

# 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 05-1 refers to the first Bulletin issued in calendar year 2005; Bulletin 06-1 refers to the first Bulletin issued in calendar year 2006. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 05-1 refers to January 2005; Volume No. 05-2 refers to February 2005; and so forth. Example: The Bulletin published in January of 2006 is cited as Volume 06-1. The December 2005 Bulletin is cited as Volume 05-12.*

## **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 Rulemaking Index of Idaho Administrative Rules**, 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.*

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### **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 "-", (38-0501-0501). 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. 38-0501-0501"

"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).

"0501" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2005.

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 2006**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
06-1	January 2006	<b>*November 19, 2005</b>	January 4, 2006	January 25, 2006
06-2	February 2006	January 5, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 3, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 3, 2006	April 5, 2006	April 26, 2006
06-5	May 2006	March 31, 2006	May 3, 2006	May 24, 2006
06-6	June 2006	May 5, 2006	June 7, 2006	June 28, 2006
06-7	July 2006	June 2, 2006	July 5, 2006	July 26, 2006
06-8	August 2006	June 30, 2006	August 2, 2006	August 23, 2006
06-9	September 2006	August 4, 2006	September 6, 2006	September 27, 2006
06-10	October 2006	<b>**August 23, 2006</b>	October 4, 2006	October 25, 2006
06-11	November 2006	October 6, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 3, 2006	December 6, 2006	December 27, 2006

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2007**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
07-1	January 2007	<b>*November 15, 2006</b>	January 3, 2007	January 24, 2007
07-2	February 2007	January 5, 2007	February 7, 2007	February 28, 2007
07-3	March 2007	February 2, 2007	March 7, 2007	March 28, 2007
07-4	April 2007	March 2, 2007	April 4, 2007	April 26, 2007
07-5	May 2007	April 6, 2007	May 2, 2007	May 24, 2007
07-6	June 2007	May 4, 2007	June 6, 2007	June 28, 2007
07-7	July 2007	June 1, 2007	July 4, 2007	July 26, 2007
07-8	August 2007	June 29, 2007	August 1, 2007	August 23, 2007
07-9	September 2007	August 3, 2007	September 5, 2007	September 27, 2007
07-10	October 2007	<b>**August 22, 2007</b>	October 3, 2007	October 25, 2007
07-11	November 2007	October 5, 2007	November 7, 2007	November 22, 2007
07-12	December 2007	November 2, 2007	December 5, 2007	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.***

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBER AND THE CURRENT ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 01</b>	<b>Accountancy, Board of</b>	<b>VOLUME 1</b>
<b>IDAPA 38</b>	<b>Administration, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 44</b>	<b>Administrative Rules Coordinator, Office of the</b>	<b>VOULME 8</b>
<b>IDAPA 02</b>	<b>Agriculture, Idaho Department of</b>	<b>VOLUME 1</b>
<b>IDAPA 40</b>	<b>Arts, Idaho Commission on the</b>	<b>VOLUME 8</b>
<b>IDAPA 03</b>	<b>Athletic Commission</b>	<b>VOLUME 1</b>
<b>IDAPA 04</b>	<b>Attorney General, Office of the</b>	<b>VOLUME 1</b>
<b>IDAPA 53</b>	<b>Barley Commission, Idaho</b>	<b>VOLUME 9</b>
<b>IDAPA 51</b>	<b>Beef Council, Idaho</b>	<b>VOLUME 9</b>
<b>IDAPA 07</b>	<b>Building Safety, Division of</b> Electrical Board Plumbing Board Building Code Advisory Board Public Works Contractors License Board HVAC Board	<b>VOLUME 2</b>
<b>IDAPA 43</b>	<b>Canola and Rapeseed Commission, Idaho</b>	<b>VOLUME 8</b>
<b>IDAPA 09</b>	<b>Commerce and Labor, Idaho Department of</b>	<b>VOLUME 2</b>
<b>IDAPA 06</b>	<b>Correction, Board of</b>	<b>VOLUME 2</b>
<b>IDAPA 19</b>	<b>Dentistry, Board of</b>	<b>VOLUME 6</b>
<b>IDAPA 08</b>	<b>Education, Board of and Department of</b>	<b>VOLUME 2</b>
<b>IDAPA 10</b>	<b>Engineers and Land Surveyors, Board of Professional</b>	<b>VOLUME 2</b>
<b>IDAPA 58</b>	<b>Environmental Quality, Department of</b>	<b>VOLUME 9</b>
<b>IDAPA 12</b>	<b>Finance, Department of</b>	<b>VOLUME 3</b>
<b>IDAPA 13</b>	<b>Fish and Game, Department of</b>	<b>VOLUME 3</b>
<b>IDAPA 14</b>	<b>Geologists, Board of Registration of Professional</b>	<b>VOLUME 3</b>

<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBER AND THE CURRENT ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
<b>IDAPA 15</b>	<b>Governor, Office of the</b> Idaho Commission on Aging Idaho Commission for the Blind and Visually Impaired Idaho Forest Products Commission Division of Human Resources and Personnel Commission Idaho Liquor Dispensary Emergency Response Commission	<b>VOLUME 3</b>
<b>IDAPA 16</b>	<b>Health and Welfare, Department of</b>	<b>VOLUMES 3, 4, &amp; 5</b>
<b>IDAPA 45</b>	<b>Human Rights Commission</b>	<b>VOLUME 8</b>
<b>IDAPA 30</b>	<b>Idaho State Library</b>	<b>VOLUME 7</b>
<b>IDAPA 11</b>	<b>Idaho State Police</b>	<b>VOLUME 2 &amp; 3</b>
<b>IDAPA 39</b>	<b>Idaho Transportation Department</b>	<b>VOLUME 8</b>
<b>IDAPA 17</b>	<b>Industrial Commission</b>	<b>VOLUME 5</b>
<b>IDAPA 18</b>	<b>Insurance, Department of</b>	<b>VOLUME 5 &amp; 6</b>
<b>IDAPA 05</b>	<b>Juvenile Corrections, Department of</b>	<b>VOLUME 1</b>
<b>IDAPA 20</b>	<b>Lands, Department of</b>	<b>VOLUME 6</b>
<b>IDAPA 52</b>	<b>Lottery Commission, Idaho State</b>	<b>VOLUME 9</b>
<b>IDAPA 22</b>	<b>Medicine, Board of</b>	<b>VOLUME 6</b>
<b>IDAPA 23</b>	<b>Nursing, Board of</b>	<b>VOLUME 6</b>
<b>IDAPA 24</b>	<b>Occupational Licenses, Board of</b> Board of Architectural Examiners Board of Barber Examiners Board of Chiropractic Physicians Board of Cosmetology Board of Drinking Water and Wastewater Specialists Board of Environmental Health Specialist Examiners Board of Hearing Aid Dealers and Fitters Board of Landscape Architects Board of Morticians Board of Examiners of Nursing Home Administrators Board of Optometry Board of Podiatry Board of Psychologist Examiners Board of Social Work Examiners Board of Professional Counselors and Marriage and Family Therapists Board of Dentistry Board of Acupuncture Real Estate Appraiser Board Board of Residential Care Facility Administrators	<b>VOLUME 6</b>



<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBER AND THE CURRENT ADMINISTRATIVE CODE VOLUME NUMBERS</b>		
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<b>IDAPA 50</b>	<b>Pardons and Parole, Commission for</b>	<b>VOLUME 9</b>
<b>IDAPA 26</b>	<b>Parks and Recreation, Department of</b>	<b>VOLUME 6 &amp; 7</b>
<b>IDAPA 27</b>	<b>Pharmacy, Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 29</b>	<b>Potato Commission, Idaho</b>	<b>VOLUME 7</b>
<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho - PERSI</b>	<b>VOLUME 9</b>
<b>IDAPA 41</b>	<b>Public Health Districts</b>	<b>VOLUME 8</b>
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<b>IDAPA 56</b>	<b>Rangeland Resources Commission, Idaho</b>	<b>VOLUME 9</b>
<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>	<b>VOLUME 7</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>	<b>VOLUME 7</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters, Board of Certified</b>	<b>VOLUME 8</b>
<b>IDAPA 36</b>	<b>Tax Appeals, Board of</b>	<b>VOLUME 7</b>
<b>IDAPA 35</b>	<b>Tax Commission, State</b>	<b>VOLUME 7</b>
<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>	<b>VOLUME 8</b>
<b>IDAPA 21</b>	<b>Veterans Services, Division of</b>	<b>VOLUME 6</b>
<b>IDAPA 46</b>	<b>Veterinary Medical Examiners, Board of</b>	<b>VOLUME 8</b>
<b>IDAPA 55</b>	<b>Vocational and Technical Education, Division of</b>	<b>VOLUME 9</b>
<b>IDAPA 47</b>	<b>Vocational Rehabilitation, Division of</b>	<b>VOLUME 8</b>
<b>IDAPA 37</b>	<b>Water Resources, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 42</b>	<b>Wheat Commission</b>	<b>VOLUME 8</b>

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-0501

#### NOTICE OF RULEMAKING - ADOPTION OF 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 22-3421, 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 pesticide Container Recycling Program is a voluntary program that involves the collection of empty pesticide containers throughout the state for recycling. The number of pesticide containers collected in this program continues to increase every year and is currently near maximum capacity. This fee increase will allow ISDA to meet the increasing demand for this program. In addition, the USEPA is currently considering a rule revision to make recycling pesticide containers mandatory. This rule change will increase the amount of the annual fee for an annual pesticide registration from \$145 to \$160 per product per calendar year and will allow the Container Recycling Program to continue to collect empty pesticide containers without a major disruption in service to the industry. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 33 and 34.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-3421, Idaho Code. The annual fee for the registration of pesticides in Idaho will be increased from \$145 to \$160 per product per year. Approximately 0.1% of pesticide registrants are located in Idaho (19 of 1,237).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact George Robinson, Bureau Chief (208) 332-8593.

DATED this 14th day of November, 2005.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, ID 83712  
Phone (208) 332-8500; Fax: (208) 334-2170

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#### DOCKET NO. 02-0303-0501 - PENDING FEE RULE

**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 05-10, October 5, 2005, pages 33 and 34.**

**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 02 - DEPARTMENT OF AGRICULTURE**

**02.04.20 - RULES GOVERNING BRUCELLOSIS**

**DOCKET NO. 02-0420-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-207, and 25-601, 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. This rule updates the documents incorporated by reference to reflect the most current editions, clarifies the language describing calfhood vaccination, and updates the protocol for the adult vaccination of imported cattle to better allow for disease prevention.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 35 through 38.

**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 with the adoption of this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact John Chatburn, Deputy Administrator (208) 332-8540.

DATED this 14th day of November, 2005.

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

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**DOCKET NO. 02-0420-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 35 through 38.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-0501**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-207, 25-305, and 25-601, 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. This rule updates the documents incorporated by reference to reflect the most current editions, clarifies the importation requirements for cattle that are not vaccinated for brucellosis, and adds additional testing requirements for dairy cattle entering Idaho.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 39 through 42.

**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 with the adoption of this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact John Chatburn, Deputy Administrator (208) 332-8540.

DATED this 14th day of November, 2005.

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

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**DOCKET NO. 02-0421-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 39 through 42.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE**

### **02.04.24 - RULES GOVERNING TUBERCULOSIS**

**DOCKET NO. 02-0424-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-207, and 25-305, 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. This rule updates the documents incorporated by reference to reflect the most current editions, clarifies the identification requirements for tuberculosis reactors.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 43 and 44.

**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 with the adoption of this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact John Chatburn, Deputy Administrator (208) 332-8540.

DATED this 14th day of November, 2005.

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

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#### **DOCKET NO. 02-0424-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 43 and 44.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS**  
**DOCKET NO. 02-0427-0501**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-3903, 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. In order to better regulate the deleterious exotic animals in Idaho, the department has proposed this rule which defines hybrids of deleterious exotic animals as deleterious exotic animals, adds provisions for permit revocation, record keeping, annual inventories, reporting, and adds additional species to the list of deleterious exotic animals.

The Department held a public hearing and received no public comments, therefore the pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 45 through 51.

**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 with the adoption of this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, John Chatburn, Deputy Administrator (208) 332-8540.

DATED this 14th day of November, 2005.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
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**DOCKET NO. 02-0427-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 45 through 51.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.01 - RULES GOVERNING THE PURE SEED LAW**

#### **DOCKET NO. 02-0601-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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 Sections 22-418(4) and 22-418(11), 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. In order to eliminate debt and secure a solid financial footing for the Idaho State Seed Lab, additional service fee revenues in the amount of approximately \$100,000 will be required. The proposed rule will increase the fees for germination, purity, and tetrazolium testing for basic classes of seed, increase the hourly fee, and increase the fee for the Out-of-State Seed Dealer's License. Without an increase in revenues, the Department may be forced to close or curtail the services of the Idaho State Seed Lab. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 21 through 30.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-418(4), Idaho Code. Germination fees will increase by an average of \$3.85, purity fees by an average of \$5.05, and tetrazolium fees by an average of \$16.45. The rush fee will increase from \$20 to \$25. The hourly fee will increase from \$38.50 to \$40. The Out-of State Seed Dealer's License will increase from \$250 to \$350.

**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 will be no fiscal impact on the state general fund, but rather an anticipated positive impact to the Agriculture Department Inspection Account of approximately \$100,000 per year.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Thomas Dayley, Administrator, Plant Industries Division, or Nancy Stouffer, Bureau Chief at (208) 332-8620.

DATED this 10th day of November, 2005.

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

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#### **DOCKET NO. 02-0601-0501 - PENDING FEE RULE**

**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 05-8, August 3, 2005, pages 21 through 30.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE

### 02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

#### DOCKET NO. 02-0602-0502

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-2724, 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. This change will update the incorporation by reference section to reflect the 2006 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO), usually published in January or February each year. This is a standard reference manual for feed control officials for the registration of animal feeds.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 24 and 25.

**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 with the adoption of this rule change. This is a dedicated fund program.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief or Ann Brueck, Program Specialist at (208) 332-8620.

DATED this 10th day of November, 2005.

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

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#### DOCKET NO. 02-0601-0501 - PENDING RULE

**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 05-9, September 7, 2005, pages 24 and 25.**

**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 02 - DEPARTMENT OF AGRICULTURE

### 02.06.12 - RULES PERTAINING TO THE IDAHO COMMERCIAL FERTILIZER LAW

DOCKET NO. 02-0612-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-604, 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. This change will update the incorporation by reference section to reflect the 2006 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO), usually published in January or February each year. This is a standard reference manual for fertilizer control officials for the registration of fertilizers.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 26 and 27.

**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 with the adoption of this rule change. This is a dedicated fund program.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief or Ann Brueck, Program Specialist at (208) 332-8620.

DATED this 10th day of November, 2005.

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

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#### DOCKET NO. 02-0612-0501 - PENDING RULE

**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 05-9, September 7, 2005, pages 26 and 27.**

**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 02 - DEPARTMENT OF AGRICULTURE

### 02.06.17 - RULES GOVERNING THE DISPOSAL OF CULL ONIONS AND POTATOES

DOCKET NO. 02-0617-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-103(22) and 22-2006, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The current rules have requirements that must be completed by March 15 of each year. The proposed amendment will improve the uniformity of the language in the rule relative to cull disposal methods, clarify the intent of the rule and the responsibilities of parties involved in the disposal of cull onions and potatoes in order to ensure better control of the onion maggot and potato pests in the onion and potato growing areas of Idaho.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 57 through 59.

**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 with the adoption of this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief or Eoin Davis, Program Manager at (208) 332-8620.

DATED this 10th day of November, 2005.

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

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#### DOCKET NO. 02-0617-0501 - PENDING RULE

**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 05-10, October 5, 2005, pages 57 through 59.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE

### 02.06.26 - RULES GOVERNING SEED POTATO CROP MANAGEMENT AREAS

DOCKET NO. 02-0626-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2017, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The proposed amendment will define the geographical boundaries for a new Seed Potato Crop Management Area in Fremont County, specifically designated as the Hog Hollow Seed Potato Crop Management Area. This Seed Potato Crop Management Area will help ensure disease-free seed and help control Idaho's potato pest problems.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 60 through 64.

**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 with the adoption of this rule change.

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

DATED this 10th day of November, 2005.

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

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#### DOCKET NO. 02-0626-0501 - PENDING RULE

**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 05-10, October 5, 2005, pages 60 through 64.](#)**

**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 02 - DEPARTMENT OF AGRICULTURE

### 02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2204, 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. This change will update the incorporation by reference section to reflect the 2006 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO), usually published in January or February each year. This is a standard reference manual for fertilizer control officials for the registration of fertilizers.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 28 and 29.

**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 with the adoption of this rule change. This is a dedicated fund program.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief or Ann Brueck, Program Specialist at (208) 332-8620.

DATED this 10th day of November, 2005.

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

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#### DOCKET NO. 02-0641-0501 - PENDING RULE

**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 05-9, September 7, 2005, pages 28 and 29.**

**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 07 - DIVISION OF BUILDING SAFETY**  
**07.01.01 - RULES GOVERNING ELECTRICAL INSPECTION TAGS**  
**DOCKET NO. 07-0101-0501**  
**NOTICE OF VACATION OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the proposed rulemaking previously initiated under this docket. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

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

The agency has vacated this rulemaking in order to better address concerns that have been raised by various interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this vacation of rulemaking, contact Stephen Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen Keys, Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, Idaho 83642  
Phone: (208) 332-7147  
Fax: (208) 855-2164

## **IDAPA 07 - DIVISION OF BUILDING SAFETY**

### **07.01.02 - RULES GOVERNING FEES FOR ELECTRICAL INSPECTIONS**

**DOCKET NO. 07-0102-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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 54-1006(5), 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 67 through 70.

**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 54-1006(5), Idaho Code. This rule change establishes a ten dollar (\$10) "small work" permit and inspection fee to address those particular installations that do not exceed two hundred dollars (\$200) and do not involve a change in service connection. 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.

**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 proposed rule will have no fiscal impact on the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephen L. Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen L. Keys, Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986 / Fax: (208) 855-2164

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#### **DOCKET NO. 07-0102-0501 - PENDING FEE RULE**

**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 05-10, October 5, 2005, pages 67 through 70.](#)**

**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 07 - DIVISION OF BUILDING SAFETY**

**07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL**

**DOCKET NO. 07-0103-0403**

**NOTICE OF VACATION OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

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

The agency has vacated this rulemaking in order to better address concerns that have been raised by various interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this vacation of rulemaking, contact Stephen Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen Keys, Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, Idaho 83642  
Phone: (208) 332-7147  
Fax: (208) 855-2164

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING**  
**DOCKET NO. 07-0104-0501**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1006(5), 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 74 through 76.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephen L. Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen L. Keys  
Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**DOCKET NO. 07-0104-0501 - PENDING RULE**

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 05-10, October 5, 2005, pages 74 through 76.](#)

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 07 - DIVISION OF BUILDING SAFETY**  
**07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING**  
**DOCKET NO. 07-0104-0502**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1006(5), 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 77 through 79.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephen L. Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen L. Keys  
Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**DOCKET NO. 07-0104-0501 - PENDING RULE**

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 05-10, October 5, 2005, pages 77 through 79.](#)

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 07 - DIVISION OF BUILDING SAFETY**  
**07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING**  
**DOCKET NO. 07-0104-0503**  
**NOTICE OF VACATION OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

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

The agency has vacated this rulemaking in order to better address concerns that have been raised by various interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this vacation of rulemaking, contact Stephen Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen Keys, Bureau Chief  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, Idaho 83642  
Phone: (208) 332-7147  
Fax: (208) 855-2164

## **IDAPA 08 - STATE BOARD OF EDUCATION**

### **08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-1701(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The State Board of Education adopted rules in 2004 that were submitted to the Legislature for review in 2005. The rules incorporated a document by reference. That document was effective November 12, 2004. The legislature rejected parts of the incorporated document. In order to be in compliance with the legislatures directive, a new manual has been adopted. The new manual removes the sections that the legislature rejected. 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. 05-05, pages 57 and 58.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Karen Echeverria at (208) 332-1567.

DATED this 16th day of November, 2005.

Karen L. Echeverria  
Policy and Governmental Affairs Officer  
State Board of Education  
650 West State Street, 3<sup>rd</sup> Floor  
PO Box 83720, Boise, ID 83720-0037  
(208) 332-1567 phone  
(208) 334-2632 fax

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#### **DOCKET NO. 08-0202-0501 - PENDING RULE**

**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 57 and 58.**

**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 08 - STATE BOARD OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0501**

**NOTICE OF RULEMAKING**

**VACATION OF PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

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

Because the State Board of Education is conducting a complete rewrite of the Idaho Achievement Standards, the Board felt it was best to not go forward with this rulemaking at this time. The Board will present this proposal through another rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this vacation of rulemaking, contact Karen Echeverria at (208) 332-1567.

DATED this 22nd day of November, 2005.

Karen L. Echeverria  
Policy and Governmental Affairs Officer  
State Board of Education  
650 West State Street, Room 301  
PO Box 83720  
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(208) 332-1567, fax (208) 334-2632

**IDAPA 08 - STATE BOARD OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0502**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-105, Idaho Code and Public Law 107-110 ("No Child Left Behind") Section 1111.b.3.C.ix.III.

**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 year determination for Limited English Proficient (LEP) students set forth in Title I of No Child Left Behind is for LEP students to take an alternate Standard Achievement Test. This alternate assessment would be a native language version of the ISAT, which Idaho has decided to not implement. Federal regulations allow an LEP student to take the ISAT with accommodations and adaptations until they test proficient on a language proficiency test and exit the program. In addition, the Office of Civil Rights (OCR) and the Idaho Consent decree state that an LEP student may be in a program until they are proficient in English. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 86 through 90.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Karen Echeverria at (208) 332-1567.

DATED this 17th day of October, 2005.

Karen L. Echeverria  
Policy and Governmental Affairs Officer  
State Board of Education  
650 West State Street, Room 301  
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**DOCKET NO. 08-0203-0502 - PENDING RULE**

**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 05-8, August 3, 2005, pages 86 through 90.](#)**

**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 08 - STATE BOARD OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0503

### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-105, Idaho Code and Public Law 107-110 ("No Child Left Behind") Section 1111.b.3.C.ix.III.

**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 National Assessment Governing Board (NAGB) currently administers a national 12<sup>th</sup> grade National Assessment of Educational Progress (NAEP) test in a variety of subjects (reading, writing, math, social studies, arts, etc.). Schools around the country are randomly selected to participate and provide information for the national report. The 12<sup>th</sup> grade NAEP at the state level could be introduced by 2007 in reading, math, and science. Idaho's districts currently volunteer to participate in NAEP at the 12<sup>th</sup> grade level. The State of Idaho realizes the importance of participating in the NAEP and the data it provides and believes it is important to require participation by any student selected. Idaho currently requires students in grades 4 and 8 to participate in the NAEP assessments and sees the equal importance of requiring 12<sup>th</sup> grade students to participate, if selected. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 91 through 95.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Karen Echeverria at (208) 332-1567.

DATED this 17th day of October, 2005.

Karen L. Echeverria  
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#### DOCKET NO. 08-0203-0503 - PENDING RULE

**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 05-8, August 3, 2005, pages 91 through 95.**

**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 08 - STATE BOARD OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0506

### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 33-105, 33-616, 33-618, 33-1612, 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.

Currently 42 credits are required for graduation. That is significantly fewer than most other states. Idaho's math and science requirements have been minimal and as a result, Idaho is one of the lowest ranking states in postsecondary enrollment. The new graduation requirements are aligned with research on the best practices in high school reform. They are also aligned with Idaho's postsecondary admission requirements. Increasing the graduation requirement will better prepare Idaho's high school students for postsecondary education and entrance into the workforce.

The new high school graduation requirements will include 46 credits (rather than 42) for high school graduation and will increase the requirements from 4 credits of math and 4 of science to 6 credits of math and 6 credits of science for those students who enter the 9th grade in 2008, and 8 credits for math and 6 credits of science for those students who enter the 9th grade in 2009. The new rules will also require the parent approved learning plan be completed at the end of 8th grade, will require all students to take a college entrance examination; and finally, will require all students to complete a senior project.

The State Board of Education held numerous hearings, meetings, and a summit to gather input and comments to these rules. All of those comments were carefully considered and the Board made amendments to the rules based on those comments.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 107 through 118.

**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:

Cost estimates include money for teacher training, increased capacity for the Idaho Digital Learning Academy, money for college entrance exams and senior projects, while hiring additional math and science teachers before the requirements are fully implemented. The preliminary cost estimates for these rules include a gradual increase in funding: \$1.4 million for FY 2007, \$1 million for FY 2008, \$3.9 million for FY 2009, \$6.8 million for FY 2010, \$11.5 million for FY 2011, \$14.8 million for FY 2012, and \$17.1 million for 2013. The increase from FY08 to FY09 is due to hiring of additional math and science teachers. These increases will continue on a graduated basis through FY13 when full implementation for both math and science is achieved.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Marilyn Davis at (208) 332-1563 or Christine Ivie at (208) 332-1577.

DATED this 16th day of November, 2005.

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DOCKET NO. 08-0203-0506 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-10, October 5, 2005, pages 107 through 118.](#)

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.

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 08-0203-0506.

THE DOCKET IS BEING REPRINTED IN ITS ENTIRETY.

007. DEFINITIONS A - G.

01. *Advanced Opportunities.* Are defined as Advanced Placement courses, Dual Credit courses, Tech Prep, or International Baccalaureate programs. ( )

02. *Advanced Placement® (AP)* - <http://www.collegeboard.com>. The Advanced Placement Program is administered by the College Board. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula. While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. ( )

03. *All Students.* All students means all public school students, grades K-12, ~~not just non-college bound.~~ (3-15-02)( )

04. *Alternative Assessment (Other Ways of Testing).* Any type of assessment in which students create a response to a question rather than choose a response from a given list, as with multiple-choice or true/false. Alternative assessments can include short-answer questions, essays, oral presentations, exhibitions, and portfolios. (4-5-00)

05. *Assessment.* The process of quantifying, describing, or gathering information about skills, knowledge or performance. (4-5-00)



- 046. Assessment Standards.** (4-5-00)
- a.** Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing”; (4-5-00)
- b.** Measures of student performance. (4-5-00)
- 057. Authentic.** Something that is meaningful because it reflects or engages the real world. An “authentic task” asks students to do something they might really have to do in the course of their lives, or to apply certain knowledge or skills to situations they might really encounter. (4-5-00)
- 068. Basic Educational Skills Training.** Instruction in basic skills toward the completion/attainment of a certificate of mastery, high school diploma, or GED. (4-5-00)
- 079. Classic Texts.** Literary or other works (e.g., films, speeches) that have been canonized, either continuously or intermittently, over a period of time beyond that of their initial publication and reception. (4-5-00)
- 0810. Context (Of a Performance Assessment).** The surrounding circumstances within which the performance is embedded. For example, problem solving can be assessed in the context of a specific subject (such as mathematics) or in the context of a real-life laboratory problem requiring the use of mathematics, scientific, and communication skills. (4-5-00)
- 0911. Cooperative Work Experience.** Classroom learning is integrated with a productive, structured work experience directly related to the goals and objectives of the educational program. Schools and participating businesses cooperatively develop training and evaluation plans to guide and measure the progress of the student. School credit is earned for successful completion, and the work may be paid or unpaid. Cooperative work experiences are also known as co-operative education or co-op. (4-5-00)
- 102. Criteria.** Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (4-5-00)
- 113. Cues.** Various sources of information used by readers to construct meaning. The language cueing systems include the graphophonic (also referred to as graphophonemic) system, which is the relationship between oral and written language (phonics); the syntactic system, which is the relationship among linguistic units such as prefixes, suffixes, words, phrases, and clauses (grammar); and semantic system, which is the study of meaning in language. Reading strategies and language cueing systems are also influenced by pragmatics-the knowledge readers have about the ways in which language is understood by others in their culture. (4-5-00)
- 14. “C” Average.** A combined average of courses taken on a four (4) point scale with “C” equal to two (2) points. ( )
- 125. Decode.** (4-5-00)
- a.** To analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning. (4-5-00)
- b.** To change communication signals into messages, as to decode body language. (4-5-00)
- 16. Dual Credit.** Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student’s permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus. ( )
- 137. Emergent Literacy.** Development of the association of print with meaning that begins early in a child’s life and continues until the child reaches the stage of conventional reading and writing. (4-5-00)

~~148.~~ **Employability Skills.** Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

~~159.~~ **Entry-Level Skills.** The minimum education and skill qualifications necessary for obtaining and keeping a specific job; the starting point in a particular occupation or with a certain employer. (4-5-00)

~~1620.~~ **Evaluation (Student).** Judgment regarding the quality, value, or worth of a response, product, or performance based on established criteria, derived from multiple sources of information. Student evaluation and student assessment are often used interchangeably. (4-5-00)

~~1721.~~ **Experiential Education (Application).** Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

~~1822.~~ **Exploratory Experience (Similar to a Job Shadow).** An opportunity for a student to observe and participate in a variety of worksite activities to assist in defining career goals. An in-school exploratory experience is a school-based activity that simulates the workplace. (4-5-00)

~~1923.~~ **Fluency.** The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

~~204.~~ **Genre (Types of Literature).** A category used to classify literary and other works, usually by form, technique, or content. Categories of fiction such as mystery, science fiction, romance, or adventure are considered genres. (4-5-00)

~~245.~~ **Graphophonic/Graphophonemic.** One (1) of three (3) cueing systems readers use to construct texts; the relationships between oral and written language (phonics). (4-5-00)

**008. DEFINITIONS H - S.**

**01. Interdisciplinary or Integrated Assessment.** Assessment based on tasks that measures a student's ability to apply concepts, principles, and processes from two (2) or more subject disciplines to a project, issue, or problem. (4-5-00)

**02. International Baccalaureate (IB)** - <http://www.ibo.org/ibo/index.cfm>. Administered by the International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of high school. IB students take end-of-course exams that may qualify for college credit. Successful completion of the full course of study leads to an IB diploma. ( )

**03. Laboratory.** *A laboratory science course is defined as one in which at least one (1) class period each week is devoted to providing students with the opportunity to manipulate equipment, materials, specimens or develop skills in observation and analysis and discover, demonstrate, illustrate or test scientific principles or concepts.* ( )

**04. Learning Plan.** *The plan that outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional-technical education (PTE), or humanities aligned with the student's post graduation goals.* ( )

~~025.~~ **Narrative.** Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

~~036.~~ **Norm-Referenced Assessment.** Comparing a student's performance or test result to performance of other similar groups of students; (e.g., he typed better than eighty percent (80%) of his classmates.) (4-5-00)

~~047.~~ **On-Demand Assessment.** Assessment that takes place at a predetermined time and place. Quizzes, state tests, SATs, and most final exams are examples of on-demand assessment. (4-5-00)

~~058.~~ **Performance Assessment.** Direct observation of student performance or student work and

professional judgment of the quality of that performance. Good quality performance assessment has pre-established performance criteria. (4-5-00)

**069. Performance-Based Assessment.** The measurement of educational achievement by tasks that are similar or identical to those that are required in the instructional environment, as in performance assessment tasks, exhibitions, or projects, or in work that is assembled over time into portfolio collections. (4-5-00)

