewal 17
- Participation Fees 18
- Participation In Multiple Categories 18
- Participation Privileges 18
- Payment, Denturist Policy Guidelines 86
- Peak Hourly Flow, Drinking Water System 146
- Penalties, Drinking Water System Operators 157
- Periodontics 76
- Permanency Planning 103
- Permanent Resident Receiving AABD Cash On August 22, 1996 61
- Permanent Residents Admitted Before August 22, 1996, Eligibility For Medicaid For Families, Children 55
- Permanent Residents Admitted On Or After August 22, 1996, Eligibility For Medicaid For Families, Children 55
- Permit Attachments, Extra-Length Combination Vehicle Permits 118
- Permit Requirements & Special Requirements, Extra-Length Combination Vehicle Permits 118
- Permit Revision 127
- Permits, Vehicles Operating At Weights In Excess Of 105,500 Pounds 118
- Personal Care Services (PCS) 103
- Pesticides, Drinking Water System 146
- Petitions Not Timely Filed 166
- Petitions To Initiate Contested Cases, Petitions, Defined, Form & Contents 164
- Phase II Source 127
- Phase II Unit 127
- Pilot Project To Exceed One Hundred Five Thousand, Five Hundred Pounds Up To One Hundred Twenty-Nine Thousand Pounds 118
- Plant Food Cooking For Hot Holding 45
- Poisonous Or Toxic Materials 47
- Posterior Restoration, Dental Restorative Procedures 72
- Potatoes 19
- Potentially Hazardous Food, Hot & Cold Holding 46
- Poultry Exemption 44
- Power Unit, Overlegal Combination Vehicle Permits 117
- Pregnant Women & Children (PWC) Codes 84
- Preventing Contamination From In-Use Utensils, Between Use Storage 45
- Preventing Deterioration, Children, Determining Need For NF Care 94
- Primary Obligation, Professional Engineers/Land Surveyors 37
- Principles & Practice Of Engineering/Disciplines 33
- Prior Authorization, Denturist Policy Guidelines 86
- Prior Notification Is Not Required For A Summary Suspension 48
- Pro-Rated Fees 18
- Procedures For Decision-Making (State Procedures For RCRA Or HWMA Permit Applications) 139
- Proceedings Involving A Permit 166
- Processed Food 17
- Processing Game Animals 45
- Processor 17
- Proctoring Of Examinations 34
- Producer 17
- Product Qualification 18
- Program Operations, School Transportation System 30
- Promotion Through The Idaho Preferred-TM Website 18
- Proposed Permit 127
- Prosthodontics 77
- Protective Services 104
- Public Drinking Water System 146
- Public Notice Of Petition For Contested Case & Declaratory Ruling 163
- Public Notice, Drinking Water System 146
- Public Water System/Water System/System 147
- Publication Of Directory, Tobacco Product Manufacturer 25
- Publication, Public Notice Of Petition For Contested Case & Declaratory Ruling 163
- Purchase Of Services 104
- Q**
- Qualifications For Certification, Drinking Water System 150
- Qualified Escrow Fund 23
- Qualified Expert Witness--ICWA 104
- Qualified Non-Citizen Child Receiving Federal Foster Care 57, 61
- Qualified Non-Citizen Entering On Or After August 22, 1996 57, 61, 65
- Qualified Non-Citizen Receiving Supplement Security Income (SSI) 61
- Quality Assurance Program 46
- Quarterly Reports 23
- R**
- Random Compliance Inspection 20
- Reasons A License May Be Revoked 51
- Reasons A Summary Suspension May Be Issued 48
- Reciprocity Requirements 155
- Reconsideration Of Interlocutory Orders 166
- Refrigerated Storage Of Medicines 47
- Refugees, Eligibility For Medicaid For Families, Children 55
- Registrants/Certificate Holders Of Other States & Boards, Professional Engineer/Land Surveyor 35
- Regulatory Authority 44
- Reheating For Hot Holding Ready To Eat Food 45
- Reimbursement To Public Hospitals, Title XIX Cost Limit 96
- Removable Prosthodontics 77
- Removable Prosthodontics By

Codes 77
Removal Of Embargo Tag Or Label 51
Renewal Of Invalidated Certificates,
 Drinking Water System
 Operators 156
Renewal Of License 48
Renewing Participation 18
Repeat Compliance Period 147
Reporting On Use Of Logo 18
Required Assessment, Adults,
 Determining Need For NF Care 93
Requirement, Initiation Of
 RuleMaking 167
Requirements For Certification,
 Drinking Water System
 Personnel 160
Reservation 104
Respite Care 104
Responses In Contested Cases,
 Answers, Defined, Form & Contents,
 Time For Filing 165
Responsibility To The Public,
 Professional Engineers/Land
 Surveyors 37
Responsible Charge (RC) 147
Responsible Charge Operator 147
Responsible Charge Operator
 Certification Requirement, Drinking
 Water System 150
Restorations By Codes, Dental
 Restorative Procedures 73
Restriction & Storage Of Medicines 47
Retailer 17
Review Of Attorney General Decisions
 Related To Excluding Or Removing
 From The Directory 24
Review Of Examination By Examinee,
 Professional Engineer/Land
 Surveyor 34
Review Of Orders Granting Or Denying
 Intervention 166
Revocation Of License 48, 51
Risk Assessment 104
Risk Control Plan 50
Routes For Extra-Length Operations,
 Overlegal Permits 116

