IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rule-making 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 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 rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

*The Bulletin is cited by year and issue number. For example, Bulletin **02-1** refers to the first Bulletin issued in calendar year **2002**; Bulletin **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. 03-**2** refers to February 2003; 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**.*

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative 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, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies 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 the 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 consensus on the content of a 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 wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must include:

a) the specific statutory authority (from Idaho Code) 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 as provided in Section 67-5222, Idaho Code; 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. 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) 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 legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

State law required 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 the proposed rule, the rulemaking can be done concurrently as a proposed/temporary 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 become 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 Rulemaking". This includes:

a) a statement giving 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;

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 change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. 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 Rulemaking" 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 an 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 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 that 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, Twin Falls, Lewiston and East Bonner County 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 83720-00306, telephone (208) 332-1820.

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

The Idaho 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 are available on the Internet at the following address:*

http://www2.state.id.us/adm/adminrules/

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 38.07.01.200.02.c.ii.

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

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

"05." *refers to Title* ***05****, which is the Department of Administrations's Division of Purchasing*

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

"200." *refers to Major Section* ***200****, "Content of the Invitation to Bid"*

"02." *refers to Subsection 200.****02****.*

*"****c.****" refers to Subsection 200.02.****c****.*

"ii." *refers to Subsection 200.02.c.****ii****.*

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0401). 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. 38-0501-0401"

"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****).*

"0401" *denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2004.*

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 of a rule 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.****"*

The citation may also include the IDAPA, Title, or Chapter number, 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 rule.*

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

: ***"201"*** *references the main Section number of the rule that the citation refers to.*

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 2005

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January 2005	***November 19, 2004**	January 5, 2005	January 26, 2005
05-2	February 2005	January 5, 2005	February 2, 2005	February 23, 2005
05-3	March 2005	February 2, 2005	March 2, 2005	March 23, 2005
05-4	April 2005	March 2, 2005	April 6, 2005	April 27, 2005
05-5	May 2005	April 1, 2005	May 4, 2005	May 25, 2005
05-6	June 2005	May 4, 2005	June 1, 2005	June 21, 2005
05-7	July 2005	June 1, 2005	July 6, 2005	July 27, 2005
05-8	August 2005	July 1, 2005	August 3, 2005	August 24, 2005
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05-11	November 2005	October 5, 2005	November 2, 2005	November 23, 2005
05-12	December 2005	November 2, 2005	December 7, 2005	December 28, 2005

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2006

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
06-1	January 2006	***November 16, 2005**	January 4, 2006	January 25, 2006
06-2	February 2006	January 4, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 1, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 1, 2006	April 5, 2006	April 26, 2006
06-5	May 2006	April 5, 2006	May 3, 2006	May 24, 2006
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06-8	August 2006	June 30, 2006	August 2, 2006	August 23, 2006
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06-10	October 2006	****August 23, 2006**	October 4, 2006	October 25, 2006
06-11	November 2006	October 4, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 1, 2006	December 6, 2006	December 27, 2006

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

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

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

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-0501

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is negotiated rulemaking authorized pursuant to Section 54-1208, Idaho Code.

MEETING SCHEDULE: A public meeting will be held to discuss the preliminary suggested wording of amendments to existing rules:

July 21, 2005 at 10:00 a.m.
Hilton Garden Inn
7699 W. Spectrum
Boise, Idaho

The Board solicits comments on preliminary suggested wording of amendments to existing rules. A copy of the preliminary suggested wording of the amendments to existing rules is available by contacting the Board office at the address listed below or by E-mail to dave.curtis@ipels.idaho.gov.

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do the following:

1. Attend the meeting noted above; or

2. Submit written comments on the preliminary suggested wording of amendments to existing rules as described below.

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

The purpose of the negotiated rulemaking is to incorporate the new address and telephone numbers of the Board office and to discontinue proctoring most examinations for other jurisdictions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed amendments to existing rules, contact David L. Curtis, P.E., Executive Director, at (208) 373-7210.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 16th day of May, 2004.

David L. Curtis, P.E., Executive Director
Idaho Board of Registration of Professional Engineers and Professional Land Surveyors
5535 W. Overland Road, Boise, Idaho 83705-2728
Phone (208) 373-7210 / Fax (208) 373-7213

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

NOTICE OF NEGOTIATED RULEMAKING ON HOME CARE FOR CERTAIN DISABLED CHILDREN (KATIE BECKETT) MEDICAID PROGRAM

DOCKET NO. 16-0000-0503

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is in response to a petition for rulemaking.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Date: **Monday, July 18, 2005**
Time: **1:30 - 4:30 p.m.**
Place: **Division of Medicaid, Conference Room D-East**
3232 Elder Street
Boise, ID

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking may:

1. Attend the negotiated rulemaking and participate in the negotiation process.
2. Provide oral or written recommendations, or both, at the negotiated rulemaking.
3. Submit written recommendations and comments to the address below.

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

Negotiated rulemaking is being initiated to explore whether the Home Care for Certain Disabled Children (Katie Beckett) Medicaid program should:

1. Recognize a psychiatric hospital level of care to qualify children with psychiatric issues who do not meet the existing nursing facility or Intermediate Care Facility/Mentally Retarded levels of care.
2. Initiate cost-sharing for families of children eligible under Home Care for Certain Disabled Children.
3. Provide eligibility for Home Care for Certain Disabled Children under a Home and Community Based Waiver.

ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking contact Mary Betournay at (208) 364-1891.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and delivered on or before July 27, 2005.

DATED this 31st day of May, 2005.

Sherri Kovach
Program Supervisor
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 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-0501

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: 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 Wednesday, July 20, 2005.

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

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

This rule change will provide more opportunity for people with disabilities who want to work to be able to do so without losing their Medicaid benefits. People with disabilities who have jobs are more self-sufficient in the long-term and may rely less on government services. This rule change is a federal work incentive authorized under Section 1905(q) of the Social Security Act.

This proposed rule adds language that will allow continued Medicaid coverage to individuals with disabilities who received Medicaid and AABD state cash assistance before they began employment or increased their level of earnings. The rule change will allow these individuals to continue to receive Medicaid after they have received an increase in earnings that would cause them to lose Medicaid benefits under the current rules.

In March 2005, the Department of Health and Welfare adopted this rule as a temporary rule with an effective date of April 1, 2005. The temporary rule was published in the March 2, 2005, Administrative Bulletin, Volume 05-3, pages 20 and 21. With this publication the Department is initiating proposed rulemaking.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

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

This rulemaking has no fiscal impact on the state general fund. One hundred percent (100%) of the funds that will be used are federal funds provided by the Medicaid Infrastructure Grant.

Projected operational costs based on current forecasting:
First Year Costs: $8,923
Fifth Year Costs: $0 (NOTE: All costs for this rule change are “up front” in the first year).

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this change was made to bring the rules into compliance with Section 1905(q) of the Social Security Act.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Linda Palmer at (208) 334-5815.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 17th day of May, 2005.

Sherri Kovach, Program Supervisor
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kovachs@idhw.state.id.us e-mail

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.
The temporary effective date is April 1, 2005.

The original text of the Temporary Rule was published in the Idaho Administrative Bulletin, Volume 05-3, March 2, 2005, pages 20 and 21.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0501

782. ~~*PARTICIPANT ENTITLED TO*~~ MEDICAID BENEFITS UNDER SECTION 1619(b) ~~*SSI ELIGIBILITY STATUS*~~ OF THE SOCIAL SECURITY ACT.
~~*A participant is eligible for Medicaid as a blind or disabled SSI recipient, if SSA is evaluating him for, or has granted him, SSI eligibility status under Section 1619b of the Social Security Act, for as long as his 1619b status continues.*~~ A participant may be eligible for Medicaid under Section 1619(b) of the Social Security Act either under federal or state criteria, depending on his circumstances. ~~*(7-1-99)*~~( )

01. Federally Qualified Under SSA Section 1619(b). An SSI recipient with a disability, previously eligible for SSI cash, who, because of earnings from employment, no longer meets the financial eligibility requirements for SSI cash, is eligible for Medicaid. SSA determines the qualification for eligibility under Section 1619(b). ( )

02. State-Only Qualified Under SSA Section 1619(b). An AABD cash participant with a disability, who, because of earnings from employment, no longer meets the financial eligibility requirements for AABD cash, may be eligible for Medicaid. The Department determines eligibility for State-only Section 1619(b) Medicaid. State-only Section 1619(b) Medicaid is authorized under Section 1905(q) of the Social Security Act. ( )

a. Eligibility Requirements. A participant must meet all of the following requirements to be eligible for State-only 1619(b) Medicaid: ( )

i. The participant received AABD cash in the month prior to the first month of his eligibility under this Section of rule. ( )

ii. The participant is under age sixty-five (65). ( )

iii. The participant continues to have a disability. ( )

iv. The participant must depend on Medicaid coverage to continue working. An individual depends on Medicaid coverage if he: ( )

(1) Used Medicaid coverage within the past twelve (12) months; or ( )

(2) Expects to use Medicaid coverage in the next twelve (12) months; or ( )

(3) Would be unable to pay unexpected medical bills in the next twelve (12) months without Medicaid coverage. ( )

v. The participant is not able to afford medical insurance equivalent to Medicaid, including attendant care. The participant meets this requirement if his earnings are under the limit referred to in Subsection 782.02.a.vii. of this rule. ( )

vi. The participant continues to meet all of the non-disability eligibility requirements in these rules. ( )

vii. The participant's annual gross earned income is less than the current calendar year's charted threshold for Idaho as developed by SSA for federal qualification for Section 1619(b) Medicaid. The charted threshold for Idaho is found at: http://policy.ssa.gov/poms.nsf/lnx/0502302200. ( )

b. Ending State-Only 1619(b) Medicaid. State-only Section 1619(b) Medicaid ends when the participant meets one (1) of the following criteria: ( )

i. The participant is no longer eligible for AABD cash for a reason other than excess earned income; ( )

ii. The participant's gross earned income is equal to or more than the current calendar year's annual earnings threshold for Idaho developed by the Social Security Administration for Federal Section 1619(b) Medicaid; ( )

iii. The participant is age sixty-five (65) or older; or ( )

iv. The participant regains eligibility for AABD cash. ( )

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0502

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given this agency has adopted a proposed rule. 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 scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2005.

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:

Approximately two years ago individuals receiving cash assistance through the Division of Welfare were converted to Medicaid with their existing assessed level of care. However, when individuals were re-assessed using the Department's Uniform Assessment Instrument (UAI), their level of care was generally assessed at a lower level than when they entered the program. After analysis, it was discovered that the UAI did not sufficiently score individuals who had behavioral issues because it was designed primarily to assess physical functional capabilities. This proposed rule change will create a unique identifier in the UAI that will identify persons living in Certified Family Homes and Assisted Living Facilities with specific diagnosis of mental illness, mental retardation and/or Alzheimer's Disease at a unique level of care that reflects behavioral needs and ties to an established reimbursement rate. This rule change adds an additional level of care which reflects minimum resources needed for providing services to individuals with specific behavioral needs of 12.5 hours per week of personal care services based on documented diagnosis of mental illness, mental retardation, or Alzheimer's Disease. The dollar amounts used as maximum calculated fees were deleted because they are outdated and not used at this time. The calculations now use a uniform term for the calculated fee.

In February 2005, the Department of Health and Welfare adopted this rule as a temporary rule with an effective date of March 1, 2005. The temporary rule was published in the Idaho Administrative Bulletin, Volume 05-2, February 2, 2005, pages 25 through 27. With this publication the Department is initiating proposed rulemaking.

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

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

The effect of this rule change is budget neutral. There is no anticipated cost to state general funds as a result of this rule.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change is being made to meet the objectives of Senate Concurrent Resolution 110 and confers a benefit there was no negotiated rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Chris Baylis at (208) 364-1891.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 1st day of June, 2005.

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Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.
The temporary effective date is November 10, 2004.

The original text of the Temporary Rule was published in the Idaho Administrative Bulletin, Volume 05-2, February 2, 2005, pages 25 through 27.

THE FOLLOWING IS THE TEXT FOR DOCKET NO. 16-0309-0502

148. PROVIDER REIMBURSEMENT FOR PERSONAL ASSISTANCE SERVICES.

01. Reimbursement Rate. Personal assistance providers will be paid a uniform reimbursement rate for service as established by the Department pursuant to Section 39-5606, Idaho Code, on an annual basis. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-30-01)

02. Calculated Fee. The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for non-medical transportation, unless approved by the RMU under a Home and Community-Based Services (HCBS) waiver, or provider transportation to and from the participant's home. Fees will be calculated as follows: (3-30-01)

a. Annually Medicaid will conduct a poll of all Idaho nursing facilities and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, certified and non-certified nurse's aides) in Idaho to be used for the reimbursement rate to be effective on July 1 of that year. (3-30-01)

b. Medicaid will then establish payment levels for personal assistance agencies for personal assistance services as follows: (3-30-01)

i. Weekly service needs of zero to sixteen (0-16) hours under the State Medicaid Plan, or a HCBS waiver:

Personal Assistance Agencies	WAHR x 1.55	=	$ amount/hour

(3-30-01)

ii. Extended visit, one (1) child (eight and one-quarter (8.25) hours up to twenty-four (24) hours):

Personal Assistance Agencies	(WAHR x actual hours of care up to 5 hours x 1.55) plus ($.65 x 1.55 hours on site on-call)	=	$ amount/hour (Maximum $ 63.65)
Licensed Child Foster Homes	(WAHR x actual hours of care up to 5 hours x 1.22) plus ($.65 x 1.22 x actual hours on site on-call)	=	$ amount/hour (Maximum $ 60.36)

(3-30-01)(   )

iii. Extended visit, two (2) children (eight and one-quarter (8.25) hours up to twenty-four (24) hours):

Personal Assistance Agencies	(WAHR x actual hours of care up to 4 hours) x (1.55 plus $.65 x 1.55 x hours on site on-call)	=	$ amount/hour (Maximum $ 54.26)
Licensed Child Foster Homes	(WAHR x hours actual care up to 4 hours x 1.22) plus ($.65 x 1.22 x hours on site on-call)	=	$ amount/hour (Maximum $ 44.33)

(3-30-01)(   )

iv. Adult participants living in Residential/Assisted Living Facilities (RALF) or Certified Family Homes will receive personal care services at a rate based on their care level. Each level will convert to a specific number of hours of personal care services. (5-3-03)

(1) Reimbursement Level I - One point twenty-five (1.25) hours of personal care services per day or eight point seventy-five (8.75) hours per week. (5-3-03)(   )

(2) Reimbursement Level II - One point five (1.5) hours of personal care services per day or ten point five (10.5) hours per week. (5-3-03)(   )

(3) Reimbursement Level III - Two point twenty-five (2.25) hours of personal care services per day or fifteen point seventy-five (15.75) hours per week. (5-3-03)(   )

(4) Reimbursement Level IV - One point seventy-nine (1.79) hours of personal care services per day or twelve point five (12.5) hours per week. This level will be assigned based on a documented diagnosis of mental illness, mental retardation, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, mental retardation, or Alzheimer's disease the provider reimbursement rate will be the higher amount as described in Subsection 148.02.b.iv.(3) of these rules. (   )

c. The attending physician or authorized provider will be reimbursed for services provided using current payment levels and methodologies for other services provided to eligible participants. (3-30-01)

d. The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Client evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the RMU. (1-1-91)

i. The number of supervisory visits by the RN or QMRP to be conducted per calendar quarter will be approved as part of the PCS care plan by the RMU. (3-30-01)

ii. Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the RMU. (1-1-91)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0505

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

DATE: August 10, 2005
TIME: 9:00 a.m. to 12:00 noon
PLACE: Division of Medicaid, Conference Room D-East
3232 Elder Street, Boise, ID

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking may do the following:

1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
2. Provide oral or written recommendations, or both at the negotiated rulemaking meeting;
3. Submit written recommendations and comments to the address below.

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

In response to House Concurrent Resolution No. 12, approved by the 2005 Legislature, negotiated rulemaking is being initiated to collect input from providers, consumers of developmental disability services and their families, advocacy groups, and professional associations regarding the addition of the self-determination option within developmental disabilities waiver services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking contact Carolyn Burt-Patterson at (208) 364-1827. A draft copy of text will be available at the negotiated rulemaking hearing.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 31, 2005.

DATED this 20th day of May, 2005.

Sherri Kovach
Program Supervisor
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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.16 - ACCESS TO HEALTH INSURANCE PROGRAM

DOCKET NO. 16-0316-0501

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the deadline for accepting written comments from the public. The action is authorized pursuant to Sections 56-202(b), 56-241 and 56-242, Idaho Code.

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

Date: **Tuesday, July 12, 2005**
Time: **5:30 - 7:00 p.m.**
Place: **Dept. of Health and Welfare**
1720 Westgate Dr. Suite D
Room 119
Boise, 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 summary of this action and the text of the Temporary/Proposed Rule can be found in the May 4, 2005, Idaho Administrative Bulletin Vol. 05-5, pages 92 through 100.