**0710. Performance Criteria.** A description of the characteristics that will be judged for a task. Performance criteria may be holistic, analytic trait, general or specific. Performance criteria are expressed as a rubric or scoring guide. Anchor points or benchmark performances may be used to identify each level of competency in the rubric or scoring guide. (4-5-00)

**0811. Phonics.** Generally used to refer to the system of sound-letter relationships used in reading and writing. Phonics begins with the understanding that each letter (or grapheme) of the English alphabet stands for one (1) or more sounds (or phonemes). (4-5-00)

**0912. Portfolio.** A collection of materials that documents and demonstrates a student's academic and work-based learning. Although there is no standard format for a portfolio, it typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (4-5-00)

**103. Print Awareness.** In emergent literacy, a learner's growing awareness of print as a system of meaning, distinct from speech and visual modes of representation. (4-5-00)

**14. Professional-Technical Education.** Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the *baccalaureate* level. ( )

**145. Proficiency.** Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

**126. School-to-Work Transition.** A restructuring effort that provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests. (4-5-00)

**137. Service Learning.** Combining service with learning activities to allow students to participate in experiences in the community that meet actual human needs. Service learning activities are integrated into the academic curriculum and provide structured time for a student to think, talk, or write about what was done or seen during the actual service activity. Service learning provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their communities, and helps foster the development of a sense of caring for others. (4-5-00)

**148. Skill Certificate.** Portable, industry-recognized credential that certifies the holder has demonstrated competency on a core set of performance standards related to an occupational cluster area. Serving as a signal of skill mastery at benchmark levels, skill certificates may assist students in finding work within their community, state, or elsewhere. A National Skills Standards Board is presently charged with issuing skill voluntary standards in selected occupations based on the result of research and development work completed by twenty-two (2) contractors. (4-5-00)

**159. Standards.** Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and performance standards. (4-5-00)

**1620. Standardization.** A set of consistent procedures for constructing, administering and scoring an assessment. The goal of standardization is to ensure that all students are assessed under uniform conditions so the interpretation of performance is comparable and not influenced by differing conditions. Standardization is an important consideration if comparisons are to be made between scores of different individuals or groups. (4-5-00)

~~1721.~~ **Standards-Based Education.** Schooling based on defined knowledge and skills that students must attain in different subjects, coupled with an assessment system that measures their progress. (4-5-00)

~~1822.~~ **Structured Work Experience.** A competency-based educational experience that occurs at the worksite but is tied to the classroom by curriculum through the integration of school-based instruction with worksite experiences. Structured work experience involves written training agreements between school and the worksite, and individual learning plans that link the student's worksite learning with classroom course work. Student progress is supervised and evaluated collaboratively by school and worksite personnel. Structured work experience may be paid or unpaid; may occur in a public, private, or non-profit organization; and may or may not result in academic credit and/or outcome verification. It involves no obligation on the part of the worksite employer to offer regular employment to the student subsequent to the experience. (4-5-00)

~~1923.~~ **Student Learning Goals (Outcomes).** Statements describing the general areas in which students will learn and achieve. Student learning goals typically reflect what students are expected to know by the time they leave high school, such as to read and communicate effectively; think critically and solve problems; develop positive self-concept, respect for others and healthy patterns of behavior; work effectively in groups as well as individually; show appreciation for the arts and creativity; demonstrate civic, global and environmental responsibility; recognize and celebrate multicultural diversity; exhibit technological literacy; have a well developed knowledge base which enhances understanding and decision making, and demonstrate positive problem solving and thinking skills. (4-5-00)

#### 009. DEFINITIONS T - Z.

~~01. Tech Prep/Associate Degree (TPAD) Program. A program with a planned sequence of competency-based studies articulated between secondary and post-secondary institutions, leading to an apprenticeship, certificate, associate degree, or four-year college degree. It provides technical preparation in at least one (1) field and builds student competence in the application of mathematics, science, communications, and workplace skills. Tech Prep is a sequenced program of study that combines at least two (2) years of secondary and two (2) years of postsecondary education. It is designed to help students gain academic knowledge and technical skills, and often earn college credit for their secondary coursework. Programs are intended to lead to an associate's degree or a certificate in a specific career field, and ultimately, to high wage, high skill employment or advanced postsecondary training.~~ (4-5-00)(\_\_\_\_)

**02. Technology Education.** A curriculum for elementary, middle, and senior high schools that integrates learning about technology (e.g., transportation, materials, communication, manufacturing, power and energy, and biotechnology) with problem-solving projects that require students to work in teams. Many technology education classrooms and laboratories are well equipped with computers, basic hand tools, simple robots, electronic devices, and other resources found in most communities today. (4-5-00)

**03. Total Quality Management.** A systematic approach to standardizing and increasing the efficiency of internal systems and processes, whether in a business or a school, using statistical and management tools for continuous improvement. Emphasis is on documenting effective processes, committing to meet customers' needs and sharing decision making. (3-15-02)

**04. Transferable Skills.** Skills that are inter-changeable among different jobs and workplaces. For example, the ability to handle cash is a skill one could use as both a restaurant cashier and a bank teller. ~~The ability to problem solve or work as a team member is transferable among most jobs and workplaces.~~ (4-5-00)(\_\_\_\_)

**05. 2+2 or 4+2.** A planned, streamlined sequence of academic and ~~vocational~~ *professional-technical* courses which eliminates redundancies between high school and community college curricula; 2+2 is high school years eleven (11) and twelve (12) and community college years thirteen (13) and fourteen (14); 4+2 is high school years nine (9), ten (10), eleven (11), and twelve (12) and community college years thirteen (13) and fourteen (14). (4-5-00)(\_\_\_\_)

~~06. Professional Technical Education. "Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the BA level." (Thesaurus of ERIC Descriptors). There are several variations on this term. Idaho uses "professional technical education," Oregon "professional technical education,"~~

and Washington “vocational-technical.” (3-15-02)

**076. Writing Process.** The many aspects of the complex act of producing written communication; specifically, planning, drafting, revising, editing, and publishing. (4-5-00)

**087. Word Recognition.** (4-5-00)

**a.** The quick and easy identification of the form, pronunciation, and appropriate meaning of a work previously met in print or writing; (4-5-00)

**b.** The process of determining the pronunciation and some degree of meaning of a word in written or printed form. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. ~~CORE OF~~ INSTRUCTION GRADES 1-12.**

**01. Instruction.** Instruction is inclusive of subject matter, content and course offerings. Patterns of instructional organization are a local school district option. Schools will assure students meet locally developed standards with the state standards as a minimum.\* (\*This includes special instruction that allows limited English proficient students to participate successfully in all aspects of the school’s curriculum and keep up with other students in the regular education program. It also includes special learning opportunities for accelerated, learning disabled students and students with other disabilities.) (4-5-00)

**02. Instructional Courses.** At appropriate grade levels, instruction will include but not be limited to the following: (4-5-00)(\_\_\_\_)

**a.** Language Arts and Communication will include instruction in reading, writing, English, literature, technological applications, spelling, speech and listening. (4-1-97)

**b.** Mathematics will include instruction in addition, subtraction, multiplication, division, percentages, mathematical reasoning and probability. (4-1-97)

**c.** Science will include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (4-1-97)

**d.** Social Studies will include instruction in history, government, geography, economics, current world affairs, citizenship, and sociology. (4-1-97)

**104. OTHER REQUIRED INSTRUCTION.** Other required instruction for all students and other required offerings of the school are: (4-1-97)

**01. Elementary Schools (~~Grades 1-6~~).** (4-1-97)(\_\_\_\_)

**a.** The following section outlines other information required for all elementary students, as well as other required offerings of the school:

Fine Arts (art and music)  
Health (wellness)  
Physical Education (fitness) (4-1-97)(\_\_\_\_)

**b.** Additional instructional options as determined by the local school district. For example:  
Languages other than English  
Career Awareness (4-1-97)

02. Middle Schools/Junior High Schools. ( )

**a.** No later than the end of Grade eight (8) ~~all~~ *each* students ~~will~~ *shall* develop parent-approved student learning plans for their high school and post-high school options. The learning plan ~~will~~ *shall* be developed by students ~~and~~ *with the assistance of* parents or guardians, *and* with advice and recommendation from school personnel. It ~~will~~ *shall* be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the *school* district's *or LEA's* graduation standards. The school district *or LEA* will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-1-97)( )

**b.** (Effective for all students that enter the sixth grade in the fall of 2006 or later.) A student *must have taken pre-algebra before the student will be permitted to enter grade nine (9).* ( )

**ac.** Other required instruction for all middle school students:  
Health (wellness)  
Physical Education (fitness) (4-1-97)( )

**bd.** Other required offerings of the school:  
Family and Consumer Science  
Fine & Performing Arts  
~~Vocational- Professional~~ Technical Education  
Advisory Period (middle school only, encouraged in junior high school)  
~~Exploratory (middle school only)~~ (4-1-97)( )

**e.** *Additional instructional options as determined by the local school district. For example:  
Languages other than English* (4-1-97)

**03. High Schools (Grades 9-12) (Effective for all students that graduate prior to January 1, 2012).**  
Students will maintain a parent-approved student learning plan for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. *A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the district's graduation standards. The learning plan outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional-technical education (PTE), or humanities aligned with the student's post graduation goals.* The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-1-97)( )

**a.** Other required instructional offerings of the high school. Each student must complete credit and achievement standards in at least two (2) of the following areas of instructional offerings:  
Physical Education (fitness)  
Humanities  
~~Vocational- Professional~~ Technical Education (including work-based learning)  
Family and Consumer Science  
Fine and Performing Arts  
Languages other than English (may include indigenous languages or sign language) (3-30-01)( )

**b.** *Additional instructional options as determined by the local school district. For example:  
Journalism* (4-1-97)

**105. GRADUATION FROM HIGH SCHOOL.**

~~Graduation~~ A student must meet all of the following requirements before the student will be eligible to graduate from an Idaho high school requires that: (4-1-97)(\_\_\_\_)

**01. Credit Requirements.**

**a.** (Effective for all students that graduate prior to January 1, 2012.) ~~At~~ Each students ~~will~~ shall demonstrate achievement in the CORE and other required subjects to include forty-two (42) semester credits, one (1) semester equaling one-half (1/2) year. (4-5-00)(\_\_\_\_)

**b.** (Effective for all students that enter the ninth grade in the fall of 2008 or later.) Each student shall complete the requirements found in Section 107 and other subjects to include forty-six (46) semester credits. (\_\_\_\_)

**02. Achievement Standards.** ~~At~~ Each students ~~will~~ shall meet locally established subject area achievement standards (using state standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-30-01)(\_\_\_\_)

**03. Proficiency (Effective January 1, 2006).** ~~At~~ Each students ~~will~~ shall achieve a proficient or advanced score on the High School Idaho Standards Achievement Test (ISAT) in order to graduate. A student who does not attain at least a proficient score prior to graduation may appeal to the ~~local~~ school ~~board~~ district or LEA, and, at the discretion of the ~~local~~ school ~~board~~ district or LEA, may be given an opportunity to demonstrate proficiency of the achievement standards through some other locally established mechanism. All locally established mechanisms used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. (3-20-04)(\_\_\_\_)

**a.** Before appealing to the ~~local~~ school ~~board~~ district or LEA for an alternate measure, the student must be: (3-20-04)(\_\_\_\_)

i. Enrolled in a special education program and have an Individual Education Plan (IEP), or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less, or (3-20-04)

iii. Enrolled in the fall semester of the senior year. (3-20-04)

**b.** The measure must be aligned at a minimum to tenth grade state content standards; (3-20-04)

**c.** The measure must be aligned to the state content standards for the subject matter in question; (3-20-04)

**d.** The measure must be valid and reliable; and (3-20-04)

**e.** Ninety percent (90%) of the criteria of the measure, or combination of measures, must be based on academic proficiency and performance. (3-20-04)

**04. Foreign Exchange Students.** Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the ~~local~~ school ~~board~~ district or LEA. (3-20-04)(\_\_\_\_)

**05. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (\_\_\_\_)

**106. (RESERVED) ADVANCED OPPORTUNITIES (EFFECTIVE JULY 1, 2007).**

All high schools in Idaho shall be required to provide Advanced Opportunities, as defined in Subsection 007.01, or provide opportunities for students to take courses at the postsecondary campus. (\_\_\_\_)

107. HIGH SCHOOL GRADUATION ~~STANDARDS (EFFECTIVE JULY 1, 2009)~~ REQUIREMENTS.

**01. Requirements.** (Effective for all students that graduate prior to January 1, 2012.) The State minimum graduation requirement for all Idaho public high schools is forty-two (42) semester credits and a proficient or advanced score on the ISAT (effective January 1, 2006). The core of instruction required by the State Board of Education is twenty-five (25) semester credits. Local school districts may establish graduation requirements beyond the state minimum. The local school district has the responsibility to provide education opportunities that meet the needs of students in both academic and ~~vocational~~ *professional-technical* areas. It is the intent of the State Board of Education to give local school districts the flexibility to provide rigorous and challenging curriculum that is consistent with the needs of students and the desire of their local patrons. (3-20-04)( )

**02. Requirements.** (Effective for all students that enter the ninth grade in the fall of 2008 or later.) The State minimum graduation requirement for all Idaho public high schools requires that a student take a minimum of forty-six (46) semester credits and achieve a proficient or advanced score on the ISAT. Thirty-one (31) semester credits are required as listed in Subsections 107.01 through 107.07, plus a minimum of fifteen (15) elective credits. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. Local school districts or LEAs may establish graduation requirements beyond the state minimum. The local school district or LEA has the responsibility to provide educational opportunities that meet the needs of students in both academic and professional technical areas. It is the intent of the State Board of Education to give local school districts the flexibility to provide rigorous and challenging curriculum that is consistent with the needs of students and the desire of their local patrons. ( )

**043. Secondary Language Arts and Communication.** (Nine (9) credits required with instruction in communications including oral communication and technological applications). Includes four (4) years of instruction in English, each year will consist of language study, composition, and literature. A course in speech or a course in debate will fulfill one (1) credit of the nine (9) credit requirement. (7-1-00)

**024. Mathematics ~~and Science.~~** ( )

**a. Mathematics and Science.** (Effective for all students that graduate prior to January 1, 2012.) (Eight (8) credits required), a minimum of four (4) credits in math and four (4) credits in science, two (2) of which will be laboratory ~~sciences~~ based. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. Secondary sciences will include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (7-1-00)( )

**b. Mathematics.** (Effective for all students that enter the ninth grade in the fall of 2008 or later but prior to the fall of 2009.) Six (6) credits required beginning with a minimum of algebra I. Secondary mathematics must include two (2) semesters of algebra I; two (2) semesters of geometry; two (2) semesters of algebra II or advanced math beyond Geometry according to standards and courses approved by the State Department of Education (unless an algebra II or advanced math beyond Geometry waiver is granted allowing the student to substitute another course for the two (2) credits of algebra II or advanced math beyond Geometry. If a student completes any of these courses with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement. However the student must take six (6) credits of high school math in addition to the courses completed in middle school. In order to apply for an algebra II or advanced math beyond Geometry waiver, a parent or guardian must apply on behalf of the child no earlier than fourth quarter of the tenth grade. The parent or guardian must meet with designated school personnel and complete the requirements of the local district or LEA for petitioning the governing school board to grant the waiver. Local school districts or LEAs must establish waiver criteria for algebra II or advanced math beyond Geometry. The criteria must include a meeting with school personnel, parents, and student. In order to meet state graduation requirements, students who are granted algebra II or advanced math beyond Geometry waivers must complete six (6) credits of math, including two (2) credits of algebra I and two (2) credits of geometry. ( )

**c. Mathematics.** (Effective for all students that enter the ninth grade in the fall of 2009 or later.) Eight (8) credits required beginning with a minimum of algebra I. Secondary mathematics must include two (2) semesters of algebra I; two (2) semesters of geometry; two (2) semesters of algebra II or advanced math beyond Geometry



according to standards and courses approved by the State Department of Education (unless an algebra II or advanced math beyond Geometry waiver is granted allowing the student to substitute another course for the two (2) credits of algebra II or advanced math beyond Geometry); and two (2) other math credits. If a student completes any of these courses with a grade of C or higher before entering grade nine (9), the student has met the high school content area requirement. However the student must take eight (8) credits of high school math in addition to the courses completed in middle school. In order to apply for an algebra II or advanced math beyond Geometry waiver, a parent or guardian must apply on behalf of the child no earlier than fourth quarter of the tenth grade. The parent or guardian must meet with designated school personnel and complete the requirements of the local district or LEA for petitioning the governing school board to grant the waiver. Local school districts or LEAs must establish waiver criteria for algebra II or advanced math beyond Geometry. The criteria must include a meeting with school personnel, parents, and student. In order to meet state graduation requirements, students who are granted algebra II or advanced math beyond Geometry waivers must complete eight (8) credits of math, including two (2) credits of algebra I and two (2) credits of geometry. ( )

**05. Science.** (Effective for all students that enter the ninth grade in the fall of 2008 or later.) (Six (6) credits required). Secondary sciences shall include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment or approved applied science. Four (4) credits of these courses must be laboratory based. If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement. However, the student must complete six (6) credits of high school science in addition to the courses completed in middle school. ( )

**036. Social Studies.** (Five (5) credits required), including government (two (2) credits), ~~U.S.~~ United States history (two (2) credits), and economics (one (1) credit). Current world affairs and geography will be integrated into all social studies instruction. Courses such as geography, sociology, world affairs, and world history may be offered as electives, not to be counted as a social studies requirement. (7-1-00)( )

**047. Humanities.** (Two (2) credits required). A course in interdisciplinary humanities, visual and performing arts, or ~~foreign~~ world language. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course syllabus is approved by the State Department of Education as being aligned with the Humanities Standards. (5-3-03)( )

**058. Health/Wellness.** (One (1) credit required). A course focusing on positive health habits. (7-1-00)

**09. College Entrance Examination.** (Effective for all students that enter the ninth grade in the fall of 2008 or later.) A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: COMPASS, ACT or SAT. Scores must be included in the Learning Plan. ( )

**10. Senior Project.** (Effective for all students that enter the ninth grade in the fall of 2008 or later.) A student shall complete a senior project that shall include a research paper and oral presentation by the end of grade twelve (12). ( )

**0611. Assessment.** A student must achieve a proficient or advanced score on the ISAT. ~~The requirement will be phased in providing the following exemptions for the classes of 2006 and 2007. A student is not required to achieve a proficient or advanced score on the ISAT if:~~ (3-20-04)( )

**a.** A student received a proficient or advanced scored on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam shall be approved by the State Board of Education, and must measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT. ( )

**b.** A student appeals for another measure approved by a school district or LEA as outlined in Subsection 105.03; or ( )

**c.** A student has an IEP that outlines alternate requirements for graduation. ( )

**d.** The requirement will be phased in providing the following exemptions for the calendar year of 2006 and 2007. ( )

~~a.i.~~ *Class Calendar year of 2006. A student is not required to achieve a proficient or advanced score on the ISAT if:* (3-20-04)(\_\_\_\_)

~~i(1).~~ *The A student took the ISAT and was within six (6) Rasch Units (RIT points) of proficiency;* (3-20-04)(\_\_\_\_)

~~ii(2).~~ *The A student has a score of seventeen (17) on the ACT or two hundred (200) on the SAT in English and a score of nineteen (19) on the ACT or four hundred sixty (460) on the SAT in Math;* (3-20-04)(\_\_\_\_)

~~iii(3).~~ *The A student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test;* (3-20-04)(\_\_\_\_)

~~iv(4).~~ *The A student is considered an LEP student through a score determined on the state language proficiency test and has been in an LEP program for three (3) academic years or less;* (3-20-04)(\_\_\_\_)

~~v(5).~~ *The A student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or* (3-20-04)(\_\_\_\_)

~~vi(6).~~ *The A student may appeal for another measure approved by the local school board district or LEA as outlined in Subsection 105.03.* (3-20-04)(\_\_\_\_)

~~b.i.~~ *Class Calendar year of 2007 and subsequent classes. A student is not required to achieve a proficient or advanced score on the ISAT if:* (3-20-04)(\_\_\_\_)

~~i(1).~~ *The A student took the ISAT and was within three (3) RIT points of proficiency;* (3-20-04)(\_\_\_\_)

~~ii(2).~~ *The A student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test;* (3-20-04)(\_\_\_\_)

~~iii(3).~~ *The A student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less;* (3-20-04)(\_\_\_\_)

~~iv(4).~~ *The A student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or* (3-20-04)(\_\_\_\_)

~~v(5).~~ *The A student may appeal for another measure approved by the local school board district or LEA as outlined in Subsection 105.03.* (3-20-04)(\_\_\_\_)

~~e.~~ *Class of 2008 and Subsequent Classes.* (3-20-04)

~~i.~~ *The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or* (3-20-04)

~~ii.~~ *The student may appeal for another measure approved by the local school board as outlined in Subsection 105.03.* (3-20-04)

**IDAPA 08 - STATE BOARD OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0601**

**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 33-105, Idaho Code and Public Law 107-110 ("No Child Left Behind") Section 1111.b.3.C.ix.III.

**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 January 18, 2006.

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 No Child Left Behind Act requires that states give some type of recognition to schools in addition to making Adequate Yearly Progress (AYP). In 2003, the State Board of Education approved two rewards. Subsequently, greater clarification was added to the rule to more clearly differentiate the two awards.

This proposal amends the rule to give responsibility of calculating rewards to the State Department of Education (SDE). The SDE currently makes all calculations for AYP and can use the same data to calculate the rewards. The SDE follows the guidelines in the State Accountability Plan to calculate AYP and would continue to follow the guidelines set up by the State Board of Education to calculate the rewards.

**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 because the rule is noncontroversial and nature and both the State Board of Education and the State Department of Education have agreed to the amendment.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Echeverria at (208) 332-1567.

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 January 25, 2006.

DATED this 17th day of October, 2005.

Karen L. Echeverria  
Policy and Governmental Affairs Officer  
State Board of Education  
650 West State Street, Room 301  
PO Box 83720  
Boise, ID 83720-0037  
(208) 334-2270  
Fax (208) 334-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0601

113. REWARDS.

**01. Distinguished Schools.** ~~The State Board of Education~~ A school may be recognized as a "Distinguished Schools" if it is in the top five percent (5%) of schools exceeding the Idaho Adequate Yearly Progress (AYP) intermediate targets listed in Subsection 112.02, of this rule, and if it has significantly ~~reducing~~ reduced the gaps between subgroups listed in Subsection 112.03.d. of this rule. ~~(4-6-05)~~( )

**02. Additional Yearly Growth (AYG) Award.** ~~A~~ Schools demonstrating improved proficiency levels of subpopulations or in the aggregate by greater than ten percent (10%) shall be considered to have achieved AYG. ~~The~~ Such school must have achieved Adequate Yearly Progress (AYP) to be eligible for this award. ~~(4-6-05)~~( )

**03. Determination by State Department of Education.** The State Department of Education will determine the schools eligible for the Distinguished School and AYG awards each year based upon the criteria outlined in Subsections 113.01 and 113.02. The State Department of Education will present the schools to be recognized to the State Board of Education no later than the annual October Board Meeting. ( )

## IDAPA 08 - DEPARTMENT OF EDUCATION

### 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0602

#### 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(s) Section 67-5224 and 67-5291, Idaho Code, and No Child Left Behind.

**MEETING SCHEDULE:** A public meeting(s) on the negotiated rulemaking will be held as follows:

Input meetings throughout the state are scheduled from November 2005 through January 2006.

Public input has been requested via the State Department of Education website. The deadline to submit input is Jan. 15, 2006. The standards are found on the State Department of Education website: <http://www.sde.state.id.us/dept>

Copies of the standards also may be requested directly from the State Department of Education by calling the public information office at 1 (208) 332-6812.

**METHOD OF PARTICIPATION:** Persons wishing to participate in the informal negotiated rulemaking must 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 input by January 15, 2006 to the address below:  
<http://www.sde.state.id.us/standards/default.asp>

**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:

Curricular standards in the areas of Reading/Language Arts, Math, Science, Social Studies, Health, Physical Education, and Humanities are included in the Administrative Rules of the State Board of Education. Over the past few years more emphasis has been placed on standards and the alignment of standards to the state assessment in order to meet the intent of the No Child Left Behind Act (NCLB). One of the requirements of NCLB to verify alignment was to have an outside source evaluate the curricular standards to see if there was alignment between the standards and the assessment. HUMRRO was contracted by the Office of the State Board of Education to provide the outside evaluation of this alignment. Their report indicated that there was not a strong alignment between the standards and assessment.

It was recommended by the Technical Advisory Committee of the Board to rewrite the ISAT test blueprint for Reading, Language Usage, Math, and Science to ensure federal compliance and alignment of standards and the ISAT. A new test blueprint is required for the Spring 2006 assessment. Based on the outcomes of the studies and recommendations from OSBE consultants, it was necessary to reorganize and revise the standards and write new test blueprints in order to meet the federal requirements of NCLB. The policy standards demonstrate growth from year to year in each curricular area and the content standards more clearly define for teachers and administrators what students should know and be able to do.

The process will include submitting the notice of intent to promulgate rules, development of a website to gather additional input, revisions to the standards documents based on input, submission of a temporary and proposed rule at the February Board meeting.

**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 rule (*if available*), contact Pat White, (208) 332-6890 or Dr. Jana Jones, (208) 332-6810.

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 January 15, 2006.

DATED this 7th day of December, 2005.

Dr. Jana Jones  
Chief Deputy Superintendent of Public Instruction  
State Department of Education  
650 W. State St.  
Boise, Idaho 83720-0027  
208-332-6810  
208-334-2228

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-0501

#### NOTICE OF RULEMAKING

#### ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

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

(1) Slightly modified the definition of "correction officer"; (2) Changed the standards for correction officer employment in the areas of misdemeanor convictions, hearing, and vision, as IDOC was unable to hire applicants that met the proposed standards and over 83% of their academy applicants needed waivers from the POST Council in order to be able to attend the academy; and (3) Eliminated unnecessary courses from required curriculum.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Idaho State Police/Peace Officer Standards and Training Council amended the temporary rule with the same revisions which have been made to the pending rule.

Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 113 through 121.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Michael N. Becar at (208) 884-7251.

DATED this 14th day of November, 2005.

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

DOCKET NO. 11-1104-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-9, September 7, 2005, pages 113 through 121.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 11-1104-0501

**Subsection 010.04**

**010. DEFINITIONS.**

**04. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the ~~safety, care~~ first-line supervision, security, protection, and monitoring risk reduction of offenders housed in the correction facility. ~~(7-1-05)F(7-1-05)T~~

**Subsection 022.07**

**022. GENERAL PROVISIONS.**

~~07. **Minimum Standards.** Each applicant must meet the minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 063, with the exception of hearing, vision, and physical agility. (7-1-05)T~~

~~a. **Hearing.** An applicant for correction officer certification or adult probation and parole officer certification must have unaided or aided hearing between zero (0) and twenty five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver to the above may be considered by the Council if accompanied by an audiologist's or ear, nose, and throat physician's certification that the applicant's condition would not jeopardize or impair the applicant's ability to perform the duties of a correction or adult probation and parole officer. (7-1-05)T~~

~~b. **Vision.** (7-1-05)T~~

~~i. An applicant for correction officer certification or adult probation and parole officer certification must possess normal binocular coordination; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision must be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There must be no pathology of the eye; applicant must possess seventy percent (70%) proficiency of the Dvorine or equivalent color discrimination test. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition would not jeopardize or impair the applicant's ability to perform the duties of a correction or adult probation and parole officer. (7-1-05)T~~



~~ii. The applicant must have uncorrected vision in each eye of no worse than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but must have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition would not jeopardize or impair the applicant's ability to perform the duties of a correction or adult probation and parole officer. (7-1-05)T~~

~~e. Physical Agility. An applicant for correction officer certification or adult probation and parole officer certification must pass the POST Physical Agility Test Battery for Correction Officers and Adult Probation and Parole officers. (7-1-05)T~~

**Sections 023 through 030 Have Been Renumbered to Sections 051 through 060,  
Sections 023 through 999 Are Being Reprinted in Their Entirety**

**023. -- 030. (RESERVED).**

**031. MINIMUM STANDARDS FOR EMPLOYMENT FOR CORRECTION OFFICERS.**

Every correction officer must meet the requirements in Sections 031 through 043. (7-1-05)T

**01. Citizenship.** Must be a citizen of the United States. (7-1-05)T

**02. Education Requirements.** (7-1-05)T

**a.** Graduation from high school or having passed the General Educational Development Test indication of high school graduation. The military or veterans equivalent of high school graduation is also acceptable. (7-1-05)T

**b.** Documentary evidence of satisfaction of this requirement must be in the form of a high school diploma, high school transcript, GED certificate, or GED test report form. A college transcript indicating the successful completion of a minimum of fifteen (15) academic credits is also acceptable. In unusual circumstances, the Council may accept other documentation, and in such cases the decision of the Council will be final. (7-1-05)T

**03. Experience Requirements.** (7-1-05)T

**a.** Not less than two (2) years of responsible work experience following high school graduation (or when the applicant would have graduated). (7-1-05)T

**b.** The work experience requirement can be complied with by two (2) years of any combination of military service, gainful employment, education, or any other productive activity. (7-1-05)T

**032. CHARACTER.**

The POST Council may take into consideration the commission of any act or offense involving moral turpitude to ensure an applicant is of good moral character and warrants the public trust. The purpose of this requirement is to prohibit persons who engage in dishonest, unprofessional, unethical, or immoral conduct from becoming correction officers, and to protect against acts or conduct which may endanger the safety and welfare of the public. (7-1-05)T

**033. CRIMINAL RECORD.**

**01. Fingerprints.** The applicant must be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results must be retained by the POST Council. (7-1-05)T

**02. Conviction.** The term "conviction" includes: (7-1-05)T

- a. Any conviction in a federal, tribal, state, county, or municipal court: (7-1-05)T
- b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court as final disposition: (7-1-05)T
- c. The payment of a fine: (7-1-05)T
- d. A plea of guilty, nolo contendere; or (7-1-05)T
- e. A finding of guilt regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. (7-1-05)T

**03. Misdemeanor Conviction.** A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (7-1-05)T

a. An applicant must be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant's agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will have the discretion to refer the application to the POST Council. In all other cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (7-1-05)T

b. An applicant with any other misdemeanor conviction will be accepted upon approval of their agency head provided the conviction occurred more than two (2) years prior to application and the applicant's agency head submits written documentation that, with knowledge of the facts and circumstances concerning the offense or violation, he approves the applicant. If the conviction occurred during the two (2) years immediately preceding application, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (7-1-05)T

**04. Felony Conviction.** An applicant must be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction will continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers will be granted by the POST Council, except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council must review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (7-1-05)T

**034. MILITARY RECORD.** A "dismissal," "bad conduct discharge" (BCD), "dishonorable discharge" (DD), or administrative discharge of other than honorable (OTH) from the military service will disqualify the applicant. The administrative discharge of "general under honorable conditions" (GEN), a "general" discharge, or an "uncharacterized" discharge may be grounds for rejection. (7-1-05)T