S

SDWIS-State, Safe Drinking Water
 Information System-State
 Version 147
Safety, School Buses 29
Sampling Point, Drinking Water
 System 147
Sanitary Defects, Drinking Water
 System 147
Sanitary Survey, Drinking Water
 System 147

School Bus Drivers & Vehicle
 Operation 30
Section 502(B)(10) Changes 127
Self-Certification 20
Semiannually Or Annually 32
Serious Emotional Disturbance
 (SED) 105
Service Limitations, Denturist Policy
 Guidelines 86
Service Of Notice 52
Service of Documents, Filing & Service
 Of Documents 163
Serving An Embargo Order 50
Shift Operator Requirement, Water
 System Operator, Drinking Water
 System 150
Significant Deficiency 147
Sixty-Day Inspections, School
 Buses 30
Social Service Block Grant 105
Southwest Idaho Basin 132
Special Or Oral Examination,
 Professional Engineer/Land
 Surveyor 32
Special Promotional Activities 19
Specific Needs, Children, Determining
 Need For NF Care 94
Specific Ultraviolet Absorption
 (SUVA) 148
Specifications For Receiving Potentially
 Hazardous Food 45
Spring, Drinking Water System 148
Stamping Agent 23
Standards Applicable To Generators Of
 Hazardous Waste 137
Standards Applicable To Transporters
 Of Hazardous Waste 138
Standards For Owners & Operators Of
 Hazardous Waste Treatment, Storage
 & Disposal Facilities 138
Standards For The Management Of
 Specific Hazardous Wastes &
 Specific Types Of Hazardous Waste
 Facilities 138
Standards For The Management Of
 Used Oil 139
Standards For Universal Waste
 Management 139
Stay Of Orders, Administrative
 Procedure Before The Board Of
 Environmental Quality 164
Storage Of Embargoed Food 51
Substitute Responsible Charge
 Operator 148
Substitute Responsible Charge Operator
 Requirement 150
Substituting Education For Experience,

 Drinking Water System
 Personnel 152, 160
Substituting Experience For Education,
 Drinking Water System
 Personnel 153, 161
Summary Suspension Of License 48
Supervision Required, Children,
 Determining Need For NF Care 94
Supporting Organization 17
Surface Water System 148
Suspend Or Revoke An Operator's
 Certificate 157
Suspension Or Revocation, Drinking
 Water System Operator
 Certificate 157
System Operator Certification
 Requirement, Drinking Water
 System 150

T

Tagging Embargoed Food 51
Target Population 105
Temperature Requirements 45
Thermal Processing Of Low-Acid
 Foods 46
Tier I Operating Permit 127
Timely Filing Of Petitions To Intervene,
 Administrative Procedure Before The
 Board Of Environmental
 Quality 165
Tire Limitations, Overlegal
 Combination Vehicle Permits 117
Title IV-E 105
Title XIX (Medicaid) 105
Title XXI 105
To Apply For A Food License 48
Tobacco Product Manufacturer 23
Total Organic Carbon (TOC) 148
Trailer Weight Sequence, Overlegal
 Combination Vehicle Permits 117
Training & Informational Materials 42
Transient Noncommunity Water
 System 148
Transportation, School Bus
 Standards 29
Treatment Facility, Drinking Water
 System 148
Tribal Court 105
Trip Logs, Submitted Quarterly,
 Vehicles Operating At Weights In
 Excess Of 105,500 Pounds 119
Turbidity, Drinking Water System 148
Two Examinations For Engineering
 Registration 33
Two Examinations For Land Surveying
 Registration 33

U

U.S. Citizen 56, 60, 64
U.S. National, National Of American
Samoa Or Swains Island 56, 60, 64
Uncovered Finished Water Storage
Facility 148
Unmarried Parents' Services 105
Unregulated Contaminant, Drinking
Water System 148
Unsafe Vehicle, School Buses 30
Untimely Or Incomplete Deposits,
Quarterly Reports 24
Use Of NCEES Examinations,
Professional Engineer/Land
Surveyor 34
Use Of Public Funds & Benefits, Child
Mental Health Services 106
Use Of The Idaho Preferred-TM Logo
On Product Labels, Advertising,
Signage, Or Other Promotional
Materials As Allowed By The
Department 18
Used Oil As A Dust Suppressant 139

V

Validated Examination 148
Variance Requirements For Food
Establishments 46
Variance, Drinking Water System 148
Verification & Documentation Of
Correction 50
Very Small Public Drinking Water
System 148
Veteran Of The U.S. Armed Forces 56,
60
Veteran Of The U.S. Armed Forces 64
Victim Of Severe Form Of
Trafficking 57, 61, 65
Visibility From The Department's
Promotion Activities 18
Viticultural Products 17
Volatile Organic Chemicals
(VOCS) 149
Voluntary Program, Idaho Preferred
Program 17
Voluntary Services Agreement 105
Vulnerability Assessment, Drinking
Water System 149

W

Water Distribution Operator 149
Water For Human Consumption 149
Water Main 149
Water Operator Certification
Requirement 150
Water Treatment Operator 149
Weather Restrictions, Overlegal
Combination Vehicle Permits 117

Wholesaler 17
Withdraw From Service Authority,
School Buses 30
Written Notice of Summary
Suspension 48
Written Report Of Correction 50
Written Violation Correction
Report 49