This new chapter of rule supports the implementation of the Idaho Health Insurance Access Card Act passed during the 2003 Idaho Legislative session. It describes the Access to Health Care program that provides insurance premium assistance for one thousand (1,000) adults who are either employees or spouses of employees working in an Idaho small business of two (2) to fifty (50) employees. The chapter includes information explaining eligibility criteria, benefits, and reimbursement.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Robin Pewtress, Idaho SCHIP Director, at (208) 364-1892.

Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 1st day of June, 2005.

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IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

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(s) 41-211 and 41-4404, Idaho Code, and "The Medicare Prescription Drug, Improvement, and Modernization Act of 2003" (Public Law No. 108-73).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2005.

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

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

The federal Medicare, Prescription Drug, Improvement, and Modernization act of 2003 adds prescription drug coverage to Medicare and creates new requirements for Medicare supplement policies offered by insurers regulated by the Department of Insurance. This rulemaking amends existing state rules governing Medicare supplement policies to conform to the federal law changes, including the addition of two additional Medicare supplement insurance plans. The Centers for Medicare & Medicaid Services (CMS) require states to implement the amendments to the model NAIC rule by September 8, 2005.

The rule is also being amended to clarify that there can be only one rate increase in a 12 month period unless an additional increase is required by federal law.

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

The rulemaking is needed to comply with deadlines imposed by federal law.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: This rulemaking does not have a fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are needed to conform to requirements imposed by federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Joan Krosch, Department of Insurance, (208)334-4250.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 3rd day of June, 2005.

Gary L Smith, 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. 18-0154-0501

004. DEFINITIONS.
For the purposes of IDAPA 18.01.54, “Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act,” the following terms will be used as defined below: (4-5-00)

01. Applicant. (4-5-00)

a. In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and (4-5-00)

b. In the case of a group Medicare supplement policy, the proposed certificate holder. (4-5-00)

02. Bankruptcy. A Medicare~~+Choice~~ Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state. ~~(4-5-00)~~(7-1-05)T

03. Certificate. Any certificate delivered or issued for delivery in this state under a group Medicare supplement policy. (4-5-00)

04. Certificate Form. The form on which the certificate is delivered or issued for delivery by the issuer. (4-5-00)

05. Continuous Period of Creditable Coverage. The period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days. (4-5-00)

06. Creditable Coverage. (4-5-00)

a. With respect to an individual, coverage of the individual provided under any of the following: (4-5-00)

i. A group health plan; (4-5-00)

ii. Health insurance coverage; (4-5-00)

iii. Part A or Part B of Title XVIII of the Social Security Act (Medicare); (4-5-00)

iv. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928; (4-5-00)

v. Chapter 55 of Title 10 United States Code (CHAMPUS); (4-5-00)

vi. A medical care program of the Indian Health Service or of a tribal organization; (4-5-00)

vii. A state health benefits risk pool; (4-5-00)

viii. A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program); (4-5-00)

ix. A public health plan as defined in federal regulation; and (4-5-00)

x. A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)). (4-5-00)

b. Creditable coverage shall not include one (1) or more, or any combination of, the following: (4-5-00)

i. Coverage only for accident or disability income insurance, or any combination thereof; (4-5-00)

ii. Coverage issued as a supplement to liability insurance; (4-5-00)

iii. Liability insurance, including general liability insurance and automobile liability insurance; (4-5-00)

iv. Workers' compensation or similar insurance; (4-5-00)

v. Automobile medical payment insurance; (4-5-00)

vi. Credit-only insurance; (4-5-00)

vii. Coverage for on-site medical clinics; and (4-5-00)

viii. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other benefits. (3-15-02)

c. Creditable coverage shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan: (4-5-00)

i. Limited scope dental or vision benefits; (4-5-00)

ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and (4-5-00)

iii. Such other similar, limited benefits as are specified in federal regulations. (4-5-00)

d. Creditable coverage shall not include the following benefits if offered as independent, non-coordinated benefits: (4-5-00)

i. Coverage only for a specified disease or illness; and (4-5-00)

ii. Hospital indemnity or other fixed indemnity insurance. (4-5-00)

e. Creditable coverage shall not include the following if it is offered as a separate policy, certificate, or contract of insurance: (4-5-00)

i. Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act; (4-5-00)

ii. Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and (4-5-00)

iii. Similar supplemental coverage provided to coverage under a group health plan. (4-5-00)

f. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically addressed separate, noncoordinated benefits in the group market at PHSA Section 2721(d)(2) and the individual market at Section 2791(c)(3). HIPAA also references excepted benefits at PHSA Sections 2701(c)(1), 2721(d), 2763(b) and 2791(c). In addition, credible coverage has been addressed in an interim final rule (62 Fed. Reg. At 16960-16962 (April 8, 1997)) issued by the Secretary of Health and Human Services, pursuant to HIPAA, and may be addressed in subsequent regulations. ~~*(3-15-02)*~~(7-1-05)T

07. Employee Welfare Benefit Plan. A plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act). (4-5-00)

08. Insolvency. When an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile. (4-5-00)

09. Issuer. Includes insurance companies, fraternal benefit societies, managed care organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates. (4-5-00)

10. Medicare. The "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended. (4-5-00)

11. Medicare~~+*Choice*~~ Advantage Plan. A plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28 (b)(1), and includes: ~~*(3-15-02)*~~(7-1-05)T

a. Coordinated care plans which provide health care services, including but not limited to managed care organization (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans; (4-5-00)

b. Medical savings account plans coupled with a contribution into a Medicare~~+*Choice*~~ Advantage medical savings account; and ~~*(4-5-00)*~~(7-1-05)T

c. Medicare~~+*Choice*~~ Advantage private fee-for-service plans. ~~*(4-5-00)*~~(7-1-05)T

12. Medicare Supplement Policy. A group or individual policy of accident and sickness insurance or an enrollee contract under a managed care organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. "Medicare Supplement Policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act. ~~*(4-5-00)*~~(7-1-05)T

13. Policy Form. The form on which the policy is delivered or issued for delivery by the issuer. (4-5-00)

14. Secretary. The Secretary of the United States Department of Health and Human Services. (4-5-00)

005. POLICY DEFINITIONS AND TERMS.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section. (4-5-00)

01. Accident, Accidental Injury, or Accidental Means. To employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization. (4-5-00)

a. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force." (4-5-00)

b. The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law. (4-5-00)

02. Benefit Period or Medicare Benefit Period. Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

03. Convalescent Nursing Home, Extended Care Facility, or Skilled Nursing Facility. Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

04. Health Care Expenses. <u>For purposes of Section 016,</u> ~~E~~<u>e</u>xpenses of managed care organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers. Expenses shall not include: ~~*(4-5-00)*~~<u>(7-1-05)T</u>

a. Home office and overhead costs; (4-5-00)

b. Advertising costs; (4-5-00)

c. Commissions and other acquisition costs; (4-5-00)

d. Taxes; (4-5-00)

e. Capital costs; (4-5-00)

f. Administrative costs; and (4-5-00)

g. Claims processing costs. (4-5-00)

05. Hospital. May be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program. (4-5-00)

06. Medicare. Shall be defined in the policy and certificate. Medicare may be substantially defined as "The Heath Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965" as then constituted or later amended, or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import. (4-5-00)

07. Medicare Eligible Expenses. Expenses of the kinds covered by Medicare <u>Parts A and B</u>, to the extent recognized as reasonable and medically necessary by Medicare. ~~*(4-5-00)*~~<u>(7-1-05)T</u>

08. Physician. Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

09. Sickness. Shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law. (4-5-00)

006. -- 007. (RESERVED).

008. POLICY PROVISIONS.

01. Medicare Supplement Policy. Except for permitted preexisting condition clauses as described in Subsections 009.01.a. and 010.01.a., no policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare. (4-5-00)

02. Waivers. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. (4-5-00)

03. Duplicate Benefits. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare. (4-5-00)

04. Outpatient Prescription Drugs. (7-1-05)T

a. Subject to Subsections 009.01.d,, 009.01.e,, 009.01.j,, and 010.01.d., and 010.01.e, a Medicare Supplement Policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder. (7-1-05)T

b. A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005. (7-1-05)T

c. After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless: (7-1-05)T

i. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and (7-1-05)T

ii. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable. (7-1-05)T

009. MINIMUM BENEFIT STANDARDS FOR POLICIES OR CERTIFICATES ISSUED FOR DELIVERY PRIOR TO JULY 1, 1992.

No policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards. (4-5-00)

01. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act". (4-5-00)

a. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage. (4-5-00)

b. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. (4-5-00)

c. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. (4-5-00)

d. A "non-cancelable," "guaranteed renewable," or "non-cancelable and guaranteed renewable" Medicare supplement policy shall not: (4-5-00)

i. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or (4-5-00)

ii. Be canceled or non-renewed by the issuer solely on the grounds of deterioration of health. (4-5-00)

e. Except as authorized by the director of this state, an issuer shall neither cancel nor non-renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation. (4-5-00)

f. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Subsection 009.01.h., the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices: (4-5-00)

i. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and/or (4-5-00)

ii. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 010.02. (4-5-00)

g. If membership in a group is terminated, the issuer shall: (4-5-00)

i. Offer the certificate holder the conversion opportunities described in Subsection 009.01.f.; or (4-5-00)

ii. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy. (4-5-00)

h. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced. (4-5-00)

i. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss. ~~(4-5-00)~~(7-1-05)T

j. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of Subsection 009.01. (7-1-05)T

02. Minimum Benefit Standards. (4-5-00)

a. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) day in any Medicare benefit period; (4-5-00)

b. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount; (4-5-00)

c. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days; (4-5-00)

d. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days; (4-5-00)

e. Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B; (4-5-00)

f. Coverage for the coinsurance amount or in the case of hospital outpatient department services paid under a prospective payments system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible; (5-3-03)

g. Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount. (4-5-00)

010. BENEFIT STANDARDS FOR POLICIES OR CERTIFICATES ISSUED OR DELIVERED ON OR AFTER JULY 1, 1992.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. (4-5-00)

01. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act". (4-5-00)

a. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage. (4-5-00)

b. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. (4-5-00)

c. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. (4-5-00)

d. No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium. (4-5-00)

e. Each Medicare supplement policy shall be guaranteed renewable. (4-5-00)

i. The issuer shall not cancel or non-renew the policy solely on the ground of health status of the individual. (4-5-00)

ii. The issuer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation. (4-5-00)

iii. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection 010.01.e.v., the issuer shall offer certificate holders an individual Medicare supplement

policy which (at the option of the certificate holder): (4-5-00)

(1) Provides for continuation of the benefits contained in the group policy; or (4-5-00)

(2) Provides for benefits that otherwise meet the requirements of this subsection. (4-5-00)

iv. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall offer the certificate holder the conversion opportunity described in Subsection 010.01.e.iii.; or, at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy. (4-5-00)

v. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced. (4-5-00)

vi. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of Section 010. (7-1-05)T

f. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss. ~~*(4-5-00)*~~(7-1-05)T

i. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance. (4-5-00)

ii. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically re-instituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement. (4-5-00)

iii. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan. (5-3-03)

g. Reinstitution of coverages as defined in Subsections 010.01.f.ii. and 010.01.f.iii.: (5-3-03)

i. Shall not provide for any waiting period with respect to treatment of preexisting conditions; (4-5-00)

ii. Shall provide for resumption of coverage ~~*which*~~ that is substantially equivalent to ~~*the*~~ coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the

date of suspension; and ~~*(4-5-00)*~~(7-1-05)T

iii. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended. (4-5-00)

02. Standards for Basic (Core) Benefits Common to ~~*All*~~ Benefit Plans A - J. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each perspective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. ~~*(4-5-00)*~~(7-1-05)T

a. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) day in any Medicare benefit period; (4-5-00)

b. Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used; (4-5-00)

c. Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ~~*the*~~ one hundred percent (100%) of Medicare Part A eligible expenses for hospitalization paid at the ~~*diagnostic related group (DRG) day outlier per diem*~~ applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days~~*;*~~. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balances. ~~*(4-5-00)*~~(7-1-05)T

d. Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; (4-5-00)

e. Coverage for the coinsurance amount, ~~*(*~~or in the case of hospital outpatient department services under a prospective payment system, the copayment amount~~*)*~~ of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible. ~~*NOTE:*~~ In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the copayment amount established by federal requirements, which will be either the amount established for the Ambulatory Payment Classification (APC) group, or a provider-elected reduced copayment amount. ~~*(5-3-03)*~~(7-1-05)T

03. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 011 of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act". (4-5-00)

a. Medicare Part A deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period. (4-5-00)

b. Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first (21st) day through the one hundredth (100th) day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A. (4-5-00)

c. Medicare Part B deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement. (4-5-00)

d. Eighty percent (80%) of the Medicare Part B excess charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge. (4-5-00)

e. One hundred percent (100%) of the Medicare Part B excess charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge. (4-5-00)

f. Basic outpatient prescription drug benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollars ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006. ~~*(4-5-00)*~~(7-1-05)T

g. Extended outpatient prescription drug benefit. Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollars ($250) calendar year deductible, to a maximum of three thousand dollars ($3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006. ~~*(4-5-00)*~~(7-1-05)T

h. Medically necessary emergency care in a foreign country: Coverage to the extent not covered by Medicare for eighty-percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars ($250), and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset. (4-5-00)

04. Preventive Medical Care Benefit. Coverage for the following preventive health services not covered by Medicare: ~~*(4-5-00)*~~(7-1-05)T

a. An annual clinical preventive medical history and physical examination that may include tests and services from Subsection 010.04.b., and patient education to address preventive health care measures. (4-5-00)

b. ~~*Any one (1) or a combination of the following p*~~Preventive screening tests or preventive services, the selection and frequency of which is ~~*considered*~~ determined to be medically appropriate~~:~~ by the attending physician. ~~*(4-5-00)*~~(7-1-05)T

~~*i.*~~ ~~*Digital rectal examination;*~~ ~~*(3-15-02)*~~

~~*ii.*~~ ~~*Dipstick urinalysis for hematuria, bacteriuria, and proteinuria;*~~ ~~*(4-5-00)*~~

~~*iii.*~~ ~~*Pure tone (air only) hearing screening test, administered or ordered by a physician;*~~ ~~*(4-5-00)*~~

~~*iv.*~~ ~~*Serum cholesterol screening (every five (5) years);*~~ ~~*(4-5-00)*~~

~~*v.*~~ ~~*Thyroid function test;*~~ ~~*(4-5-00)*~~

~~*vi.*~~ ~~*Diabetes screening.*~~ ~~*(4-5-00)*~~

~~*c.*~~ ~~*Tetanus and diphtheria booster (every ten (10) years).*~~ ~~*(3-15-02)*~~

~~*d*~~c. ~~*Any other tests or preventive measures determined appropriate by the attending physician.*~~ Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare. ~~*(4-5-00)*~~(7-1-05)T

05. At-Home Recovery Benefit. Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery. For purposes of this benefit, the following definitions shall apply: (4-5-00)

a. Activities of daily living include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings. (4-5-00)

b. Care provider. A duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses' registry. (4-5-00)

c. Home. Any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence. (4-5-00)

d. At-home recovery visit. The period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit. (4-5-00)

06. Coverage Requirements and Limitations. (4-5-00)

a. At-home recovery services provided must be primarily services which assist in activities of daily living. (4-5-00)

b. The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare. (4-5-00)

c. Coverage is limited to: (4-5-00)

i. No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment; (4-5-00)

ii. The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit; (4-5-00)

iii. One thousand six hundred dollars ($1,600) per calendar year; (4-5-00)

iv. Seven (7) visits in any one week; (4-5-00)

v. Care furnished on a visiting basis in the insured's home; (4-5-00)

vi. Services provided by a care provider as defined in this section; (4-5-00)

vii. At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; (4-5-00)

viii. At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit. (4-5-00)

d. Coverage is excluded for: (4-5-00)

i. Home care visits paid for by Medicare or other government programs; and (4-5-00)

ii. Care provided by family members, unpaid volunteers or providers who are not care providers. (4-5-00)

07. ~~***New or Innovative Benefits***~~. ~~*An issuer may, with the prior approval of the director, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and*~~

~~*offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.*~~ **Standards for Plan K**. Standardized Medicare supplement benefit plan "K" shall consist of the following: ~~*(4-5-00)*~~(7-1-05)T

a. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first (61st) through the ninetieth (90th) day in any Medicare benefit period; (7-1-05)T

b. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first (91st) through the one hundred fiftieth (150th) day in any Medicare benefit period; (7-1-05)T

c. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance; (7-1-05)T

d. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subsection 010.07.j.; (7-1-05)T

e. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first (21st) day through the one hundredth (100th) day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection 010.07.j.; (7-1-05)T

f. Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subsection 010.07.j.; (7-1-05)T

g. Coverage for fifty percent (50%) under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection 010.07.j.; (7-1-05)T

h. Except for coverage provided in Subsection 010.07.i., coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of -pocket limitation is met as described in Subsection 010.07.j.; (7-1-05)T

i. Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and (7-1-05)T

j. Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars ($4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services. (7-1-05)T

08. **Standards for Plan L**. Standardized Medicare supplement benefit plan "L" shall consist of the following: (7-1-05)T

a. The benefits described in Subsections 010.07.a. through 010.07.c., and 010.07.i.; (7-1-05)T

b. The benefit described in Subsections 010.07.d. through 010.07.h. but substituting seventy-five percent (75%) for fifty percent (50%); and (7-1-05)T

c. The benefit described in Subsection 010.07.j. but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000). (7-1-05)T

011. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS.