**035. -- 036. (RESERVED).**

**037. BACKGROUND INVESTIGATION.**

**01. Requirements.** The applicant must have undergone a comprehensive background investigation, the results of which attest to the fact that the person meets the minimum standards for employment, has not engaged in

conduct or a pattern of conduct that would jeopardize public trust in the correction profession, and is of good moral character. Consideration will be given to any and all law violations, including traffic and fish and game infractions or convictions. (7-1-05)T

**02. Procedures.** (7-1-05)T

**a.** The applicant must complete and submit to the appointing correction agency a comprehensive application and personal history statement prior to the start of the background investigation. The history statement must contain questions which aid in determining whether the applicant is eligible for certified status as a correction officer. The background investigation must include information provided by personal references, schools, and the last three (3) previous employers, as well as law enforcement agency records in jurisdictions where the applicant has lived or worked. This information must be recorded and retained by the appointing agency. (7-1-05)T

**b.** The appointing agency must conduct a personal interview with the applicant to ascertain personal attributes such as personal appearance, demeanor, attitudes that are relevant to the correction mission, judgment, maturity, resourcefulness, and ability to communicate. Searching questions may include, but not be limited to: (7-1-05)T

**i.** Use of intoxicants, narcotics and drugs; (7-1-05)T

**ii.** Physical, mental, and emotional history; (7-1-05)T

**iii.** Family problems; (7-1-05)T

**iv.** Moral outlook and habits; and (7-1-05)T

**v.** Financial transactions. (7-1-05)T

**c.** The appointing agency must conduct a thorough investigation into the character and reputation of the applicant which may include, but not be limited to, the applicant's morality, integrity, reputation, honesty, dependability, qualifications, experience, associations, emotional stability, prejudice, and loyalty. (7-1-05)T

**d.** All results of the background investigation must be considered confidential and processed accordingly. (7-1-05)T

**e.** The results of the background investigation must ultimately be evaluated by the agency head and/or the appointing authority to determine whether the applicant is suitable. (7-1-05)T

**038. PHYSICAL - MEDICAL.**

**01. Requirements.** (7-1-05)T

**a.** Hearing. The applicant must have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver to the above may be considered by the Council if accompanied by an audiologist's or ear, nose, and throat physician's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. (7-1-05)T

**b.** Vision. (7-1-05)T

**i.** The applicant must demonstrate to a vision specialist the ability to distinguish primary colors. (7-1-05)T

**ii.** The applicant must have uncorrected vision in each eye of no worse than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but must

have the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination must be administered by an optometrist or ophthalmologist to any applicant whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or worse. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. (7-1-05)T

c. Disease/Condition. The applicant must be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver to a physical defect may be considered by the Council upon the applicant's demonstration that the defect does not jeopardize or impair his ability to perform the duties of a correction officer. (7-1-05)T

d. Physical Agility. The applicant must pass the POST Physical Agility Test for Correction Officers. (7-1-05)T

**02. Procedures.** (7-1-05)T

a. A POST Council-approved medical history form must be supplied by each applicant to the examining physician. The medical history must include information on past and present diseases, injuries and operations. (7-1-05)T

b. A medical examination must be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The physician must record his findings on the appropriate form or letter and must note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. (7-1-05)T

**039. MENTAL EXAMINATION.**

01. Requirement. Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. (7-1-05)T

02. Procedure. During the interview, the examining psychiatrist or psychologist must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination must be recorded and that record or a summary of recommendations must be forwarded to the appointing authority for review. (7-1-05)T

**040. APTITUDE.**

The applicant must be evaluated on the agency-approved aptitude test to determine if the applicant possesses the aptitude, capacity, and adaptability for absorbing and understanding the training and skills which are essential to the performance of the correction function. (7-1-05)T

**041. CODE OF CONDUCT/CODE OF ETHICS.**

Each applicant must attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.04 and the Law Enforcement Code of Ethics as adopted by the International Association of Chiefs of Police, 515 North Washington Street, Alexandria, VA 22314. (7-1-05)T

**042. PROBATIONARY PERIOD.**

01. Probation. Every officer appointed by an agency below the level of agency head must satisfactorily complete a probationary period of not less than six (6) months. This requirement must also apply to officers who

*transfer laterally into an agency.*

*(7-1-05)T*

**02. Supervisor/Mid-Manager.** *Every officer who is promoted or appointed to a supervisory, middle management, or assistant agency head position must satisfactorily complete a probationary period of not less than six (6) months in that position.*

*(7-1-05)T*

**03. Extended.** *No correction officer who lacks the training qualifications required by the Council will have his temporary or probationary employment extended beyond one (1) year by renewal of appointment or otherwise.*

*(7-1-05)T*

**043. SPECIAL PROVISIONS.**

**01. Minimum Standards.** *It is emphasized that these are minimum standards for employment. Higher standards are recommended whenever the availability of qualified applicants meets the demand.*

*(7-1-05)T*

**02. No Discrimination.** *No agency will discriminate as to employment against any persons on the basis of race, creed, color, or sex, pursuant to state or federal law.*

*(7-1-05)T*

**03. Equal Opportunity Employer.** *Every agency must be an equal opportunity employer.*

*(7-1-05)T*

**044. -- 050. (RESERVED).**

**02351. LAPSE OF CORRECTION OFFICER CERTIFICATION.**

The certification of any correction officer will be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years.

*(7-1-05)T*

**01. Three to Five Years.** A correction officer who has been out of full-time correction officer status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements:

*(7-1-05)T*

**a.** Submit a POST Certification Correction Challenge Packet;

*(7-1-05)T*

~~**b.** Attend an approved course of study in Idaho correction legal issues and pass the POST Idaho correction legal issues exam;~~

~~*(7-1-05)T*~~

~~**eb.** Pass the following tests administered by a POST Training Specialist:~~

~~*(7-1-05)T*~~

~~i.~~ The POST correction certification examination approved by the Council, conducted in the manner set forth in ~~HDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council,"~~ Subsection 09753.02.b. ~~of these rules; and~~

~~*(7-1-05)T(7-1-05)T*~~

~~ii.~~ ~~The POST Firearms Qualification Course;~~

~~*(7-1-05)T*~~

~~iii.~~ The POST Correction Officer Physical Agility Test ~~Battery;~~ and

~~*(7-1-05)T(7-1-05)T*~~

~~**dc.** Satisfactorily complete a probationary period of not less than six (6) months.~~

~~*(7-1-05)T*~~

**02. Over Five Years.** A correction officer who has been out of full-time correction officer status for over five (5) years must attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence must be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements:

*(7-1-05)T*

~~**a.** Attend an approved course of study in Idaho correction legal issues and pass the POST Idaho correction legal issues exam;~~

~~*(7-1-05)T*~~

~~**b.** Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems;~~ (7-1-05)T

**ea.** Pass the following tests administered by a POST Training Specialist: (7-1-05)T

i. The POST correction certification examination approved by the Council, conducted in the manner set forth in ~~IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council,"~~ Subsection 09753.02.b. ~~of these rules; and~~ (7-1-05)T(7-1-05)T

~~ii. The POST Firearms Qualification Course;~~ (7-1-05)T

iii. The POST Correction Officer Physical Agility Test ~~Battery~~; and (7-1-05)T(7-1-05)T

~~db.~~ Satisfactorily complete a probationary period of not less than six (6) months. (7-1-05)T

**03. Over Eight Years.** A correction officer who has been out of full-time correction officer status for over eight (8) years must attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement will be granted by the Council. (7-1-05)T

#### **02452. CORRECTION OFFICER CERTIFICATION.**

**01. Mandatory Certification.** Every correction officer employed ~~on or~~ after July 1, 2005 must be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.16. (7-1-05)T(7-1-05)T

**02. Voluntary Certification.** Correction officers employed prior to July 1, 2005, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements for certification as prescribed in Sections 022, 031 through 043, and 0253 of these rules. However, the requirement for successful completion of the POST Basic Correction Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must successfully complete the POST Basic Correction Academy to be certified. This option closes on June 30, 2008. (7-1-05)T(7-1-05)T

#### **0253. THE BASIC CERTIFICATE.**

In addition to the requirements set forth in Sections 022 and 031 through 043 of these rules, the requirements in Section 0253 of these rules are necessary for award of the Basic Correction Officer certificate. (7-1-05)T(7-1-05)T

**01. Probation.** The applicant must have satisfactorily completed at least a six (6) month probationary period, which may include basic correction academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the agency the officer is appointed to when applying for certification. The probationary period must not extend over one (1) year for certification purposes. (7-1-05)T

**02. Basic Training.** The applicant must have satisfactorily completed: (7-1-05)T

**a.** The POST Basic Correction Academy; or (7-1-05)T

**b.** Be a graduate of a private prison contractor's correction officer training program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Correction Academy, and must have passed the POST correction certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must

successfully complete the POST Basic Correction Academy to be certified. (7-1-05)T

**03. Correction Field Training Manual.** The applicant must have satisfactorily completed forty (40) hours of POST-approved correction field training. (7-1-05)T

**04. Private Prison Contractor's Correction Officer Training Program.** A graduate from an Idaho POST-certified private prison contractor's correction officer training program must also submit a completed POST Correction Officer Certification Packet. (7-1-05)T

**02654. CHALLENGING THE BASIC CORRECTION ACADEMY.**

Any correction officer presently appointed by the Idaho Department of Correction or by a private prison contractor of the State Board of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a correction officer or a student who has satisfactorily completed a Basic Correction Academy equivalent to the Idaho POST Basic Correction Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Correction Academy, provided the officer: (7-1-05)T

**01. Submission of Challenge Packet.** Submits a POST Certification Correction Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (7-1-05)T

~~**02. Attends and Passes Legal Course.** Attends an approved course of study in Idaho correction legal issues and passes the POST Idaho correction legal issues exam;~~ (7-1-05)T

~~**03. Attends and Passes POST-Certified Courses.** Attends and passes Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems;~~ (7-1-05)T

**042. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (7-1-05)T

**a.** The POST correction certification examination approved by the Council, conducted in the manner set forth in ~~IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council,"~~ Subsection 09753.02.b. of these rules; and (7-1-05)T

~~**b.** The POST Firearms Qualification Course; and~~ (7-1-05)T

~~**cb.** The POST Correction Officer Physical Agility Test ~~Battery~~; and~~ (7-1-05)T(7-1-05)T

~~**053. Completes Probationary Period.** Completes his probationary period as required by Subsection 0253.01.~~ (7-1-05)T(7-1-05)T

~~**02755. -- 0360. (RESERVED).**~~

**061. MINIMUM STANDARDS FOR EMPLOYMENT FOR ADULT PROBATION AND PAROLE OFFICERS.**

Every adult probation and parole officer must meet the minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 063, with the exception of hearing, vision, and physical agility. (7-1-05)T

**01. Hearing.** An applicant for adult probation and parole officer certification must have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver to the above may be considered by the Council if accompanied by an audiologist's or ear, nose, and throat physician's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. (7-1-05)T

02. Vision. (7-1-05)T

a. *An applicant for adult probation and parole officer certification must possess normal binocular coordination; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision must be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There must be no pathology of the eye; applicant must possess a minimum of seventy percent (70%) proficiency of the Dvorine or equivalent color discrimination test. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer.* (7-1-05)T

b. *The applicant must have uncorrected vision in each eye of no worse than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but must have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination must be administered by an optometrist or ophthalmologist to any applicant whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or worse. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer.* (7-1-05)T

03. Physical Agility. *An applicant for adult probation and parole officer certification must pass the POST Physical Agility Test for Adult Probation and Parole officers.* (7-1-05)T

**03+62. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.**

The certification of any adult probation and parole officer will be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. (7-1-05)T

**01. Three to Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to be recertified must meet the following POST requirements: (7-1-05)T

a. Submit a POST Certification Adult Probation and Parole Challenge Packet; (7-1-05)T

~~b. Attend an approved course of study in Idaho adult probation and parole legal issues and pass the POST Idaho adult probation and parole legal issues exam;~~ (7-1-05)T

eb. Pass the following tests administered by a POST Training Specialist: (7-1-05)T

i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in ~~HDAPA 11-11-01~~, "*Rules of the Idaho Peace Officer Standards and Training Council*," Subsection 09753.02.b. *of these rules; and* (7-1-05)T(7-1-05)T

~~ii. The POST Firearms Qualification Course;~~ (7-1-05)T

~~iii. The POST Adult Probation and Parole Officer Physical Agility Test-Battery; and~~ (7-1-05)T(7-1-05)T

~~dc. Satisfactorily complete a probationary period of not less than six (6) months.~~ (7-1-05)T

**02. Over Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years must attend the POST Basic Adult Probation and Parole Academy to be recertified. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence must be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (7-1-05)T



~~a. Attend an approved course of study in Idaho adult probation and parole legal issues and pass the POST Idaho adult probation and parole legal issues exam; (7-1-05)T~~

~~bq. Attend and pass Idaho POST-certified courses in Arrest Techniques, ~~Handgun Retention~~, and Practical Problems; (7-1-05)T(7-1-05)T~~

~~eb. Pass the following tests administered by a POST Training Specialist: (7-1-05)T~~

~~i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in ~~IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council,"~~ Subsection 09753.02.b. ~~of these rules; and (7-1-05)T(7-1-05)T~~~~

~~ii. ~~The POST Firearms Qualification Course; (7-1-05)T~~~~

~~iii. The POST Adult Probation and Parole Officer Physical Agility Test ~~Battery~~; and (7-1-05)T(7-1-05)T~~

~~dc. Satisfactorily complete a probationary period of not less than six (6) months. (7-1-05)T~~

**03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years must attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement will be granted by the Council. (7-1-05)T

**03263. ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.**

**01. Mandatory Certification.** Every adult probation and parole officer employed ~~on or~~ after July 1, 2005 must be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.16. ~~(7-1-05)T(7-1-05)T~~

**02. Voluntary Certification.** Adult probation and parole officers employed prior to July 1, 2005, although specifically excluded by law from meeting the requirements set by the Council, may be certified provided they meet the minimum requirements for certification as prescribed in Sections 022, 061, and ~~03364~~ of these rules. However, the requirement for successful completion of the POST Basic Adult Probation and Parole Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on the POST adult probation and parole certification examination approved by the Council. The applicant will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he must successfully complete the POST Basic Adult Probation and Parole Academy to be certified. This option closes on June 30, 2007. ~~(7-1-05)T(7-1-05)T~~

**03364. THE BASIC CERTIFICATE.**

In addition to the requirements set forth in Sections 022 and 061 of these rules, the requirements in Section ~~03364~~ of these rules are necessary for award of the Basic Adult Probation and Parole Officer certificate. ~~(7-1-05)T(7-1-05)T~~

**01. Probation.** The applicant must have satisfactorily completed at least a six (6) month probationary period, which may include basic adult probation and parole academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the agency the officer is appointed to when applying for certification. The probationary period must not extend over one (1) year for certification purposes. (7-1-05)T

**02. Basic Training.** The applicant must have satisfactorily completed the POST Basic Adult Probation and Parole Academy. (7-1-05)T

**03. Adult Probation and Parole Field Training Manual.** The applicant must have satisfactorily completed forty (40) hours of POST-approved adult probation and parole field training. (7-1-05)T

**03465. CHALLENGING THE BASIC ADULT PROBATION AND PAROLE ACADEMY.**

Any adult probation and parole officer presently appointed by the Idaho Department of Correction who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as an adult probation and parole officer or a student who has satisfactorily completed a Basic Adult Probation and Parole Academy equivalent to the Idaho POST Basic Adult Probation and Parole Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Adult Probation and Parole Academy, provided the officer: (7-1-05)T

**01. Submission of Challenge Packet.** Submits a POST Certification Adult Probation and Parole Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (7-1-05)T

~~**02. Attends and Passes Legal Course.** Attends an approved course of study in Idaho adult probation and parole legal issues and passes the POST Idaho adult probation and parole legal issues exam;~~ (7-1-05)T

~~**032. Attends and Passes POST-Certified Courses.** Attends and passes Idaho POST-certified courses in Arrest Techniques, ~~Handgun Retention,~~ and Practical Problems;~~ (7-1-05)T(7-1-05)T

**043. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (7-1-05)T

**a.** The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in ~~IDAPA 11.11.01,~~ "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 09753.02.b. of these rules; and (7-1-05)T(7-1-05)T

~~**b.** The POST Firearms Qualification Course; and~~ (7-1-05)T

~~**eb.** The POST Adult Probation and Parole Officer Physical Agility Test ~~Battery;~~ and~~ (7-1-05)T(7-1-05)T

~~**054. Completes Probationary Period.** Completes his probationary period as required by Subsection 03364.01 of these rules.~~ (7-1-05)T(7-1-05)T

**03566. -- 999. (RESERVED).**

# **IDAPA 11 - IDAHO STATE POLICE**

## **11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-0601**

### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 3, 2005.

**AUTHORITY:** In compliance with Section 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) 67-2901A, 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 February 22, 2006.

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 Motor Carrier Safety agency issued a final rule August 25, 2005 revising CFR 395 "Hours of Service for Drivers". The revised rule is effective as of October 3, 2005. The Idaho State Police receives federal grant MCSAP funds that require it to enforce this rule. Failure to enforce this rule will result in the loss of those funds. Update the incorporated reference of 49 CFR 395 to the August 25, 2005 version.

**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: Compliance with deadlines in amendments to governing law or federal programs.

**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 associated with this rule change.

**FISCAL IMPACT:** There is no negative fiscal impact attributable to this rule change.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this change is required due to revisions to the governing federal Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Captain Lamont Johnston at (208) 884-7221.

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 February 22, 2006.

DATED this 10th day of November, 2005.

Colonel R. Dan Charboneau  
Director  
Idaho State Police  
700 S. Stratford  
P. O. Box 700  
Meridian, ID 83680-0700  
208-884-7003 Fax 208-884-7090

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1301-0601**

**019. CARRIER SAFETY REQUIREMENTS.**

**01. Adoption of Federal Regulations.** Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under this Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388.

(3-20-04)

**02. Obligation of Familiarity With Rules.** All interstate and foreign carriers and all intrastate carriers subject to these Rules at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 must obtain copies of the federal regulations adopted by reference in Subsection 019.01 and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter: (4-5-00)

- a. Part 356. Authority to Serve a Particular Section - Construction. (3-20-04)
- b. Part 365. How to Apply for Operating Authority. (3-20-04)
- c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- d. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- e. Part 385. Safety Fitness Standards. (4-5-00)
- f. Part 387. Financial Responsibility. (3-20-04)
- g. Part 388. Cooperative Agreements with States. (4-5-00)
- h. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- i. Part 391. Qualifications of Drivers. (4-5-00)
- j. Part 392. Driving of Motor Vehicles. (4-5-00)
- k. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- l. Part 395. Hours of Service of Drivers. (4-5-00)
- m. Part 396. Inspection, Repair and Maintenance. (4-5-00)
- n. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- o. Part 398. Transportation of Migrant Workers. (4-5-00)

**p.** Part 399. Employee Safety and Health Standards. (4-5-00)

**03. Recognition of Federal Waivers.** Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (4-5-00)

**04. Version of Federal Regulations Adopted.** The federal regulations adopted by reference in this Subsection 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 394, and 396 through 399 published in the Code of Federal Regulations volumes dated October 1, 2002, and Parts 393 ~~and 395~~ published in the Code of Federal Regulations volumes dated January 4, 2004, and Part 395 published in the Code of Federal Regulations volume dated August 25, 2005. (~~3-20-04~~)(10-3-05)T

**05. Availability of Incorporated Documents.** The 49 CFR's can be found at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the central office of the Idaho State Police. (3-20-04)

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

### **16.02.03 - RULES GOVERNING EMERGENCY MEDICAL SERVICES**

#### **DOCKET NO. 16-0203-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-1017, Idaho Code and House Bill No. 697, 2004 Legislative Session.

**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 August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, pages 198 through 205.

**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. There is no fiscal impact to the state general fund. The money involved is currently in the EMS Bureau's general administrative account and are "dedicated" funds not Idaho General Funds. This new rule will require provider education modules to be added to the training curriculum for EMS agencies. Within the first year, there will be a one time cost, of \$5,000 for development of the curriculum and \$1,000 for supporting documentation and distribution costs. After that first year, there will be no additional costs. The Department will contract with an Idaho University for this curriculum development.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Dia Gainor at (208) 334-4000.

DATED this 9th day of September, 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

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#### **DOCKET NO. 16-0203-0501 - PENDING RULE**

**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 05-8, August 3, 2005, pages 198 through 205.](#)**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.10 - IDAHO REPORTABLE DISEASES

DOCKET NO. 16-0210-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-605, 39-906, 39-1003, 39-1603, 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 Department received two comments from the Division of Health of the Department of Health and Welfare requesting the following changes: (1) change the requirement of one (1) negative stool sample to two (2) negative stool samples in Subsection 020.13.d. in accordance with the current literature and (2) Subsection 020.34.c. changed the word "excreting" to "suspected or diagnosed" and "excluded". The Department adopted these changes in its pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 122 through 161.

**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. There is no anticipated fiscal impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Dr. Leslie Tengelsen at (208) 334-5939.

DATED this 11th day of October, 2005.

Sherri Kovach  
Program Supervisor  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
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Boise, Idaho 83720-0036  
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kovachs@idhw.state.id.us e-mail

DOCKET NO. 16-0210-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-9, September 7, 2005, pages 122 through 161.](#)

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0210-0501

*Subsection 020.13.d. and 020.34.c.*

020. SPECIFIC CONTROL MEASURES FOR REPORTABLE DISEASES.

13. Escherichia coli (E. coli) 0157:H7 and Other Shiga Toxin Producing E. coli (STEC). (4-5-00)

**ed.** Persons who are excreting E. coli 0157:H7 and other STEC may not attend day care facilities while incontinent or provide personal care to children in day care facilities or to persons in health care facilities ~~or work as food handlers~~ while the disease is present in a communicable form without the approval of the Department or ~~the~~ District. ~~One~~ Two (~~±~~2) negative fecal specimens for E. coli 0157:H7 and other STEC is sufficient to remove restrictions ~~on personnel.~~ (4-5-00)(    )

**34. Norovirus.** (    )

**a.** Each case of Norovirus must be reported to the Department or District within one (1) working day of identification. (    )

**b.** Each report of a case must be investigated to confirm the diagnosis, determine the extent of the outbreak, and determine the source of the infection. (    )

**c.** Persons *suspected or diagnosed with* Norovirus are *excluded* from working as food employees while symptomatic unless *an* exemption is made by the Department or District. (    )

**d.** Persons excreting Norovirus must not attend day care facilities or schools while symptomatic or provide personal care in day care, custodial institutions, or medical facilities unless exemption is obtained from the Department or District. This restriction will be rescinded once asymptomatic, unless hygienic practices are insufficient. (    )



## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

#### DOCKET NO. 16-0224-0501 - (NEW CHAPTER)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 6-2604, 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 Department of Health and Welfare is adopting this new chapter of rules to protect the public by establishing acceptable processes and standards for the cleanup of clandestine drug laboratories. This new chapter of rules was written to meet the requirements under the "Clandestine Drug Laboratory Cleanup Act" (S1122), passed by the 2005 Legislature.

Based on public comment, the following changes are being made to the proposed rule:

1. Clarified reference to the laboratory accreditation done by the American Industrial Hygiene Association; and
2. Corrected conversion of one hundred (100) square centimeters to sixteen (16), rather than four (4), square inches.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the Wednesday, October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 184 through 191.

**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.

General Fund = \$50,760 Salary + \$20,573 Benefits + \$6,667 Operating (Total = \$78,000)

Idaho State Police federal COPS Grant = \$27,000 (for startup/rules/public hearings - one time cost)

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Elke Shaw-Tulloch at (208) 334-5950.

DATED this 7th day of November, 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) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

DOCKET NO. 16-0224-0501 - PENDING RULE (NEW CHAPTER)

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 184 through 191.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0224-0501

*Subsections 200.01, 200.02.b., and 200.03*

**200. RESPONSIBILITIES OF THE PROPERTY OWNER.**

The owner of a listed property must: ( )

**01. Ensure the Vacancy of the Listed Property.** Ensure the property remains vacant until the property is delisted in accordance with Section 120 of these rules; *and* ( )

**02. Ensure That Cleanup Standards Are Met.** ( )

**a.** Ensure that the property is cleaned up to meet the cleanup standards in Section 500 of these rules and have the analytical results certified by a qualified industrial hygienist; or ( )

**b.** Ensure that the property is demolished, in lieu of clean up, as provided for in Section 6-2606, Idaho Code. Demolition and removal of materials must be conducted in compliance with applicable local, state, and federal laws and regulations; *and* ( )

**03. Provide the Department With a Written Report.** Provide the Department with a written report in accordance with Section 600 of these rules. ( )

*Subsections 400.02.d., 400.02.h., and 400.02.j.*

**400. CLEARANCE SAMPLING REQUIREMENTS.**

**02. General Sampling Procedures.** Sample collection must be conducted according to the following minimum requirements: ( )

**d.** Samples must be analyzed by a laboratory certified by the U.S. Environmental Protection Agency or accredited by the American Industrial Hygiene Association *laboratory accreditation program.* ( )

**h.** Discrete sampling must be used in areas expected to have the highest levels of contamination, as

identified on the Department approved form. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm<sup>2</sup>), or approximately *sixteen (16)* square inches) must be sampled from non-porous surfaces such as floors, walls, appliances, sinks, or countertops in each room. The sample area must be composed of no fewer than three (3) discrete samples. ( )

**j.** A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm<sup>2</sup>), or approximately *sixteen (16)* square inches) must be sampled from the ventilation system in a location to be determined by the qualified industrial hygienist. ( )

### ***Subsection 500.01***

#### **500. CLEANUP STANDARDS.**

**01. Cleanup Standard for Methamphetamine.** A level of methamphetamine that does not exceed a concentration of point one (0.1) micrograms per one hundred (100) square centimeters (0.1 µg/100 cm<sup>2</sup>) as demonstrated by clearance sampling conducted by a qualified industrial hygienist. ( )

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

### **16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN**

**DOCKET NO. 16-0301-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, and 56-1004, Idaho Code; also 42 CFR 435.601, 42 CFR 457.50 and 457.310; PL 104-193, Section 103, and PL 106-113; Title XIX, Sections 1902 (a)(10)(A) and 1931(b)(1)(I) of the Social Security Act; and Title XXI, Sections 2102 and 2103 of the Social Security Act.

**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 October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 192 through 198.

**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. There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Peggy Cook at (208) 334-5815.

DATED this 24th day of October, 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) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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#### **DOCKET NO. 16-0301-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 192 through 198.**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**

**DOCKET NO. 16-0304-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. This pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, Idaho Code, and 7 CFR.

**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. In accordance with 67-5228, Idaho Code, typographical errors have been corrected. In Subsection 011.09, in the definition of Fair Hearing the word "in" has been corrected to read "is". In Section 532 in the second sentence the word "members" has been corrected to read "member". The complete text of the proposed rule was published in the Wednesday, October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 199 through 236.

**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. There is no anticipated fiscal impact to the state general fund as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Chris Werner at (208) 334-5746.

DATED this 28th day of October, 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) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**DOCKET NO. 16-0304-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 199 through 236.**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,**  
**BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0502**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, Idaho Code, and 20 CFR Part 421.

**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 text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rules was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 239 through 246.

The Department has had a request for formal rules negotiation on the proposed changes to Sections 837, 838, and 871 on Life Estates and Annuities as Asset Transfers and the Treatment of Trusts. Section 837 is being left as it currently is in rule, and Section 838 will be a Reserved Section in rule. Section 871 will be left as it currently is in rule, with the exception of correcting a reference cites.

**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 anticipated fiscal impact for these rule changes are case-by-case benefits and are not a direct result of these rule changes.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Peggy Cook at (208) 334-5969.

DATED this 15th day of November, 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  
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**DOCKET NO. 16-0305-0502 - PENDING RULE**

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 239 through 246.

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.

**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0305-0502**

**Section 837**

**837. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.**

Conditions for determining if a life estate is an asset transfer for less than fair market value are listed in Subsection 837.01 of this rule. The purchase of an annuity is an asset transfer that is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows the purchase of the annuity would not have affected his eligibility for Medicaid or, the payment from the annuity is not greater than necessary to meet the reasonable and ordinary monthly needs of the beneficiary. For the purposes of Section 837, the reasonable and ordinary monthly needs are those defined by the maximum community spouse allowance at Section 725 of these rules. The participant must also show that the annuity meets the conditions in Subsections 837.03 and 837.04 of this rule. (5-3-03)

**01. Life Estate.** A life estate worth less than the value of the transferred real property is subject to the asset transfer penalty. To compute the value of the life estate, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.01 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
0	.02812	1	.01012	2	.00983	3	.00922
4	.01019	5	.01062	6	.01116	7	.01178
8	.01252	9	.01337	10	.01435	11	.01547
12	.01671	13	.01802	14	.01934	15	.02063
16	.02185	17	.02300	18	.02410	19	.02520
20	.02635	21	.02755	22	.02880	23	.03014
24	.03159	25	.03322	26	.03505	27	.03710
28	.03938	29	.04187	30	.04457	31	.04746
32	.05.058	33	.05.392	34	.05.750	35	.06132
36	.06540	37	.06974	38	.07433	39	.07917
40	.08429	41	.08970	42	.09543	43	.10145

TABLE 837.01 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
44	.10779	45	.11442	46	.12137	47	.12863
48	.13626	49	.14422	50	.15257	51	.16126
52	.17031	53	.17972	54	.18946	55	.19954
56	.20994	57	.22069	58	.23178	59	.24325
60	.25509	61	.26733	62	.27998	63	.29304
64	.30648	65	.32030	66	.33449	67	.34902
68	.36390	69	.37914	70	.39478	71	.41086
72	.42739	73	.44429	74	.46138	75	.47851
76	.49559	77	.51258	78	.52951	79	.54643
80	.56341	81	.58033	82	.59705	83	.61358
84	.63002	85	.64641	86	.66236	87	.67738
88	.69141	89	.70474	90	.71779	91	.73045
92	.74229	93	.75308	94	.76272	95	.77113
96	.77819	97	.78450	98	.79000	99	.79514
100	.80025	101	.80468	102	.80946	103	.81563
104	.82144	105	.83038	106	.84512	107	.86591
108	.89932	109	.95455				

(3-15-02)

**02. Irrevocable Annuity.** An irrevocable annuity is an asset transfer if it does not provide fair market value to the participant. To provide fair market value, an irrevocable annuity must meet life expectancy and annual interest tests listed in Subsections 837.03 and 837.04 of this rule. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. The sixty (60) month look-back applies. (5-3-03)

**03. Irrevocable Annuity Life Expectancy Test.** The participant's life expectancy, shown in the following table, must equal or exceed the term of the annuity. Using Table 837.03 compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 837.03 - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09



20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74
68	13.61	16.85	88	4.26	5.34
69	13.00	16.14	89	3.98	4.97
70	12.41	15.44	90	3.73	4.63
71	11.82	14.75	95	2.71	3.26
72	11.24	14.06	100	2.05	2.39
73	10.67	13.40	110	1.14	1.22

(3-15-02)

**04. Irrevocable Annuity Annual Interest Test.** The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. The participant can rebut the five percent (5%) interest test. He must show that single premium annuities were not offered by insurers when the annuity was purchased and it would not be practical to exchange the annuity for one with a higher interest rate. Insurers must be rated excellent or superior by an insurance rating firm such as A.M. Best Co. (5-3-03)

**05. Revocable Annuity.** The surrender amount of a revocable annuity is a resource. Early surrender of a revocable annuity is not an asset transfer for less than fair market value. (7-1-99)

**838. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**Section 871 and 871.01.a.**

**871. TREATMENT OF TRUSTS.**

These trust treatment rules apply to all Medicaid participants. These rules apply to trusts established with the participant's assets on August 11, 1993 or later, and to trusts funded August 11, 1993 or later. This Section does not apply to an irrevocable trust if the participant meets the undue hardship exemption in Subsection ~~840841.121~~ 840841.121 of these rules. Assets transferred to a trust are subject to the asset transfer penalty. Section 871 *does not apply* to a trust established by a will. (7-1-99)(\_\_\_\_)

**01. Revocable Trust.** Revocable trusts are treated as listed in Subsections 871.01.a. through 871.01.d. of these rules. A revocable burial trust is not a trust for the purposes of Subsection 871.01 of these rules. (7-1-99)(\_\_\_\_)

**a.** The body (corpus) of a revocable trust is a resource. (7-1-99)

**b.** Payments from the trust to or for the participant are income. (7-1-99)

**c.** Any other payments from the trust are an asset transfer, triggering an asset transfer penalty period. (7-1-99)

**d.** The home and adjoining property loses its exclusion when transferred to a revocable trust, unless the participant or spouse is the sole beneficiary of the trust. The home is excluded again if removed from the trust. The exclusion restarts the next month. (7-1-99)

**02. Irrevocable Trust.** Irrevocable trusts are treated as listed in Subsections 871.02.a. through 871.02.g. of these rules. (7-1-99)(\_\_\_\_)

**a.** The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the participant, is a resource. (7-1-99)

**b.** Payments made to or for the participant are income. (7-1-99)

**c.** Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. (7-1-99)

**d.** Any part of the trust from which payment cannot be made to, or for the benefit of, the participant under any circumstances, is an asset transfer. (7-1-99)

**e.** The effective date of the transfer is the date the trust was established, or the date payments to the participant were foreclosed. (7-1-99)

**f.** The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. (7-1-99)

**g.** An irrevocable burial trust is not subject to treatment under Subsection 871.02 of these rules, unless funds in the trust can be paid for a purpose other than the participant's funeral and related expenses. The trust can provide that funds not needed for the participant's funeral expenses are available to reimburse Medicaid, or to go to the participant's estate. (7-1-99)(\_\_\_\_)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,**  
**BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0503**

**NOTICE OF RULEMAKING**

**PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is April 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202, Idaho Code, and 20 CFR Part 421.

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

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Inadvertently the word "clothing" was not stricken entirely in Section 300, and the rule is being amended to delete the word. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule.

Only the sections that have changes that are different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 247 through 251.

**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. There is no anticipated fiscal impact to the state general fund as a result of these rule changes.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Peggy Cook at (208) 334-5969.

DATED this 14th day of November, 2005.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
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DOCKET NO. 16-0305-0503 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 247 through 251.

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

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET 16-0305-0503

*Section 300*

**300. INCOME DEFINITION.**

Income is anything that can be used to meet needs for food, ~~clothing~~, or shelter. Income is cash, wages, pensions, in-kind payments, inheritances, gifts, awards, rent, dividends, interest, or royalties the participant receives during a month. ~~(7-1-99)(4-1-05)T~~

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,**  
**BLIND AND DISABLED (AABD)**

**DOCKET NO. 16-0305-0601**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 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 January 18, 2006.

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:

Beginning January 1, 2006, Medicaid recipients who are also on Medicare will no longer have their prescriptions paid for by Idaho's Medicaid Program. They will be covered by the new Medicare Prescription Drug Plan. Under the new drug plan, Medicaid recipients on Medicare will have out of pocket costs of \$1 or \$3 for each prescription and may also have an additional cost for the monthly premium of their chosen drug plan. The increase in the basic allowance assists this population by providing additional money for the Medicaid recipient so it can be used on their increased out of pocket medical costs. The rule changes will increase the individual's basic allowance from \$67 a month to \$87 a month in the following living arrangements: Room and Board Home, Residential and Assisted Living Facilities (RALF), and Certified Family Homes (CFH).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rulemaking is being promulgated for protection of the public health, safety and welfare; and also confers a benefit.

**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: NA - There is no fee attached to this rulemaking. The \$1 to \$3 out of pocket costs is for Medicare, not Medicaid.

**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. There is no fiscal impact to the state general fund due to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule confers a benefit to participants and no objections to the rule are expected.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

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 January 25, 2006.

DATED this 15th day of November, 2005.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0601**

**501. BASIC ALLOWANCE.**

Each participant receives a basic allowance unless he lives in a nursing facility. The basic allowance for each living arrangement is listed in Subsections 501.01 through 501.05. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility and Certified Family Home basic allowances are those in effect January 1, 2001. They do not change with the annual cost-of-living increase in the federal SSI benefit amount.

(5-3-03)

**01. Single Participant.** Through December 31, 2000, a participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.e. Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

(3-30-01)

- a. Living alone. (7-1-99)
- b. Living with his ineligible spouse. (7-1-99)
- c. Living with another participant who is not his spouse. (7-1-99)
- d. Living in another's household. This includes a living arrangement where the participant purchases lodging (room) and meals (board) from his parent, child or sibling. (3-30-01)
- e. Living with his TAFI child. (7-1-99)

**02. Couple or Participant Living With Essential Person.** Through December 31, 2000, a participant living with his participant spouse or his essential person is budgeted seven hundred sixty-eight dollars (\$768) monthly as a basic allowance. Beginning January 1, 2001, the basic allowance increase for a couple is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a couple. The increase may be rounded up.

(3-30-01)

**03. SIGRIF.** A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance.

(7-1-99)

**04. Room and Board Home.** A participant living in a room and board home, as defined in Section 512, is budgeted ~~sixty~~ eighty-seven dollars (\$87) monthly as a basic allowance.

~~(3-15-02)~~(1-1-06)T

**05. Personal Care Supplement.** A participant living in a Residential and Assisted Living Facility, or Certified Family Home with state plan personal care services, is budgeted five hundred and twenty dollars (\$520) monthly as a Basic Allowance, if he does not have enough income to pay his provider for his rent, utilities and food. To receive a Personal Care Supplement, the participant's income after exclusions and disregards must be less than his Basic Allowance. Beginning January 1, 2003, the basic allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

(5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

**512. ROOM AND BOARD HOME ALLOWANCE.**

Room and board is a living arrangement where the participant purchases lodging (room) and meals (board) from a person he lives with who is not his parent, child or sibling. *Through December 31, 2000, a participant living in a room and board home is budgeted six hundred thirty-two dollars (\$632) monthly. Beginning January 1, 2001, the Room and Board allowance increase is one-half (1/2) the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. Beginning January 1, 2002, the Room and Board allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. Beginning January 1, 2006, a participant living in a room and board home is budgeted six hundred ninety-three dollars (\$693). Beginning January 1, 2007, the Room and Board allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.* (3-20-04)(1-1-06)T

**513. LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.**

A participant living in a Residential and Assisted Living Facility (RALF), (*see in accordance with* IDAPA 16.03.22, “Rules Governing Licensed Residential and Assisted Living Facilities in Idaho”) or Certified Family Home (CFH), (*see in accordance with* IDAPA 16.03.19, “Rules Governing Certified Family Homes”) with State Plan Personal Care Services, is budgeted a basic allowance of ~~sixty~~ eighty-seven dollars (\$87) monthly. A participant is also budgeted a monthly allowance for care based on his level of care. If the participant gets a lower level of RALF or CFH care than his assessed level, his allowance is for the lower level of care. These allowances are used to determine eligibility for Medicaid. *The participant is not entitled to AABD cash assistance, unless he* These allowances are only used for AABD cash when the participant is entitled to the Personal Care Supplement in Subsection 512.05 of these rules DD Waiver in accordance with Section 789, “Developmentally Disabled (DD) Waiver,” of this rule. If the participant does not require the RALF or CFH level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. *A participant with Home and Community-Based Services for the aged and disabled (HCBS A&D) is not entitled to cash assistance.* (5-3-03)(1-1-06)T

**01. Care Levels and Monthly Allowances.** *Through December 31, 2000* Beginning January 1, 2006, care levels and monthly allowances are those listed in Table 513. *Beginning January 1, 2001, through December 31, 2001, the RALF and CFH care allowances and the basic allowance increase by one-half (1/2) the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.* Beginning January 1, 2002, the RALF and CFH allowances increase by the full dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

TABLE 513 - CARE LEVELS AND ALLOWANCES AS OF 12-31-06		
	Level Of Care	Monthly Allowance
a.	Level I	<del>Seven Eight</del> hundred and <del>seventy-four</del> <u>thirty-five</u> dollars (\$ <del>774</del> <u>835</u> )
b.	Level II	<del>Eight Nine</del> hundred and <del>forty-one</del> <u>two</u> dollars (\$ <del>841</del> <u>902</u> )
c.	Level III	Nine hundred and <del>sixty</del> <u>nine</u> dollars (\$ <del>966</del> <u>9</u> )

(3-15-02)(1-1-06)T

**02. CFH Operated by Relative.** A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH allowances. He may receive the allowance for a person living with a relative. A relative for this purpose is the participant’s parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption. (3-15-02)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**  
**DOCKET NO. 16-0309-0503**  
**NOTICE OF RULEMAKING**  
**PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code, and House Bill No. 190 passed by the 2005 Legislature now codified in Section 56-118, Idaho Code.

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

House Bill No. 190 passed by the 2005 Idaho Legislature requires the Department to discuss reimbursement rates annually with Medicaid mental health and developmental disability providers. An annual report to the Legislature is also required. This rule is being amended based on comments received during the comment period and the public hearing. Section 061.05 has been amended to clarify that the contents of the Department's annual report will be in compliance with Section 56-118, Idaho Code regarding those items required to be in the annual report.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule.

Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 254 - 256.

**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.

Current Medicaid staff will conduct the surveys and prepare a report for the Legislature. The cost of their time to perform this work will be no more than \$7,000. This staff time will be diverted from other projects. When the survey information is shared with the Legislature, a possible result may be an increase in Medicaid reimbursement to providers.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Sheila Pugatch at (208) 364-1817.

DATED this 15th day of November, 2005.

Sherri Kovach  
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DHW – Administrative Procedures Section  
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DOCKET NO. 16-0309-0503 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 254 through 256.

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.

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THE FOLLOWING IS THE AMENDED TEXT FOR DOCKET NO. 16-0309-0503

*Subsection 061.05*

**061. COMMUNITY-BASED PROVIDER REIMBURSEMENT REVIEW AND REPORT.**

**05. Contents of the Department's Report.** The Department will compile a report ~~to include the following~~ in compliance with Section 56-118, Idaho Code, and will include, but is not limited to, the following:  
(7-1-05)T(7-1-05)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0601**

**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is May 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202(b), and 56-203(g), Idaho Code, and HB385 passed by the 2005 Legislature.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This rulemaking establishes a program that credentials mental health agencies to assure mental health clinics and psychosocial rehabilitation providers meet minimal quality standards, utilize qualified providers, and provide appropriate services that meet the needs of Medicaid participants. Under these rules, mental health agencies will be required to undergo a Department-approved credentialing process prior to being authorized to deliver and bill for services, and to be re-credentialed on a periodic basis.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rule protects the public health, safety, and welfare of Idahoans.

**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 fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. HB385 passed by the 2005 Idaho Legislature appropriated Three hundred and fifty thousand dollars (\$350,000) to the Department to contract with an outside vendor for a credentialing process.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Jamie Simpson at (208) 364-1842.

DATED this 9th day of November, 2005.

Sherri Kovach  
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**THE FOLLOWING IS THE TEXT FOR DOCKET NO. 16-0309-0601**

**449. DEFINITIONS FOR PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR).**

- 01. Assessment Hours.** Time allotted for completion of evaluation and diagnostic services. (4-6-05)
- 02. Credentialing.** A process where the Medicaid PSR agency is approved by the Department or the Department's designee as having met the requirements of the provider agreement and professional standards defined in these rules. (5-1-06)T
- 023. Demographic Information.** Information that identifies participants and is entered into the Department's database collection system. (4-6-05)
- 034. Goal.** The desired outcome related to an identified issue. (4-6-05)
- 045. Initial Contact.** The date a participant, parent, or legal guardian signs the request for assessment hours. (4-6-05)
- 056. Issue.** A statement specifically describing the participant's behavior directly relating to the participant's mental illness and functional impairment. (4-6-05)
- 067. Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. The nurse practitioner and clinical nurse specialist must have experience prescribing psychotropic medication. (4-6-05)
- 078. Objective.** A milestone toward meeting the goal that is concrete, measurable, time-limited, and behaviorally specific. (4-6-05)
- 089. Psychosocial Rehabilitative Services (PSR).** Rehabilitative services provided both to children with serious emotional disturbance and to adults with severe and persistent mental illness to address functional deficits due to psychiatric illness and to restore independent living, socialization, and effective life management skills. (4-6-05)
- 0910. Tasks.** Specific, time-limited activities and interventions designed to accomplish the objectives in the individualized treatment plan. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**451. RESPONSIBILITIES OF THE DEPARTMENT REGARDING PSR SERVICES.**

The Department will administer the provider agreement for the provision of PSR services and is responsible for the following tasks: (4-6-05)

- 01. Service System.** The Department is responsible for the development, maintenance and coordination of regional, comprehensive and integrated service systems. (4-6-05)
- 02. Credentialing.** The Department is responsible for ensuring Medicaid PSR agencies meet credentialing requirements. (5-1-06)T
- 023. Assessment Authorization.** The Department or its designee will review requests for assessment hours and authorize as appropriate. (4-6-05)
- 034. Individualized Treatment Plan Authorization Requirements.** Individualized treatment plan authorizations must include the following: (4-6-05)
- a. Required Documentation.** The required documentation for each individualized treatment plan

includes: (4-6-05)

- i. Participant demographic information; (4-6-05)
- ii. A comprehensive assessment as provided in Subsection 453.01 of these rules; and (4-6-05)
- iii. A written individualized treatment plan as provided in Subsection 453.02 of these rules. (4-6-05)
- iv. Adult service plans also require a rehabilitation outcome database. (4-6-05)
- v. Children's individualized treatment plans also require the Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS). (4-6-05)

**b. Physician's Signature and Receipt of Required Documentation.** Reimbursement for services will be authorized from the date of the physician's signature if the required documentation is received by the Department or its designee within thirty (30) days from the request of assessment hours. If the documentation is received after thirty (30) days from the date of the request of assessment hours, or after the expiration of the plan, the date to begin services is the date the individualized treatment plan and other required documentation are received by the Department or its designee. For the annual update, all required documentation must be received by the Department or its designee before the expiration date of the current assessment and plan. In order for a prior authorization to remain valid throughout the treatment plan year, documentation of the one hundred twenty (120) day reviews must comply with Subsection 457.05 of these rules. (4-6-05)

**c. Hours and Type of Service.** The Department or its designee must authorize the number of hours and type of services which could be reasonably expected to lead to achievement of the individualized treatment plan objectives. (4-6-05)

**d. Authorization Time Period.** Service authorizations are limited to a twelve (12) month period and must be reviewed and updated at least annually. (4-6-05)

**e. No Duplication of Services.** The Department or its designee must monitor, coordinate, and jointly plan with all known providers to a participant to prevent duplication of services provided to PSR participants through other Medicaid reimbursable and non-Medicaid programs. (4-6-05)

**045. Notice of Decision.** At the point a decision is made that a participant is ineligible for PSR services, a notice of decision citing the reason(s) the participant is ineligible for PSR services must be issued by the Department. The notice of decision must be sent to the adult participant and a copy to his legal guardian, if any. When the participant is a minor child, the notice of decision must be sent to the minor child's parent or legal guardian. (4-6-05)

**056. Changes in Individualized Treatment Plan Hours or Service Type.** When the Department or its designee is notified, in writing, by the provider of recommended increases in hours or change in type of service provided, the Department or its designee must review the request and either approve or deny within ten (10) working days of receipt. A clear rationale for the change in hours or service type must be included with the request. (4-6-05)

**067. Changes to Individualized Treatment Plan Objectives.** When a provider believes that an individualized treatment plan needs to be revised, the provider should include that recommendation and rationale in documentation of the next one hundred twenty (120) day review. The Department or its designee will review the information, and if appropriate, act on the recommendation. In the event substantial changes in the participant's mental status or circumstances occur requiring immediate changes in the plan objectives, the provider must notify the Department or its designee, in writing, of its recommendation and rationale for the change. The Department has ten (10) working days to respond to and either approve or deny the request for change. (4-6-05)

**078. Minor Changes to Individualized Treatment Plan Tasks.** When the Department or its designee is notified in writing by the provider of necessary and specific changes to individualized treatment plan tasks that require no change in total hours or service type, a copy of the amended individualized treatment plan tasks must be forwarded to the Department or its designee including rationale for those changes. The Department or its designee

has ten (10) working days to respond to the changes. If no response is received, the provider may proceed to incorporate those and only those specific task changes into the individualized treatment plan. While task changes may result in reassignment of available hours among tasks, under no circumstances does this permit the provider to increase the total number of prior authorized hours. (4-6-05)

**089. Quality of Services.** The Department or its designee must monitor the quality and outcomes of PSR services provided to participants, in coordination with the Divisions of Medicaid, Management Services, and Family and Community Services. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**455. PSR PROVIDER AGENCY REQUIREMENTS.**

Each agency that enters into a provider agreement with the Department for the provision of PSR services must meet the following requirements: (4-6-05)

**01. Agency.** A PSR agency must be a proprietorship, partnership, corporation, or other entity, employing at least two (2) staff qualified to deliver PSR services under Section 456 of these rules, and offering both PSR services and administrative services. Administrative services may include such activities as billing, hiring staff, assuring staff qualifications are met and maintained, setting policy and procedure, payroll. (4-6-05)

**02. Credentialing.** The Department is phasing in the Credentialing Program in 2006. During the first three (3) years of development the following will take place. (5-1-06)T

**a. Reimbursement.** A PSR agency must be designated as credentialed or provisionally credentialed in order to receive Medicaid reimbursement for services. Any agency that fails to maintain credentialed status will have its Medicaid provider agreement terminated. (5-1-06)T

**b. Application.** All existing providers and new provider applicants must submit an application for credentialing that will be reviewed in order to proceed with the credentialing process and obtain the required credential by the Department or its designee. All initial applications will be responded to within thirty (30) days indicating if the application is approved or additional information is required. The applicant must submit the additional information for the application to be considered further. The application will be reviewed up to three (3) times. If the applicant has not provided the required information by the third submittal then the application will be denied and the application will not be considered again for twelve (12) months. (5-1-06)T

**c. Temporary Credentialed Status.** In order for existing providers to be able to continue to provide services during these first three (3) years the Department will grant a one-time temporary credential to all existing providers not to exceed three (3) years. (5-1-06)T

**d. New Providers.** Once the Credentialing Program is initiated any new provider applicants will be required to submit an application and successfully complete the credentialing process prior to billing for Medicaid services. (5-1-06)T

**e. Elements of Credentialing.** The credentialing process consists of the application and an on-site review. Whenever deficiencies are identified a plan of improvement approved by the Department or its designee must be submitted by the agency. (5-1-06)T

**f. Expiration and Renewal of Credentialed Status.** Credentials issued under these rules will be issued for a period up to three (3) years. Unless sooner suspended or revoked, the agency's credential will expire on the date designated by the Department or its designee. No later than ninety (90) days before expiration, an agency may apply for renewal of credentials. A site review may be conducted by the Department or its designee for renewal applications. (5-1-06)T

**g. Provisional Credentialed Status.** If a new or renewal applicant is found deficient in one (1) or more

of the requirements for credentialing, but does not have deficiencies that jeopardize the health and safety of the participants or substantially affect the provider's ability to provide services, a provisional credential may be issued. Provisional credentials will be issued for a period not to exceed one hundred and eighty (180) days. During that time, the Department or its designee will determine whether the deficiencies have been corrected. If so, then the agency will be credentialed. If not, then the credential will be denied or revoked. (5-1-06)T

**h.** Denial, or Revocation of Credentialed Status. The Department or its designee may deny or revoke credentials when conditions exist that endanger the health, safety, or welfare of any participant or when the agency is not in substantial compliance with these rules. Additional causes for denial of credentials include the following: (5-1-06)T

**i.** The provider agency or provider agency applicant has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining credentialed status; (5-1-06)T

**ii.** The provider agency or provider agency applicant has been convicted of a criminal offense related to the provider's or applicant's involvement in any program established under Medicare, Medicaid or the Title XX Services Program, or has been found to have committed any offense involving theft, or abuse, neglect or exploitation of another person; (5-1-06)T

**iii.** The provider agency or provider agency applicant has been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or similar minor offense; (5-1-06)T

**iv.** The provider agency or provider agency applicant has been denied or has had revoked any health facility license, or certificate; (5-1-06)T

**v.** A court has ordered that any provider agency owner or provider agency applicant must not operate a health facility, residential care or assisted living facility, or certified family home; (5-1-06)T

**vi.** Any owners, employees, or contractors of the provider agency or provider agency applicant are listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; (5-1-06)T

**vii.** The provider agency or provider agency applicant is directly under the control or influence, whether financial or other, of any person who is described in Subsections 455.02.h.i. through 455.02.h.vi. of these rules. (5-1-06)T

**i.** Procedure for Appeal of Denial or Revocation of Credentials. Immediately upon denial or revocation of credentials, the Department or the Department's designee will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (5-1-06)T

**023. Criminal History Checks.** (4-6-05)

**a.** The agency must verify that all employees, subcontractors, or agents of the agency providing direct care or PSR services have complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (4-6-05)

**b.** Once an employee, subcontractor, or agent of the agency has completed a self-declaration form and has been fingerprinted, he may begin working for the agency on a provisional basis while awaiting the results of the criminal history check. (4-6-05)

**c.** Once an employee, subcontractor, agent of the agency has received a criminal history clearance, any additional criminal convictions must be reported to the Department or its designee when the agency learns of the conviction. (4-6-05)

**034. PSR Agency Staff Qualifications.** The agency must assure that each agency staff person

delivering PSR services meets at least one (1) of the qualifications in Section 456 of these rules. (4-6-05)

~~**04. Supplemental Services Agreement.** The agency must have negotiated a Supplement Services Agreement (SSA) with the Department or its designee. The SSA must specify what PSR services must be provided by the agency. The agency's Supplemental Services Agreement must be reviewed at least annually and may be revised or cancelled at any time. (4-6-05)~~

**05. Agency Employees and Subcontractors.** Employees and subcontractors of the agency are subject to the same conditions, restrictions, qualifications and rules as the agency. (4-6-05)

**06. Supervision.** The agency must provide staff with adequate supervision to insure that the tasks on a participant's individualized treatment plan can be implemented effectively in order for the individualized treatment plan objectives to be achieved. Case-specific supervisory contact must be made weekly, at a minimum, with staff for whom supervision is a requirement. Individuals in Subsections 456.09 through 456.12 of these rules must be supervised by individuals in Subsections 456.01 through 456.08. Documentation of supervision must be maintained by the agency and be available for review by the Department or its designee. (4-6-05)

**07. Continuing Education.** The agency must assure that all staff complete twenty (20) hours of continuing education annually from the date of hire. Four (4) hours every four (4) years must be in ethics training. Staff who are not licensed must select the discipline closest to their own and use the continuing education standards attached to that professional license. Nothing in these rules will affect professional licensing continuing education standards and requirements set by the Bureau of Occupational Licenses. (4-6-05)

**08. Crisis Service Availability.** PSR agencies must provide twenty-four (24) hour crisis response services for their participants or make contractual arrangement for the provision of those services. (4-6-05)

**09. Ethics.** (2-1-05)T

**a.** The provider must adopt, adhere to and enforce among its staff who are providing Medicaid reimbursable services a Code of Ethics similar to or patterned after one (1) of the following: (5-1-06)T

**i.** US Psychiatric Rehabilitation Association Code of Ethics found at <http://www.uspra.org/i4a/pages/index.cfm?pageid=3601>; (5-1-06)T

**ii.** National Association of Social Workers Code of Ethics found at <http://www.naswdc.org/pubs/code/default.asp>; (5-1-06)T

**iii.** American Psychological Association Code of Ethics found at <http://www.apa.org/ethics/code.html>;  
or (5-1-06)T

**iv.** American Counseling Association Code of Ethics found at [http://www.counseling.org/Content/NavigationMenu/RESOURCES/ETHICS/ACA Code of Ethics.htm](http://www.counseling.org/Content/NavigationMenu/RESOURCES/ETHICS/ACA_Code_of_Ethics.htm) (5-1-06)T

**v.** Marriage and Family Therapists Code of Ethics found at [www.aamft.org/resources/Irmp/ethics/ethicscode2001.asp](http://www.aamft.org/resources/Irmp/ethics/ethicscode2001.asp). (5-1-06)T

**b.** Evidence of the Agency's Code of Ethics, the discipline(s) upon which it is modeled, and each staff member's training on the code must be submitted to the Department or its designee upon request. (5-1-06)T

**c.** The Provider must develop a schedule for providing ethics training to its staff. (5-1-06)T

**d.** The ethics training schedule must provide that new employees receive the training during their first year of employment, and that all staff receive ethics training no less than four hours every four (4) years thereafter. (5-1-06)T

**460. BUILDING STANDARDS FOR PSR AGENCY LOCATIONS.**

Each physical location that is maintained by the PSR agency and where participants go to meet or receive services

must meet the following standards: (5-1-06)T

**01. Accessibility.** PSR service providers must be responsive to the needs of the service area and persons receiving services and accessible to persons with disabilities as defined in Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and the uniform federal accessibility standard. (5-1-06)T

**02. Environment.** PSR agency offices must be designed and equipped to meet the needs of each participant including, but not limited to, factors such as sufficient space, equipment, lighting and noise control. (5-1-06)T

**03. Capacity.** PSR agency offices must provide qualified staff as listed in Subsection 465.07 of these rules to meet a staff to participant ratio that ensures safe, effective and clinically appropriate interventions. (5-1-06)T

**04. Fire and Safety Standards.** (5-1-06)T

**a.** PSR agency offices must meet all local and state codes concerning fire and life safety. The owner/operator must have the facility inspected at least annually by the local fire authority. In the absence of a local fire authority, such inspections must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection must be made available upon request and must include documentation of any necessary corrective action taken on violations cited; and (5-1-06)T

**b.** PSR agency offices must be structurally sound and must be maintained and equipped to assure the safety of participants, employees and the public; and (5-1-06)T

**c.** In PSR agency offices where natural or man-made hazards are present, suitable fences, guards or railings must be provided to protect participants; and (5-1-06)T

**d.** PSR agency offices must be kept free from the accumulation of weeds, trash and rubbish; and (5-1-06)T

**e.** Portable heating devices are prohibited except units that have heating elements that are limited to not more than 212°F. The use of unvented, fuel-fired heating devices of any kind are prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority; and (5-1-06)T

**f.** Flammable or combustible materials must not be stored in the PSR agency; and (5-1-06)T

**g.** All hazardous or toxic substances must be properly labeled and stored under lock and key; and (5-1-06)T

**h.** Water temperatures in areas accessed by participants must not exceed 120°F; and (5-1-06)T

**i.** Portable fire extinguishers must be installed throughout the agency facility. Numbers, types and location must be directed by the applicable fire authority noted in Subsection 472.04 of these rules; and (5-1-06)T

**j.** Electrical installations and equipment must comply with all applicable local or state electrical requirements. In addition, equipment designed to be grounded must be maintained in a grounded condition and extension cords and multiple electrical outlet adapters must not be utilized unless U.L. approved and the numbers, location, and use of them are approved, in writing, by the local fire or building authority. (5-1-06)T

**k.** There must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers must be posted near the telephone or where they can be easily accessed; and (5-1-06)T

**l.** Furnishings, decorations or other objects must not obstruct exits or access to exits. (5-1-06)T

**05. Emergency Plans and Training Requirements.** (5-1-06)T



**a.** Evacuation plans must be posted throughout the facility. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building.(5-1-06)T

**b.** There must be written policies and procedures covering the protection of all persons in the event of fire or other emergencies; and (5-1-06)T

**c.** All employees must participate in fire and safety training upon employment and at least annually thereafter; and (5-1-06)T

**d.** All employees and PSR participants who receive services at that location must engage in quarterly fire drills. At least two (2) of these fire drills must include evacuation of the building; and (5-1-06)T

**e.** A brief summary of the fire drill and the response of the employees and participants must be written and maintained on file. The summary must indicate the date and time the drill occurred, problems encountered and corrective action taken. (5-1-06)T

**06. Food Preparation and Storage.** (5-1-06)T

**a.** If foods are prepared in the PSR agency offices, they must be stored in such a manner as to prevent contamination and be prepared by sanitary methods. (5-1-06)T

**b.** Except during actual preparation time, cold perishable foods must be stored and served under 45°F and hot perishable foods must be stored and served over 140°F. (5-1-06)T

**c.** Refrigerators and freezers used to store participant lunches and other perishable foods used by participants, must be equipped with a reliable, easily-readable thermometer. Refrigerators must be maintained at 45°F or below. Freezers must be maintained at 0°F to 10°F or below. (5-1-06)T

**d.** When meals are prepared or provided for by the PSR agency for participants, meals must be nutritional. (5-1-06)T

**07. Housekeeping and Maintenance Services.** (5-1-06)T

**a.** The interior and exterior of the PSR offices must be maintained in a clean, safe and orderly manner and must be kept in good repair; and (5-1-06)T

**b.** Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; and (5-1-06)T

**c.** All housekeeping equipment must be in good repair and maintained in a clean, safe and sanitary manner; and (5-1-06)T

**d.** The PSR agency must be maintained free from infestations of insects, rodents and other pests; and (5-1-06)T

**e.** The PSR agency must maintain the temperature and humidity within a normal comfort range by heating, air conditioning, or other means. (5-1-06)T

**f.** Garbage will be disposed of in a sanitary manner. It must not be allowed to accumulate and must be placed in leak-proof bags. (5-1-06)T

**08. Firearms.** No firearms are permitted in the PSR agency offices. (5-1-06)T

**09. Plumbing.** Restroom facilities must be maintained in good working order and available and accessible to participants while at the PSR agency offices in accordance with the Americans with Disabilities Act. This includes the presence of running water for operation of the toilet and washing hands. (5-1-06)T

**10. Lighting.** Lighting levels must be maintained throughout the PSR agency offices which are appropriate to the service being provided. (5-1-06)T

**11. Drinking Water.** Where the source is other than a public water system or commercially bottled, water quality must be tested and approved annually by the district health department. (5-1-06)T

**4601. CLINIC SERVICES - DIAGNOSTIC SCREENING CLINICS.**

The Department will reimburse medical social service visits to clinics which coordinate the treatment between physicians and other medical professionals for recipients which are diagnosed with cerebral palsy, myelomeningitis or other neurological diseases and injuries with comparable outcomes. (4-1-91)