01. Policy Form or Certificate Form. An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 010.02. (4-5-00)

02. Medicare Supplement Benefits. No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Subsection 01~~*0*~~1.07 and in Section 012. ~~*(4-5-00)*~~(7-1-05)T

03. Benefit Plans. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "~~*J*~~L" listed in this subsection and conform to the definitions in Section 004. Each benefit shall be structured in accordance with the format provided in Subsections 010.02, ~~*and*~~ 010.03, 010.07, and 010.08 and list the benefits in the order shown in this Section 011. For purposes of Section 011, "structure, language, and format" means style, arrangement and overall content of a benefit. ~~*(4-5-00)*~~(7-1-05)T

04. Other Designations. An issuer may use, in addition to the benefit plan designations required in Subsection 011.03, other designations to the extent permitted by law. (4-5-00)

05. Make-Up of Benefit Plans: (4-5-00)

a. Standardized Medicare supplement benefit plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as defined in Subsection 010.02. (4-5-00)

b. Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible as defined in Subsection 010.03.a. (4-5-00)

c. Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Subsections 010.03.a. through 010.03.c., and 010.03.h., respectively. (4-5-00)

d. Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit (as defined in Subsection 010.02), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Subsections 010.03.a., 010.03.b., 010.03.h., and 010.05, respectively. (4-5-00)

e. Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in Subsections 010.03.a., 010.03.b., 010.03.h., and 010.04, respectively. (4-5-00)

f. Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 010.03.a. through 010.03.c., 010.03.e., and 010.03.h., respectively. (4-5-00)

g. Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 010.03.a. through 010.03.c., 010.03.e., and 010.03.h., respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be one thousand five hundred dollars ($1,500) for 1998 and 1999, and shall be based on the calendar year. It shall be

adjusted annually thereafter by the Secretary of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10). ~~(4-5-00)~~(7-1-05)T

h. Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Subsections 010.03.a., 010.03.b., 010.03.d., 010.03.h., and 010.05, respectively. (4-5-00)

i. Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in Subsections 010.03.a., 010.03.b., 010.03.f., and 010.03.h., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~(4-5-00)~~(7-1-05)T

j. Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in Subsections 010.03.a., 010.03.b., 010.03.e., 010.03.f., 010.03.h., and 010.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~(4-5-00)~~(7-1-05)T

k. Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in Subsections 010.03.a. through 010.03.c., 010.03.e., 010.03.g., 010.03.h., 010.04 and 010.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~(4-5-00)~~(7-1-05)T

l. Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Subsections 010.03.a. through 010.03.c., 010.03.e., 010.03.g., 010.03.h., 010.04, and 010.05, respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be one thousand five hundred dollars ($1,500) for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~(4-5-00)~~(7-1-05)T

06. Make-Up of Two Medicare Supplement Plans Mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA): (7-1-05)T

a. Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Subsection 010.07.01. (7-1-05)T

b. Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Subsection 010.08.02. (7-1-05)T

07. New or Innovative Benefits. An issuer may, with the prior approval of the director, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that

otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goals of simplification of Medicare supplement policies. After December 31, 2005 the innovative benefit shall not include an outpatient prescription drug benefit. (7-1-05)T

012. MEDICARE SELECT POLICIES AND CERTIFICATES.
This section shall apply to Medicare Select policies and certificates, as defined in this section. No policy may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section. (4-5-00)

01. Definitions. For the purposes of Section 012: (4-5-00)

a. Complaint. Any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers. (4-5-00)

b. Grievance. Dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers. (4-5-00)

c. Medicare Select issuer. An issuer offering, or seeking to offer, a Medicare Select policy or certificate. (4-5-00)

d. Medicare Select policy or Medicare Select certificate. Respectively a Medicare supplement policy or certificate that contains restricted network provisions. (4-5-00)

e. Network provider. A provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy. (4-5-00)

f. Restricted network provision. Any provision which conditions the payment of benefits, in whole or in part, on the use of network providers. (4-5-00)

g. Service area. The geographic area approved by the director within which an issuer is authorized to offer a Medicare Select policy. (4-5-00)

02. Authorization to Issue Medicare Select Policy or Certificate. The director may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to Section 012 of these rules and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the director finds that the issuer has satisfied all of the requirements of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act". (4-5-00)

03. Filing Requirements. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the director. (4-5-00)

04. Proposed Plan of Operation. A Medicare Select issuer shall file a proposed plan of operation with the director in a format prescribed by the director. The plan of operation shall contain at least the following information: (4-5-00)

a. Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that: (4-5-00)

i. Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community. (4-5-00)

ii. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either to deliver adequately all services that are subject to a restricted network provision or to make appropriate referrals. (4-5-00)

iii. There are written agreements with network providers describing specific responsibilities. (4-5-00)

iv. Emergency care is available twenty-four (24) hours per day and seven (7) days per week. (4-5-00)

v. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This ~~*paragraph*~~ Subsection 012.04.a.v. shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate. ~~*(4-5-00)*~~(7-1-05)T

b. A statement or map providing a clear description of the service area. (4-5-00)

c. A description of the grievance procedure to be utilized. (4-5-00)

d. A description of the quality assurance program, including: (4-5-00)

i. The formal organizational structure; (4-5-00)

ii. The written criteria for selection, retention, and removal of network providers; and (4-5-00)

iii. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted. (4-5-00)

e. A list and description, by specialty, of the network providers. (4-5-00)

f. Copies of the written information proposed to be used by the issuer to comply with Subsection 012.08. (4-5-00)

g. Any other information requested by the director. (4-5-00)

05. Proposed Changes to the Plan of Operation. A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the director prior to implementing the changes. Changes shall be considered approved by the director after thirty (30) days unless specifically disapproved. An updated list of network providers shall be filed with the director at least quarterly. (4-5-00)

06. Restrictions. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if: (4-5-00)

a. The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and (4-5-00)

b. It is not reasonable to obtain services through a network provider. (4-5-00)

07. Payment for Full Coverage. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers. (4-5-00)

08. Full and Fair Disclosure. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following: (4-5-00)

a. An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with: (4-5-00)

i. Other Medicare supplement policies or certificates offered by the issuer; and (4-5-00)

ii. Other Medicare Select policies or certificates. (4-5-00)

b. A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers. (4-5-00)

c. A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L. ~~(4-5-00)~~(7-1-05)T

d. A description of coverage for emergency and urgently needed care and other out-of-service area coverage. (4-5-00)

e. A description of limitations on referrals to restricted network providers and to other providers. (4-5-00)

f. A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer. (4-5-00)

g. A description of the Medicare Select issuer's quality assurance program and grievance procedure. (4-5-00)

09. Medicare Select Policy or Certificate. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection 012.08 of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate. (4-5-00)

10. Complaints and Grievances. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures. (4-5-00)

a. The grievance procedure shall be described in the policy and certificates and in the outline of coverage. (4-5-00)

b. At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer. (4-5-00)

c. Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action. (4-5-00)

d. If a grievance is found to be valid, corrective action shall be taken promptly. (4-5-00)

e. All concerned parties shall be notified about the results of a grievance. (4-5-00)

f. The issuer shall report no later than each March 31 to the director regarding its grievance procedure. The report shall be in a format prescribed by the director and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances. (4-5-00)

11. Initial Purchase. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer. (4-5-00)

12. Comparable or Lesser Benefits. (4-5-00)

a. At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted

network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months. (4-5-00)

b. For the purposes of Section 012, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of Subsection 012.12.b., a significant benefit means coverage for the Medicare Part A deductible, ~~*coverage for prescription drugs,*~~ coverage for at-home recovery services or coverage for Part B excess charges. ~~*(4-5-00)*~~(7-1-05)T

13. Continuation of Coverage. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select program to be re-authorized under law or its substantial amendment. (4-5-00)

a. Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability. (4-5-00)

b. For the purposes of Section 012, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of Subsection 012.13.b., a significant benefit means coverage for the Medicare Part A deductible, ~~*coverage for prescription drugs,*~~ coverage for at-home recovery services or coverage for Part B excess charges. ~~*(4-5-00)*~~(7-1-05)T

14. Requests for Data. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program. (4-5-00)

013. OPEN ENROLLMENT.

01. Offer of Coverage. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, or discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under Subsection 013.01 without regard to age. (4-5-00)

a. If an applicant qualifies under Subsection 013.01 and submits an application during the time period referenced in Subsection 013.01 and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition. (4-5-00)

b. If the applicant qualifies under Subsection 013.01 and submits an application during the time period referenced in Subsection 013.01 and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary of Health and Human Services shall specify the manner of the reduction under this subsection. ~~*(4-5-00)*~~(7-1-05)T

c. Except as provided in Subsection 013.01.a., and Sections 014 and 025, Subsection 013.01.a. shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. ~~*(4-5-00)*~~(7-1-05)T

014. GUARANTEED ISSUE FOR ELIGIBLE PERSONS.

01. Guaranteed Issue. (4-5-00)

a. Eligible persons are those individuals described in Subsection 014.02 who seek to enroll under the policy during the period specified in Subsection 014.0~~3~~5, and who submit evidence of the date of termination or disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy. ~~(5-3-03)~~(7-1-05)T

b. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection 014.0~~3~~5 that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy. ~~(4-5-00)~~(7-1-05)T

02. Eligible Persons. An eligible person is an individual described here in any part of ~~*the following paragraphs*~~ Subsection 014.02: ~~(4-5-00)~~(7-1-05)T

a. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefits plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan; (4-5-00)

b. The individual is enrolled with a Medicare~~+*Choice*~~ Advantage organization under a Medicare~~+*Choice*~~ Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare~~+*Choice*~~ Advantage plan: ~~(3-15-02)~~(7-1-05)T

i. The certification of the organization or plan under this part has been terminated; ~~*or*~~ ~~(5-3-03)~~(7-1-05)T

ii. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; ~~*or*~~ ~~(5-3-03)~~(7-1-05)T

iii. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area; ~~(4-5-00)~~(7-1-05)T

iv. The individual demonstrates, in accordance with guidelines established by the Secretary of Health and Human Services, that the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or the organization, or agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or the individual meets such other exceptional conditions as the Secretary may provide. ~~(5-3-03)~~(7-1-05)T

c. The individual is enrolled with: (4-5-00)

i. An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); (5-3-03)

ii. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; (4-5-00)

iii. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or (5-3-03)

iv. An organization under a Medicare Select policy; and (4-5-00)

d. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Subsection 014.02.b. (4-5-00)

e. The individual is enrolled under a Medicare supplement policy and the enrollment ceases because: (4-5-00)

i. Of the insolvency of the issuer or bankruptcy of the non-issuer organization; or (4-5-00)

ii. Of other involuntary termination of coverage or enrollment under the policy; (4-5-00)

iii. The issuer of the policy substantially violated a material provision of the policy; or (4-5-00)

iv. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual. (4-5-00)

f. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare~~+*Choice*~~ Advantage organization under a Medicare~~+*Choice*~~ Advantage plan under Part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and ~~*(5-3-03)*~~(7-1-05)T

g. The subsequent enrollment under Subsection 014.02.f. is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or (4-5-00)

h. The individual, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in a Medicare~~+*Choice*~~ Advantage plan under Part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment. ~~*(5-3-03)*~~(7-1-05)T

i. The individual enrolls in a Medicare Part D plan during the initial enrollment period and at the time of enrollment in Part D, was enrolled under Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection 014.05.e. (7-1-05)T

03. Guaranteed Issue Time Periods. (5-3-03)

a. In the case of an individual described in Subsection 014.02.a., the guaranteed issue period begins on the later of the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of ~~*such*~~ a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter~~*the date of the applicable notice*~~; ~~*(5-3-03)*~~(7-1-05)T

b. In the case of an individual described in Subsections 014.02.b., 014.02.c., 014.02.f., 014.02.g., or 014.02.h., whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated; ~~*(5-3-03)*~~(7-1-05)T

c. In the case of an individual described in Subsections 014.02.e.i. and 014.02.e.ii., the guaranteed issue period begins on the earlier of: (5-3-03)

i. The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and (5-3-03)

ii. The date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated; (5-3-03)

d. In the case of an individual described in Subsections 014.02.b~~.c.iii~~. and 014.02.~~b~~c.~~c.iv.~~, and 014.02.f., 014.02.g., or 014.02.h., who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date; and ~~(5-3-03)~~(7-1-05)T

e. In the case of an individual described in Subsection 014.02.i., ~~but not described in the preceding provisions of Subsection 014.03, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.~~ the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and ~~(5-3-03)~~(7-1-05)T

f. In the case of an individual described in Subsection 014.02 but not described in the preceding provisions of Subsection 014.03, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date. (7-1-05)T

04. Extended Medigap Access for Interrupted Trial Periods. (5-3-03)

a. In the case of an individual described in Subsection 014.02.f. (or deemed to be so described, pursuant to this ~~paragraph~~ Subsection 014.04.a.) whose enrollment with an organization or provider described in Subsection 014.02.f. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection 014.02.f.; ~~(5-3-03)~~(7-1-05)T

b. In the case of an individual described in Subsection 014.02.h. (or deemed to be so described, pursuant to this ~~paragraph~~ Subsection 014.04.b.) whose enrollment with a plan or in a program described in Subsection 014.02.h. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection 014.02.h.; and ~~(5-3-03)~~(7-1-05)T

c. For purposes of Subsection 014.02.f. and 014.02.h., no enrollment of an individual with an organization or provider described in Subsection 014.02.f. or with a plan or in a program described in Subsection 014.02.h. may be deemed to be an initial enrollment under Subsection 014.04.c. after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program. (5-3-03)

05. Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under: ~~(4-5-00)~~(7-1-05)T

a. Subsections 014.02.a. through 014.02.e. and 014.02.g. is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F (including F with a high deductible), K or L offered by any issuer. ~~(4-5-00)~~(7-1-05)T

b. Subsection 014.02.~~f~~g. is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection 014.0~~3~~5.a. ~~(4-5-00)~~(7-1-05)T

c. ~~Subsection 014.02.h. shall include any Medicare supplement policy offered by any issuer.~~ After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in Subsection 014.05 is: ~~(4-5-00)~~(7-1-05)T

i. The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or (7-1-05)T

ii. At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer; (7-1-05)T

d. Subsection 014.02.h. shall include any Medicare supplement policy offered by any issuer. (7-1-05)T

e. Subsection 014.02.i. is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage. (7-1-05)T

06. Notification Provisions. (4-5-00)

a. At the time of an event described in Subsection 014.02 of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under Section 014, and of the obligations of issuers of Medicare supplement policies under Subsection 014.01. Such notice shall be communicated contemporaneously with the notification of termination. (4-5-00)

b. At the time of an event described in Subsection 014.02 of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection 014.01. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

016. LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM.

01. Loss Ratio Standards. (4-5-00)

a. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form. (4-5-00)

i. At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or (4-5-00)

ii. At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies; (4-5-00)

b. Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a managed care organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a managed care organization shall not include: ~~(4-5-00)~~(7-1-05)T

i. Home office and overhead costs; (7-1-05)T

ii. Advertising costs; (7-1-05)T

iii. Commissions and other acquisition costs; (7-1-05)T

iv. Taxes; (7-1-05)T

v. Capital costs; (7-1-05)T

vi. Administrative costs; and (7-1-05)T

vii. Claims processing costs. (7-1-05)T

c. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss radio standards. (4-5-00)

d. For purposes of applying Subsections 016.01.a. and 017.0~~3~~1.c., only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. ~~*(4-5-00)*~~(7-1-05)T

e. For policies issued prior to July 1, 1992, expected claims in relation to premiums shall meet: (4-5-00)

i. The originally filed anticipated loss ratio when combined with the actual experience since inception; (4-5-00)

ii. The appropriate loss ratio requirement from Subsections 016.01.a.i. and 016.01.a.ii. when combined with actual experience beginning with July 1, 1992 to date; and (4-5-00)

iii. The appropriate loss ratio requirement from Subsections 016.01.a.i. and 016.01.a.ii. over the entire future period for which the rates are computed to provide coverage. (4-5-00)

02. Refund or Credit Calculation. (4-5-00)

a. An issuer shall collect and file with the director by May 31 of each year the data contained in the applicable reporting form as defined by NAIC Model Regulation (Attachments) and accessible by the Internet (www.doi.~~*state.id.us*~~idaho.gov) for each type in a standard Medicare supplement benefit plan. ~~*(4-5-00)*~~(7-1-05)T

b. If on the basis of the experience as reported the benchmark ratio since inception (ratio one (1)) exceeds the adjusted experience ratio since inception (ratio three (3)), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded. (4-5-00)

c. For the purpose of Section 016, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after July 1, 1992. The first report shall be due by May 31, 1994. (4-5-00)

d. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credit exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based. (4-5-00)