**01. Multidisciplinary Assessments and Consultations.** The clinic must perform on site multidisciplinary assessments and consultations with each recipient and responsible parent or guardian. Diagnostic and consultative services related to the diagnosis and treatment of the recipient will be provided by board certified physician specialists in physical medicine, neurology and orthopedics. ~~(4-1-91)~~(5-1-06)T

**02. Billings.** No more than five (5) hours of medical social services per recipient may be billed by the specialty clinic each state fiscal year for which the medical social worker monitors and arranges recipient treatments and provides medical information to providers which have agreed to coordinate the care of their patient. (4-1-91)

**03. Services Performed.** Services performed or arranged by the clinic will be subject to the amount, scope and duration for each service as set forth elsewhere in this chapter. (12-31-91)

**04. The Clinic.** The clinic is established as a separate and distinct entity from the hospital, physician or other provider practices. (4-1-91)

**05. Services Reimbursed.** Services performed by a diagnostic and screening clinic will be reimbursed under a fee for service basis as established by Idaho Department of Health and Welfare Rules, IDAPA 16.03.10, Section 406, "Rules Governing Medicaid Provider Reimbursement in Idaho". (12-31-91)

~~4612.~~ -- 463. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**465. MENTAL HEALTH CLINIC PROVIDER AGENCY REQUIREMENTS.**

Each agency that enters into a provider agreement with the Department for the provision of mental health clinic services must meet the following requirements: (4-6-05)

**01. Mental Health Clinic.** A mental health clinic, also referred to as "agency," must be a proprietorship, partnership, corporation, or other entity, in a distinct location, employing at least two (2) staff qualified to deliver clinic services under this rule and operating under the direction of a physician. The Department must approve the enrollment of the agency as a Medicaid provider. Each location of the agency must meet these requirements. All mental health clinic services must be provided at the clinic unless provided to an eligible homeless individual. (4-6-05)

**02. Credentialing.** The Department is phasing in the Credentialing Program in 2006. During the first three (3) years of development the following will take place. (5-1-06)T

**a. Reimbursement.** A mental health clinic must be designated as credentialed or provisionally credentialed in order to receive Medicaid reimbursement for services. Any agency that fails to maintain credentialed status will have its Medicaid provider agreement terminated. (5-1-06)T

**b. Application.** All existing providers and new provider applicants must submit an application for credentialing that will be reviewed in order to proceed with the credentialing process and obtain the required

credential by the Department or its designee. All initial applications will be responded to within thirty (30) days indicating if the application is approved or additional information is required. The applicant must submit the additional information for the application to be considered further. The application will be reviewed up to three (3) times. If the applicant has not provided the required information by the third submittal then the application will be denied and the application will not be considered again for twelve (12) months. (5-1-06)T

**c.** Temporary Credentialed Status. In order for existing providers to be able to continue to provide services during these first three (3) years the Department will grant a one-time temporary credential to all existing providers not to exceed three (3) years. (5-1-06)T

**d.** New Providers. Once the Credentialing Program is initiated any new provider applicants will be required to submit an application and successfully complete the credentialing process prior to billing for Medicaid services. (5-1-06)T

**e.** Elements of Credentialing. The credentialing process consists of the application and an on-site review. Whenever deficiencies are identified a plan of improvement approved by the Department or its designee must be submitted by the agency. (5-1-06)T

**f.** Expiration and Renewal of Credentialed Status. Credentials issued under these rules will be issued for a period up to three (3) years. Unless sooner suspended or revoked, the agency's credential will expire on the date designated by the Department or its designee. No later than ninety (90) days before expiration, an agency may apply for renewal of credentials. A site review may be conducted by the Department or its designee for renewal applications. (5-1-06)T

**g.** Provisional Credentialed Status. If a new or renewal applicant is found deficient in one (1) or more of the requirements for credentialing, but does not have deficiencies that jeopardize the health and safety of the participants or substantially affect the provider's ability to provide services, a provisional credential may be issued. Provisional credentials will be issued for a period not to exceed one hundred and eighty (180) days. During that time, the Department or its designee will determine whether the deficiencies have been corrected. If so, then the agency will be credentialed. If not, then the credential will be denied or revoked. (5-1-06)T

**h.** Denial, or Revocation of Credentialed Status. The Department or its designee may deny or revoke credentials when conditions exist that endanger the health, safety, or welfare of any participant or when the agency is not in substantial compliance with these rules. Additional causes for denial of credentials include the following: (5-1-06)T

**i.** The provider agency or provider agency applicant has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining credentialed status; (5-1-06)T

**ii.** The provider agency or provider agency applicant has been convicted of, or is currently under investigation for fraud, gross negligence, abuse, assault, battery or exploitation; (5-1-06)T

**iii.** The provider agency or provider agency applicant has been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or similar minor offense; (5-1-06)T

**iv.** The provider agency or provider agency applicant has been denied or has had revoked any health facility license, or certificate; (5-1-06)T

**v.** A court has ordered that any provider agency owner or provider agency applicant must not operate a health facility, residential care or assisted living facility, or certified family home; (5-1-06)T

**vi.** Any owners, employees, or contractors of the provider agency or provider agency applicant are listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; (5-1-06)T

**vii.** The provider agency or provider agency applicant is directly under the control or influence, whether financial or other, of any person who is described in Subsections 465.02.h.i. through 465.02.h.vi. of these

rules.

(5-1-06)T

i. Procedure for Appeal of Denial or Revocation of Credentials. Immediately upon denial or revocation of credentials, the Department or the Department's designee will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings".

(5-1-06)T

**023. Physician Requirement for Clinic Supervision.** In order to fulfill the requirement that the clinic be under the direction of a physician, the clinic must have a contract with the physician. (4-6-05)

**a.** The contract must specifically require that the physician spend as much time in the facility as is necessary to assure that participants are receiving services in a safe and efficient manner in accordance with accepted standards of medical practice. (4-6-05)

**b.** The supervising physician of the clinic may also serve as the supervising physician of a participant's care. (4-6-05)

**034. Physician Requirement for Supervision of a Participant's Care.** Each participant's care must be under the supervision of a physician directly affiliated with the clinic. Documentation of the affiliation must be kept in the clinic location. The clinic may have as many physician affiliations as is necessary in order to meet the needs of the volume of participants served in that location. The physician who supervises a participant's care does not have to deliver this service at the clinic nor does the physician have to be present at the clinic when the participant receives services at the clinic. In order to fulfill the requirement for physician supervision of a participant's care, the following conditions must also be met: (4-6-05)

**a.** The clinic and the physician must enter into a formal arrangement in which the physician must assume professional responsibility for the services provided; (4-6-05)

**b.** The physician must see the participant at least once to determine the medical necessity and appropriateness of clinic services; (4-6-05)

**c.** The physician must review and sign the individualized treatment plan as an indicator that the services are prescribed; and (4-6-05)

**d.** The physician must review and sign all updates to the individualized treatment plan that involve changes in the types or amounts of services. (4-6-05)

**045. Assessment.** All treatment in mental health clinics must be based on an individualized assessment of the patient's needs, including a current mental status examination, and provided under the direction of a licensed physician. (4-6-05)

**056. Criminal History Checks.** (4-6-05)

**a.** The agency must verify that all employees, subcontractors, or agents of the agency providing direct care or clinical services have complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (4-6-05)

**b.** Once an employee, subcontractor, or agent of the agency has completed a self-declaration form and has been fingerprinted, he may begin working for the agency on a provisional basis while awaiting the results of the criminal history check. (4-6-05)

**c.** Once an employee, subcontractor, agent of the agency has received a criminal history clearance, any additional criminal convictions must be reported to the Department or its designee when the agency learns of the conviction. (4-6-05)

**067. Staff Qualifications.** The mental health clinic must assure that each agency staff person delivering

clinical services to eligible MA participants has, at a minimum, one (1) or more of the following qualifications: (4-6-05)

- a. Licensed Psychiatrist; (4-6-05)
- b. Licensed Physician or licensed practitioner of the healing arts; (4-6-05)
- c. Licensed Psychologist; (4-6-05)
- d. Psychologist extender, registered with the Bureau of Occupational Licenses; (4-6-05)
- e. Licensed Masters Social Worker, Licensed Clinical Social Worker, or Licensed Social Worker; (4-6-05)
- f. Licensed Clinical Professional Counselor or Licensed Professional Counselor; (4-6-05)
- g. Licensed Marriage and Family Therapist; (4-6-05)
- h. Certified Psychiatric Nurse, R.N., as described in Subsection 456.02 of these rules; (4-6-05)
- i. Licensed Professional Nurse, R.N.; or (4-6-05)
- j. Registered Occupational Therapist, O.T.R. (4-6-05)

~~078.~~ **Support Staff.** For the purposes of this rule, support staff is any person who does not meet the qualifications of professionals as listed in Subsection 465.067 of these rules. The agency may elect to employ support staff to provide support services to participants. Such support services may include providing transportation, cooking and serving meals, cleaning and maintaining the physical plant, or providing general, non-professional supervision. Support staff must not deliver or assist in the delivery of services that are reimbursable by Medicaid.

(4-6-05)(5-1-06)T

~~089.~~ **Agency Employees and Subcontractors.** Employees and subcontractors of the agency are subject to the same conditions, restrictions, qualifications and rules as the agency. (4-6-05)

~~0910.~~ **Supervision.** The agency must ensure that staff providing clinical services are supervised according to the following guidelines: (4-6-05)

- a. Standards and requirements for supervision set by the Bureau of Occupational Licenses are met; (4-6-05)
- b. Case-specific supervisory contact must be made weekly, at a minimum, with staff for whom supervision is a requirement; and (4-6-05)
- c. Documentation of supervision must be maintained by the agency and be available for review by the Department or its designee. (4-6-05)

~~101.~~ **Continuing Education.** The agency must ensure that all staff complete twenty (20) hours of continuing education annually in the field in which they are licensed. Documentation of the continuing education hours must be maintained by the agency and be available for review by the Department or its designee. Nothing in these rules will affect professional licensing continuing education standards and requirements set by the Bureau of Occupational Licenses. (4-6-05)

~~112.~~ **Informed Consent.** The agency must ensure that participants who receive services through the agency have obtained informed consent from the participant or his legal guardian indicating agreement with all of the elements on the individualized treatment plan including choice of the provider agency, designated services, times, dates, frequencies, objectives, goals, and exit criteria. For minors, informed consent must be obtained from the minor's parent or legal guardian. (4-6-05)

**13. Ethics.** (2-1-05)T

**a.** The provider must adopt, adhere to and enforce among its staff who are providing Medicaid reimbursable services a Code of Ethics similar to or patterned after one (1) of the following: (5-1-06)T

**i.** US Psychiatric Rehabilitation Association Code of Ethics found at <http://www.uspra.org/i4a/pages/index.cfm?pageid=3601>; (5-1-06)T

**ii.** National Association of Social Workers Code of Ethics found at <http://www.naswdc.org/pubs/code/default.asp>; (5-1-06)T

**iii.** American Psychological Association Code of Ethics found at <http://www.apa.org/ethics/code.html>;  
or (5-1-06)T

**iv.** American Counseling Association Code of Ethics found at [http://www.counseling.org/Content/NavigationMenu/RESOURCES/ETHICS/ACA\\_Code\\_of\\_Ethics.htm](http://www.counseling.org/Content/NavigationMenu/RESOURCES/ETHICS/ACA_Code_of_Ethics.htm). (5-1-06)T

**v.** Marriage and Family Therapists Code of Ethics found at [www.aamft.org/resources/lrmp/ethics/ethicscode2001.asp](http://www.aamft.org/resources/lrmp/ethics/ethicscode2001.asp). (5-1-06)T

**b.** Evidence of the Agency's Code of Ethics, the discipline(s) upon which it is modeled, and each staff member's training on the code must be submitted to the Department or its designee upon request. (5-1-06)T

**c.** The Provider must develop a schedule for providing ethics training to its staff. (5-1-06)T

**d.** The ethics training schedule must provide that new employees receive the training during their first year of employment, and that all staff receive ethics training no less than four (4) hours every four (4) years thereafter. (5-1-06)T

**466. INDIVIDUALIZED TREATMENT PLAN FOR MENTAL HEALTH CLINIC SERVICES.**

A written individualized treatment plan is a medically-ordered plan of care. An individualized treatment plan must be developed and implemented for each participant receiving mental health clinic services. Treatment planning is reimbursable if conducted by a qualified professional identified in Subsection 465.067 of these rules.

~~(4-6-05)~~(5-1-06)T

**01. Individualized Treatment Plan Development.** The individualized treatment plan must be developed by the following: (4-6-05)

**a.** The clinic staff providing the services; and (4-6-05)

**b.** The adult participant, if capable, and the adult participant's legal guardian, or, in the case of a minor, the minor's parent or legal guardian. The participant or his parent or legal guardian may also choose others to participate in the development of the plan. (4-6-05)

**02. Individualized Treatment Plan Requirements.** An individualized treatment plan must include the following, at a minimum: (4-6-05)

**a.** Statement of the overall goals and concrete, measurable treatment objectives to be achieved by the participant, including time frames for completion. The goals and objectives must be individualized and must be directly related to the clinic service needs that are identified in the assessment. (4-6-05)

**b.** Documentation of who participated in the development of the individualized treatment plan. (4-6-05)

**i.** The authorizing physician must sign and date the plan within (30) thirty calendar days from the initiation of treatment. (4-6-05)

ii. The adult participant, the adult participant's legal guardian or, in the case of a minor, the minor's parent or legal guardian, must sign the treatment plan indicating their participation in its development. If these signatures indicating participation in the development of the treatment plan are not obtained, then the agency must document in the participant's record the reason the signatures were not obtained, including the reason for the participant's refusal to sign. A copy of the treatment plan must be given to the adult participant and his legal guardian or to his parent or legal guardian if the participant is a minor. (4-6-05)

iii. Other individuals who participated in the development of the treatment plan must sign the plan. (4-6-05)

iv. The author of the treatment plan must sign the plan and include his title and credentials. (4-6-05)

c. The diagnosis of the participant must be documented by an examination and be made by a licensed physician or other licensed practitioner of the healing arts, licensed psychologist, licensed clinical professional counselor, or licensed clinical social worker within the scope of his practice under state law; and (4-6-05)

d. A problem list, and the type, frequency, and duration of treatment estimated to achieve all objectives based on the ability of the participant to effectively utilize services. (4-6-05)

**03. Treatment Plan Review.** The treatment plan review by the clinic and the participant must occur within one-hundred-twenty (120) days and every one-hundred-twenty (120) days thereafter. During the review, the clinic staff providing the services and the participant must review progress made on objectives and identify objectives that may be added, amended, or deleted from the individualized treatment plan. The attendees of the treatment plan review are determined by the adult participant or his legal guardian, or, in the case of a minor, his parent or legal guardian and clinic staff providing the services. (4-6-05)

**04. Physician Review of Treatment Plan.** Each individualized treatment plan must be reviewed and be completely rewritten and signed by a physician at least annually. Changes in the types or amount of services that are determined during treatment plan reviews must be reviewed and signed by a physician. Projected dates for the participant's reevaluation and the rewrite of the individualized treatment plan must be recorded on the treatment plan. (4-6-05)

**05. Authorization for Services.** Authorization for services after the first year must be based on documentation of the following: (4-6-05)

a. Description of the ways the participant has specifically benefited from clinic services, and why he continues to need additional clinical services; and (4-6-05)

b. The participant's progress toward the achievement of therapeutic goals that would eliminate the need for the service to continue. (4-6-05)

**467. CARE AND SERVICES IN MENTAL HEALTH CLINICS NOT REIMBURSED.**

**01. Inpatient Medical Facilities.** The MA Program will not pay for mental health clinic services rendered to MA recipients residing in inpatient medical facilities including nursing homes, hospitals, or public institutions as defined in 42 CFR 435.1009; or (4-6-05)

**02. Scope.** Any service or supplies not included as part of the allowable scope of the MA Program; or (3-30-01)

**03. Non-Qualified Persons.** Services provided within the mental health clinic framework by persons other than those qualified to deliver services as specified in Subsection 465.067 of these rules. ~~(4-6-05)~~(5-1-06)T

**468. EVALUATION AND DIAGNOSTIC SERVICES IN MENTAL HEALTH CLINICS.**

**01. Medical Psychosocial Histories.** Medical psychosocial intake histories must be contained in all

case files. (3-30-01)

**02. Diagnosis and Individualized Treatment Plan.** Information gathered will be used for establishing a participant data base used in part to formulate the diagnosis and individualized treatment plan. (4-6-05)

**03. Qualified Therapist.** The medical psychosocial intake and plan development is reimbursable if conducted by a primary therapist who, at a minimum, has one (1) or more of the following qualifications: (3-30-01)

- a. Licensed Psychologist; or (7-1-99)
- b. Psychologist extender, registered with the Bureau of Occupational Licenses; or (7-1-99)
- c. Licensed Masters Social Worker, or Licensed Clinical Social Worker, or Licensed Social Worker; or (4-6-05)
- d. Certified Psychiatric Nurse, R.N.; or (7-1-99)
- e. Licensed Clinical Professional Counselor or Licensed Professional Counselor; or (4-6-05)
- f. Licensed Physician or Licensed Psychiatrist; or (4-6-05)
- g. Licensed Marriage and Family Therapist; or (3-15-02)
- h. Licensed Professional Nurse (RN). (4-6-05)

**04. Intake Assessment.** If an individual who is not eligible for MA receives intake services from any staff not having the required degree(s) as provided in Subsection 468.03 of these rules, and later becomes eligible for MA, a new intake assessment and individualized treatment plan will be required which must be developed by a qualified staff person and authorized prior to any reimbursement. (4-6-05)

**05. Non-Qualified Staff.** Any delivery of evaluation, diagnostic service, or treatment designed by any person other than an agency staff person designated as qualified under Section 468 or Sections 466 or 469 of these rules, is not eligible for reimbursement under the MA Program. (4-6-05)

**06. Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of an examinee's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments. (4-6-05)

- a. Psychological testing may be provided as a reimbursable service when provided in direct response to a specific evaluation question. (4-6-05)
- b. The psychological report must contain the reason for the performance of this service. (4-6-05)
- c. Agency staff may deliver this service if they meet one (1) of the following qualifications: (4-6-05)
  - i. Licensed Psychologist; (4-6-05)
  - ii. Psychologist extenders as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners"; or (4-6-05)
  - iii. A qualified therapist listed in Subsection 469.06 of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. (4-6-05)

**07. Psychiatric Diagnostic Interview Exam.** A psychiatric diagnostic interview exam may be



provided as a reimbursable service when delivered by one (1) of the following licensed professionals: (4-6-05)

- a. Psychiatrist; (4-6-05)
- b. Physician; (4-6-05)
- c. Practitioner of the healing arts; (4-6-05)
- d. Psychologist; (4-6-05)
- e. Clinical social worker; ~~or~~ ~~(4-6-05)~~(5-1-06)T
- f. Clinical professional counselor; or ~~(4-6-05)~~(5-1-06)T
- g. Licensed Marriage and Family Therapist. (5-1-06)T

**08. Evaluations Performed by Occupational Therapists.** Evaluations performed by qualified registered occupational therapists, O.T.R., performed in conjunction with the development of an individualized treatment plan are reimbursable. (4-6-05)

**09. Documentation.** All intake histories, psychiatric evaluations, psychological testing, or specialty evaluations must be in written form, dated, and fully signed to certify when completed and by whom, and retained in the participant's file for documentation purposes. (4-6-05)

**10. Data.** All data gathered must be directed towards formulation of a written diagnosis, problem list, and individualized treatment plan which specifies the type, frequency, and anticipated duration of treatment. (4-6-05)

**11. Limitations.** A total of twelve (12) hours is the maximum time allowed for a combination of any evaluative or diagnostic services and individualized treatment plan development provided to an eligible participant in a calendar year. (4-6-05)

**469. TREATMENT SERVICES IN MENTAL HEALTH CLINICS.**

**01. Psychotherapy.** Individual and group psychotherapy must be provided in accordance with the goals specified in the individualized treatment plan. (4-6-05)

**02. Family Psychotherapy.** Family psychotherapy services must include at least two (2) family members and must be delivered in accordance with the goals of treatment as specified in the individualized treatment plan. (4-6-05)

**03. Emergency Services.** Individual emergency psychotherapy services can be provided by qualified clinic staff at any time. (3-30-01)

a. Emergency services provided to an eligible participant prior to intake and evaluation is a reimbursable service but must be fully documented in the participant's record; and (4-6-05)

b. Each emergency service will be counted as a unit of service and part of the allowable limit per participant unless the contact results in hospitalization. Provider agencies may submit claims for the provision of psychotherapy in emergency situations in accordance with Subsections 469.06 and 469.07 of these rules even when contact does not result in the hospitalization of the participant. (4-6-05)

**04. Collateral/Contact Consultation.** Collateral contact will be covered by Medicaid if it is conducted face to face by agency staff qualified to deliver clinical services, and if it is included on the individualized treatment plan and is necessary to gather and exchange information with individuals having a primary relationship to the participant. (4-6-05)

**05. Nursing Facility.** Psychotherapy services may be provided to participants residing in a nursing facility if the following criteria are met: (4-6-05)

**a.** The participant has been identified through the PASARR Level II screening process as requiring psychotherapy as a specialized service; and (4-6-05)

**b.** The service is provided outside the nursing facility at a clinic location; and (3-30-01)

**c.** Services provided are: (11-29-91)

**i.** Supported by the independent evaluations completed and approved by the Department or its designee; and (4-6-05)

**ii.** Incorporated into the participant's medical care plan; and (4-6-05)

**iii.** Directed toward the achievement of specific measurable objectives which include target dates for completion. (11-29-91)

**06. Staff Qualifications for Psychotherapy Services.** Licensed, qualified professionals providing psychotherapy services as set forth in Subsections 469.01 through 469.03 of these rules must have, at a minimum, one (1) or more of the following degrees: (4-6-05)

**a.** Licensed Psychiatrist; or (4-6-05)

**b.** Licensed Physician; or (4-6-05)

**c.** Licensed Psychologist; or (7-1-99)

**d.** Licensed Clinical Social Worker; or (4-6-05)

**e.** Licensed Clinical Professional Counselor; or (4-6-05)

**f.** Licensed Marriage and Family Therapist; or (4-6-05)

**g.** Certified Psychiatric Nurse (RN), as described in Subsection 456.02 of these rules; or (4-6-05)

**h.** Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified under Subsections 469.06.a. through 469.06.g. of this rule; or (4-6-05)

**i.** Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or (4-6-05)

**j.** A Psychologist Extender, registered with the Bureau of Occupational Licenses. (4-6-05)

**07. Psychotherapy Limitations.** Psychotherapy services as set forth in Subsections 469.01 through 469.03 of these rules are limited to forty-five (45) hours per calendar year. (3-15-02)

**08. Pharmacological Management.** Pharmacological management consultations must be provided by a physician or other practitioner of the healing arts within the scope of practice defined in their license in direct contact with the participant. (4-6-05)

**a.** Consultation must be for the purpose of prescribing, monitoring, and/or administering medication as part of the individualized treatment plan; and (4-6-05)

**b.** Pharmacological management, if provided, must be part of the individualized treatment plan and frequency and duration of the treatment must be specified. (4-6-05)

**09. Nursing Services.** Nursing services, when physician ordered and supervised, can be part of the participant's individualized treatment plan. (4-6-05)

**a.** Licensed and qualified nursing personnel can supervise, monitor, and administer medication within the limits of the Nurse Practice Act, Section 54-1402(d), Idaho Code; and (4-6-05)

**b.** The frequency and duration of the treatment must be specified on the participant's individualized treatment plan. (4-6-05)

**10. Partial Care.** Partial Care is treatment for those whose functioning is sufficiently disrupted so as to interfere with their productive involvement in daily living. Partial Care services are a structured program of therapeutic interventions that assist program participants in the stabilization of their behavior and conduct through the application of principles of behavior modification for behavior change and structured, goal-oriented group socialization for skill acquisition. The goal of Partial Care services is to decrease the severity and acuity of presenting symptoms so that the program participant may be maintained in the least restrictive setting and to increase the program participants' interpersonal skills in order to obtain the optimal level of interpersonal adjustment. (4-6-05)

**a.** Qualifications of Partial Care Services. In order to be considered a Partial Care service, the service must: (4-6-05)

**i.** Be provided in a structured environment within the MHC setting; (4-6-05)

**ii.** Be a needed service as indicated on the individualized treatment plan with documented, concrete, and measurable goals and outcomes; and (4-6-05)

**iii.** Provide interventions for relieving symptoms and acquiring specific skills. These interventions must include the specific medical services, therapies, and activities that are used to meet the treatment objectives. (4-6-05)

**b.** Limit on Treatment Hours. Treatment will be limited to thirty-six (36) hours per week per eligible participant. (4-6-05)

**c.** Criteria for Partial Care Service Program Participants. In order for a MHC program participant to be eligible for Partial Care Services the following criteria must be met and documented: (4-6-05)

**i.** Assessments completed within the previous twelve (12) months have documented that the participant has any combination of emotional, behavioral, neurobiological or substance abuse problems that significantly impair social and occupational functioning. The intake assessment must document that the participant is presently at risk for an out-of-home placement, further clinical deterioration that would lead to an out-of-home placement, or further clinical deterioration which would interfere with the participant's ability to maintain current level of functioning. (4-6-05)

**ii.** Other services have failed or are not appropriate for the clinical needs of the participant. (4-6-05)

**iii.** For each participant, the services can reasonably be expected to improve the participant's condition or prevent further regression so that the current level of care is no longer necessary or may be reduced. (4-6-05)

**d.** Partial care service is not appropriate for certain people. Persons identified in the list below are disqualified from participating in Partial Care services: (4-6-05)

**i.** Persons at immediate risk of self-harm or harm to others; (4-6-05)

**ii.** Persons needing more restrictive care or inpatient care; and (4-6-05)

**iii.** Persons who have not fulfilled the requirements of Subsection 469.10.c. of this rule. (4-6-05)

**e.** Partial Care Services Must Be on the Individualized Treatment Plan. Partial care services must be

part of the participant's individualized treatment plan which must identify the specific objective to be addressed through the service and specify the amount, frequency, and expected duration of treatment. (4-6-05)

**f.** Staff Qualifications for Partial Care Services. Licensed, qualified professionals providing partial care services must have, at a minimum, one (1) or more of the qualifications listed in Subsection 465.067 of these rules. ~~(4-6-05)~~(5-1-06)T

**g.** Excluded Services. Services that focus on vocation, recreation or education are not reimbursable under Medicaid Partial Care. Services that are provided outside the clinic facility are not reimbursable. (4-6-05)

**470. RECORD KEEPING REQUIREMENTS FOR MENTAL HEALTH CLINICS.**

**01. Maintenance.** Each mental health clinic will be required to maintain records on all services provided to MA participants. (4-6-05)

**02. Record Contents.** The records must contain the current individualized treatment plan ordered by a physician and must meet the requirements as set forth in Section 466. (4-6-05)

**03. Requirements.** The records must: (3-30-01)

**a.** Specify the exact type of treatment provided; and (11-10-81)

**b.** Who the treatment was provided by; and (11-10-81)

**c.** Specify the duration of the treatment and the time of day delivered; and (4-6-05)

**d.** Contain detailed records which outline exactly what occurred during the therapy session or participant contact documented by the person who delivered the service; and (4-6-05)

**e.** Contain the legible, dated signature, with degree credentials listed, of the staff member performing the service. (11-10-81)

**04. Non-Reimbursable.** Any service not adequately documented in the participant's record by the signature of the therapist providing the therapy or participant contact, the length of the therapy session, and the date of the contact, will not be reimbursed by the Department. (4-6-05)

**05. Non-Eligible Staff.** Any treatment or contact provided as a result of an individualized treatment plan that is performed by any staff other than those qualified to deliver services under Subsection 465.067 of these rules is not be eligible for reimbursement by the Department. ~~(4-6-05)~~(5-1-06)T

**06. Recoupment.** If a record is determined not to meet minimum requirements as set forth herein any payments made on behalf of the participant are subject to recoupment. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**472. BUILDING STANDARDS FOR MENTAL HEALTH CLINICS.**

**01. Accessibility.** Mental health clinic service providers must be responsive to the needs of the service area and persons receiving services and accessible to persons with disabilities as defined in Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and the uniform federal accessibility standard. (4-6-05)

**02. Environment.** Clinics must be designed and equipped to meet the needs of each participant including, but not limited to, factors such as sufficient space, equipment, lighting and noise control. (4-6-05)

**03. Capacity.** Clinics must provide qualified staff as listed in Subsection 465.067 of these rules to meet a staff to participant ratio that ensures safe, effective and clinically appropriate interventions. ~~(4-6-05)~~(5-1-06)T

**04. Fire and Safety Standards.** (4-6-05)

**a.** Clinic facilities must meet all local and state codes concerning fire and life safety. The owner/operator must have the facility inspected at least annually by the local fire authority. In the absence of a local fire authority, such inspections must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection must be made available upon request and must include documentation of any necessary corrective action taken on violations cited; and (4-6-05)

**b.** The clinic facility must be structurally sound and must be maintained and equipped to assure the safety of participants, employees and the public; and (4-6-05)

**c.** In clinic facilities where natural or man-made hazards are present, suitable fences, guards or railings must be provided to protect participants; and (4-6-05)

**d.** Clinic facilities must be kept free from the accumulation of weeds, trash and rubbish; and (4-6-05)

**e.** Portable heating devices are prohibited except units that have heating elements that are limited to not more than two hundred twelve (212F) degrees Fahrenheit. The use of unvented, fuel-fired heating devices of any kind are prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority; and (4-6-05)

**f.** Flammable or combustible materials must not be stored in the clinic facility; and (4-6-05)

**g.** All hazardous or toxic substances must be properly labeled and stored under lock and key; and (4-6-05)

**h.** Water temperatures in areas accessed by participants must not exceed one hundred twenty (120) degrees Fahrenheit; and (4-6-05)

**i.** Portable fire extinguishers must be installed throughout the clinic facility. Numbers, types and location must be directed by the applicable fire authority noted in Subsection 472.04 of these rules; and (4-6-05)

**j.** Electrical installations and equipment must comply with all applicable local or state electrical requirements. In addition, equipment designed to be grounded must be maintained in a grounded condition and extension cords and multiple electrical outlet adapters must not be utilized unless U.L. approved and the numbers, location, and use of them are approved, in writing, by the local fire or building authority. (4-6-05)

**k.** There must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers must be posted near the telephone or where they can be easily accessed; and (4-6-05)

**l.** Furnishings, decorations or other objects must not obstruct exits or access to exits. (4-6-05)

**05. Emergency Plans and Training Requirements.** (4-6-05)

**a.** Evacuation plans must be posted throughout the facility. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building. (4-6-05)

**b.** There must be written policies and procedures covering the protection of all persons in the event of fire or other emergencies; and (4-6-05)

**c.** All employees must participate in fire and safety training upon employment and at least annually thereafter; and (4-6-05)

**d.** All employees and partial care participants must engage in quarterly fire drills. At least two (2) of these fire drills must include evacuation of the building; and (4-6-05)

**e.** A brief summary of the fire drill and the response of the employees and partial care participants must be written and maintained on file. The summary must indicate the date and time the drill occurred, problems encountered and corrective action taken. (4-6-05)

**06. Food Preparation and Storage.** (4-6-05)

**a.** If foods are prepared in the clinic facility, they must be stored in such a manner as to prevent contamination and be prepared by sanitary methods. (4-6-05)

**b.** Except during actual preparation time, cold perishable foods must be stored and served under forty-five (45F) degrees Fahrenheit and hot perishable foods must be stored and served over one hundred forty (140F) degrees Fahrenheit. (4-6-05)

**c.** Refrigerators and freezers used to store participant lunches and other perishable foods used by participants, must be equipped with a reliable, easily-readable thermometer. Refrigerators must be maintained at forty-five (45F) degrees Fahrenheit or below. Freezers must be maintained at zero (0F) to ten (10F) degrees Fahrenheit or below. (4-6-05)

**d.** When meals are prepared or provided for by the clinic, meals must be nutritional. (4-6-05)

**07. Housekeeping and Maintenance Services.** (4-6-05)

**a.** The interior and exterior of the clinic facility must be maintained in a clean, safe and orderly manner and must be kept in good repair; and (4-6-05)

**b.** Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; and (4-6-05)

**c.** All housekeeping equipment must be in good repair and maintained in a clean, safe and sanitary manner; and (4-6-05)

**d.** The clinic facility must be maintained free from infestations of insects, rodents and other pests; and (4-6-05)

**e.** The clinic facility must maintain the temperature and humidity within a normal comfort range by heating, air conditioning, or other means. (4-6-05)

**f.** Garbage will be disposed of in a sanitary manner. It must not be allowed to accumulate and must be placed in leak-proof bags. (4-6-05)

**08. Firearms.** No firearms are permitted in the clinic facility. (4-6-05)

**09. Plumbing.** Restroom facilities must be maintained in good working order and available and accessible to participants while at the clinic in accordance with the Americans with Disabilities Act. This includes the presence of running water for operation of the toilet and washing hands. (4-6-05)

**10. Lighting.** Lighting levels must be maintained throughout the clinic facility which are appropriate to the service being provided. (4-6-05)

**11. Drinking Water.** Where the source is other than a public water system or commercially bottled, water quality must be tested and approved annually by the district health department. (4-6-05)

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

### **16.03.16 - ACCESS TO HEALTH INSURANCE PROGRAM**

**DOCKET NO. 16-0316-0501**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-241, and 56-242, Idaho Code.

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

This chapter of rule supports the implementation of the Idaho Health Insurance Access Card Act passed during the 2003 Idaho Legislative session. Since the temporary rule published before the program was implemented, revisions needed to be made to these rules to ensure current program requirements are implemented. These changes to the rule are being made to more accurately reflect how the program was operationalized. The rule changes are based on comments received and public input.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule.

Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the May 4, 2005 Idaho Administrative Bulletin, Vol. 05-5, pages 92 through 100.

**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 to the state general fund. The majority of funding is from federal funding and the remainder will come from the premium tax fund in lieu of utilizing state general funds.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Robin Pewtress, Idaho SCHIP, Director at (208) 364-1892.

DATED this 15th day of November, 2005.

Sherri Kovach  
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DOCKET NO. 16-0316-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-5, May 4, 2005, pages 92 through 100.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0316-0501

**Section 210**

**210. OFFER TO PARTICIPATE.**

The Department will provide written notice to an employer or his insurance representative of an offer to participate in the program when the conditions in Subsections 210.01 through 210.03 in these rules are met. If the employer chooses to participate in the program, the insurance representative must forward the applications, as described in Sections 300 and 320 of these rules, to the Department. Applications must be received or postmarked within fifteen (15) calendar days of the written notice after which time the offer is void. ~~(7-1-05)F(7-1-05)T~~

**Section 220**

**220. CONDITIONAL APPROVAL.**

The Department will provide written notification of an business' employer's conditional approval for program participation to the insurance representative and the insurance carrier. If the employer chooses to participate in the program, the signed conditional approval letter must be returned to the Department with a signed employer agreement. The documents must be received or postmarked within fifteen (15) calendar days of the notification after which time the conditional approval is void. ~~(7-1-05)F(7-1-05)T~~

**Section 230**

**230. FORFEIT OF REGISTRATION.**

An business that employer who allows either voids its his offer to participate or its his conditional approval to become void, forfeits its his placement on the employer registration list. Program slots pending use by an business that employer who forfeits its his registration are made available to other employers. ~~(7-1-05)F(7-1-05)T~~

**Section 240**

**240. NEW REGISTRATION REQUIRED.**

An business that either voids its offer to participate or employer who forfeits its his registration must electronically re-register its his intent to participate in the program. The business employer must meet the conditions specified in Section 210 of these rules to be reconsidered for participation. ~~(7-1-05)F(7-1-05)T~~



**Subsections 320.01, 320.03, 320.06, 320.07, and 320.11**

**320. INDIVIDUAL NON-FINANCIAL ELIGIBILITY CRITERIA.**

An individual who wants to participate in the Access to Health Insurance program must meet each of the following conditions: (7-1-05)T

**01. Employer Participates.** The individual must be employed by, or be a dependent of an employee of, a participating ~~Idaho Small Business~~ employer. (7-1-05)F(7-1-05)T

**03. Citizen or ~~Eligible~~ Permanent Resident Alien.** The individual must be a United States citizen or ~~eligible permanent resident~~ alien. ~~An individual is an eligible alien if he meets the requirements of IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children".~~ (7-1-05)F(7-1-05)T

**06. No Health Insurance.** An individual must not have creditable health insurance at the time of application, and must not have disenrolled from creditable health insurance in the six (6) months prior to his application with the intent to qualify for the Access to Health Insurance Program. (7-1-05)F(7-1-05)T

**07. ~~Section 1931, Social Security Act, Title XIX Medicaid~~ Not Eligible.** The individual must not be eligible for ~~health care assistance under Section 1931 of the Social Security Act a Title XIX Medicaid Program.~~ (7-1-05)F(7-1-05)T

**11. ~~Delinquent CHIP-B Premiums.~~** ~~A child's premium payments for CHIP-B participation must not be more than sixty (60) days in arrears.~~ (7-1-05)T

**Section 350, 350.01 through 350.05**

**350. FAMILY ~~FINANCIAL ELIGIBILITY~~ SIZE CRITERIA.**

**01. Individuals Counted in Family Size.** ~~Individuals related by marriage and any dependent child(ren) of either individual are counted in the family size. The employee, employee's spouse and any dependant children through the age of their nineteenth birthday are included in the family size, unless the individual meets one (1) of the exclusion criteria in Subsections 350.02 through 350.04 of these rules.~~ (7-1-05)F(7-1-05)T

**02. ~~Income Limit SSI Recipient.~~** ~~The family must have gross countable income less than or equal to one hundred and eighty five percent (185%) of the Federal Poverty Guideline (FPG) for the family size. Any person receiving SSI benefits must not be included.~~ (7-1-05)F(7-1-05)T

**03. ~~Adult's Income Counted AABD Recipient.~~** ~~Each adult's earned and unearned income is counted when determining family income. The income of a dependent child is not counted. Any person receiving AABD benefits must not be included.~~ (7-1-05)F(7-1-05)T

**04. ~~No Income Deductions Ineligible Non-Citizen.~~** ~~No deductions are applied to family countable income. Any person who has not attained permanent resident alien status must not be included.~~ (7-1-05)F(7-1-05)T

**05. ~~Income Exclusions.~~** ~~Income excluded from the family countable income is defined in IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Section 385.~~ (7-1-05)F

**351. -- 39954. (RESERVED).**

**Section 355 (New Section)**

**355. FAMILY FINANCIAL ELIGIBILITY CRITERIA.**

**01. Income Limit.** *The gross family income must not exceed one hundred and eighty-five percent (185%) of the Federal Poverty Guideline (FPG) for the family size.* (7-1-05)T

**02. Adult's Income Counted.** *The earned and unearned income of each adult counted in the family size is counted when determining family income. The income of a dependent child is not counted.* (7-1-05)T

**03. Determining Income Eligibility for the Month of Application.** *Countable income for the application month is calculated using the requirements of IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Sections 346 through 354, 356, 370, and 372 through 385.* (7-1-05)T

**04. Excluded Income.** *Income that belongs to a child but is paid in the name of the parent or caretaker is excluded from the countable income determination.* (7-1-05)T

**05. No Income Deductions.** *No deductions are applied to family countable income.* (7-1-05)T

**06. Income Exclusions.** *Income excluded from the family countable income is defined in IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Section 385.* (7-1-05)T

**356. -- 399. (RESERVED).**

**Section 400 and 400.05**

**400. CONTINUOUS ELIGIBILITY.**

Applicants found eligible in an initial determination or an *annual* renewal remain eligible for a period of twelve (12) months *from the start date of enrollment in the health plan* unless one (1) of the following occurs: (7-1-05)F(7-1-05)T

**05. Employee Changes Employers.** *The participant no longer works for the same small business employer.* (7-1-05)F(7-1-05)T

**Section 410, and 410.01 through 410.04**

**410. ANNUAL RENEWAL.**

Each participant's eligibility must be renewed *at least* annually. The ~~annual~~ renewal is a review of all eligibility factors. (7-1-05)F(7-1-05)T

**01. Renewal Application Required.** *Each participant must submit an annual renewal application to continue participation in the program.* (7-1-05)T

**02. Eligibility Criteria Must Be Met.** *All eligibility criteria specified in these rules except that in Section 320.06 must be met at each renewal to continue participation in the program.* (7-1-05)T

**03. Interim Renewal.** *The renewal may be conducted prior to the annual renewal date to coincide with a change in insurance coverage.* (7-1-05)T

**04. Closure of Benefits.** *Failure to complete the renewal process or failure to meet eligibility criteria at renewal will result in closure of program benefits. Each participant must be notified ten (10) calendar days prior to the effective date of the action.* (7-1-05)T

***Subsection 500.01***

**500. PARTICIPANT RIGHTS.**

The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of their rights during the application process and eligibility reviews. (7-1-05)T

**01. Right to Hearing.** Any participant can request a hearing to contest a Department decision under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~(7-1-05)T~~(7-1-05)T

***Section 600***

**600. PREMIUM ASSISTANCE.**

The Access to Health Insurance Program pays a premium subsidy toward a private health insurance plan for a participant. The health insurance plan subsidized must be one regulated by Title 41, Chapter 47, Idaho Code. The rules governing payment and benefits are found in Sections 605 through Section 620 of these rules.

~~(7-1-05)T~~(7-1-05)T

***Sections 621 through 649***

**621. -- ~~999~~649. (RESERVED).**

***Section 650 (New Section)***

**650. VENDOR PAYMENT.**

A vendor must prospectively invoice the Department each month for reimbursement of the premium subsidy. The Department must reimburse a vendor within thirty (30) days of receipt of the invoice for participants eligible for premium subsidy. (7-1-05)T

***Sections 651 through 999***

**651. -- 999. (RESERVED).**

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

**16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES**

**DOCKET NO. 16-0319-0501 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section 39-3505, 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 and is being repealed in its entirety. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 257 and 258.

**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. There is no fiscal impact to the state general fund with the repeal of this chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact David Simmitt at (208) 364-1992.

DATED this 31st day of October, 2005.

Sherri Kovach  
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**DOCKET NO. 16-0319-0501 - PENDING RULE (CHAPTER REPEAL)**

**This chapter is repealed in its entirety.**

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

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-10, October 5, 2005, pages 257 and 258.](#)**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES**

**DOCKET NO. 16-0319-0502 (CHAPTER REWRITE)**

**NOTICE OF RULEMAKING**

**ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Section 39-3505, Idaho Code.

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

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 06-10, pages 259 through 290. Changes have been made due to comments received. The changes were made to address the concerns of providers on the environmental sanitation inspections for sewage disposal.

**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.

There is no fiscal impact to the state general fund with the rewrite of this chapter.

**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:

These temporary rules are necessary to align rules with statute changes effective July 1, 2005.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact David Simnitt at (208) 364-1992.

DATED this 31st day of October, 2005.

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**DOCKET NO. 16-0319-0502 - PENDING RULE (CHAPTER REWRITE)**

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 259 through 290.

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.

**THE FOLLOWING IS THE AMENDED TEXT FOR DOCKET NO. 16-0319-0502**

***Subsection 101.06***

**101. APPLICATION FOR CERTIFICATION.**

The applicant must apply for certification on forms provided by the Department, and must provide information required by the Department. (7-1-05)T

**06. Environmental Sanitation Inspection.** If the home is not on a municipal water supply or sewage disposal system, a current statement *is needed* from the local environmental health agency ~~or, if not available, a current statement from a person in the business of servicing these systems,~~ that the water supply and sewage disposal system meet the legal standards. If the local environmental health agency cannot provide this information, the home must obtain a statement to that effect. In addition, the applicant must provide a signed statement that the water supply and sewage disposal system are in good working order. (7-1-05)F(7-1-05)T

***Subsections 500.03 and 500.03.b.***

**500. ENVIRONMENTAL SANITATION STANDARDS.**

The home is responsible for disease prevention and maintenance of sanitary conditions. (7-1-05)T

**03. Nonmunicipal Sewage Disposal.** For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every three (3) years thereafter the home must provide proof that the septic tank has been pumped or that pumping was not necessary ~~at the time of the sewage system inspection. The home must follow the recommendations of the sewage system inspection.~~ In addition, at the time of initial certification: (7-1-05)F(7-1-05)T

**b.** If the local health district does not issue these statements, ~~the home must have the system inspected by a person in the business of servicing these systems~~ the home must obtain a statement to that effect from the health district. The ~~inspection report statement~~ must be kept on file at the home. (7-1-05)F(7-1-05)T

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

### **16.03.22 - RULES FOR LICENSED RESIDENTIAL OR ASSISTED LIVING FACILITIES IN IDAHO**

#### **DOCKET NO. 16-0322-0501 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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 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 39-3305, 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 October Idaho Administrative Bulletin, Vol. 05-10, page 291. This docket repeals the entire chapter of rules. Changes due to comments received and public hearings are published in this bulletin under Docket No. 16-0322-0502.

**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 56-1007, Idaho Code. This is a repeal of the entire chapter which have fees that will be carried over into the re-write of the chapter in Docket No. 16-0322-0502.

**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 State Fiscal Year 2006 budget for RALF includes 4 additional full-time employee positions (FTEs) and \$277,600 in personnel and operating funds, 50% of which comes from the state general fund. Without the rule changes, there would have been a total of 10 additional staff and \$635,600 of additional funds needed.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Debra Ransom at (208) 334-6626.

DATED this 31st day of October, 2005.

Sherri Kovach  
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#### **DOCKET NO. 16-0322-0501 - PENDING FEE RULE (CHAPTER REPEAL)**

**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 05-10, October 5, 2005, page 291.](#)**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO**  
**DOCKET NO. 16-0322-0502 (CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING - ADOPTION OF 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 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 Title 39, Chapter 33, 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 text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The entire chapter of rules is printed in this bulletin to ensure there is no confusion from the original proposed text and the final pending rewritten chapter.

The original text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 293 through 355. Changes made to the pending rules have been made because of negotiated rulemaking, public hearings, and comments received from providers, advocates, resident families and staff.

**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 56-1007, Idaho Code. This docket is a rewrite of an existing chapter of rules and the fee imposed in this docket is not an increase.

**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 State Fiscal Year 2006 budget for RALF includes 4 additional full-time employee positions (FTEs) and \$277,600 in personnel and operating funds, 50% of which comes from the state general fund. Without the rule changes, there would have been a total of 10 additional staff and \$635,600 of additional funds needed.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Debra Ransom at (208) 334-6626.

DATED this 8th day of November, 2005.

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DOCKET NO. 16-0322-0502 - PENDING RULE (CHAPTER REWRITE)

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 293 through 355.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0322-0502

IDAPA 16, TITLE 03, CHAPTER 22

16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under Section 39-3305, Idaho Code, to adopt and enforce rules to protect the health, safety, and the individual's rights for residents in residential care or assisted living facilities.

( )

**001. TITLE, SCOPE, AND RESPONSIBILITIES.**

**01. Title.** The title of this chapter of rules is IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho".

( )

**02. Scope.** The purpose of a residential care or assisted living facility in Idaho is to provide choice, dignity and independence to residents while maintaining a safe, humane, and home-like living arrangement for individuals needing assistance with daily activities and personal care. These rules set standards for providing services that maintain a safe and healthy environment.

( )

**03. General Provider Responsibilities.** The facility must ~~ensure~~ assure quality services by providing choices, dignity and independence to residents. The facility must have an administrator and staff who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility. The facility must be operated consistent with the rules and statutes as it conducts its work.

( )

**04. General Department Responsibilities.** The Department is responsible for monitoring and enforcing the provisions of the statute and this chapter to protect residents in these facilities by providing information, education and evaluating providers to ~~ensure~~ assure compliance with statute and these rules. This responsibility includes: licensing facilities and monitoring the condition of the facility.

( )

**05. Exemptions.** The provisions of these rules do not apply to any of the following:

( )

**a. Health Facility.** The provisions of these rules do not apply to hospitals, nursing facilities, intermediate care facilities for persons with mental retardation, or any other health facility as defined by Title 39,

Chapter 13, Idaho Code. ( )

**b.** Alternate Living Arrangements. The provisions of these rules do not apply to any house, institution, hotel, congregate housing project, retirement home, or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities, or that have residents independently accessing supportive services from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility. ( )

**c.** Relatives. The provisions of these rules do not apply to any arrangement for the receiving and care of persons by a relative, except when the caretaker is paid for the care through a state or federal program, in which case the caretaker relative and the care setting must meet all applicable requirements. ( )

**002. WRITTEN INTERPRETATIONS.**

These rules may be *interpreted* implemented through informational letters generated and maintained by the Department. ( )

**003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.**

**01. Administrative Appeals and Contested Cases.** Administrative appeals and contested cases are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ( )

**02. Informal Dispute Resolution Meeting.** If a facility disagrees with a deficiency cited for a core issue, it may request an informal dispute resolution meeting to the Bureau of Facility Standards. The policy and procedure for requesting informal dispute resolution is posted on the Licensing and Survey Agency website at <http://www.facilitystandards.idaho.gov>. ( )

**004. INCORPORATION BY REFERENCE.**

The documents, referenced in Subsection 004.01 through 004.08 of these rules, are incorporated by reference as provided by Section 67-5229 (a), Idaho Code. These incorporated documents are available for public review upon request at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702, or when available on line at the websites provided in these rules. ( )

**01. National Fire Protection Association (NFPA) documents.** The NFPA documents referenced in these regulations are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908; 1-800-344-3555; and online at <http://www.nfpa.org>. ( )

**02. Idaho Diet Manual.** This manual is available from the Idaho Dietetic Association, Ninth Edition, 2005, online at <http://eatrightidaho.org>. ( )

**03. Idaho Food Code.** IDAPA 16.02.19, "Food Safety and Sanitation Standards For Food Establishments," April 6, 2005. These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa16/0219.pdf>. ( )

**04. Americans with Disabilities Act Accessibility Guidelines.** 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is 1-800-514-0301. ( )

**05. Idaho Board of Nursing Rules.** IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa23/23index.htm>. ( )

**06. Idaho Board of Pharmacy Rules.** IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy". These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa27/27index.htm>. ( )

**07. International Building Code.** Edition 2003. This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: 888-422-7233 and online at <http://www.iccsafe.org>. ( )

**08. Idaho Medical Assistance Program Rules.** IDAPA 16.03.09, "Rules Governing the Medicaid

Assistance Program,” Section 817. These rules may be found online at <http://adm.idaho.gov/adminrules/rules/idapa16/0309.pdf>. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.**

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

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

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

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

**05. Internet Website Address.** The Department Internet website address is: <http://www.healthandwelfare.idaho.gov>. ( )

**06. Licensing and Survey Agency.** The Department’s Licensing and Survey Agency, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**07. Licensing and Survey Agency Website.** <http://www.facilitystandards.idaho.gov>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records”. ( )

**02. Public Records.** The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state and federal law. ( )

**03. Disclosure of Resident Identity.** Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure. ( )

**04. Public Availability of Deficiencies.** The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing and Survey Agency Web site. ( )

**007. -- 008. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECKS.**

**01. Compliance With Department Criminal History and Background Checks.** Residential Care or Assisted Living Facilities must comply with IDAPA 16.05.05, “Criminal History and Background Checks in Long Term Care Settings”. ( )

**02. Direct Patient Access Individuals.** These rules apply to employees and contractors hired or contracted with after October 1, 2005, that have direct patient access to residents in Residential Care or Assisted Living Facilities. ( )

~~**03. Fees for Criminal History and Background Checks.** Fees for the criminal history and background checks are paid through the Federal Pilot Project grant as provided in Public Law 108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, from October 1, 2005 through September~~

~~30, 2007, or until federal funding is no longer available.~~ (—)

**043. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2005, must complete a self-declaration form before having access to residents. If a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," is disclosed, the individual cannot have access to any resident without a clearance by the Department. Once the notarized self-declaration is completed the individual can only work under supervision until the individual has been fingerprinted. The individual must have the fingerprinting completed within twenty (20) days of completion of the self-declaration. ( )

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

**01. Abuse.** The non-accidental act of sexual, physical or mental mistreatment, or injury of a resident through the action or inaction of another individual. ( )

**02. Accident.** An unexpected, unintended event that can cause a resident injury. ( )

**03. Activities.** All organized and directed social and rehabilitative services a facility provides, arranges, or cooperates with. ( )

**04. Activities of Daily Living.** The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, and mobility. ( )

**05. Administrator.** An individual, properly licensed by the Bureau of Occupational Licensing, who is responsible for day to day operation of a residential care or assisted living facility. ( )

**06. Adult.** A person who has attained the age of eighteen (18) years. ( )

**07. Advance Directive.** A written instruction, such as a living will or durable power of attorney for health care, recognized under State Law, whether statutory or as recognized by the courts of the State, and relates to the provision of medical care when the individual is unable to communicate. ( )

**08. Advocate.** An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by a facility. ( )

**09. Ambulatory Person.** A person who, unaided by any other person, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs. ( )

**10. Assessment.** The conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. ( )

**11. Authentication.** Proof of authorship. ( )

**12. Authorized Provider.** An individual who is a nurse practitioner or clinical nurse specialist or physician assistant. ( )

**13. Basement.** That portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) More than six (6) feet (1829 mm) above grade plane; (2) More than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) More than twelve (12) feet (3658 mm) above the finished ground level at any point. International Building Code-2003. ( )

~~**14. Bed Bound.** A resident who is in bed or in a recliner for twenty (20) hours or more per day. This definition also includes residents who are primarily bedfast but have bathroom privileges.~~ (—)

**154. Behavioral Plan.** A written plan which decreases the frequency or intensity of maladaptive behaviors and increases the frequency of adaptive behaviors and introduces new skills. ( )

**165. Call System.** A signaling system whereby a resident can contact staff directly from their sleeping room, toilet room, and bathing area. The system may be voice communication; an audible or visual signal; and, may include wireless technology. ( )

**176. Chemical Restraint.** A medication used to control behavior or to restrict freedom of movement and is not a standard treatment for the resident's condition. ( )

**187. Client of the Department.** Any person who receives financial aid, or services, or both from an organized program of the Department. ( )

**198. Complaint.** A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a resident concerning the care or conditions at the facility. This expression could be oral, in writing, or by alternative means of communication. ( )

**209. Complaint Investigation.** A survey to investigate the validity of allegations of noncompliance with applicable state requirements. ( )

**240. Core Issue.** A core issue is any one (1) of the following: abuse; neglect; exploitation; inadequate care; a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day to day operations of the facility; inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system; or surveyors denied access to records, residents or facilities. ( )

**221. Criminal Offense.** Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2(o), and 18 U.S.C. Sections 1001 through 1027. ( )

**232. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. ( )

**243. Dementia.** A chronic deterioration of intellectual function and other cognitive skills severe enough to interfere with the ability to perform activities of daily living and instrumental activities of daily living. ( )

**254. Department.** The Idaho Department of Health and Welfare. ( )

**265. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means chronic disability of a person which appears before the age of twenty-two (22) years of age and: ( )

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

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity of independent living, or economic self-sufficiency; and ( )

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or direct care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. ( )

**276. Director.** The Director of the Idaho Department of Health and Welfare or his designee. ( )

**287. Electronic Signature, E-Signature.** The system for signing electronic documents by entering a unique code or password that verifies the identity of the person signing and creates an individual "signature" on the record. ( )

**298. Exit Conference.** A meeting with the facility administrator or designee to: (1) provide review, discussion and written documentation of non-core issues (Punch List), and (2) to provide preliminary findings of core

issues. ( )

~~3029~~. **Exploitation.** The misuse of a resident's funds, property, resources, identity or person for profit or advantage. ( )

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.**

**01. Follow-Up Survey.** A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. ( )

**02. Functional Abilities Assessment.** An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. ( )

**03. Governmental Unit.** The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. ( )

**04. Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. ( )

**05. Hands On.** Physical assistance to the resident beyond verbal prompting. ( )

**06. Hourly Adult Care.** Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. ( )

**07. Immediate Danger.** Any resident is subject to an imminent or substantial danger. ( )

**08. Inadequate Care.** When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. ( )

**09. Incident.** An ~~unexpected, unintended~~ event that can cause a resident injury. ( )

**10. Incident, Reportable.** A situation when a facility is required to report information to the Licensing and Survey Agency. ( )

**a.** Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. ( )

**b.** Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. ( )

**c.** Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. ( )

**d.** An injury due to resident-to-resident incident. ( )

**e.** An incident that results in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. ( )

- 11. Independent Mobility.** A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. ( )
- 12. Instrumental Activities of Daily Living.** The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. ( )
- 13. Legal Guardian or Conservator.** A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. ( )
- 14. License.** A permit to operate a facility. ( )
- 15. Licensee.** The business and all owners with more than five percent (5%) of the assets. ( )
- 16. Licensing and Survey Agency.** The section of the Department responsible for licensing and surveying residential care or assisted living facilities. ( )
- 17. Medication.** Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. ( )
- 18. Medication Administration.** It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. ( )
- 19. Medication Assistance.** The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. ( )
- 20. Medication Dispensing.** The act of filling, labeling and providing a prescribed medication to a resident. ( )
- 21. Medication, Self-Administration.** The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. ( )
- 22. Mental Disorders.** Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. ( )
- 23. Mental Illness.** Refers collectively to all diagnosable mental disorders. ( )
- 24. Monitoring Visit.** A visit by a representative of the Licensing and Survey Agency for the purpose of ~~ensuring~~ assuring residents are not in immediate danger. ( )
- 25. Neglect.** Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. ( )
- 26. Negotiated Service Agreement.** The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. ( )
- 27. Non-Core Issue.** Any finding of deficiency that is not a core issue. ( )
- 28. Non-Repudiation.** The ability to ~~ensure~~ assure that a party to a communication cannot deny the authenticity of his or her signature on a document or the sending of a message that he or she originated. ( )

**012. DEFINITIONS AND ABBREVIATIONS O THROUGH Z.**

- 01. Owner.** Any person or entity, having legal ownership of the facility as an operating business, regardless of who owns the real property. ( )
- 02. Personal Assistance.** The provision by the staff of the facility of one (1) or more of the following services as outlined in the Negotiated Service Agreement: ( )
- a.** Assisting the resident with activities of daily living and instrumental activities of daily living. ( )
  - b.** Arranging for supportive services. ( )
  - c.** Being aware of the resident's general whereabouts and supervision. ( )
  - d.** Monitoring the activities of the resident while on the premises of the facility to ~~ensure~~ assure the resident's health, safety, and well-being. ( )
  - e.** Assisting residents with self-administration of medication. ( )
- 03. Personnel.** Paid ~~or unpaid~~ individuals assigned the responsibility of providing care and supervision and services to the facility and its residents. ( )
- 04. Physical Restraint.** Any device or physical force that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body except for treatment of a medical condition. ( )
- 05. Portable Heating Device.** Any device designed to provide heat on a temporary basis; is not designed as part of a building's heating system; is not permanently affixed to the building; and, if electrical, is not hardwired to the building's electrical service. This does not include the therapeutic devices of heating pads, heated mattress pads and electric blankets which require a physician or authorized provider's order. ( )
- 06. PRN.** Indicates that a medication or treatment prescribed by a medical professional to an individual may be given as needed. ( )
- 07. Pressure Ulcer.** Any lesion caused by unrelieved pressure that results in damage to the underlying tissue(s). Although friction and shear are not primary causes of pressure ulcers, friction and shear are important contributing factors to the development of pressure ulcers. ( )
- 08. Provisional License.** A license which may be issued to a facility not in compliance with the rules pending the satisfactory correction of all deficiencies. ( )
- 09. Psychosocial History.** A combined summary of psychological and social histories of an individual designed to inform a care giver of a person's abilities and limitations which will assist in identifying appropriate resources. ( )
- 10. Publicly Funded Programs.** Any program funded in whole or in part by an appropriation of the U.S. Congress, the Idaho Legislature, or other governmental body. ( )
- 11. Punishment.** Any action in which an adverse consequence is presented to a resident that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a resident's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. ( )
- 12. Relative.** A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. ( )
- 13. Repeat Deficiency.** A deficiency found on a resurvey, complaint investigation, or follow-up survey that was also found on the previous survey or visit. ( )



14. **Resident.** An adult, other than the owner, administrator, their immediate families, or employees, who lives in a residential care or assisted living facility. ( )
15. **Residential Care or Assisted Living Facility.** A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as "facility". Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. ( )
16. **Room and Board.** Lodging, meals, and utilities. ( )
17. **Scope.** The frequency or extent of the occurrence of a deficiency in a facility. ( )
18. **Self-Evacuating Resident.** A resident who is able to leave the building without one-on-one (1 on 1) or hands-on assistance and can remain at a designated location. ( )
19. **Self Preservation.** The ability of a person to independently avoid situations and circumstances in which he might be easily taken advantage of, and to protect themselves and property. ( )
20. **Short Term.** A treatment window designed to allow a resident to receive treatment for a short term acute episode, usually ~~f~~fourteen (14) days or less, as determined by a licensed professional nurse. ( )
21. **Story.** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two (2) successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. ( )
22. **Story Above Grade Plane.** Any story having its finished floor surface entirely above grade plane, except that a basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) more than six (6) feet (1829 mm) above grade plane, (2) more than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) more than twelve (12) feet (3658 mm) above the finished ground level at any point. ( )
23. **Substantial Compliance.** A facility is in substantial compliance with these rules when no core issues have been cited as a deficiency during any survey. ( )
24. **Substantial Evening Meal.** An offering of three (3) or more menu items at one-time, one (1) of which includes a high-quality protein such as meat, fish, eggs, or cheeses. The meal should represent no less than twenty percent (20%) of the day's total nutritional requirements. ( )
25. **Supervision.** A critical watching and directing activity which provides protection, guidance, knowledge of the resident's general whereabouts, and assistance with activities of daily living. The administrator is responsible for providing appropriate supervision based on each resident's Negotiated Service Agreement or other legal requirements. ( )
26. **Supportive Services.** Services provided to the resident in the community. ( )
27. **Survey.** A review conducted by a surveyor to determine compliance with statutes and rules. There are two (2) components to a survey, health care and fire life safety and sanitation. ( )
28. **Surveyor.** A person authorized by the Department to conduct surveys or complaint investigations to determine compliance with statutes and rules. ( )
29. **Syringe - Oral Feeding.** Use of a syringe to deliver liquid or pureed nourishment directly into the mouth. ( )