03. Annual Filing of Premium Rates. An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 1, 1992 in this state shall file annually its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the director in accordance with the filing requirements and procedures prescribed by the director. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the director, in accordance with the applicable filing procedures of this state: (4-5-00)

a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing. (4-5-00)

b. An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date. (4-5-00)

c. If an issuer fails to make premium adjustments acceptable to the director, the director may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by Section 016. (4-5-00)

d. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate. (4-5-00)

04. Public Hearings. The director may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 1, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the director. (4-5-00)

017. FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES.

01. Filing and Premium Rates. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the director in accordance with filing requirements and procedures prescribed the director. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the director in the state in which the policy or certificate was issued. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the director in accordance with the filing requirements and procedures prescribed by the director. Except as provided in Subsection 016.03, the insured shall not receive more than one (1) rate increase in any twelve (12) month period. ~~(4-5-00)~~(7-1-05)T

a. Except as provided in Subsection 017.01.b., an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan. (4-5-00)

b. An issuer may offer, with the approval of the director, up to four (4) additional policy forms or

certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) or each of the following cases: (4-5-00)

i. The inclusion of new or innovative benefits; (4-5-00)

ii. The addition of either direct response or agent marketing methods; (4-5-00)

iii. The addition of either guaranteed issue or underwritten coverage; (4-5-00)

iv. The offering of coverage to individuals for Medicare by reason of disability. (4-5-00)

c. ~~Type.~~ For the purposes of Subsection 017.01, "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy. ~~(4-5-00)~~(7-1-05)T

02. Availability of Policy Form or Certificate. Except as provided in Subsection 017.02.a., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," that has been approved by the director. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months. (4-5-00)

a. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the director in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of this notice by the director, the issuer shall no longer offer for sale the policy form or certificate form in this state. (4-5-00)

b. An issuer that discontinues the availability of a policy form or certificate form pursuant to Subsection 017.02.a. shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the director of the discontinuance. The period of discontinuance may be reduced if the director determines that a shorter period is appropriate. (4-5-00)

c. The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of Subsection 017.02~~.c~~. ~~(4-5-00)~~(7-1-05)T

d. A change in the rating structure or methodology shall be considered a discontinuance under this Subsection 017.02 unless the issuer complies with the following requirements: (4-5-00)

i. The issuer provides an actuarial memorandum, in a form and manner prescribed by the director, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates. (4-5-00)

ii. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The director may approve a change to the differential which is in the public interest. (4-5-00)

03. Experience of Policy Forms. (4-5-00)

a. Except as provided in Subsection 017.03.b., the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 016. (4-5-00)

b. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation. (4-5-00)

04. Attained Age Rating Prohibited. With respect to Medicare supplement policies that conform to the Ten Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement

Insurance Minimum Standards Model Act," sold to residents of this state and all those sold on or after January 1, 1995, it is an unfair practice and an unfair method of competition for any issuer, insurer, or licensee to use the increasing age of an insured, subscriber or participant as the basis for increasing premiums or prepayment charges for policyholders who initially purchase a policy after January 1, 1995. This rule explicitly authorizes both issue age ratings and community ratings consistent with the prohibition of attained age ratings and allows companies to resubmit for approval issue age ratings previously rejected. (4-5-00)

05. Rating by Area and Gender Prohibited. With respect to Medicare supplement policies that conform to the Ten Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho, July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this State and all those sold on or after January 1, 1999, it is an unfair practice and an unfair method of competition for any issuee, issuer, or licensee to use area or gender for rating purpose. (4-5-00)

018. PERMITTED COMPENSATION ARRANGEMENTS.

01. Commissions. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first-year commission or other first-year compensation is no more than two hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period. (4-5-00)

02. Compensation in Subsequent Years. The commission or other compensation provided in subsequent renewal years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years. ~~(4-5-00)~~(7-1-05)T

03. Renewal Compensation. No issuer or other entity shall provide compensation to its agent or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced. (4-5-00)

04. Compensation. For purposes of Section 018, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, awards, and finder's fees. (4-5-00)

019. REQUIRED DISCLOSURE PROVISIONS.

01. General Rules. (4-5-00)

a. Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age. (4-5-00)

b. Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing and signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy. (4-5-00)

c. Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import. (4-5-00)

d. If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations". (4-5-00)

e. Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. (4-5-00)

f. Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a "Guide to Health Insurance for People with Medicare" in the form developed jointly by the National Association of Insurance Commissions and the ~~*Health Care Financing Administration*~~ Centers for Medicare & Medicaid Services and in a type size no smaller than twelve (12) point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered. ~~*(3-15-02)*~~(7-1-05)T

g. ~~*Form.*~~ For the purposes of Section 019, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing. ~~*(4-5-00)*~~(7-1-05)T

02. Notice Requirements. (4-5-00)

a. As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the director. The notice shall: (4-5-00)

i. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and (4-5-00)

ii. Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare. (4-5-00)

b. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension. (4-5-00)

c. The notices shall not contain or be accompanied by any solicitation. (4-5-00)

03. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 Notice Requirements. Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. (7-1-05)T

0~~*3*~~4. Outline of Coverage Requirements for Medicare Supplement Policies. (4-5-00)

a. Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and (4-5-00)

b. If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued." (4-5-00)

c. The outline of coverage provided to applicants pursuant to this section consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A-~~J~~L shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated. ~~(3-15-02)~~(7-1-05)T

0~~4~~5. Notice Regarding Policies or Certificates Which are Not Medicare Supplement Policies. (4-5-00)

a. Any accident and sickness insurance policy or certificate other than Medicare supplement policy and policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Section 1395 et seq.), disability income policy; or other policy identified in Subsection 001.02.b. of this ~~regulation~~ rule, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language: "THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company." ~~(4-5-00)~~(7-1-05)T

b. Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection 019.04.a. shall disclose, using the applicable NAIC Model Regulation referenced as Appendix C located on the Internet (www.doi.~~state.id.us~~idaho.gov, - select ~~SHIBA~~ Services for People on Medicare under the Consumer ~~Assistance~~ Services link, see Attachments to NAIC Model Act implementing the Medicare supplement insurance minimum standards), the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate. ~~(4-5-00)~~(7-1-05)T

020. REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE.

01. Application Forms. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has another Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used. ~~(4-5-00)~~(7-1-05)T

02. Statements. (4-5-00)

a. You do not need more than one (1) Medicare supplement policy. (4-5-00)

b. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages. (4-5-00)

c. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy. (4-5-00)

d. If, after purchasing this policy, you become eligible for Medicaid, ~~T~~the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you

enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension. ~~(4-5-00)~~(7-1-05)T

e. If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension. (7-1-05)T

~~e~~f. Counseling services are available through the Senior Health Insurance Benefit Advisors program (SHIBA), ~~*available*~~ to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB). ~~(4-5-00)~~(7-1-05)T

03. Questions. ~~*To the best of your knowledge:*~~ See Appendix A at the end of this chapter. ~~(4-5-00)~~(7-1-05)T

~~*a. Do you have another Medicare supplement policy or certificate in force? (4-5-00)*~~

~~*i. If so, with which company? (4-5-00)*~~

~~*ii. If so, do you intend to replace your current Medicare supplement policy with this policy? (4-5-00)*~~

~~*b. Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy? (4-5-00)*~~

~~*i. If so, with which company? (4-5-00)*~~

~~*ii. What kind of policy? (4-5-00)*~~

~~*c. Are you covered for medical assistance through the state Medicaid program: (4-5-00)*~~

~~*i. As a Specified Low-Income Medicare Beneficiary (SLMB)? (4-5-00)*~~

~~*ii. As a Qualified Medicare Beneficiary (QMB)? (4-5-00)*~~

~~*iii. For other Medicaid medical benefits? (4-5-00)*~~

04. Agents. Agents shall list any other health insurance policies they have sold to the applicant. (4-5-00)

a. List policies sold which are still in force. (4-5-00)

b. List policies sold in the past five (5) years which are no longer in force. (4-5-00)

05. Direct Response Issuer. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy. (4-5-00)

06. Notice Regarding Replacement of Medicare Supplement Coverage. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its

agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage. (4-5-00)

07. SHIBA And Consumer Assistance Link. The notice required in Subsection 020.06 for an issuer shall be provided in substantially the following form based on the NAIC Model Regulation which includes Appendixes A, B, and C and all other outlines of coverage and specific plan designs. For website, go to Idaho Department of Insurance Home Page, www.doi.~~*state.id.us*~~idaho.gov, select ~~*SHIBA*~~ Services for People on Medicare under Consumer ~~*Assistance*~~ Services link, see Attachments to NAIC Model Act implementing the Medicare supplement insurance minimum standards. To obtain a copy of the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. ~~*(4-5-00)*~~(7-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

023. APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE.
In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement. Any sale of Medicare supplement ~~*coverage*~~ policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage. ~~*(4-5-00)*~~(7-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

APPENDIX A

SAMPLE CONSUMER QUESTIONNAIRE

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application.

PLEASE ANSWER ALL QUESTIONS.

To the best of your knowledge:

1. Did you turn 65 in the last six (6) months?

2. Did you enroll in Medicare Part B in the last six (6) months?

a. If so, what is the effective date?

3. Are you covered for medical assistance through the state Medicaid program? NOTE TO APPLICANT; If you are participating in a "Spend-Down Program and have not met your "Share of Cost," please answer NO to this question.

4. Will Medicaid pay your premiums for this Medicare supplement policy?

5. Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

6. If you had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days (for example, a Medicare Advantage Plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

7. If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

8. Was this your first time in this type of Medicare plan?

9. Did you drop a Medicare supplement policy to enroll in the Medicare plan?

10. Do you have another Medicare supplement policy in force?

a. If so, with what company and what plan do you have?

b. If so, so you intend to replace your current medicare supplement policy with this policy?

11. Have you had coverage under any other health insurance within the past sixty-three (63) days?

a. If so, with what company and what kind of policy?

b. What are your dates of coverage under the other policy?

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2005.

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 rulemaking is for the following purposes: to incorporate updated revisions of the American Dental Association's "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry" and "Guidelines for Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists" into the Board of Dentistry's administrative rules by reference; to clarify permissible duties of a dental hygienist by deleting redundant and antiquated terms from existing duties and specifying additional permissible duties; and to authorize a properly trained dental assistant who holds the appropriate expanded function certification to initiate and regulate nitrous oxide for a patient while the dental assistant is working under the direct supervision of a dentist.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Notice of the proposed rulemaking was previously provided to interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 16th day of May, 2005.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
708½ W. Franklin Street
Boise, Idaho 83702
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-0501

004. INCORPORATION BY REFERENCE (RULE 4).
Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Documents. (7-1-93)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 6th Edition, 2000. (3-15-02)

b. American Dental Association, Council on Dental Education, Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, October 200~~*0*~~3. ~~*(3-15-02)*~~(____)

c. American Dental Association, Council on Dental Education, Guidelines for Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists, October 200~~*0*~~3. ~~*(3-15-02)*~~(____)

d. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

e. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2003(as amended). (3-20-04)

f. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), 1995. (4-6-05)

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 708 1/2 West Franklin Street, Boise, Idaho 83720, or the Idaho State Law Library, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

030. DENTAL HYGIENISTS - PRACTICE (RULE 30).
Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental hygienists are hereby authorized to perform the activities specified below: (4-6-05)

01. General Supervision. A dental hygienist may perform specified duties under general supervision as follows: (4-6-05)

a. ~~*Performing o*~~Oral prophylaxis (including removal of supragingival and subgingival calculus, stains and ~~*accretions*~~ plaque biofilm from teeth); ~~*(4-6-05)*~~(____)

b. ~~*Performing*~~ Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); ~~*(4-6-05)*~~(____)

c. Developing patient care plans for prophylaxis, ~~*and*~~ non-surgical periodontal therapy and supportive and evaluative care in accordance with the treatment parameters set by supervising dentist; ~~*(4-6-05)*~~(____)

d. ~~*Performing r*~~Root planing; ~~*(4-6-05)*~~(____)

e. ~~*Performing n*~~Non-surgical periodontal therapy; ~~*(4-6-05)*~~(____)

f. ~~*Performing c*~~Closed subgingival curettage; ~~*(4-6-05)*~~(____)

g. Administration of local anesthesia; (4-6-05)

h. Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); (4-6-05)

i. Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); (4-6-05)

j. Instructing patients in techniques of oral hygiene and preventive procedures; (4-6-05)

k. Placement of antibiotic treated materials pursuant to written order and site specific; (4-6-05)

l. ~~*Performing a*~~<u>A</u>ll duties which may be performed by a dental assistant; and ~~*(4-6-05)*~~<u>(   )</u>

m. ~~*Performing s*~~<u>S</u>uch other duties as approved by the Board. ~~*(4-6-05)*~~<u>(   )</u>

02. Indirect Supervision. A dental hygienist may perform specified duties under indirect supervision as follows: (4-6-05)

a. Administration and monitoring of nitrous oxide; (4-6-05)

b. All dental hygienist duties specified under general supervision; and (4-6-05)

c. ~~*Performing s*~~<u>S</u>uch other duties as approved by the Board. ~~*(4-6-05)*~~<u>(   )</u>

03. Direct Supervision. A dental hygienist may perform specified duties under direct supervision as follows: (4-6-05)

a. Use of a laser restricted to gingival curettage and bleaching; (4-6-05)

b. All dental hygienist duties specified under general and indirect supervision; and (4-6-05)

c. ~~*Performing s*~~<u>S</u>uch other duties as approved by the Board. ~~*(4-6-05)*~~<u>(   )</u>

(BREAK IN CONTINUITY OF SECTIONS)

035. DENTAL ASSISTANTS - PRACTICE (RULE 35).

01. Direct Supervision. A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)

a. Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)

b. Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)

c. Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)

d. Expose and process radiographs; (4-6-05)

e. Take impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (4-6-05)

f. Record diagnostic bite registration; (4-6-05)

g. Record bite registration for fabrication of restorations; (4-6-05)

h. Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)

i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)

j. Placement and removal of arch wire; (4-6-05)

k. Placement and removal of orthodontic separators; (4-6-05)

l. Placement and removal of ligature ties; (4-6-05)

m. Cutting arch wires; (4-6-05)

n. Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)

o. Adjust arch wires; (4-6-05)

p. Etching of teeth prior to placement of restorative materials; (4-6-05)

q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)

r. Placement and removal of rubber dam; (4-6-05)

s. Placement and removal of matrices; (4-6-05)

t. Placement and removal of periodontal pack; (4-6-05)

u. Removal of sutures; (4-6-05)

v. Application of cavity liners and bases; (4-6-05)

w. Placement and removal of gingival retraction cord; (4-6-05)

x. Application of topical fluoride agents; and (4-6-05)

y. Performing such other duties as approved by the Board. (4-6-05)

02. Prohibited Duties. Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)

a. Definitive diagnosis and treatment planning. (4-6-05)

b. The placement or carving of permanent restorative materials in any manner. (7-1-93)

c. Any procedure using lasers. (4-6-05)

d. The administration of any general anesthetic, infiltration anesthetic or any injectable nerve block procedure. (4-6-05)

e. Any oral prophylaxis. Oral prophylaxis is defined as the removal of plaque, calculus, and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing. (7-1-93)

f. Any intra-oral procedure using a highspeed handpiece, except to the extent authorized by a

Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)

g. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)

i. Fabrication and placement of temporary crowns; (4-6-05)

ii. Perform the mechanical polishing of restorations; (7-1-93)

iii. Initiating, regulating and ~~*M*~~monitoring the administration of nitrous oxide analgesia to a patient ~~*while nitrous oxide analgesia is being administered*~~; ~~*(4-6-05)*~~(   )

iv. Application of pit and fissure sealants; (7-1-93)

v. Coronal polishing, unless authorized by a Certificate of Registration; this refers to the technique of removing soft substances from the teeth with pumice or other such abrasive substances with a rubber cup or brush. This in no way authorizes the mechanical removal of calculus nor is it to be considered a complete oral prophylaxis. This technique (coronal polishing) would be applicable only after examination by a dentist and removal of calculus by a dentist or dental hygienist. (7-1-93)

vi. Use of a highspeed handpiece restricted to the removal of orthodontic cement or resin. (4-6-05)

03. Expanded Functions Qualifications. A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g. upon satisfactory completion of the following requirements: (4-6-05)

a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)

i. Current certification by the Dental Assisting National Board; or (7-1-93)

ii. Successful completion of a Board-approved course in the fundamentals of dental assisting; or (3-18-99)

iii. Successfully challenging the fundamentals course. (7-1-93)

b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

04. Course Approval. Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its courses of instruction in expanded functions. Before approving such course, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. (3-18-99)

05. Other Credentials. Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved courses, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (3-18-99)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.08 - EASEMENTS ON STATE OWNED LANDS

DOCKET NO. 20-0308-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 58-104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency not later than July 20, 2005.

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

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

The Idaho Department of Lands (IDL) is initiating this rulemaking to make revisions to IDAPA 20.03.08 - "Easements on State Owned Lands," which were last modified, partially, in 1993. The amendments include, but are not limited to: application, amendment, minimum compensation, and appraisal fees; the Director's level of authority for easement approval; and the state's rights to, and/or disposal of, any timber within the easement area.