**30. Therapeutic Diet.** A diet ordered by a physician or authorized provider as part of treatment for a clinical condition or disease, or to eliminate or decrease specific nutrients in the diet, (e.g. sodium) or to increase specific nutrients in the diet (e.g. potassium) or to provide food the resident is able to eat (e.g. mechanically altered diet). ( )

**31. Traumatic Brain Injury (TBI).** An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. ( )

**32. Trust Account.** An account maintained by the facility separate from its own accounts, to deposit, hold, or disburse monies belonging to a resident. The facility is the trustee of such accounts and the residents are the beneficiaries. ( )

**33. Uniform Assessment Instrument (UAI).** A set of standardized criteria to assess functional and cognitive abilities of the resident. ( )

**34. Unlicensed Assistive Personnel (UAP).** Unlicensed assistive personnel (UAP) employed to perform nursing care services under the direction and supervision of licensed nurses. UAP also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. ( )

**35. Variance.** Permission by the Department to do something contrary to rule. ( )

**36. Waiver Services.** Home and Community Based (HCBS) Services. ( )

**013. -- 049. (RESERVED).**

**050. VARIANCES.**

The Licensing and Survey Agency may grant a variance provided the following criteria in Subsection 050.01 of these rules are met. ( )

**01. Written Request.** A written request for a variance must be sent to the Licensing and Survey Agency. The request must include the following: ( )

**a.** Reference to the section of the rules for which the variance is requested; ( )

**b.** Reasons that show good cause why the variance should be granted, the extenuating circumstances which caused the need for the variance, any compensating factors or conditions that may have bearing on the variance such as additional floor space or additional staffing; and ( )

**c.** Written documentation that assures residents' health and safety will not be jeopardized if a variance is granted. ( )

**02. Temporary Variance.** A temporary variance may be granted for a specific resident or situation. The variance expires when the resident no longer lives at the facility or when the situation no longer exists. ( )

**03. Continuing Temporary Variance.** The Licensing and Survey Agency reviews the appropriateness of continuing a variance during the survey process. If the facility administrator wishes to continue the variance, an annual request must be submitted to the Licensing and Survey Agency in writing. ( )

**04. Permanent Variance.** A permanent variance may be granted provided the provisions of Subsections 050.01.a. through 050.01.c. of these rules are met. ( )

**05. Decision to Grant a Variance.** The decision to grant a variance will not be considered as a precedent or be given any force or effect in any other proceeding. ( )

**06. Revocation of Variance.** The Licensing and Survey Agency may revoke a variance if circumstances identify a risk to resident health and safety. ( )

**051. -- 054. (RESERVED).**

**055. SPECIAL WAIVER.**

The Department may grant a special waiver of the requirement for licensure as a residential care or assisted living facility when it is deemed in the best interests of individuals, residents, and with due consideration of the criteria as specified in Section 39-3354A, Idaho Code. ( )

**056. -- 099. (RESERVED).**

**100. REQUIREMENTS FOR A LICENSE.**

**01. Current License.** No person, firm, partnership, association, corporation, or governmental unit can operate, establish, manage, conduct, or maintain a residential care or assisted living facility in Idaho without a license issued by the Department. ( )

**02. Issuance of License.** Upon completion of the application process requirements the Department will issue: ( )

**a.** A residential care or assisted living license, in the name of the licensee applying for the license and to the address of the facility stated in the application; ( )

**b.** The residential care or assisted living license will specify the maximum allowable number of beds. All occupants other than the owner, administrator, immediate family, or employees will be included in the licensed bed capacity of the facility. ( )

**03. Distinctive Business Name.** Every facility must use a distinctive name, which is registered with the Secretary of State of Idaho. If a facility decides to change its name, it will only be changed upon written notification to the Licensing and Survey Agency confirming the registration of the name change with the Secretary of State of Idaho. This notification needs to be received by the Licensing and Survey Agency at least thirty (30) calendar days prior to the date the proposed name change is to be effective. ( )

**04. Licensed Administrator.** Each facility must have an administrator, licensed by the Bureau of Occupational Licensing, who is responsible for the day-to-day operation of the facility. ( )

**05. Display of Facility License.** The current facility license must be posted in the facility and clearly visible to the general public. ( )

**06. Change in Corporate Shares.** When there is a significant change in shares held by a corporate licensee of a residential care or assisted living facility, which does not alter the overall ownership or operation of the business, that change must be communicated to the Licensing and Survey Agency within (60) days of the effective date of change. ( )

**07. Licensee Responsibility.** The licensee of the facility is responsible for the operation of the residential care or assisted living facility, even when a separate administrator is employed. ( )

**101. -- 104. (RESERVED).**

**105. CHANGE OF OWNERSHIP.**

**01. Non-Transfer of Facility License.** A facility license is not transferable from one (1) individual to another, from one (1) business entity to another, or from one (1) location to another. When a change of licensee, ownership, lease or location occurs, the facility must be re-licensed. The new licensee must follow the application procedures, and obtain a license, before commencing operation as a facility. ( )

**02. Application for Change of Ownership.** The application for a change of ownership must be submitted to the Licensing and Survey Agency at least ninety (90) days prior to the proposed date of change. ( )

**03. Change of Ownership for a Facility In Litigation.** An application for change of ownership of a facility from a person who is in litigation for failure to meet licensure standards, or who has had a license revoked, must include evidence that there is a bonafide arms length agreement and relationship between the two (2) parties. An entity purchasing a facility with an enforcement action acquires the enforcement action. ( )

**106. -- 109. (RESERVED).**

**110. FACILITY LICENSE APPLICATION.**

**01. Facility License.** License application forms are available upon written request or online at the Licensing and Survey Agency's website "<http://www.facilitystandards.idaho.gov>". The applicant must provide the following information: ( )

**a.** A written statement that the applicant has thoroughly read and reviewed the statute, Title 39, Chapter 33, Idaho Code, and IDAPA 16.03.22, "Rules for Residential Care or Assisted Living Facilities in Idaho," and is prepared to comply with both; ( )

**b.** The applicant must provide a written statement that discloses any license revocation or other disciplinary action taken or in the process of being taken, against a license held or previously held by the entity in Idaho or any other state or jurisdiction; ( )

**c.** When the applicant is a firm, association, organization, partnership, business trust, corporation, government entity, or company, the administrator and other members of the organization who provide direct resident care or who directly influence the facility's operation must provide the information contained in Subsections 110.01.a. and 110.01.b. of these rules. ( )

**d.** Each shareholder or investor holding ~~five~~ ten percent (~~5~~10%) or more interest in the business must be listed on the application; ( )

**e.** A copy of the Certificate of Assumed Business Name from Secretary of State of Idaho; ( )

**f.** A statement from the local fire authority that the facility is located in a lawfully constituted fire district or affirmation that a lawfully constituted fire authority will respond to a fire at the facility; ( )

**g.** A statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical codes; ( )

**h.** When the facility does not use an approved municipal water or sewage treatment system, a statement from a local environmental health specialist with the public health district indicating that the water supply and sewage disposal system meet the Department's requirements and standards; ( )

**i.** A complete set of printed operational policies and procedures as described in Sections 150 through 162 of these rules. ( )

**j.** A detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings must be submitted for evaluation by the Licensing and Survey Agency. See Sections 250-260, 400-410, and 430 of these rules. ( )

**k.** A copy of the Purchase Agreement, Lease Agreement, or Deed. ( )

**l.** For facilities with nine (9) beds or more, signatures must be obtained from the following: ( )

**i.** The local zoning official documenting that the facility meets local zoning codes for occupancy;

- ( )
- ii. The local building official documenting that the facility meets local building codes for occupancy; and ( )
- iii. The local fire official documenting that the facility meets local fire codes for occupancy. ( )

**02. Written Request for Building Evaluation.** The applicant must request in writing to the Licensing and Survey Agency for a building evaluation of existing buildings. The request must include the physical address of the building that is to be evaluated; the name, address, and telephone number of the person who is to receive the building evaluation report. ( )

**03. Building Evaluation Fee.** This application and request must be accompanied by a five hundred dollar (\$500) initial building evaluation fee. ( )

**04. Identification of the Licensed Administrator.** The applicant must provide the following information for the licensed administrator: ( )

- a. A copy of the administrator license; ( )
- b. A current primary residence of the administrator. ( )

**05. Failure to Complete Application Process.** Failure of the applicant to complete the Licensing and Survey Agency's application process within six (6) months, of the original date of application, may result in a denial of the application. If the application is denied the applicant is required to initiate a second licensing process. ( )

**111. -- 114. (RESERVED).**

**115. EXPIRATION AND RENEWAL OF LICENSE.**

**01. Application for License Renewal.** The facility must submit a Licensing and Survey Agency application for renewal of a license at least thirty (30) days prior to the expiration of the existing license. ( )

**02. Existing License.** The existing license, unless suspended or revoked remains in force and effect until the Licensing and Survey Agency has acted upon the application renewal, when such application for renewal has been filed. ( )

**116. -- 119. (RESERVED).**

**120. FACILITY OPERATING WITHOUT A LICENSE.**

**01. Facility Without a License.** An operation is considered an unlicensed facility if it meets the definition of a facility stated in these rules, or is represented to provide care and serve the population of a residential or assisted living facility, is not licensed and is not exempt from licensure. ( )

**02. Residents in Facility Without a License.** Upon discovery of a facility operating without a license, the Department will refer residents to an appropriate placement or adult protective services agency if either of the following conditions exist: ( )

- a. There is an immediate threat to the resident's health and safety; or ( )
- b. The unlicensed facility does not cooperate with the Department to apply for a license and meet licensing standards requirements. ( )

**03. Operator of a Facility Operating Without a License.** A person found to be operating a facility without a license is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5000), according to Section 39-3352(4), Idaho Code.

( )

**04. Prosecution of Violators.** In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the Attorney General is authorized to prosecute violations under the provisions of Section 39-3352(5), Idaho Code. ( )

**121. -- 124. (RESERVED).**

**125. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE.**

The Department will not review an application of an applicant who has had a license denied or revoked. The Department will review an application after five (5) years have elapsed from the date of license denial or revocation. ( )

**126. -- 129. (RESERVED).**

**130. LICENSURE SURVEYS.**

**01. Surveys of Facilities.** The Licensing and Survey Agency will ~~ensure~~ assure that surveys are conducted at specified intervals in order to determine compliance with this chapter and applicable rules and statutes. The intervals of surveys will be: ( )

**a.** Within ninety (90) days from initial licensure followed by a survey within fifteen (15) months. Facilities receiving no core issue deficiencies during both the initial and the subsequent survey will then enter the three (3) year survey cycle. ( )

**b.** Once every twelve (12) months, or more frequently at the discretion of the Licensing and Survey Agency for those facilities receiving core issue deficiencies during any survey. Surveys will be conducted until the facility attains two (2) consecutive surveys, excluding follow-up surveys, without a core issue deficiency. ( )

**c.** At least every thirty-six (36) months, for those facilities having attained no core issue deficiencies for two (2) or more consecutive surveys, regardless of survey type. ( )

**d.** Complaint investigation survey ~~in accordance with triage timeframes~~ based on the potential severity of the complaint. ( )

**02. Unannounced Surveys.** Surveys are made unannounced and without prior notice at the discretion of the Department. ( )

**03. Inspection or Survey Services.** The Department may use the services of any qualified person or organization, either public or private, to examine, survey or inspect any entity requesting or holding a facility license. ( )

**04. Access and Authority to Entire Facility.** A surveyor must have full access and has the authority to examine: quality of care, services delivery, resident records, facility's records including any records or documents pertaining to any financial transactions between residents and the facility or any of its employees, resident accounts, physical premises, including the condition of buildings, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with applicable statute, rules, and standards. ( )

**05. Interview Authority.** A surveyor has the authority to interview any individual associated with the facility or the provision of care, including the license holder, administrator, staff, residents, residents' families, service providers, authorized provider or physician or other legally responsible person. Interviews are confidential and conducted privately unless otherwise specified by the interviewee. ( )

**06. Access to Staff Living Quarters.** The surveyor has full authority to inspect the facility, including personal living quarters of operators, administrator, or staff living in the facility, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on compliance with these rules. ( )

**07. Written Report of Deficiencies.** The Licensing and Survey Agency will provide a written report to support any deficiencies found. ( )

**a.** Core Issue Deficiency. The Licensing and Survey Agency will provide, within ten (10) business days from the exit conference or from the last day of receipt of additional material, a written Statement of Deficiencies and Plan of Correction form to the facility when core deficiencies are identified during the survey. ( )

**b.** Non-Core Issue Deficiency. The Licensing and Survey Agency will provide the facility a written report specifying the non-core issue deficiencies at the time of the exit conference. ( )

**08. Plan of Correction for Core Issue Deficiencies.** The facility must develop a plan of correction and return an acceptable plan of correction to the Licensing and Survey Agency, for all core-issue deficiencies, within ten (10) calendar days of receipt of the Statement of Deficiencies and Plan of Correction form. An acceptable plan of correction must include: ( )

**a.** A plan to ~~ensure~~ assure correction of each deficient practice and to ~~ensure~~ assure ongoing compliance;( )

**b.** Describe how and the frequency that the corrective actions will be monitored to ~~ensure~~ assure that each deficient practice is corrected and will not recur, such as what program will be put into place to monitor the continued effectiveness of the systemic change; ( )

**c.** State the completion date for correcting each deficiency, except in unusual circumstances, and only with the written approval of the Licensing and Survey Agency. No correction date may be more than sixty (60) days from the inspection exit date as printed on the "Statement of Deficiencies and Plan of Correction" form; and ( )

**d.** The administrator's signature and the date submitted. ( )

**09. Evidence of Resolution for Non-Core Deficiencies.** The facility must provide evidence of resolution of non-core issues to the Licensing and Survey Agency, within thirty (30) calendar days of the exit conference. The facility may show evidence of resolution by providing receipts, pictures, and completed policies, training, schedules, and other records. If there are non-core issues that the facility is unable to resolve due to extenuating circumstances, a written request for the delay must be submitted for Licensing and Survey Agency approval within thirty (30) days of the exit conference. The request must contain the following information: ( )

**a.** The reason for the delay; ( )

**b.** A plan for resolution; ( )

**c.** The date of the expected resolution, which may not exceed six (6) months; and ( )

**d.** A plan for ~~ensuring~~ assuring the safety of the residents until resolution. ( )

**10. Follow-Up Survey.** The Licensing and Survey Agency will conduct follow-up surveys to ascertain corrections to core issue and non-core issue deficiencies are made according to time frames established in the plan of correction and evidence of resolution. ( )

**131. -- 139. (RESERVED).**

**140. COMPLAINTS AND INVESTIGATIONS.**

**01. Filing a Complaint.** Any person who believes that the facility has failed to meet any provision of the rules or statute may file a complaint with the Department. All complaints must have a basis in rule or statutory requirements. In the event that it does not, the complainant will be referred to the appropriate entity or agency.

( )  
**02. Investigation Survey.** The Licensing and Survey Agency will investigate, or cause to be investigated the following: ( )

**a.** ~~Any~~ complaint alleging a violation of the rules or statute ~~or~~; and ( )

**b.** ~~Any~~ reportable incident which indicates there was a violation of the rules or statute. ( )

**03. Disclosure of Complaint Information.** The Department will not disclose the name or identifying characteristics of a complainant unless: ( )

**a.** The complainant consents in writing to the disclosure; ( )

**b.** The investigation results in a judicial proceeding and disclosure is ordered by the court; or ( )

**c.** The disclosure is essential to prosecution of a violation. The complainant is given the opportunity to withdraw the complaint before disclosure. ( )

**04. Method of Investigation.** The nature of the complaint will determine the method used to investigate the complaint. ( )

**05. Notification to Complainant.** The Licensing and Survey Agency will inform the complainant of the results of the investigation survey when the complainant has provided a name and address. ( )

**141. -- 149. (RESERVED).**

**150. POLICIES AND PROCEDURES.**

Each facility must develop a written set of policies and procedures which are available to all staff at all times and include the facility policies described in Sections 151 through 162 of these rules. ( )

**151. ACTIVITY POLICIES.**

**01. Policy and Plan.** Each facility must develop a written activity policy that assists, encourages and promotes residents to maintain and develop their highest potential for independent living through their participation in planned recreational and other activities. ( )

**02. Activity Opportunities.** The policy must include opportunities ~~for~~ from the following activities: ( )

**a.** Socialization through group discussion, conversation, recreation, visiting, arts and crafts, music; ( )

**b.** Daily living activities to foster and maintain independent functioning; ( )

**c.** Physical activities such as games, sports, and exercises which develop and maintain strength, coordination, and range of motion; ( )

**d.** Education through special classes or activities; and ( )

**e.** Leisure time so residents may engage in activities of their own choosing. ( )

**03. Community Resources for Activities.** The facility will utilize community resources to promote resident participation in integrated activities of their choice both in and away from the facility. ( )

**152. ADMISSION POLICIES.**



**01. Admissions.** Each facility must develop written admission policies and procedures. The written admission policy must include; ( )

a. The purpose, quantity and characteristics of available services; ( )

b. Any restrictions or conditions imposed because of religious or philosophical reasons. ( )

c. Limitations concerning delivery of routine personal care by persons of the opposite gender. ( )

d. ~~Notice of non-resident and~~ Notification of any residents who ~~have been convicted of a sexual crime are on the sexual offender registry and who live on the premises or~~ in the facility. The registry may be accessed at "http://www.isp.state.id.us/identification/sex\_offender/public\_access.html". ( )

e. Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. ( )

~~02. Screening for Diseases. Policy and procedure for screening residents on admission for tuberculosis (TB), according to the Centers for Disease Control and Prevention (CDC) screening guidelines.~~ ( )

~~032.~~ **Fee Description.** A written description of how fees will be handled by the facility. ( )

~~043.~~ **Resident Funds Policies.** When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. ( )

a. A statement if the facility does not manage resident funds. ( )

b. If the facility manages resident funds, how funds are handled and safeguarded. ( )

~~054.~~ **Resident Admission, Discharge, and Transfer.** The facility must have policies addressing Admission, discharge, and transfer of residents to, from, or within the facility. ( )

~~065.~~ **Policies of Acceptable Admissions.** Written descriptions of the conditions for admitting residents to the facility must include: ( )

a. A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; ( )

b. No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: ( )

i. A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; ( )

ii. A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; ( )

iii. A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; ( )

~~iv. A resident who is bed bound, except for a resident whose death is imminent;~~ ( )

- iv. A resident who is comatose, except for a resident ~~whose death is imminent~~ who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; ( )
- v. A resident who is on a mechanically supported breathing system, except for residents who use CPAP (continuous positive airway pressure); ( )
- vi. A resident who has a tracheotomy who is unable to care for the tracheotomy independently; ( )
- vii. A resident who is fed by a syringe; ( )
- ~~viii.~~ viii. A resident with open, draining wounds for which the drainage cannot be contained; ( )
- ix. A resident with a Stage III or IV pressure ulcer; ( )
- x. A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; ( )
- xi. A resident ~~whose condition is unstable and needs nursing assessment and observation~~ who has MRSA (methicillin-resistant staphylococcus aureus) in an active stage (infective stage). ( )
- c. For any resident who has needs requiring a nurse, the facility must ~~ensure~~ assure a licensed nurse is available to meet the needs of the resident. ~~Licensed nursing care must not be delegated to unlicensed personnel.~~ ( )
- d. A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; ( )
- e. A resident that is violent or a danger to himself or others; ( )
- f. Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; ( )
- g. Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and ( )
- ~~h.~~ ~~Resident safety can be assured by the appropriate combination of personnel and facility design.~~ ( )

**153. ADDITIONAL POLICIES REQUIRED.**

- 01. Response of Staff to Abuse, Neglect or Exploitation of Residents.** The facility must develop policies and procedures to ~~ensure~~ assure that allegations of abuse, neglect and exploitation are identified, reported, investigated, followed up with interventions to prevent reoccurrence and ~~ensure~~ assure protection, and documented. ( )
- 02. Response of Staff to Emergencies.** How staff are to respond to emergency situations: ( )
  - a. Medical and psychiatric emergencies; ( )
  - b. Resident absence; ( )
  - c. Criminal situations; and ( )
  - d. Presence of law enforcement officials at the facility. ( )
- 03. Notification of Changes to Resident Health or Mental Status.** Who and how staff are to notify of

any changes in residents' health or mental status. ( )

**04. Provided Care and Services by Staff.** How staff are to provide care and services to residents in the following areas: ( )

- a. Activities of daily living; ( )
- b. Dietary and eating, including when a resident refuses to eat or follow a prescribed diet; ( )
- c. Dignity; ( )
- d. ~~Ensuring~~ Assuring each individual's rights; ( )
- e. Medication assistance; ( )
- f. Provision of privacy; ( )
- g. Social activities; ( )
- h. Supervision; ( )
- i. Supporting resident independence; and ( )
- j. Telephone access. ( )

**05. Resident Property Identified and Safe.** Identification of resident property and ~~ensuring~~ assuring that personal items are kept safe and used only by the resident. ( )

**06. Intervention Procedures to ~~Ensure~~ Assure Safety of Residents and Staff.** How to intervene to ~~ensure~~ assure resident and staff safety in unsafe situations-physical or behaviorally caused. ( )

**07. Behavior Management for Residents.** The facility must have policies and procedures to assure timely assessment, plan development which implements the least restrictive intervention to address the behavior and document the effect of interventions. ( )

**08. Staff Procedures for Accidents, Incidents, and Complaints.** The facility must develop policies and procedures to assure that accidents and incidents are identified, reported, investigated, and followed up with interventions to prevent reoccurrence and assure protection, and documented. ( )

**09. Facility Operations, Inspections, Maintenance, and Testing.** Plans and procedures for the operation, periodic inspection, and testing of the physical plant, which includes utilities, fire safety and plant maintenance for all areas of the facility's campus. ( )

**10. Hazardous Materials.** Policies and procedures for handling of hazardous materials. ( )

**11. Mechanical Equipment.** Policies and procedures for handling potentially dangerous mechanical equipment. ( )

**154. EMERGENCY PREPAREDNESS POLICIES.**

**01. Emergency Preparedness Plan.** Each facility must develop and implement an emergency preparedness plan to follow in the event of fire, explosion, flood, earthquake, high wind, or other emergency. ( )

**02. Written Procedures.** The facility must have written procedures outlining steps to be taken in the event of an emergency including: ( )

- a. Who is to respond; ( )

- b. Each person's responsibilities; ( )
- c. Where and how residents are to be evacuated; and ( )
- d. Notification of emergency agencies. ( )

**155. HOURLY ADULT CARE POLICIES.**

Facilities offering hourly adult care must develop written policies and procedures which include the following:( )

- 01. Services Offered for Hourly Adult Care.** A description of services offered, including: transportation services if offered, meals, activities, and supervision. ( )
- 02. Acceptable Hourly Care Individuals.** Types of individuals who may or may not be accepted for hourly care. ( )
- 03. Cost of Program.** Cost of program to individual. ( )
- 04. Health and Other Individual Needs.** Health and other pertinent information regarding the individual's needs. ( )
- 05. Emergency Information.** Emergency telephone numbers of family members and physician or authorized provider, and other identification information. ( )
- 06. Hours for Care.** Time periods of program not to exceed fourteen (14) consecutive hours in a twenty-four (24) hour period. ( )

**156. INFECTION CONTROL POLICIES.**

Each facility must develop policies and procedures consistent with recognized standards which control and prevent infections for both staff and residents. ( )

**157. MEDICATION POLICIES.**

- 01. Medication.** Each facility must develop written medication policies and procedures that detail the following: ( )
  - a. Receiving of medications; ( )
  - b. Storage of medications; ( )
  - c. Medication distribution system to be used; ( )
  - d. How staff are to respond if: ( )
    - i. A resident refuses a medication; ( )
    - ii. A resident misses a medication and the reason; ( )
    - iii. A resident medication is not available; ( )
    - iv. Medications are missing; ( )
    - v. A resident receives an incorrect medication; ( )
  - e. The process for determining who can self-administer medication; ( )
  - f. Unused medications: ( )

- i. Destruction; ( )
- ii. Return of medications to the pharmacy; ( )
- g. Documentation requirements: ( )
  - i. ~~Given~~ Taken; ( )
  - ii. Refused; ( )
  - iii. Missed; ( )
  - iv. Not available; and ( )
  - v. For residents self-medicating. ( )

**02. Nurse Delegation.** The process the nurse will use to delegate assistance with medication and how it will be documented. ( )

**158. FOOD AND NUTRITIONAL CARE POLICIES.**

Each facility must develop written policies and procedures for providing proper nutritional care for each resident which includes procedures to follow if the resident refuses food or to follow the prescribed diet. ( )

**159. RECORDS POLICIES.**

**01. Complete and Accurate Records.** Each facility must develop written policies and procedures to ~~ensure~~ assure complete, accurate, and authenticated records. ( )

**02. Electronic Records.** Facilities that implement an electronic record or signature must have written policies in place to ~~ensure~~ assure the following: ( )

- a. Proper security measures to protect the use of an electronic signature by anyone other than the person to which the electronic signature belongs; ( )
- b. The privacy and integrity of the record; ( )
- c. Includes which records will be maintained and signed electronically; ( )
- d. How an e-signature code is assigned and the code and associated staff identities are protected; ( )
- e. How passwords are assigned and the frequency for which they are changed; ( )
- f. Allows resident access to his records within ~~twenty-four (24) hours~~ one (1) business day of the request; and( )
- g. Allows immediate access to records by surveyors, and others who are authorized by law; ( )

**160. RESIDENT RIGHTS POLICIES.**

Each facility must develop written policies and procedures which ~~ensure~~ assure that resident rights will be promoted and protected in the facility. ( )

**161. SMOKING POLICIES.**

**01. Policy on Smoking.** The facility must develop written rules governing smoking. These rules must be made known to all facility personnel, residents, and the visiting public. ( )

**02. Smoking Prohibited.** Nothing in this section requires that smoking be permitted in a facility whose admission policies prohibit smoking. ( )

**03. Policy Content.** The policy must include: ( )

**a.** Prohibiting smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; ( )

**b.** Prohibiting smoking in bed by anyone; ( )

**c.** Prohibiting unsupervised smoking by residents classified as not mentally or physically responsible, and residents affected by medication; ( )

**d.** Prohibiting smoking in areas where combustible supplies or materials are stored; and ( )

**e.** Designating areas where smoking is permitted. ( )

**162. STAFFING POLICIES.**

The facility must develop written staffing policies and procedures based on the numbers of residents, resident needs, and configuration of the facility. ( )

**163. -- 209. (RESERVED).**

**210. REQUIREMENTS FOR ACTIVITIES.**

The facility must provide an ongoing program of activities that is consistent with the facility's policies and procedures as described in Section 151 of these rules. ( )

**211. -- 214. (RESERVED).**

**215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR.**

Each facility must be organized and administered under one (1) licensed administrator assigned as the person responsible for the operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation. ( )

**01. Administrator Responsibility.** The administrator is responsible for ~~ensuring~~ assuring that policies and procedures required in Title 39, Chapter 33, Idaho Code and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho" are implemented. ( )

**02. Availability of Administrator.** The facility's administrator must be on site sufficiently to provide for safe and adequate care of the residents to meet the terms in the Negotiated Service Agreement. The facility's administrator or his designee must be available to be on-site at the facility within two (2) hours. ( )

**03. Thirty Day Operation Limit.** The facility may not operate for more than thirty (30) days without a licensed administrator. ( )

**04. Representation of Residents.** The administrator, his relatives, or employees cannot act as or seek to become the legal guardian of, or have power of attorney for any resident. ~~The administrator may not require the resident to name the facility or any employee of the facility as the payee as a condition of providing services.~~ Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be permitted are permitted. ( )

**05. Responsibility for Acceptable Admissions.** The administrator must ~~ensure~~ assure that ~~each~~ no resident is knowingly admitted or retained ~~in compliance with~~ who requires care as defined in Section 39-3307, Idaho Code, and Subsection 152.06~~5~~ of these rules. ( )

**06. ~~No One Allowed to Live or Work in the Facility if Convicted of Sexual Crime Offender.~~** The

administrator must assure that a non-resident ~~convicted of a sexual crime~~ on the sexual offender registry is not allowed to live or work in the facility. The registry may be accessed at [http://www.isp.state.id.us/identification/sex\\_offender/public\\_access.html](http://www.isp.state.id.us/identification/sex_offender/public_access.html). ( )

**07. Notification of Adult Protection and Law Enforcement.** The administrator must assure that adult protection and law enforcement are notified in accordance with Section 39-5310, Idaho Code. ( )

**08. Procedures for Investigations.** The administrator must assure the facility procedures for investigation of incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to assure resident safety. ( )

**09. Notification of Reportable Incidents.** The administrator must assure notification to the Licensing and Survey Agency of ~~the following~~ reportable incidents: ( )

~~a- Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, lacerations, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported.~~ ( )

~~b- Any accident involving facility-sponsored transportation resulting in resident injury. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle.~~ ( )

~~c- Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility without the facility's knowledge.~~ ( )

~~d- Resident-to-resident abuse incidents where there is injury.~~ ( )

~~e- Staff mistakes that result in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. Some examples of staff mistakes include failure to adhere to the NSA, failure to notify appropriate staff of a significant change.~~ ( )

**10. Administrator's Designee.** A person authorized in writing to act in the absence of the administrator and who is knowledgeable of facility operations, the residents and their needs, emergency procedures, the location and operation of emergency equipment, and how the administrator can be reached in the event of an emergency. ( )

**11. Ability to Reach Administrator or Designee.** The administrator or his designee must be reachable and available at all times. ( )

**12. Minimum Age of Personnel.** The administrator will assure that no personnel providing hands-on care or supervision services will be under eighteen (18) years of age unless they have completed a certified nursing assistant (CNA) certification course. ( )

**216. -- 219. (RESERVED).**

**220. REQUIREMENTS FOR ADMISSION AGREEMENTS.**

~~01- Admission Agreements.~~ Prior to or on the day of admission, the facility and each resident or the resident's legal guardian or conservator will enter into a written admission agreement that is understandable and translated into a language the resident or his representative understands. The agreement must be signed by all involved parties. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement and admission agreement are met. Admission agreements must include: all items described under Subsections 220.01 through 220.14 of these rules. ( )

~~01.~~ **Services Provided.** Services the facility provides including: room, board, assistance with activities of daily living, supervision, assistance and monitoring of medications, laundering of linens owned by the facility,

coordination of outside services, arrangement for routine, urgent, and emergency medical and dental services, emergency interventions, housekeeping services, maintenance, utilities, access to basic television in common areas, maintenance of self-help skills, recreational activities, and provisions for trips to social functions. ( )

**b02. Staffing.** Staffing patterns and qualification of staff on duty during a normal day. ( )

**e03. Notification of Populations Served.** The facility must notify potential residents of the types of populations it specializes in serving. ( )

**#04. Notification of Liability Insurance Coverage.** The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident's admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writing. ( )

**e05. Medication Responsibilities.** The facility's and resident's roles and responsibilities relating to assistance with medications including the reporting of missed doses or those taken on a PRN basis. ( )