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

The proposed changes will update the costs for the application and amendment fees from $50 to $100. The minimum compensation fee will be increased from $250 to $500. Appraisal fees will be established, and the maximum appraisal fee will be raised to $1,000 from $500. The Director's level of authority for approving easements will also increase to $25,000 from $10,000.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.011.01.811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith O'Connor, Right-of-Way Specialist at (208) 334-0200.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 2nd day of June, 2005.

Winston A Wiggins
Director
Idaho Department of Lands
954 W. Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
Phone (208) 334-0200/ Fax (208) 334-2339

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0308-0501

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.08, "Easements on State Owned Lands". ( )

02. Scope. These rules set forth procedures concerning the issuance of easements on all lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands and formerly submerged lands. Further, these rules shall not apply to easements for hydroelectric projects. ~~(9-9-86)~~( )

0~~1~~3. Valid Existing Rights. These rules shall not be construed as affecting any valid existing rights. (9-9-86)

002. ~~*(RESERVED)*~~ WRITTEN INTERPRETATIONS.
The Board does not rely on any written interpretive statements concerning these rules. ( )

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.
There are no documents incorporated herein by reference. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
Idaho Department of Lands, 954 W. Jefferson St., Boise, Idaho 83720; office hours are 8 a.m. to 5 p.m.(MST); except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. ( )

00~~4~~7. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the board. (9-9-86)

02. Damage or Impairment of Rights to the Remainder of the Property. The diminution of the market value of the remainder area, in the case of a partial taking. (9-9-86)

03. Department. The Idaho Department of Lands. (9-9-86)

04. Director. The Director of the Department of Lands or such representative as may be designated by the director. (9-9-86)

05. Easement. A non-possessory interest ~~*held by one (1) person in land of another person whereby the first person is accorded partial use of such*~~ in land for a specific purpose. Such interest may be limited to a specified term. ~~(9-9-86)~~( )

06. Endowment Lands. Land grants made to the state of Idaho by the Congress of the United States,

or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. ~~(9-9-86)~~(____)

~~*07.* *Exclusive Use. That use specified in the easement precludes the grantor from using the easement area for any other uses.* (9-9-86)~~

0~~8~~7. **~~Fair~~ Market Value**. The ~~*amount*~~ most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which ~~*in all probability*~~ the property ~~*would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy*~~ should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ~~(9-9-86)~~(____)

~~*09.* *Grantee. The party to whom the easement is granted and their assigns and successors in interest.* (9-9-86)~~

~~*10.* *Grantor. The state of Idaho and its assigns and successors in interest.* (9-9-86)~~

~~*11.* *Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government.* (9-9-86)~~

~~*12.* *Specific Term Easement. An easement that is issued for a specific time period of ten (10) to fifty-five (55) years.* (9-9-86)~~

~~13~~08. **State-Owned Lands**. All lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands or formerly submerged lands. (9-9-86)

~~14~~09. **Temporary Permit**. An instrument authorizing a specific use on state land usually issued for five (5) years or less, but which may be issued for up to ten (10) years. (9-9-86)

~~012~~011. -- 019. (RESERVED).

~~011~~020. POLICY.

01. **Easements Required**. Easements shall be required for all rights-of-way of a permanent nature over state-owned land. Easements shall not be granted where temporary permits will serve the required purpose or where a lease is ~~*more usual and customary*~~ appropriate. ~~(9-9-86)~~(____)

~~*02.* *No Adverse Possession. An easement cannot be established by adverse possession on state endowment land, no matter how long the adverse use has been in existence.* (9-9-86)~~

0~~3~~2. **Prior Grants**. The director shall recognize easements on state endowment lands by grant of the federal government, or subsequent landowners, prior to title vesting with the State or by eminent domain. ~~(9-9-86)~~(____)

0~~4~~3. **Existing Easements**. These rules shall not apply to any use, facility or structure described in an existing easement. For ~~*modification*~~ amendment of an existing easement, see Section 025. ~~(9-9-86)~~(____)

0~~5~~4. **Director's Discretion**. The director may grant an easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. (9-9-86)

0~~6~~5. **Reciprocal Easements**. The director may seek reciprocal easements for access to state-owned lands from applicants for easements over state-owned lands. The value of the easement acquired by the state may be applied towards the cost of the easement acquired from the state. (9-9-86)

0~~7~~6. **Interest Granted**. An easement grants only such interest to the grantee as is specified in the instrument, including the right to use the property for the specified purpose without interference by the grantor. The right to use the property for all other purposes not inconsistent with the grantee's interest remains with the grantor.

(9-9-86)

0~~8~~7. Limit of Director's Discretion. The director may grant and renew easements in all cases except when the compensation will exceed ~~ten~~ twenty-five thousand dollars ($~~10~~25,000) exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. ~~(9-9-86)~~(____)

0~~9~~8. Width of Easement. The width of any easement granted shall not be less than eight (8) feet. (9-9-86)

09. Recordation. The department will record the easement, or easement release, with the appropriate county recorder's office. (____)

10. Term Easement. The director may grant an easement which is issued for a specific time period of ten (10) to fifty-five (55) years. (____)

~~020~~021. FEES AND COMPENSATION.

01. Application Fee. The application fee for new, renewed, or amended easements is ~~fifty~~ one hundred dollars ($~~5~~100) and shall be collected from all applicants. This application fee shall be in addition to the easement compensation and appraisal costs, and is non-refundable unless the director determines that the land applied for is not under the jurisdiction of the board. ~~(9-9-86)~~(____)

02. Easement Fee. The compensation for permanent easements over state-owned lands covered by these rules shall be as follows:

	COMPENSATION
Highways, roads, railroads, reservoirs, trails, canals, ditches, or any other improvements that require long term, exclusive or near exclusive use and occupation of the right of way	Up to 100% of land value plus payment for any damage or impairment of rights to the remainder of the property as determined by the director and supported by specific data such as an appraisal
Overhead transmission and power lines	Up to 100% of land value depending on the exclusivity of use as determined by the director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property as determined by the director and supported by data such as an appraisal
Buried installations - cables, pipelines, sewerlines, waterlines	Up to 100% of land value, depending on the exclusivity use as determined by the director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property, as determined by the director and supported by specific data such as an appraisal

(7-1-93)

03. Appraisal Required. An appraisal of an easement may be required where, in the opinion of the director, the easement value will exceed the minimum compensation fee of ~~two~~ five hundred ~~fifty~~ dollars ($~~2~~5~~5~~00). ~~(9-9-86)~~(____)

04. Performance of Appraisal. The appraisal of the easement will normally be performed by qualified departmental staff. If so desired by the applicant and agreed to by the director, the applicant may provide the appraisal which must be acceptable to and meet the specifications set by the director. (9-9-86)

05. Appraisal Costs. Where the appraisal is performed by departmental staff, the appraisal costs shall

be ~~*assessed at actual cost and shall be*~~ two hundred fifty dollars ($250) for a market analysis, five hundred dollars ($500) for a short form appraisal, and one thousand dollars ($1,000) for appraisals of easements requiring board approval. The appraisal cost will be in addition to those costs outlined in Subsections ~~*020*~~021.01 and ~~*020*~~021.02. ~~*These costs shall include transportation, personnel costs (including per diem), and administrative overhead. An itemized statement of these costs shall be provided to the applicant.*~~ In no case shall an applicant be charged more than ~~*five hundred*~~ one thousand dollars ($~~*5*~~1000) for an appraisal of an easement conducted by departmental staff. ~~*(9-9-86)*~~(____)

06. **~~*Fixed*~~ Term Easements**. Compensation for ~~*specific*~~ term easements ~~*--ten (10) to fifty-five (55) years--*~~shall be established by appraisal. ~~*(9-9-86)*~~(____)

~~***07.*** ***Timber****. The grantee shall pay fair market value for all timber cut from easement unless the director elects to sell the timber through the department's timber sale program. All timber remaining uncut on the easement area shall revert to the State upon completion of any construction on the easement area and may not be cut or disturbed without first obtaining written consent from the director and payment of fair market value for the timber.*~~ ~~*(9-9-86)*~~

0~~*8*~~7. **Minimum Compensation**. The minimum compensation for any easement shall be ~~*two*~~ five hundred ~~*fifty*~~ dollars ($~~2~~5~~5~~00), not including the application fee and appraisal costs. ~~*(9-9-86)*~~(____)

~~*021*~~022. -- 024. (RESERVED).

025. EASEMENT ~~*MODIFICATION*~~ AMENDMENT.

~~*Modification*~~ Amendment of an existing easement shall be processed in the same manner as a new application. ~~*Modification*~~ Amendment includes change of use, widening the easement area, or changing the location of the easement area. ~~*Modification*~~ Amendment does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and culverts. ~~*(9-9-86)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

040. ASSIGNMENTS.

01. **Fee**. Easements issued by the director or by the board are assignable provided that the assignor and assignee complete the department's standard assignment form and forward it and the non-refundable assignment fee of fifty dollars ($50) to any department office. (9-9-86)

02. **Prior Written Consent**. An assignment is not valid without the prior written consent of the director. Such consent will not be unreasonably withheld. ~~*(9-9-86)*~~(____)

03. **Multiple Assignments**. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee shall be required. (9-9-86)

(BREAK IN CONTINUITY OF SECTIONS)

046. PROCEDURE.

01. **Contents of Application**. An easement application shall contain. (7-1-93)

a. A letter of request stating the purpose of the easement; (7-1-93)

b. A ~~*plat*~~ map of right-of-way in triplicate; and ~~*(7-1-93)*~~(____)

c. One (1) copy of an acceptable written description based on a centerline survey ~~*of the centerline,*~~ or a metes and bounds survey of the perimeter of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned land affected by the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and leaves the parcel. ~~*(9-9-86)*~~(____)

02. Engineer Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes shall be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the department and one (1) copy with the Director, Department of Water Resources. (9-9-86)

03. Where to Submit Application. An easement application may be submitted to any office of the department. (9-9-86)

04. Notification of Approval. If approved, the applicant shall be notified of the amount due to the department. (9-9-86)

05. Notification of Denial. If the application is denied, the applicant shall be notified in writing of such decision. (9-9-86)

047. EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.

01. Approval of Contract Purchaser. The director shall not approve an easement on lands under contract of sale (land sale certificate) without the approval of the contract sale purchaser or without reviewing the consideration received to insure that the state's interests are protected. (9-9-86)

02. Compensation. The compensation for easements on lands under land sale contract shall be as set out in Section ~~*020*~~021 except that "land value" may be the sale value. These moneys shall be applied to the principal balance on the land sale contract. Additionally, the department shall collect the ~~*fifty*~~ one hundred dollar ($~~*5*~~100) application fee. ~~*(9-9-86)*~~(____)

03. Co-Signature of Contract Purchaser. The contract sale purchaser must co-sign the easement to validate the document. (9-9-86)

IDAPA 23 - IDAHO BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-0501

NOTICE OF RULEMAKING - PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. 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. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1404, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the May 4, 2005 Idaho Administrative Bulletin, Vol. 05-5, pages 103 through 105.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-1404, Idaho Code. The proposed changes, pursuant to the Board's authority under Section 54-1404, Idaho Code, increase the cost of renewal of licensure from $50 to $90 for the two-year renewal period and endorsement of licensure from $85 to $110.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: The pending rulemaking will have no impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sandy Evans, MAEd., R.N., Executive Director, at (208) 334-3110.

DATED this 26th day of May, 2005.

Sandy Evans, MAEd., R.N., Executive Director
Idaho State Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
P. O. Box 83720, Boise, ID 83720-0061
Phone: (208) 334-3110 / Fax: (208) 334-3262

IDAPA 23, TITLE 01, CHAPTER 01

RULES OF THE IDAHO BOARD OF NURSING

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 05-5, May 4, 2005, pages 103 through 105.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.11 - RULES GOVERNING OVERLEGAL PERMITTEE RESPONSIBILITY AND TRAVEL RESTRICTIONS

DOCKET NO. 39-0311-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 10, 2005.

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 and 49-1004, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2005.

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:

Due to ever increasing traffic volumes on state and interstate highways, this rule is being modified to restrict over-width permitted vehicles from operating on certain sections of state and interstate highways during the hours of high-commuter traffic (6:30 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m.). There is a minimal impact to industry since they are already subject to high commuter traffic restrictions on non-interstate state highways.

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

Restricting over-width permitted vehicles from operating on certain section of interstate highways during the hours of high-commuter traffic will protect the public safety.

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

There is no fee or charge associated with this rulemaking.

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

There is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because immediate implementation will protect the public safety of the traveling public by reducing the congestion already occurring on some stretches of interstate highways.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Frew, Commercial Vehicles Manager, 334-8809.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 1st day of June, 2005.

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. 39-0311-0501

200. TIME OF TRAVEL RESTRICTIONS FOR OVER LEGAL LOADS.
Oversize loads may be transported on Idaho Highways subject to the following conditions: (10-2-89)

01. Red-Coded Routes. Daylight travel until 2 p.m. on Friday, no Saturday, no Sunday. Due to low traffic volumes on these routes early in the mornings of Saturday and Sunday, single trip permits may be issued for dawn to 8 a.m. If the movement is not completed by 8 a.m. the permittee will be required to safely park and not proceed until the next day. (4-5-00)

02. Black-Coded Routes. Loads not in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may travel daylight hours seven (7) days per week. (12-26-90)

03. Interstate. Loads not in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fourteen (14) feet six (6) inches high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fourteen (14) feet six (6) inches high may travel daylight hours, seven (7) days per week. (4-5-00)

04. Additional Restrictions. (8-25-94)

a. Red-Coded Routes: No travel for any load after 2 p.m. on the day preceding a holiday or holiday weekend. A holiday weekend occurs as three (3) consecutive days, when a designated holiday occurs on a Friday or Monday, or when the designated holiday occurs on a Saturday or Sunday, in which case the preceding Friday or the following Monday shall be included in such three (3) day holiday weekend. Travel may be resumed at dawn on the day following the holiday or holiday weekend. (4-5-00)

b. Black-Coded Routes and Interstate Routes: Loads in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may not travel after 4:00 p.m. on the day preceding a holiday; travel may be resumed at dawn on the day following the holiday. (4-5-00)

c. The following days are designated as holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. (8-25-94)

d. Additional restrictions relating to movement of buildings and houses are listed in IDAPA 39.03.18, "Rules Governing Overlegal Permits for Relocation of Buildings or Houses," Section 400. (4-5-00)

e. Other time of travel restrictions may be noted on the permit due to special circumstances. (8-25-94)

05. Hours Of Darkness. Hours are defined as extending from one-half (1/2) hour after sundown to one-half (1/2) hour before sun rise or at any other time when visibility is restricted to less than five hundred (500)

feet. (4-5-00)

06. Heavy Commuter Traffic Restrictions. The movement of oversize permitted vehicles or loads which are in excess of twelve (12) feet in width, ~~*in excess of eighty-five (85) feet in length, or in excess of sixteen (16) feet in height*~~ may be prohibited from movement on all state and Interstate highways within five (5) five miles of and through the ~~*urban*~~ city limits of the following cities: Boise, Caldwell, Coeur d'Alene, Eagle, Emmett, Hayden, Idaho Falls, Lewiston, Meridian, Middleton, Moscow, Nampa, Pocatello, Post Falls, Sandpoint, Star, Twin Falls, Garden City, and Chubbuck at times of heavy commuter traffic. Unless restricted for holiday travel or otherwise defined on the permit, the times of heavy commuter traffic shall be considered to be 6:30 a.m. to 8:30 a.m.~~*, 11:30 a.m. to 1:30 p.m.*~~ and 4 p.m. to 6 p.m. Monday through Friday. ~~*This restriction may not apply to sections of completed Interstate Highway within the above listed cities. Such a restriction of oversize load travel to avoid conflict with heavy commuter traffic volumes shall appear on the face of the permit.*~~ Restrictions to the operation of overwidth vehicles and/or loads during times of heavy commuter traffic shall appear either on the face of the permit or in the attachments for annual permits. ~~*(4-5-00)*~~(3-10-05)T

07. Hazardous Travel Conditions Restrictions. Extreme caution in the operation of permitted vehicle combinations shall be exercised when hazardous conditions exist. The movement of overlegal vehicles and/or loads by overlegal permit shall be prohibited and otherwise valid permits shall automatically become invalid enroute when travel conditions become hazardous due to ice, snow or frost; when visibility is restricted to less than five hundred (500) feet by fog, dust, smoke or smog or other atmospheric conditions. (3-10-05)

08. Delaying Movement. Enforcement personnel responsible for any section of highway may delay movements and carry out enforcement action for violations involving overlegal permit operations. (4-5-00)

09. Map Resources. The Pilot/Escort Vehicle and Travel Time Requirement Map is available at the Idaho Transportation Department Overlegal Permit Office, and Ports of Entry, and District Offices. (4-5-00)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.45 - RULES GOVERNING SALE OF NO LONGER USEFUL OR USABLE REAL PROPERTY

DOCKET NO. 39-0345-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

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(s) 58-335A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 20, 2005.

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:

In the 2005 legislative session, Senate Bill 1083 amended Section 58-335A, Idaho Code, to allow local government entities to acquire surplus ITD property, for other than transportation purposes, at a negotiated price, up to the appraised value, expressly for public purposes, with sales proceeds to the State Highway Account.

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

To comply with amendments made to Idaho Code by Senate Bill 1083 passed in the 2005 legislative session.

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

There is no fee or charge associated with this rulemaking.

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

There is no negative fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is necessary for compliance with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Leonard Hill, Right-of-Way Manager, 334-8520.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2005.

DATED this 1st day of June, 2005.

Linda L. Emry, Management Assistant
Budget, Policy, and Intergovernmental Relations
Idaho Transportation Department
3311 West State Street
PO Box 7129, Boise ID 83707-1129
Phone - 208-334-8810 / FAX - 208-334-8195

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0345-0501

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.03.45 "Rules Governing Sale of No Longer Useful or Usable Real Property," IDAPA 39, Title 03, Chapter 45. (7-1-05)T

02. Scope. This rule ~~*establishes a process*~~ contains guidelines for selling no longer useful or usable real property under the ownership and control of the Idaho Transportation Department. ~~*(7-1-97)*~~(7-1-05)T

002. WRITTEN INTERPRETATIONS.
There are no written interpretations for this chapter. (7-1-05)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". (7-1-05)T

004. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference in this chapter. (7-1-05)T

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P.O. Box 7129, Boise ID 83707-1129. (7-1-05)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (7-1-05)T

03. Telephone and FAX Numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. (7-1-05)T

04. Idaho Transportation Department District Offices are at the following locations: (7-1-05)T

a. Idaho Transportation Department District 1
Mailing address - 600 W. Prairie
Coeur d'Alene, Idaho 83815-8764
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Phone - (208) 772-1200 (7-1-05)T

b. Idaho Transportation Department District 2
2600 Frontage Road, Lewiston
Mailing address - P.O. Box 837
Lewiston, Idaho 83501-0837

Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Phone - (208) 799-5090 (7-1-05)T

c. Idaho Transportation Department District 3
8150 Chinden Blvd., Boise
Mailing address - P.O. Box 8028
Boise, Idaho 83707-2028
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone - (208) 334-8300 (7-1-05)T

d. Idaho Transportation Department District 4
216 Date Street, Shoshone
Mailing address - P.O. Box 2-A
Shoshone, Idaho 83352-0820
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone - (208) 886-7800 (7-1-05)T

e. Idaho Transportation Department District 5
5151 South 5th, Pocatello
Mailing address - P.O. Box 4700
Pocatello, Idaho 83205-4700
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone - (208) 239-3300 (7-1-05)T

f. Idaho Transportation Department District 6
206 North Yellowstone, Rigby
Mailing address - P.O. Box 97
Rigby, Idaho 83442-0097
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Phone - (208) 745-7781 (7-1-05)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. (7-1-05)T

00~~2~~7. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

301. *~~METHOD OF SALE FOR PROPERTY VALUED LESS THAN TEN THOUSAND DOLLARS~~* SALE OR EXCHANGE OF PROPERTY TO TAX SUPPORTED ENTITIES AT THE APPRAISED VALUE.
~~The department shall offer the property for sale at an amount not less than the Surplus Property Value Estimate. The property shall first be offered to all adjoining property owners. If more than one (1) adjoining property owner is interested in the property, a private auction will be held between the adjacent owners. If the property is not purchased by an adjacent owner, it shall be offered at public sale. The sales price shall include an administrative fee. Term sales of up to five (5) years may be offered at the discretion of the department.~~ The department shall first offer property at the appraised price to the following: state agencies, county where the property is located, city where the property is located, the highway district in which the property is located. State agencies are given first priority to purchase the property, county second, city third and highway district fourth. Other tax supported entities not enumerated will not specifically be notified but have the fifth priority to purchase property. The sale price shall include any administrative fees incurred by the department. *~~(7-1-97)~~*(7-1-05)T

302. ~~*METHOD OF SALE FOR PROPERTY VALUED AT TEN THOUSAND DOLLARS OR GREATER*~~ SALE OR EXCHANGE OF PROPERTY TO TAX SUPPORTED ENTITIES FOR LESS THAN THE APPRAISED VALUE.

~~*The department shall first offer the property at the appraised price to the following: State Agencies, County and City where the property is located, the Highway District in which the property is located. The state agencies are given first priority to purchase the property, county second, city third and Highway District forth. If none of the above public agencies purchase the property, it will be offered at public sale. The sales price shall include an administrative fee. Term sales of up to twenty (20) years may be offered at the discretion of the department.*~~ If none of the above public agencies wishes to purchase the property for the appraised value the department may negotiate sale or exchange of the property at less than the fair market value in the priority set out above to any tax-supported agency or political subdivision of the state of Idaho in whose jurisdiction the property resides other than state agencies. If property is sold or exchanged for less than the fair market value it must be used exclusively and in perpetuity for a public purpose. The specific public use will be set out in the deed of transfer and if the use is violated or discontinued the property will revert to the ownership of the department. If jurisdiction, value or use cannot be agreed upon between the department and a public agency the property will be offered at a public sale. Any property purchased using federal funds must receive the approval of the Federal Highway Administration prior to being sold or exchanged for less than the appraised value. ~~*(7-1-97)*~~(7-1-05)T

303. METHOD OF SALE FOR PROPERTY VALUED AT LESS THAN TEN THOUSAND ($10,000) DOLLARS.

If property is not purchased by a public entity it shall be offered at an amount not less than the value estimate or appraisal. The property shall first be offered to immediate adjoining property owners. If more than one (1) adjoining property owner is interested in the property a private auction will be held between those adjoining owners wishing to purchase the property. If the property is not purchased by an adjoining owner it shall be offered at public sale. The sales price shall include an administrative fee. Term sales of up to five (5) years may be offered at the discretion of the department. (7-1-05)T

304. METHOD OF SALE FOR PROPERTY VALUED AT TEN THOUSAND ($10,000) DOLLARS OR GREATER.

If no public agency purchases property it will be offered at public sale. The sales price shall include an administrative fee. Term sales of up to twenty (20) years may be offered at the discretion of the department. (7-1-05)T

30~~*3*~~5. -- 399. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 31, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, 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 Wednesday, July 22, 2005.

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: DEQ conducted negotiated rulemaking to make changes to sections of the Rules for the Control of Air Pollution in Idaho that pertain to sources of air pollution that were deferred from the Title V permitting program as defined in IDAPA 58.01.01.301.02.b.iv.

IDAPA 58.01.01.313.01.e.i. stated that deferred sources were required to submit a Tier I operating permit application no later than June 1, 2005. DEQ anticipated that the Environmental Protection Agency (EPA), by December 2004, would have decided whether to require the deferred sources to submit an application; however, that decision has not been issued. Therefore, DEQ was required to put a rule in place on or before June 1, 2005 in order to address this issue.

In conjunction with members of the regulated community and other interested parties, DEQ initiated rulemaking and negotiated a temporary/proposed rule allowing DEQ to exempt deferred sources from the requirement to obtain a Tier I operating permit unless EPA decides differently. The Board of Environmental Quality adopted the temporary rule on May 17, 2005.

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 for adoption of a pending rule in October 2005. The pending rule will become final upon the conclusion of the 2006 session of the Idaho Legislature if approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to meet deadlines in federal law.

IDAHO CODE SECTION 39-107D STATEMENT: This temporary/proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

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 Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin, March 2, 2005, Vol. 05-3, page 24.

GENERAL INFORMATION: For more information about DEQ’s programs and activities, visit DEQ’s web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Mike Simon at (208)373-0212, msimon@deq.idaho.gov.

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 August 5, 2005.

DATED this 3rd day of June, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pwilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0501

006. GENERAL DEFINITIONS.

No changes are being made to Subsections 006.01 through 006.101.

102. Tier I Source. Any of the following: (5-1-94)

a. Any source located at any major facility as defined in Section 008; (4-5-00)

b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; ~~(5-1-94)~~(5-31-05)T

c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); ~~(5-1-94)~~(5-31-05)T

d. Any Phase II source; and (5-1-94)

e. Any source in a source category designated by the Department. (5-1-94)

The remainder of this Section (006.103 -- 114) has no changes.

(BREAK IN CONTINUITY OF SECTIONS)

301. REQUIREMENT TO OBTAIN TIER I OPERATING PERMIT.

01. Prohibition. No owner or operator shall operate, or allow or tolerate the operation of, any Tier I source without an effective Tier I operating permit. (5-1-94)

02. Exceptions. (3-23-98)

a. No Tier I operating permit is required if the owner or operator is in compliance with Sections 311 through 315 and the Department has not taken final action on the application. (5-1-94)

b. Tier I sources not located at major facilities do not require a Tier I operating permit until: (3-23-98)

i. December 31, 1997 for Phase II sulfur dioxide sources; (3-23-98)

ii. January 1, 1999 for Phase II nitrogen oxides sources; (3-23-98)

iii. January 1, 2000 for solid waste incineration units required to obtain a permit pursuant to 42 U.S.C. Section 7429(e); and (3-23-98)

iv. ~~*June 1, 2001 for all other such sources, unless an earlier date is required by an applicable standard or EPA determines that no Tier I operating permit is required. All other such sources may request deferral of the Tier I operating permit requirements until June 1, 2006, or such time as the Department provides written notification of an earlier date, by registering the source in accordance with Subsection 313.01.e.*~~ <u>The source becomes a Tier I source under Section 006 of this chapter.</u> ~~*(3-30-01)*~~(5-31-05)T

c. No Tier I operating permit is required for the following Tier I sources: (5-1-94)

i. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA; and (5-1-94)

ii. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61.145. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

313. TIMELY APPLICATION.

01. Original Tier I Operating Permits. (5-1-94)

a. For Tier I sources existing on May 1, 1994, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than June 1, 1996, or within twelve (12) months of EPA approval of the Tier I operating program, whichever is earlier, unless: (3-20-97)

i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)

ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. (5-1-94)

b. For sources that become Tier I sources after May 1, 1994, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless: (3-23-98)

i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)

ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. (5-1-94)

c. For initial phase II acid rain sources identified in Subsections 301.02.b.i. or 301.02.b.ii., the owner or operator of the initial Phase II acid rain source shall submit to the Department a complete application for an original Tier I operating permit by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides. (3-23-98)

d. For Tier I sources identified in Subsection 301.02.b.iii.: (3-23-98)

i. Existing on July 1, 1998, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1999, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)

ii. That become Tier I sources after July 1, 1998, located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (3-23-98)

~~*e. For Tier I sources identified in Subsection 301.02.b.iv.: (3-23-98)*~~

~~*i. Existing on January 1, 2000, the owner or operator of the Tier I source shall register the source by submitting the information listed in Subsection 313.01.f. to the Department no later than May 1, 2001. Complete applications for an original Tier I operating permit for sources registered by May 1, 2001 shall be submitted to the Department no later than June 1, 2005, unless the Department provides written notification of an earlier date to the owner or operator. Any additional plans, specifications, evidence or documents that the Department may require to complete an evaluation of a registered source shall be furnished on request. (5-3-03)*~~

~~*ii. That become Tier I sources after January 1, 2000 but before January 1, 2005, and are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall register the source by submitting the information listed in Subsection 313.01.f. to the Department no later than twelve (12) months after becoming a Tier I source or commencing operation. Complete applications for an original Tier I operating permit for a Tier I source that registers under this provision shall be submitted to the Department no later than June 1, 2005, unless the Department provides written notification of an earlier date to the owner or operator. Any additional plans, specifications, evidence or documents that the Department may require to complete the evaluation of a registered source shall be furnished on request. (5-3-03)*~~

~~*iii. That become Tier I sources after January 1, 2005, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (3-30-01)*~~

~~*f. The registration information required under Subsection 313.01.e. includes the following: (5-3-03)*~~

~~*i. Facility information. The name, address, telephone number, and location of the facility. (3-30-01)*~~

~~*ii. Owner/operator information. The name, address, and telephone numbers of the owners and operators. (3-30-01)*~~

~~*iii. Facility emissions units. The number and type of emissions units present at the facility. (3-30-01)*~~

~~*iv. Pollutant registration. The emissions from the previous calendar year, or other twelve (12) month period requested by the registrant and approved by the Department, for any regulated air pollutant based on actual annual emissions and/or an estimate of the actual annual emissions calculated using the unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Additional detailed information on sources, stacks, and emissions may be requested by*~~

~~*the Department on an annual basis.*~~ ~~*(3-30-01)*~~

02. Earlier Dates During Initial Period. Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: (5-1-94)

a. The Department may develop a general estimate of the total work load and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and significant permit modification applications. (3-19-99)

b. Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three (3) groups each representing approximately one-third (1/3) of the total work load and benefits. (5-1-94)

c. The Department may prioritize the three (3) groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Subsection 313.01. (5-1-94)

03. Renewals of Tier I Operating Permits. The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing Tier I operating permit. To ensure that the term of the operating permit does not expire before the permit is renewed, the owner or operator is encouraged to submit the application nine (9) months prior to expiration. (4-5-00)

04. Changes to Tier I Operating Permits. Sections 380 through 386 provide the requirements and procedures for changes at Tier I sources and to Tier I operating permits. (3-19-99)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0501

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 Sections 39-105, 39-107, and 39-3601 et seq., 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 Wednesday, July 22, 2005.

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: In this rulemaking, the Department of Environmental Quality (DEQ) proposes to remove the NONE designation for aquatic life for water body units B-23, B-24, and B-25 (Subsection 160.02), parts of Soda Creek tributary to the Bear River. This will leave these water bodies as undesignated and protected for a default use of cold water aquatic life. This action is taken to be consistent with the discovery of aquatic life in Soda Creek which resulted in the withdrawal of a Use Attainability Analysis (UAA) on which the designation of NONE was based. In addition, DEQ proposes the following revisions to Section 003 (Definitions):

1) Add a definition for Zone of Initial Dilution for use in mixing zone analysis; and
2) Revise the definitions of Ephemeral Waters and Intermittent Waters to clarify that natural stream flows are the basis for such classifications.

Those with NPDES permits, particularly dischargers of wastewater to Soda Creek, or members of the public using Soda Creek for fishing, and those concerned with the use of small streams may be interested in participating in this rulemaking by commenting on this proposed rule. 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 October 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The proposed changes in definitions and use designations are not broader scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held 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, April 6, 2005, Vol. 05-4, page 19.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at (208) 373-0119 or dessig@deq.idaho.gov.

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 August 5, 2005.

Dated this 3rd day of June, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pwilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0501

003. DEFINITIONS.
For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," the following definitions apply: (4-5-00)

No changes are being made to Subsections 003.01 through 003.37.

38. Ephemeral Waters. A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. ~~*(4-5-00)*~~(____)

No changes are being made to Subsections 003.39 through 003.54.

55. Intermittent Waters. A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cfs is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. ~~*(4-5-00)*~~(____)

No changes are being made to Subsections 003.56 through 003.137.

138. Zone of Initial Dilution (ZID). An area within a Department authorized mixing zone where acute criteria may be exceeded. This area should be as small as practicable and assure that drifting organisms are not exposed to acute concentrations for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available. (____)

(BREAK IN CONTINUITY OF SECTIONS)

160. BEAR RIVER BASIN.
Surface waters found within the Bear River basin total six (6) subbasins and are designated as follows: (4-5-00)

No changes are being made to Subsection 160.01.

02. Bear Lake Subbasin. The Bear Lake Subbasin, HUC 16010201, is comprised of twenty-five (25) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
B-1	Alexander Reservoir (Bear River)	COLD SS	PCR	
B-2	Bear River -railroad bridge (T14N, R45E, Sec. 21) to Alexander Reservoir	COLD SS	PCR	
B-3	Bailey Creek - source to mouth	COLD SS	SCR	
B-4	Eightmile Creek - source to mouth	COLD SS	SCR	
B-5	Pearl Creek - source to mouth	COLD SS	SCR	
B-6	Stauffer Creek - source to mouth	COLD SS	SCR	
B-7	Skinner Creek - source to mouth	COLD SS	SCR	
B-8	Co-op Creek - source to mouth	COLD SS	SCR	
B-9	Ovid Creek - confluence of North and Mill Creek to mouth			
B-10	North Creek - source to mouth	COLD SS	PCR	
B-11	Mill Creek - source to mouth	COLD SS	PCR	
B-12	Bear Lake Outlet - Lifton Station to Bear River	COLD SS	PCR	DWS SRW
B-13	Paris Creek - source to mouth	COLD SS	PCR	
B-14	Bloomington Creek - source to mouth	COLD SS	PCR	DWS SRW
B-15	Spring Creek - source to mouth			
B-16	Little and St. Charles Creeks - source to Bear Lake	COLD SS	PCR	SRW
B-17	Dry Canyon Creek - source to mouth			
B-18	Bear Lake	COLD SS	PCR	DWS SRW
B-19	Fish Haven Creek - source to Bear Lake	COLD SS	PCR	SRW

Unit	Waters	Aquatic Life	Recreation	Other
B-20	Montpelier Creek - source to mouth			
B-21	Snowslide Creek - source to mouth	COLD SS	SCR	
B-22	Georgetown Creek - source to mouth	COLD SS	PCR	DWS SRW
B-23	Soda Creek - Soda Creek Reservoir Dam to Alexander Reservoir	~~NONE~~	SCR	
B-24	Soda Creek Reservoir	~~NONE~~	SCR	
B-25	Soda Creek - source to Soda Creek Reservoir	~~NONE~~	SCR	

~~(5-3-03)~~( )

No changes are being made to Subsections 160.03 through 160.06.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0502

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 Sections 39-105, 39-107, and 39-3601 et seq., 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 Wednesday, July 22, 2005.

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: In this rulemaking, the Department of Environmental Quality (DEQ) proposes to clarify and consolidate language in Sections 080 and 251 regarding E. coli criteria designed to protect recreational use of Idaho waters. To maintain internal consistency, DEQ is also revising language in Section 420 to be consistent with the changes in Section 251. The changes make it clear that five (5) samples of E. coli are needed to judge compliance with the surface water quality standards, and allow greater flexibility in obtaining the requisite five (5) samples in thirty (30) days. These changes are being made to clarify Idaho's intentions with regard to use of data from a single water sample measured for E. coli, as allowed by EPA guidance on bacteria criteria, and provide more flexibility in monitoring frequency. This change is necessary to avoid possible misinterpretation of rules regarding application of ambient bacteria criteria and wastewater disinfection requirements that could result in unnecessarily stringent effluent limits and bacteria load reductions. In this rulemaking, DEQ also proposes to add the standard rule sections, and delete unnecessary rule sections, for conformance with IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," and for consistency with other DEQ administrative rules.

Publicly owned treatment works (POTWs) and recreational users of Idaho's surface waters may be interested in participating in this rulemaking by commenting on this proposed rule. 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 October 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The proposed changes in bacteria criteria and treatment requirements are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held 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, April 6, 2005, Vol. 05-4, page 20.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at (208) 373-0119 or dessig@deq.idaho.gov.

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 August 5, 2005.

Dated this 3rd day of June, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pwilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0502

~~000.~~ ~~(RESERVED).~~

~~001~~000. LEGAL AUTHORITY.
Pursuant to Sections 39-105 and 39-3601 et seq., Idaho Code, the Director is directed to formulate and recommend to the Board, such rules and regulations and standards as may be necessary to deal with the problems related to personal health and water pollution. The Director is further charged with the supervision and administration of a system to safeguard the quality of the waters of the state including the enforcement of standards relating to the discharge of effluent into the waters of the state. Authority to adopt rules, regulations and standards as are necessary and feasible to protect the environment and health of the citizens of the state is vested in the Board pursuant to Section 39-107, Idaho Code. (3-20-97)

~~002~~001. TITLE AND SCOPE.

01. Title. These rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (4-5-00)

02. Scope. These rules designate uses which are to be protected in and of the waters of the state and establish standards of water quality protective of those uses. Restrictions are placed on the discharge of wastewaters and on human activities which may adversely affect public health and water quality in the waters of the state. In addition, unique and outstanding waters of the state are recognized. These rules do not provide any legal basis for an additional permit system, nor can they be construed as granting to the Department any authority not identified in the Idaho Code. (4-2-03)

002. WRITTEN INTERPRETATIONS.
As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. (   )

~~996~~003. ADMINISTRATIVE PROVISIONS.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

~~995~~004. INCORPORATION BY REFERENCE.
Codes, standards and regulations may be incorporated by reference in these rules pursuant to Section 67-5229, Idaho Code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in these rules. Copies of the codes, standards or regulations adopted by reference throughout these rules are available in the following locations: (8-24-94)

01. Department. Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-

1255; (4-5-00)

02. Law Library. State Law Library, 451 W. State Street, Boise, Idaho 83720. (7-1-93)

03. Federal Documents. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. http://www.gpoaccess.gov/index.html. ~~(8-24-94)~~( )

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

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ( )

~~997~~006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 9-342A, Idaho Code, and the Rules of the Department of Environmental Quality, IDAPA 58.01.21, "Use and Disclosure of Records in the Possession of the Department of Environmental Quality". (4-5-00)

007. -- 009. (RESERVED).

~~003~~010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," the following definitions apply: (4-5-00)

No changes are being made to Subsections 010.01 through 010.90.

91. Public Swimming Beaches. Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. ( )

9~~1~~2. Public Wastewater System or Wastewater System. For purposes of Sections 403 through 405, a public wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a non profit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, non-mechanical septic tank and subsurface treatment and distribution system, any animal waste system used for agricultural purposes that have been constructed in part or whole by public funds, or industrial wastewater systems under private ownership. (4-6-05)

9~~2~~3. Receiving Waters. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

9~~3~~4. Recharge. The process of adding water to the zone of saturation. (7-1-93)

9~~4~~5. Recharge Water. Water that is specifically utilized for the purpose of adding water to the zone of saturation. (7-1-93)

9~~5~~6. Reference Stream or Condition. A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

9~~6~~7. **Release**. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

9~~7~~8. **Resident Species**. Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

a. Are usually present at the site; (8-24-94)

b. Are present only seasonally due to migration; (8-24-94)

c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)

d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)

e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

9~~8~~9. **Responsible Charge (RC)**. For purposes of Sections 403 through 413, responsible charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and/or on-call direction of employees and assistants. (4-2-03)

~~99~~100. **Responsible Charge Operator**. For purposes of Sections 403 through 405, a responsible charge operator is an operator licensed at a class equal to or greater than the classification of the system and who has been designated by the system owner to have direct supervision of and responsibility for the performance of operations of a specified wastewater treatment system(s) or wastewater collection system(s) and the direction of personnel employed or retained at the same system. The responsible charge operator has an active daily on-site and/or on-call presence at the specified facility. (4-6-05)

10~~0~~1. **Responsible Persons in Charge**. Any person who: (8-24-94)

a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)

b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)

c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

10~~1~~2. **Saturated Zone**. Zone or layer beneath the earth's surface in which all of the pore spaces of rock or soil are filled with water. (7-1-93)

10~~2~~3. **Secondary Treatment**. Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter. (7-1-93)

10~~3~~4. **Seven Day Mean**. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

10~~4~~5. **Sewage**. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

10~~5~~6. **Short-Term or Temporary Activity**. An activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but

are not limited to, those activities described in Subsection 080.02. (3-20-97)

10~~6~~7. Silviculture. Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

10~~7~~8. Sludge. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

10~~8~~9. Special Resource Water. Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)

a. To preserve outstanding or unique characteristics; or (7-1-93)

b. To maintain current beneficial use. (7-1-93)

1~~09~~10. Specialized Best Management Practices. Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

11~~0~~1. State. The state of Idaho. (7-1-93)

11~~1~~2. State Water Quality Management Plan. The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

11~~2~~3. Steady-State Model. A fate and transport model that uses constant values of input variables to predict constant values of receiving water quality concentrations. (8-24-94)

11~~3~~4. Substitute Responsible Charge Operator. A public wastewater operator holding a valid license at a class equal to or greater than the public wastewater 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. (4-6-05)

11~~4~~5. Subsurface Disposal. Disposal of effluent below ground surface, including, but not limited to, drainfields or sewage beds. (7-1-93)

11~~5~~6. Suspended Sediment. Organic and inorganic particulate matter which has been removed from its site of origin and measured while suspended in surface water. (7-1-93)

11~~6~~7. Technology-Based Effluent Limitation. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

11~~7~~8. Total Maximum Daily Load (TMDL). The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

11~~8~~9. Toxicity Test. A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

1~~19~~20. Toxic Substance. Any substance, material or disease-causing agent, or a combination thereof,

which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

12~~0~~1. **Treatment**. A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

12~~1~~2. **Treatment System**. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. This definition does not apply to Sections 403 through 413. (4-2-03)

12~~2~~3. **Trihalomethane (THM)**. THM means one of the family of organic compounds named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in the molecular structure of methane are substituted by one (1) of the chemical elements chlorine, bromine or iodine. (7-1-93)

12~~3~~4. **Twenty-Four Hour Average**. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

12~~4~~5. **Unique Ecological Significance**. The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

12~~5~~6. **User**. Any person served by a public wastewater system. (4-2-03)

12~~6~~7. **Wasteload Allocation (WLA)**. The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

12~~7~~8. **Wastewater**. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

12~~8~~9. **Wastewater Collection System 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 wastewater collection system in order to safeguard the public health and environment. (4-2-03)

1~~29~~30. **Wastewater 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 wastewater treatment system in order to safeguard the public health and environment. (4-2-03)

13~~0~~1. **Water Body Unit**. Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

13~~1~~2. **Water Pollution**. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

13~~2~~3. Water Quality-Based Effluent Limitation. An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

13~~3~~4. Water Quality Limited Water Body. After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

13~~4~~5. Waters And Waters Of The State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

13~~5~~6. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

13~~6~~7. Watershed Advisory Group. An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

13~~7~~8. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

~~004~~011. -- 049. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

080. VIOLATION OF WATER QUALITY STANDARDS.

01. Discharges Which Result in Water Quality Standards Violation. No pollutant shall be discharged from a single source or in combination with pollutants discharged from other sources in concentrations or in a manner that: (7-1-93)

a. Will or can be expected to result in violation of the water quality standards applicable to the receiving water body or downstream waters; or (7-1-93)

b. Will injure designated or existing beneficial uses; or (8-24-94)

c. Is not authorized by the appropriate authorizing agency for those discharges that require authorization. (8-24-94)

02. Short Term Activity Exemption. The Department or the Board can authorize, with whatever conditions deemed necessary, short term activities even though such activities can result in a violation of these rules; (8-24-94)

a. No activity can be authorized by the provisions of Subsection 080.02 unless: (7-1-93)

i. The activity is essential to the protection or promotion of public interest; (7-1-93)

ii. No permanent or long term injury of beneficial uses is likely as a result of the activity. (7-1-93)

b. Activities eligible for authorization by Subsection 080.02 include, but are not limited to: (7-1-93)

i. Wastewater treatment facility maintenance; (7-1-93)

ii. Fish eradication projects; (7-1-93)

iii. Mosquito abatement projects; (7-1-93)

iv. Algae and weed control projects; (7-1-93)

v. Dredge and fill activities; (3-20-97)

vi. Maintenance of existing structures; (3-20-97)

vii. Limited road and trail reconstruction; (3-20-97)

viii. Soil stabilization measures; (3-20-97)

ix. Habitat enhancement structures; and (3-20-97)

x. Activities which result in overall enhancement or maintenance of beneficial uses. (7-1-93)

~~***03.***~~ ~~***E. coli Standard Violation***~~. ~~*A single water sample exceeding an E.coli standard does not in itself constitute a violation of water quality standards, however, additional samples shall be taken for the purpose of comparing the results to the geometric mean criteria in Section 251 as follows:*~~ ~~*(4-5-00)*~~

~~***a.***~~ ~~*Any discharger responsible for providing samples for E.coli shall take five (5) additional samples in accordance with Section 251.*~~ ~~*(4-5-00)*~~

~~***b.***~~ ~~*The Department shall take five (5) additional samples in accordance with Section 251 for ambient E.coli samples unrelated to dischargers' monitoring responsibilities.*~~ ~~*(4-5-00)*~~

0~~*4*~~<u>3</u>. **Temperature Exemption**. Exceeding the temperature criteria in Section 250 will not be considered a water quality standard violation when the air temperature of a given day exceeds the ninetieth percentile of a yearly series of the maximum weekly maximum air temperature (MWMT) calculated over the historic record measured at the nearest weather reporting station. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

01. ~~***Primary Contact Recreation***~~ **<u>E. Coli Bacteria</u>**. Waters designated for ~~*primary contact*~~ recreation are not to contain E.coli bacteria<u>,</u> ~~*significant to the public health*~~ <u>used as indicators of human pathogens,</u> in concentrations exceeding: ~~*(4-5-00)*~~<u>(   )</u>

a. ~~*For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample of two hundred thirty-five (235) E. coli organisms per one hundred (100) ml. For the purpose of this subsection, "specified public swimming beaches" are considered to be indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition.*~~ <u>Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain E. coli bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) E. coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period.</u>

~~*(3-15-02)*~~( )

b. ~~*For all other waters designated for primary contact recreation, a single sample of four hundred six (406) E.coli organisms per one hundred (100) ml; or*~~ Use of Single Sample Values. A water sample exceeding the E. coli single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.: ~~*(3-15-02)*~~( )

i. For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) E. coli organisms per one hundred (100) ml; or ( )

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) E. coli organisms per one hundred (100) ml; or ( )

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) E. coli organisms per one hundred (100) ml. Single sample counts above this value should be used in considering beach closures. ( )

c. ~~*A geometric mean of one hundred twenty-six (126) E.coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty (30) day period.*~~ Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean E. coli criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilites for dischargers. ~~*(4-5-00)*~~( )

~~***02.***~~ ~~***Secondary Contact Recreation***~~. ~~*Waters designated for secondary contact recreation are not to contain E.coli bacteria significant to the public health in concentrations exceeding:*~~ ~~*(4-5-00)*~~

~~***a.***~~ ~~*A single sample of five hundred seventy-six (576) E.coli organisms per one hundred (100) ml; or*~~ ~~*(4-5-00)*~~

~~***b.***~~ ~~*A geometric mean of one hundred twenty-six (126) E.coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty (30) day period.*~~ ~~*(4-5-00)*~~

(BREAK IN CONTINUITY OF SECTIONS)

420. POINT SOURCE SEWAGE WASTEWATER DISCHARGE RESTRICTIONS.

All provisions and requirements of Sections 400, 401, and 402 are applicable to sewage wastewater treatment facilities and their discharges. (8-24-94)

01. **General Treatment Requirements**. Except as provided in Subsections 420.02 and 420.03, sewage wastewater discharges, except those from lagoon or trickling filter facilities, into surface waters of the state must have the following characteristics: (7-1-93)

a. BOD - the equivalent of eighty-five percent (85%) removal of the biochemical oxygen demand, but not more than a thirty (30) day average concentration of thirty (30) mg/l; and (7-1-93)

b. Suspended Solids - the equivalent of eighty-five percent (85%) removal of the suspended solids, but not more than a thirty (30) day average concentration of thirty (30) mg/l. (7-1-93)

02. **Alternative Treatment Requirements**. The following alternative treatment requirements are

established to apply to facilities which provide at least sixty-five percent (65%) BOD removal using a trickling filter or lagoon as the principal treatment process, and which the Department determines cannot consistently achieve requirements of Subsections 420.01.a. and 420.01.b. (7-1-93)

a. Sewage wastewater discharges from facilities using trickling filters as the principal treatment process must have the following characteristics: (7-1-93)

i. BOD - not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and (7-1-93)

ii. Suspended Solids - at least sixty-five percent (65%) removal and not to exceed a thirty (30) day average concentration of forty-five (45) mg/l. (7-1-93)

b. Sewage wastewater discharges from facilities using lagoons as the principal treatment process must have the following characteristics: (7-1-93)

i. BOD - not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and (7-1-93)

ii. Suspended Solids - not to exceed a thirty (30) day average concentration of seventy (70) mg/l. (7-1-93)

03. Adjusted Treatment Requirements for Industrial Loading. The Department may proportionally adjust, on a case-by-case basis, the treatment requirements of Subsection 401.03 or 401.05 where industrial waste loadings contribute greater than ten percent (10%) of the design flow or loading into a publicly owned sewage treatment facility. (7-1-93)

04. Determining the Necessity for Disinfection of Sewage Wastewater Treatment Plant Effluent. (8-24-94)

a. Disinfection of sewage treatment plant effluent shall be required when discharged to a water body under the following conditions: (8-24-94)

i. The water body receiving the effluent flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation. (8-24-94)

ii. The water body receiving the effluent is a direct tributary to a water body that flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation and disinfection is necessary to protect public health. (8-24-94)

iii. Site-specific conditions warrant disinfection for the protection of public health. (8-24-94)

b. The need for disinfection of sewage wastewater treatment plant effluent where treatment consists of lagoons with at least thirty (30) day retention time shall be evaluated on a case-by-case basis. (8-24-94)

05. Disinfection Requirements for Sewage Wastewater Treatment Plant Effluent. When disinfection is determined to be required under Subsection 420.04, sewage wastewater treatment plant effluent must receive adequate disinfection by any disinfection process which satisfies the following applicable criteria, prior to discharge to any receiving water. (8-24-94)

a. E. coli concentrations in secondary treated effluent must not exceed a geometric mean of one hundred and twenty-six (126) colonies per one hundred (100) milliliters based on a minimum of five (5) samples taken every three (3) to ~~*five*~~ seven (~~*5*~~7) days over a thirty-day (30) period. ~~*A single sample must not exceed four hundred and six colonies per one hundred milliliters (406 colonies per 100 ml).*~~ ~~*(3-15-02)*~~(____)

i. The samples must be representative of all samples collected during the month; and (3-15-02)

ii. Geometric mean computations must be calculated and recorded monthly. (3-15-02)

b. On an interim basis, pending the addition of secondary treatment, E. coli concentrations in primary effluent must not exceed a geometric mean of two hundred and fifty-two (252) colonies per one hundred (100) milliliters based on a minimum of five (5) samples taken every three (3) to ~~*five*~~ seven (~~5~~7) days over a thirty-day (30) period. ~~*A single sample must not exceed eight hundred and twelve colonies per one hundred milliliters (812 colonies per 100 ml).*~~ ~~*(3-15-02)*~~(   )

i. The samples must be representative of all samples collected during the month; (3-15-02)

ii. Geometric mean computations must be calculated and recorded monthly; and (3-15-02)

iii. This discharge bacteria level will not be permitted even on an interim basis where the bacteria receiving water quality standard is not being met. (3-15-02)

06. Chlorine Contact Tank Requirements. Chlorine contact tanks providing disinfection must be designed and operated so that: (7-1-93)

a. Short circulating is minimized with thorough mixing of chlorine and waste flow; (7-1-93)

b. Floatable and settleable solids are removed without discharging unchlorinated effluent; and (7-1-93)

c. Unit drains are not discharged into the treated wastewater outfall. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

853. -- ~~*994*~~999. (RESERVED).

~~995.~~ Section 995 has been moved and renumbered to Section 004.

~~996.~~ Section 996 has been moved and renumbered to Section 003.

~~997.~~ Section 997 has been moved and renumbered to Section 006.

~~998. INCLUSIVE GENDER AND NUMBER.~~

~~*For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.*~~ ~~*(7-1-93)*~~

~~999. SEVERABILITY.~~

~~*Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standard and Wastewater Treatment Requirements" are severable. If any rules, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.*~~ ~~*(7-1-93)*~~

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.11 - GROUND WATER QUALITY RULE

DOCKET NO. 58-0111-0501

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 Sections 39-105, 39-107, 39-120 and 39-126, 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 Wednesday, July 20, 2005.

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 Department of Environmental Quality (DEQ) is initiating this rulemaking for the purpose of making the Ground Water Quality Rule consistent with the federal drinking water regulations designed to protect human health. This proposed rule includes the following revisions:

1) Change numerical standard for arsenic from 0.05 mg/l to 0.01 mg/l;
2) Add numerical standard for uranium as 0.03 mg/l, CAS # 7440-61-1; and
3) Add numerical standard for Giardia 1 cyst/10 liters and Cryptosporidium 1 oocyst/10 liters.

In addition, DEQ proposes to remove the reference to Subsection 200.01.c. from Subsection 400.02.a.iii. The reference to Subsection 200.01.c. is no longer correct due to revisions made to Section 200 in 2003.

Domestic well owners and the public at large may be interested in participating in this rulemaking by commenting on the proposed rule. 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 October 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. There is no federal law or regulation that is comparable to the Ground Water Quality Rule. Therefore, the proposed changes to the rule are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which "proposes to regulate an activity not regulated by the federal government". The proposed rule changes a standard in an existing program authorized by the Idaho Legislature. See Sections 39-120 and 39-126, Idaho Code. It does not propose to expand a regulatory program to an area or activity not regulated by the federal government. Therefore, the rule change itself does not appear to be subject to the requirements of Section 39-107D, Idaho Code.

While the proposed rule just changes a standard in an existing program, and does not propose to expand regulation to a new activity, the existing program does establish standards for ground water protection that are used to regulate activities not regulated by the federal government. The Ground Water Quality Rule does not in and of itself create a permit program that regulates activities. The rule, however, does provide minimum requirements for ground water protection to be used in state ground water protection programs, including those programs that require permits. Some of the ground water protection programs regulate activities not regulated by the federal government. The existing Ground Water Quality Rule was first adopted in 1997 and therefore was not subject to the requirements of Section 39-107D, Idaho Code, which was enacted in 2002 and amended in 2003.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: On April 6, 2005 the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 05-4, page 22, and a preliminary draft negotiated rule was made available for public comment. A meeting was held on May 5, 2005. This proposed rule is the same as the April 6, 2005 preliminary draft.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Edward Hagan at (208) 373-0356 or ehagan@deq.idaho.gov.

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 August 3, 2005.

Dated this 3rd day of June, 2005.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pwilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0111-0501

200. GROUND WATER QUALITY STANDARDS.
The following numerical and narrative standards apply to all ground water of the state and shall not be exceeded unless otherwise allowed in this rule. (3-20-97)

01. Numerical Ground Water Quality Standards. (3-20-97)

a. The Primary Constituent Standards are based on protection of human health and are identified in Table II.

Table II - Primary Constituent Standards

Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
7440-36-0	Antimony	0.006
7440-38-2	Arsenic	0.0~~5~~1
1332-21-4	Asbestos	7 million fibers/l longer than 10 um

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	**Constituent**	**Standard (mg/l unless otherwise specified)**
7440-39-3	Barium	2
7440-41-7	Beryllium	0.004
7440-43-9	Cadmium	0.005
7440-47-3	Chromium	0.1
7440-50-8	Copper	1.3
57-12-5	Cyanide	0.2
16984-48-8	Fluoride	4
7439-92-1	Lead	0.015
7439-97-6	Mercury	0.002
*	Nitrate (as N)	10
*	Nitrite (as N)	1
*	Nitrate and Nitrite (both as N)	10
7782-49-2	Selenium	0.05
7440-28-0	Thallium	0.002
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
71-43-2	Benzene	0.005
50-32-8	Benzo(a)pyrene (PAH)	0.0002
75-27-4	Bromodichloromethane (THM)	0.1
75-25-2	Bromoform (THM)	0.1
1563-66-2	Carbofuran	0.04
56-23-5	Carbon Tetrachloride	0.005
57-74-9	Chlordane	0.002
124-48-1	Chlorodibromomethane (THM)	0.1
67-66-3	Chloroform(THM)	0.002
94-75-7	2,4-D	0.07
75-99-0	Dalapon	0.2
103-23-1	Di(2-ethylhexyl) adipate	0.4
96-12-8	Dibromochloropropane	0.0002
541-73-1	Dichlorobenzene m-	0.6
95-50-1	Dichlorobenzene o-	0.6

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	**Constituent**	**Standard (mg/l unless otherwise specified)**
106-46-7	1,4(para)-Dichlorobenzene or Dichlorobenzene p-	0.075
107-06-2	1,2-Dichloroethane	0.005
75-35-4	1,1-Dichloroethylene	0.007
156-59-2	cis-1, 2-Dichloroethylene	0.07
156-60-5	trans-1, 2-Dichloroethylene	0.1
75-09-2	Dichloromethane	0.005
78-87-5	1,2-Dichloropropane	0.005
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007
85-00-7	Diquat	0.02
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002
100-41-4	Ethylbenzene	0.7
106-93-4	Ethylene dibromide	0.00005
1071-83-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane	0.0002
72-43-5	Methoxychlor	0.04
108-90-7	Monochlorobenzene	0.1
23135-22-0	Oxamyl (Vydate)	0.2
87-86-5	Pentachlorophenol	0.001
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
122-34-9	Simazine	0.004
100-42-5	Styrene	0.1
1746-01-6	2,3,7,8-TCDD (Dioxin)	3.0 x 10-8
127-18-4	Tetrachloroethylene	0.005
108-88-3	Toluene	1

Table II - Primary Constituent Standards

Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
*	Total Trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)]	0.1
8001-35-2	Toxaphene	0.003
93-72-1	2,4,5-TP (Silvex)	0.05
120-82-1	1,2,4-Trichlorobenzene	0.07
71-55-6	1,1,1-Trichloroethane	0.2
79-00-5	1,1,2-Trichloroethane	0.005
79-01-6	Trichloroethylene	0.005
75-01-4	Vinyl Chloride	0.002
1330-20-7	Xylenes (total)	10
*	Gross alpha particle activity (including radium -226, but excluding radon and uranium)	15 pCi/l
*	Combined beta/photon emitters	4 millirems/year effective dose equivalent
*	Combined Radium - 226 and radium 228	5 pCi/l
*	Strontium 90	8 pCi/l
*	Tritium	20,000 pCi/l
7440-61-1	Uranium	0.03
*	Total Coliform	1 colony forming unit/100 ml
	Giardia lamblia	1 cyst/10 liters
	Cryptosporidium	1 oocyst/10 liters

* No Chemical Abstract Service Number exists for this constituent. ~~(3-20-97)~~(   )

b. The Secondary Constituent Standards are generally based on aesthetic qualities and are identified in Table III.

Table III - Secondary Constituent Standards

Constituent	Standard (mg/l unless otherwise specified)
Aluminum	0.2
Chloride	250
Color	15 Color Units

Table III - Secondary Constituent Standards	
Constituent	**Standard (mg/l unless otherwise specified)**
Foaming Agents	0.5
Iron	0.3
Manganese	0.05
Odor	3.0 Threshold Odor Number
pH	6.5 to 8.5 (no units apply)
Silver	0.1
Sulfate	250
Total Dissolved Solids	500
Zinc	5

(3-20-97)

c. Sample preservation and analytical procedures to determine compliance with the standards identified in Subsection 200.01 shall be in accordance with the following, except that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by the Department: (5-3-03)

i. Environmental Protection Agency, Code of Federal Regulations, Title 40, Parts 141 and 143, revised as of July 2001; or (5-3-03)

ii. Another method approved by the Department. (3-20-97)

02. Narrative Ground Water Quality Standards. Contaminant concentrations, alone or in combination with other contaminants or properties, shall not cause the ground water to be hazardous, deleterious, carcinogenic, mutagenic, teratogenic, or toxic. Determinations of specific numerical levels when applying this standard shall be based on: (3-20-97)

a. Best scientific information currently available on adverse effects of the contaminant(s); (3-20-97)

b. Protection of a beneficial use; or (3-20-97)

c. Practical quantitation levels for the contaminant(s), if they exceed the levels identified in Subsection 200.02.a. or 200.02.b. (3-20-97)

03. Natural Background Level. If the natural background level of a constituent exceeds the standard in this section, the natural background level shall be used as the standard. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

400. GROUND WATER CONTAMINATION.

01. Releases Degrading Ground Water Quality. No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that:

(3-20-97)

a. Causes a ground water quality standard to be exceeded; (3-20-97)

b. Injures a beneficial use of ground water; or (3-20-97)

c. Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method. (3-20-97)

02. Prevention Measures. (3-20-97)

a. When a numerical standard is not exceeded, but degradation of ground water quality is detected and deemed significant by the Department, the Department shall take one (1) or more of the following actions: (3-20-97)

i. Require a modification of regulated activities to prevent continued degradation; (3-20-97)

ii. Coordinate with the appropriate agencies and responsible persons to develop and implement prevention measures for activities not regulated by the Department; (3-20-97)

iii. Allow limited degradation of ground water quality for the constituents identified in Subsection~~s~~ 200.01.a. ~~*and 200.01.c.,*~~ if it can be demonstrated that: ~~*(3-20-97)*~~(____)

(1) Best management practices, best available methods or best practical methods, as appropriate for the aquifer category, are being applied; and (3-20-97)

(2) The degradation is justifiable based on necessary and widespread social and economic considerations; or (3-20-97)

iv. Allow degradation of ground water quality up to the standards in Subsection 200.01.b., if it can be demonstrated that: (3-20-97)

(1) Best management practices are being applied; and (3-20-97)

(2) The degradation will not adversely impact a beneficial use. (3-20-97)

b. The following criteria shall be considered when determining the significance of degradation: (3-20-97)

i. Site specific hydrogeologic conditions; (3-20-97)

ii. Water quality, including seasonal variations; (3-20-97)

iii. Existing and projected future beneficial uses; (3-20-97)

iv. Related public health issues; and (3-20-97)

v. Whether the degradation involves a primary or secondary constituent in Section 200. (3-20-97)

03. Contamination Exceeding a Ground Water Quality Standard. The discovery of any contamination exceeding a ground water standard that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions, as determined by the Department, to prevent further contamination. These actions may consist of investigation and evaluation, or enforcement actions if necessary to stop further contamination or clean up existing contamination, as required under the Environmental Protection and Health Act, Section 39-108, Idaho Code. (3-20-97)

04. Agricultural Chemicals. Agricultural chemicals found in intermittently saturated soils within the crop root zone will not be considered ground water contaminants as long as the chemicals remain within the crop root

zone, and have been applied in a manner consistent with all appropriate regulatory requirements. (3-20-97)

05. Site-Specific Ground Water Quality Levels. The Department may allow site-specific ground water quality levels, for any aquifer category, that vary from a standard(s) in Section 200 or Section 300, based on consideration of effects to human health and the environment, for: (3-20-97)

a. Remediation conducted under the Department's oversight; (3-20-97)

b. Permits issued by the Department; (3-20-97)

c. Situations where the site background level varies from the ground water quality standard; or (3-20-97)

d. Other situations authorized by the Department in writing. (3-20-97)

06. Mineral Extraction. Naturally occurring constituents found in ground water within a specified area surrounding an active mineral extraction area, as determined by the Department, will not be considered contaminants as long as all applicable best management practices, best available methods or best practical methods, as approved by the Department, are applied. (7-1-98)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT
TO PROPOSE OR PROMULGATE
NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036

16-0305-0501, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled. Allows continued Medicaid coverage to individuals with disabilities who received Medicaid and AABD state cash assistance before they began employment or increased their level of earnings. Comment by: 7/27/05.

16-0309-0502, Rules Governing the Medical Assistance Program. Creates a unique UAI identifier to identify persons living in Certified Family Homes and Assisted Living Facilities with specific diagnosis of mental illness, mental retardation and/or Alzheimer's Disease at a unique level of care that reflects behavioral needs and ties to an established reimbursement rate. Comment by: 7/27/05.

IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043

18-0154-0501, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. Changes conform to the Federal Medicare, Prescription Drug, Improvement, and Modernization Act of 2003 that added prescription drug coverage to Medicare by adding two additional required Medicare supplement insurance plans. Comment by: 7/27/05.

IDAPA 19 - STATE BOARD OF DENTISTRY
708½ W. Franklin Street, Boise, ID 83702

19-0101-0501, Rules of the Idaho State Board of Dentistry. Updates revised ADA documents that are incorporated by reference; clarifies and adds to the permissible duties of a dental hygienist; and authorizes a properly trained dental assistant who holds the appropriate expanded function certification to initiate and regulate nitrous oxide for a patient while working under the direct supervision of a dentist. Comment by: 7/27/05.

IDAPA 20 - DEPARTMENT OF LANDS
PO Box 83720, Boise, ID 83720-0050

20-0308-0501, Easements on State-Owned Lands. Increases application and amendment fees and the minimum compensation fee; establishes and sets a maximum for appraisal fees; increases Director's level of authority for easement approval and the state's rights to, and/or disposal of, any timber within the easement area. Comment by: 7/27/05.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129

39-0311-0501, Rules Governing Overlegal Permittee Responsibility and Travel Restrictions. Restricts over-width permitted vehicles from operating on certain sections of state and interstate highways during the hours of high-commuter traffic. Comment by: 7/27/05.

39-0345-0501, Rules Governing Sale of No Longer Useful or Useable Real Property. Conforms to statutory changes by allowing local government entities to acquire surplus ITD property (for other than transportation purposes, at a negotiated price up to the appraised value and expressly for public purposes) with sales proceeds to the State Highway Account. Comment by: 7/27/05.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255

58-0101-0502, Rules for the Control of Air Pollution in Idaho. Allows DEQ to exempt deferred sources from the requirement to obtain a Tier I operating permit unless EPA decides differently. Comment by: 8/5/05.

58.01.02, Water Quality Standards and Wastewater Treatments Requirements.
58-0102-0501, Removes the “NONE” designation for aquatic life for water body units B-23, B-24, and B-25 (Subsection 160.02), parts of Soda Creek tributary to the Bear River; adds definition for “Zone of Initial Dilution” for use in mixing zone analysis; and revises definitions of “Ephemeral Waters” and “Intermittent Waters” to clarify that natural stream flows are the basis for such classifications. Comment by: 8/5/05.

58-0102-0502, Clarifies and makes consistent language regarding E. coli criteria designed to protect recreational use of Idaho waters; makes it clear that 5 samples of E. coli are needed to judge compliance with the surface water quality standards; allows greater flexibility in obtaining the requisite 5 samples in 30 days; and adds required rule sections and deletes unnecessary sections. Comment by: 8/5/05.

58-0111-0501, Ground Water Quality Rules. Changes numerical standard for arsenic; adds numerical standard for uranium, Giardia, and Cryptosporidium; removes incorrect citations. Comment by: 8/3/05.

A Public Hearing Has Been Scheduled for the Following Rulemaking:

Dept. of Health and Welfare
16-0316-0501, *Access to Health Insurance Program.*

Public Meetings Have Been Scheduled for the Following Negotiated Rulemakings

Board of Registration of Professional Engineers and Land Surveyors
10-0101-0501, *Rules of Procedure.*

Dept. of Health and Welfare
16-0000-0503, *Home Care for Certain Disabled Children (Katie Beckett) Medicaid Program.*
16-0309-0505, *Rules Governing the Medical Assistance Program.*

Please refer to the Idaho Administrative Bulletin, **July 6, 2005, Volume 05-7** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.

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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.

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