**#06. Resident Personal Fund Responsibilities.** Who is responsible for the resident's personal funds. ( )

**g07. Resident Belongings Responsibility.** Responsibility for protection and disposition of all valuables belonging to the resident and provision for the return of resident's valuables if the resident leaves the facility. ( )

**h08. Fee Description and Emergency Transfers.** Fee description and conditions under which emergency transfers will be made. ( )

**ia.** Arrangement for payments; ( )

**ii.** How a partial month's resident fees are to be refunded when a resident no longer resides in the facility; ( )

**iii.** Written notice to vacate the facility must be given thirty (30) calendar days prior to transfer or discharge on the part of either party except in the following situations; ( )

**i.** In the case of the resident's death, fifteen (15) days notice is required. The date of death begins the fifteen (15) days notice requirement; and ( )

**ii.** In the case of an emergency condition that requires a resident's transfer, fifteen (15) days notice is required. The date of transfer starts the fifteen (15) days notice requirement. ( )

**#09. Resident Permission to Transfer Information.** Permission to transfer information from the resident's records to any facility to which the resident transfers. ( )

**j10. Resident Responsibilities.** Resident responsibilities, as appropriate. ( )

**k11. Restrictions on Choice of Care or Service Providers.** Any restriction on choice of care or service providers, such as pharmacy, home health agency, hospice agency, physician or authorized provider. ( )

**l12. Advance Directive.** Written documentation of the resident's preference regarding the formulation of an Advance Directive in accordance with Idaho state law. When a resident has an Advanced Directive, a copy must be immediately available for staff and emergency personnel. ( )

**m.** ~~Agreement that within fifteen (15) days after admission the resident will be skin tested for tuberculosis, unless there is a documented medical contraindication from an authorized provider or physician; and~~ ( )

**13. Notification of Payee Requirements.** Notification if the facility requires as a condition of ( )



admission that the administrator or an employee of the facility be named as payee; and ( )

**#14.** **Other Information.** Other information that the facility may deem appropriate. ( )

**221. ~~(RESERVED)~~ REQUIREMENTS FOR TERMINATION OF ADMISSION AGREEMENT.**

**021. Conditions for Termination of the Admission Agreement.** The admission agreement cannot be terminated, except under the following conditions: ( )

**a.** ~~By written notification, by either party,~~ **g** Giving the other party thirty (30) calendar days written notice for any reason; ( )

**b.** The resident's death; ( )

**c.** Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; ( )

**d.** The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307, Idaho Code, and Subsection 152.065 of these rules; ( )

**e.** Nonpayment of the resident's fees; ( )

**f.** When the facility can not meet resident needs due to changes in services, in house or contracted, or inability to provide the services; and ( )

**g.** Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. ( )

**032. Facility Responsibility During Resident Discharge.** The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. ( )

**043. Resident's Appeal of Involuntary Discharge.** A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. ( )

**a.** Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. ( )

**b.** This notice must be in writing and in a language and manner the resident or his representative can understand. ( )

**054. Written Notice of Discharge.** The written notice of discharge must include the following: ( )

**a.** The reason for the discharge; ( )

**b.** Effective date of the discharge; ( )

**c.** A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; ( )

**d.** The name and address of where the appeal must be submitted; ( )

**e.** The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and ( )

**f.** The name, address and telephone number of CO-AD, for residents with developmental disabilities

or mental illness. ( )

**g.** If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies. ( )

**h.** When the notice does not contain all the above required information, the notice is void and must be reissued. ( )

**065. Receipt of Appeal.** Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. ( )

**224.2. -- 224. (RESERVED).**

**225. REQUIREMENTS FOR BEHAVIOR MANAGEMENT.**

The facility must identify and ~~access~~ evaluate behavioral symptoms that are distressing to the resident or infringe on other residents' rights. ( )

**01. ~~Assessment~~ Evaluation for Behavior Management.** The ~~assessment~~ facility evaluation must include the following; ( )

**a.** Identification if the resident behavioral ~~symptoms are~~ is transitory or permanent; ( )

**b.** ~~Study of antecedent~~ Review of the resident's previous behaviors and activities; ( )

**c.** Review of ~~B~~baseline data including intensity, duration and frequency of the resident behavior; ( )

**d.** Identification of recent changes in the resident's life, such as death in the family, change in resident's daily routine, or changes in the Resident's Negotiated Service Agreement; ( )

**e.** Identification of environmental causes that could contribute to the resident's behavior such as excessive heat, noise, overcrowding, hunger, staffing; ~~and~~ ( )

**f.** Rule ~~ing~~ out possible medical causes such as pain, constipation, fever, ~~or~~ infection, or medication side effects; and ( )

**g.** Identification of events that trigger behavioral symptoms. ( )

**02. Intervention. ~~Interventions~~ The facility must ~~be~~ developed an intervention for each behavioral symptom.** ( )

**a.** All staff must be aware of and consistently implement each behavioral symptom interventions; ( )

**b.** The interventions ~~needs~~ to be the least restrictive; and ( )

**c.** Each intervention needs to be reviewed within seventy-two (72) hours of implementation, and from then on as appropriate, to evaluate the continued need for the intervention. ( )

**03. Ordering Prescribing Provider and Pharmacists.** The resident's medication regime must be evaluated every six (6) months to ~~ensure~~ assure that medications used to treat behavioral symptoms are necessary and at the lowest possible dose. ( )

**226. -- 249. (RESERVED).**

**250. REQUIREMENTS FOR BUILDING CONSTRUCTION AND PHYSICAL STANDARDS.**

**01. Building Character.** All buildings utilized as residential care or assisted living facilities must be of such character as to be suitable for such use. Facilities must be of such character as to enhance normalization and integration of residents into the community. ( )

**02. Plans and Specifications.** Plans and specifications for any proposed new facility construction, any addition or remodeling are governed by the following: ( )

**a.** Plans must be prepared by an architect or engineer licensed in the state of Idaho. A variance of this requirement may be granted by the Licensing and Survey Agency when the size of the project does not necessitate involvement of an architect or engineer; ( )

**b.** Plans and specifications must be submitted to the Licensing and Survey Agency to assure compliance with applicable construction standards, codes, and regulations; ( )

**c.** Newly constructed or converted buildings housing sixteen (16) or more residents must submit professionally prepared drawings or plans of the kitchen and a listing of all kitchen equipment for review and approval prior to construction. ( )

**03. Remodeling or Additions.** Remodeling of or additions to a facility will be consistent with all applicable fire and life safety requirements. ( )

**04. Approval.** All buildings, additions and remodeling are subject to approval by the Licensing and Survey Agency and must meet applicable requirements. ( )

**05. Walls and Floor Surfaces.** Walls and floors must be of such character to permit cleaning. Walls and ceilings in kitchens, bathrooms, and utility rooms must have washable surfaces. ( )

**06. Toilet and Bathrooms.** Each facility must provide: ( )

**a.** A toilet and bathroom for resident use so arranged that it is not necessary for an individual to pass through another resident's room to reach the toilet or bath; ( )

**b.** Solid walls or partitions to separate each toilet and bathroom from all adjoining rooms; ( )

**c.** Mechanical ventilation to the outside from all inside toilets and bathrooms not provided with an operable exterior window; ( )

**d.** Each tub, shower, and lavatory with hot and cold running water; ( )

**e.** At least one (1) flush toilet for every six (6) residents; ( )

**f.** At least one (1) tub or shower for every eight (8) residents; ( )

**g.** At least one (1) lavatory with a mirror for each toilet; and ( )

**h.** At least one (1) toilet, tub or shower, and lavatory in each building in which residents sleep, with additional units if required by the number of persons. ( )

**07. Accessibility for Persons With Mobility and Sensory Impairments.** For residents with mobility or sensory impairments, the facility must provide a physical environment which meets the needs of the person for independent mobility and use of appliances, bathroom facilities, and living areas. New construction must meet the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Existing facilities must comply, to the maximum extent feasible, with 28 CFR Sections 36.304 and 36.305 regarding removal of barriers under the Americans with Disabilities Act, without creating an undue hardship or burden on the facility, and must provide as required, the necessary accommodations: ( )

- a.** Ramps for residents who require assistance with ambulation shall comply with the requirements of the ADAAG 4.8; ( )
- b.** Bathrooms and doors large enough to allow the easy passage of a wheelchair as provided for in the ADAAG 4.13; ( )
- c.** Grab bars in resident toilet and bathrooms in compliance with ADAAG 4.26; ( )
- d.** Toilet facilities in compliance with ADAAG 4.16 and 4.23; ( )
- e.** Non-retractable faucet handles in compliance with ADAAG 4.19, with the exception of self-closing valves under 4.19.5, and 4.27; and ( )
- f.** Suitable hand railing must be provided on both sides of all stairs leading into and out of a building for residents who require the use of crutches, walkers, or braces. ( )
- 08. Lighting.** The facility must provide adequate lighting in all resident sleeping rooms, dining rooms, living rooms, recreation rooms, and hallways. ( )
- 09. Ventilation.** The facility must be ventilated, and precautions shall be taken to prevent offensive odors. ( )
- 10. Plumbing.** All plumbing in the facility must comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. The temperature of hot water at plumbing fixtures used by residents must be between one hundred five degrees (105°F) Fahrenheit and one hundred twenty degrees (120°F) Fahrenheit. ( )
- 11. Heating.** A heating system must be provided for the facility that is capable of maintaining a minimum temperature of seventy degrees (70°F) Fahrenheit during the day and a minimum of sixty-two degrees (62°F) Fahrenheit during the night. Wood stoves are not be permitted as the sole source of heat and the thermostat for the primary source of heat must be remotely located away from any wood stove. ( )
- 12. Dining, Recreation, Shower, Bathing and Living Space.** The total area set aside for these purposes must be no less than thirty (30) square feet per licensed bed. A hall or entry can not be included as living or recreation space. ( )
- 13. Residents Required to Go Outside.** Residents requiring the use of wheelchairs, walkers, or assistance with ambulation cannot be admitted to a facility that requires residents to go outside to go back and forth from the dining room and recreation areas. ( )
- 14. Covered Cement Walks.** For facilities licensed after July 1, 1991, where residents are required to go outside to another building for dining or recreation, there must be covered paved walks from one (1) building to the other. ( )
- 15. Resident Sleeping Rooms.** The facility must assure that: ( )
- a.** Resident sleeping rooms are not in attics, stairs, halls, or any other room commonly used for other than bedroom purposes; ( )
- b.** A room with a window that opens into an exterior window well cannot be used for a resident sleeping room; ( )
- c.** Not more than four (4) residents can be housed in any multi-bed sleeping room in facilities licensed prior to July 1, 1991. New facilities or building converted to a licensed facility after July 1, 1992, cannot have more than two (2) residents in any multi-bed sleeping room. When there is any change in ownership of the facility, the maximum number of residents allowed in any room is two (2); ( )

**d.** Square footage requirements for resident sleeping rooms must provide for not less than one hundred (100) square feet of floor space per resident in a single-bed sleeping room and not less than eighty (80) square feet of floor space per resident in a multi-bed sleeping room; ( )

**e.** Each resident's sleeping room must be provided with an operable exterior window. An operable window is not required where there is a door directly to the outside from the sleeping room; ( )

**f.** The operable window sill height must not exceed thirty-six (36) inches above the floor in new construction, additions, or remodeling; ( )

**g.** The operable window sill height must not exceed forty-four (44) inches above the floor in existing buildings being converted to a facility; ( )

**h.** Each resident sleeping room must provide a total window space that equals at least eight percent (8%) of the room's total square footage; ( )

**i.** Window screens must be provided on operable windows; ( )

**j.** Resident sleeping rooms must have walls that run from floor to ceiling; have doors that will limit the passage of smoke; and provide the resident(s) with privacy; ( )

**k.** Ceiling heights in sleeping rooms must be at least seven (7) feet, six (6) inches; and ( )

**l.** Closet space in each resident sleeping room must provide at least four (4) usable square feet per resident. Common closets used by two (2) or more residents must have substantial dividers for separation of each resident's clothing. All closets must be equipped with doors. Free-standing closets are deducted from the square footage of the sleeping room. ( )

**16. Secure Environment.** If the facility accepts and retains residents who have cognitive impairment, the facility must provide an ~~an~~ *secure* interior environment and exterior yard which is secure and safe. ( )

**17. Call System.** The facility must have a call system. The call system cannot be a substitute for supervision. For facilities licensed prior to January 1, 2006, when the current system is no longer operational or repairable the facility must install a call system as defined in these rules. ( )

**18. Dietary Standards.** Each facility must have a full service kitchen to meet the needs of the residents. Any satellite kitchen must meet all applicable requirements. ( )

**251. -- 254. (RESERVED).**

**255. REQUIREMENTS FOR ADDITIONAL PHYSICAL STANDARDS.**

**01. Fire District.** The facility site must be in a lawfully constituted fire district. ( )

**02. Roads.** The facility must be served by an all-weather road and kept open to motor vehicles at all times of the year. ( )

**03. Medical Accessibility.** The facility site must be accessible to authorized providers, or emergency medical services within thirty (30) minutes driving time. ( )

**04. Service Accessibility.** The facility site must be accessible within thirty (30) minutes driving time to necessary social, medical, and rehabilitation services. ( )

**256. -- 259. (RESERVED).**

**260. REQUIREMENTS FOR ENVIRONMENTAL SANITATION.**

**01. Water Supply.** The facility must have an adequate water supply that is safe and of a sanitary quality. It must be from: ( )

**a.** An approved private, public, or municipal water supply; ( )

**b.** Water from a private supply, must have water samples submitted annually to either a private accredited laboratory or to the Public Health District Laboratory for bacteriological examination. The Department may require more frequent examinations if warranted; and ( )

**c.** There must be a sufficient amount of water under adequate pressure to meet sanitary and fire sprinkler system requirements of the facility at all times. ( )

**02. Sewage Disposal.** All sewage and liquid waste must be discharged, into a municipal sewage system where such a system is available. If a municipal sewage system is not available sewage and liquid waste must be collected, treated, and disposed of in a manner approved by the Department. ( )

**03. Garbage and Refuse Disposal.** All garbage and refuse disposal must be provided by the facility. ( )

**a.** The premises and all buildings must be kept free from accumulation of weeds, trash and rubbish. ( )

**b.** Material not directly related to the maintenance and operation of the facility must not be stored on the premises. ( )

**c.** All containers used for storage of garbage and refuse must be constructed of durable, nonabsorbent material and must not leak or absorb liquids. Containers must be provided with tight fitting lids unless stored in a vermin-proof room(s) or enclosures. ( )

**d.** Garbage containers must be maintained in a sanitary manner. Sufficient containers must be afforded to hold all garbage and refuse which accumulates between periods of removal from the facility. Storage areas must be clean and sanitary. ( )

**04. Insect and Rodent Control.** A pest control program must be in effect at all times. This program must effectively prevent insects, rodents and other pests from entrance to, or infestation of the facility. ( )

**a.** All toxic chemicals must be properly labeled and stored under lock and key; and ( )

**b.** No toxic chemicals must be stored in resident areas, where drugs are stored, or in any area where food is stored, prepared or served. ( )

**05. Linen and Laundry Facilities and Services.** ( )

**a.** The facility must have available at all times a quantity of linen essential to the proper care and comfort of residents; ( )

**b.** There must be at least two (2) complete changes of clean bed linen and two (2) sets of towels on hand for each licensed bed; ( )

**c.** Linen must be of good quality, not thread-bare, torn or badly stained; ( )

**d.** Linens must be handled, processed and stored in a appropriate manner that prevents contamination; ( )

**e.** Adequate facilities must be provided for the proper and sanitary washing and drying of linen and other washable goods laundered in the facility; ( )

f. The laundry must be situated in an area separate and apart from where food is stored, prepared or served; ( )

g. The laundry must be well lighted and ventilated, adequate in size for the needs of the facility, maintained in a sanitary manner and kept in good repair; ( )

h. When the facility sends linen and personal laundry out for laundry services, care must be taken that soiled linen and clothing are properly handled before sending out. Clean linen and clothing received from a laundry service must be stored in a proper manner; and ( )

i. Residents' and personnel's personal laundry must be collected, transported, sorted, washed, and dried in a sanitary manner and cannot be washed with general linens (towels, sheets). ( )

**06. Housekeeping Services and Equipment.** Housekeeping, maintenance personnel, and equipment must be provided to maintain the interior and exterior of the facility in a clean, safe, and orderly manner. Prior to occupancy of any sleeping room by a new resident, the room must be thoroughly cleaned including the bed, bedding, and furnishings. ( )

**261. -- 299. (RESERVED).**

**300. REQUIREMENTS FOR NURSING SERVICES.**

Nursing services must be performed in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". The facility must have on staff or under contract the nursing personnel listed in Subsections 300.01 and 300.02 of these rules to provide nursing service requirements. ( )

**01. Licensed Professional Nurse (RN).** A licensed professional nurse (RN) must visit the facility at least once ~~each calendar month~~ every ninety (90) days or when there is a change in the resident's condition. The licensed professional nurse is responsible for delegation of all nursing functions, according to IDAPA 23.01.01, "Idaho Board of Nursing Rules," Section 400. ( )

**02. Licensed Nurse.** The facility must ~~ensure~~ assure that a licensed nurse is ~~immediately~~ available ~~by telephone and capable of being onsite within one (1) hour, twenty-four (24) hours per day~~; to address changes in the resident's health or mental status and to review and implement new orders prescribed by the resident's health care provider. ( )

**301. -- 304. (RESERVED).**

**305. LICENSED PROFESSIONAL NURSE RESPONSIBILITY REQUIREMENTS.**

~~Each month~~ The licensed professional nurse must assess and document, including date and signature, for each resident as described in Subsections 305.01 through 305.08 of these rules. ( )

**01. Resident Response to Medications and Therapies.** Conduct a nursing assessment of each resident's response to medications and prescribed therapies. ( )

**02. Current Medication Orders.** Assure the residents' medication orders are current by verifying that the medication listed on the medication distribution container ~~and medication recap sheet provided by the pharmacy~~, including over-the-counter-medications as appropriate, are consistent with physician or authorized provider orders. A copy of the actual written, signed and dated orders must be present in each resident's care record. ( )

**03. Resident Health Status.** Conduct a nursing assessment of the health status of each resident by identifying symptoms of illness, or any changes in mental or physical health status. ( )

**04. Recommendations.** Make recommendations to the administrator regarding any medication needs, other health needs requiring follow up, or changes needed to the Negotiated Service Agreement. ( )

**05. Progress of Previous Recommendations.** Conduct a review and follow-up of the progress on

previous recommendations made to the administrator regarding any medication needs or other health needs that require follow up. Report to the attending physician or authorized provider and state agency if recommendations for care and services are not implemented that have affected or have the potential to affect the health and safety of residents. ( )

**06. Self-Administered Medication.** Conduct an initial nursing assessment on each resident participating in a self-administered medication program as follows: ( )

**a.** Before the resident can self-administer medication to assure resident safety; and ( )

**b.** Evaluate the ~~accuracy~~ continued validity of the assessment to assure the resident is still capable to safely continue the self-administered medication for the next ~~month~~ ninety (90) days. ( )

**07. Medication Interactions and Usage.** Conduct a review of the resident's use of all prescribed and over-the-counter medications for side effects, interactions, abuse or a combination of these adverse effects. The nurse must notify the resident's physician or authorized provider, ~~and pharmacist~~ of any identified concerns. ( )

**08. Resident and Facility Staff Education.** Assess, document and recommend any health care related educational needs, for both the resident and facility staff, as the result of the assessment or at the direction of the resident's health care provider. ( )

**306. -- 309. (RESERVED).**

**310. REQUIREMENTS FOR MEDICATION.**

**01. Medication Distribution System.** Each facility must use medi-sets or blister packs. The facility may use multi-dose medication distribution systems that are provided for resident's receiving medications from the Veterans Administration or Railroad benefits. The medication system must be filled by a pharmacist and appropriately labeled in accordance with pharmacy standards and physician or authorized provider instructions. A licensed nurse may fill medi-sets, blister packs, or other Licensing and Survey Agency approved system as provided in Section 39-3326, Idaho Code and Section 157 of these rules. ( )

**a.** All medications will be kept in a locked area such as a locked box or room; ( )

**b.** Poisons, toxic chemicals, and cleaning agents will be stored in separate locked areas apart from medications, such as a locked medication cart, locked box or room; ( )

**c.** Biologicals and other medications requiring cold storage will be refrigerated. A covered container in a home refrigerator will be considered to be satisfactory storage if the temperature is maintained at thirty-eight to forty-five degrees (38-45°F) Fahrenheit. The temperature will be monitored and documented on a daily basis; ( )

**d.** Assistance with medication must comply with the Board of Nursing requirements; ( )

**e.** Each medication must be given to the resident directly from the medi-set, blister pack or medication container; and ( )

**f.** Each resident must be observed taking the medication. ( )

**02. Unused Medication.** Unused, discontinued, or outdated medications cannot accumulate at the facility for longer than thirty (30) days. The unused medication must be disposed of in a manner that ~~ensures~~ assures it cannot be retrieved. The facility may enter into agreement with a pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09, "Rules Governing the Medicaid Assistance Program," Section 817, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy". A written record of all drug disposals must be maintained in the facility and include: ( )

**a.** A description of the drug, including the amount; ( )



- b. Name of resident for prescription medication; ( )
- c. The reason for disposal; ( )
- d. The method of disposal; ( )
- e. The date of disposal; and ( )
- f. Signatures of responsible facility personnel and witness. ( )

**03. Controlled Substances.** The facility must track all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy," Section 495, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing Rules," Section 490. ( )

**04. Psychotropic or Behavior Modifying Medication. ( )**

~~a. Psychotropic or behavior modifying medication intervention must not be used only as a last recourse and at the lowest effective dosage. Prior to the facility obtaining physician or authorized provider orders for psychotropic or behavior modifying medication, the facility must implement a less restrictive systematic non-medication, behavior management approach to assist and redirect the resident to control specified behaviors the first resort to address behaviors. The facility must attempt non-drug interventions to assist and redirect the resident's behavior.~~ ( )

~~b. The facility must ensure that an authorized provider's orders for psychotropic or behavior modifying medications are ordered for a specific condition, as diagnosed and documented in the medical record, at the lowest possible dosage and for a duration not to exceed a six (6) month period. At the end of each six (6) month period, the need for the medication and the current dosage will be reassessed by the resident's physician or authorized provider for possible continuation, dose reduction, or discontinuation of the medication. The facility must have written documentation, signed and dated by a physician or authorized provider and the consultant pharmacist regarding the resident's reassessment and determinations for continuation, reduction, or discontinuances of medications or behavioral management interventions. Psychotropic or behavior modifying medications must be prescribed by a physician or authorized provider.~~ ( )

~~c. The facility will monitor the resident to determine continued need for the medication based on the resident's demonstrated behaviors.~~ ( )

~~d. The facility will monitor the resident for any side effects that could impact the resident's health and safety.~~ ( )

~~e. The use of psychotropic or behavior modifying medications must be reviewed by the physician or authorized provider at least every six (6) months. The facility must provide behavior updates to the physician or authorized provider to help facilitate an informed decision on the continuing use of the psychotropic or behavior modifying medication.~~ ( )

**311. -- 319. (RESERVED).**

**320. REQUIREMENTS FOR THE NEGOTIATED SERVICE AGREEMENT.**

The Negotiated Service Agreement must be completed and signed no later than fourteen (14) calendar days from the date of admission. A written interim plan must be developed and used while the Negotiated Service Agreement is being completed. ( )

**01. Use of Negotiated Service Agreement.** Each resident, regardless of the source of funding, must enter into a Negotiated Service Agreement. The Negotiated Service Agreement provides for coordination of services ~~guidance of and instruction to the facility staff, and management of the facility.~~ Upon completion, the agreement must clearly identify the resident; describe services to be provided, the frequency of such services, and how such services are to be delivered. The Negotiated Service Agreement must be implemented. ( )

- 02. Key Elements of the Negotiated Service Agreement.** A resident's agreement must be based on the following: ( )
- a.** Resident's uniform assessment or assessment based on the uniform assessment criteria; ( )
  - b.** Level of support in activities of daily living; ( )
  - c.** Health services; ( )
  - d.** Level of assistance for medications; ( )
  - e.** Frequency of needed services; ( )
  - f.** Scope of needed assistance; ( )
  - g.** Habilitation needs, to specify the program being used if applicable; ( )
  - h.** Training needs, to specify the program being used if applicable; ( )
  - i.** Identification of specific behavioral symptoms, situations that trigger the behavior symptoms and the specific interventions for each behavioral symptom; ( )
  - j.** Physician or authorized provider's signed and dated orders; ( )
  - k.** Admission records; ( )
  - l.** Community support systems; ( )
  - m.** Resident's desires; ( )
  - n.** Transfer plans; ( )
  - o.** Discharge plans; ( )
  - p.** Identification of individual services being provided by other providers and who is providing the service; and ( )
  - q.** Other identified needs. ( )
- 03. Signature, Date and Approval of Agreement.** The administrator and resident, legal guardian, or conservator, must sign and date the service agreement upon its completion. ( )
- 04. Review Date.** The Negotiated Service Agreement must include the next scheduled date of review. ( )
- 05. Development of the Service Agreement.** The resident, and other relevant persons as identified by the resident, must be included in the development of the service agreement. Licensed and professional staff will be involved in the development of the service agreement as applicable. ( )
- 06. Provision of Copy of Agreement.** Signed copies of the agreement must be given to the resident, legal guardian, or conservator, and a copy placed in the resident's record file, no later than fourteen (14) calendar days from admission. ( )
- 07. Resident Choice.** A resident must be given the choice and control of how and what services the facility or external vendors will provide, to the extent the resident can make choices. The resident's choice must not violate the provisions of Section 39-3307(1), Idaho Code. ( )

**08. Periodic Review.** The Negotiated Service Agreement must be reviewed when there is a change in a diagnosis for the resident or other change in condition requiring different, additional, or replacement services or at least every twelve (12) months. ( )

**321. -- 329. (RESERVED).**

**330. REQUIREMENTS FOR RECORDS.**

The facility administrator is responsible for ~~ensuring~~ assuring that record policies and procedures are implemented in the facility. ( )

**01. Individual Resident Care Record.** An individual resident care record must be maintained for each admission with all entries kept current, dated and signed. All paper records must be recorded legibly in ink. ( )

**02. Resident Record Retention.** Records must be preserved in a safe location protected from fire, theft, and water damage for a period of not less than ~~five~~ three (3) years. ( )

**03. Resident Record Confidentiality.** The facility must safeguard resident information against loss, destruction, and unauthorized use. ( )

**04. Staff Access.** Resident care records of current residents must be available to direct care staff at all times. ( )

**05. Electronic Records.** The facility must be able to print records maintained electronically in the facility. ( )

**06. Accessibility of Records to Survey Staff.** Survey staff must have complete and immediate access to resident and facility records. ( )

**331. -- 334. (RESERVED).**

**335. REQUIREMENTS FOR INFECTION CONTROL.**

The administrator is responsible for ~~ensuring~~ assuring that infection control policy and procedure are implemented. ( )

**01. Implementation of Policies.** Staff must implement facility policy and procedure. ( )

**02. Staff With Infectious Disease.** Staff with an infectious disease must not work until the infectious stage is corrected or must be reassigned to a work area where contact with others is not expected and likelihood of transmission of infection is absent. ( )

**03. Universal Precautions.** Universal Precautions must be used in the care of residents to prevent transmission of infectious disease according to the Centers for Disease Control and Prevention (CDC) guidelines. These guidelines may be accessed on the CDC website <http://www.cdc.gov/ncidod/hip/Blood/universa.htm>. ( )

**04. Reporting of Individual With Infectious Disease.** The name of any resident or facility personnel with a reportable disease listed in IDAPA 16.02.10, "Idaho Reportable Diseases," will be reported immediately to the local Health District authority and appropriate infection control procedures must be immediately implemented as directed by that local health authority. ( )

~~**05. Screening Staff for Tuberculosis (TB).** The facility must screen all newly hired personnel for tuberculosis (TB) within two (2) weeks of employment, according to the Centers for Disease Control and Prevention (CDC) screening guidelines. These guidelines may be accessed on the CDC website [www.cdc.gov/mmwr/preview/mmwrhtml/rr4906a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4906a1.htm).~~ ( )

~~**06. Screening New Residents for Tuberculosis (TB).** The facility must screen all new residents within in two (2) weeks of admission for tuberculosis (TB), in accordance with a physician or authorized provider order and according to the Centers for Disease Control and Prevention (CDC) screening guidelines. These guidelines may be~~

*accessed on the CDC website [www.cdc.gov/mmwr/preview/mmwrhtml/rr4906a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4906a1.htm).*

(←)

**336. -- 339. (RESERVED).**

**340. REQUIREMENTS FOR MENTAL HEALTH CONTRACT BEDS.**

A facility may enter into an agreement with the Department to provide short-term care to certain residents designated by the mental health program of the Department. These residents are temporarily distressed and unable to fully meet their basic needs. They require strong support, supervision, and while nonviolent nor a danger to self or others, could regress without these supports. ( )

**01. License and Personnel.** The facility must be on a full license and must be staffed with at least one (1) staff member up and awake at night to assure the safety of all residents. ( )

**02. Written Contract.** The facility must have a written contract with the Department outlining the responsibilities of both parties and lists the names and telephone numbers of individuals who may be contacted if questions arise regarding the residents' care. ( )

**03. Resident Assessment.** The facility must have on file the results of a Department assessment which clearly assures that the resident is not a danger to them self or others. ( )

**04. Personnel Orientation and Training.** Personnel providing direct resident care, including contract staff must have documented evidence on file at the facility of appropriate orientation and training in providing care for residents with mental illness. ( )

**341. -- 344. (RESERVED).**

**345. REQUIREMENTS FOR HOURLY ADULT CARE.**

If the facility provides hourly adult care, the administrator must assure that the facility's policies and procedures are implemented. ( )

**01. Medication and Treatment Orders.** All medications and treatments must be ordered by a physician or authorized provider. ( )

**02. Assistance With Medication.** Assistance with medication by unlicensed assistive personnel in the facility must follow IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". ( )

**a.** Each hourly adult care individual is responsible for bringing appropriately labeled medications for the stay; and ( )

**b.** The facility is responsible for the safeguarding hourly adult care individual's medications while at the facility. ( )

**03. Restrictions for Hourly Adult Care.** The facility must ~~ensure~~ assure that the restrictions for hourly adult care in Subsections 345.03.a. through 345.03.f. of these rules are followed. ( )

**a.** Hourly adult care services may be provided to such number of individuals that the facility can handle without interference with the normal activities of the facility; staffing must be based upon the needs of all residents in the facility to include full-time residents and hourly adult care individuals; ( )

**b.** Provision of time appropriate accommodations will be made available for the individual, to include, napping furniture for day time hours, 6 a.m. through 10 p.m., such as lounge chairs, recliners, and couches; ( )

**c.** The facility will have the ability to space napping furniture at least three (3) feet apart; ( )

**d.** Beds and bedrooms will be available for the sleeping hours when needed by the hourly adult care individual. This bed will not be counted as a licensed bed if the individual sleeps over; ( )

e. Beds, and bedrooms of non-hourly residents will not be utilized by hourly adult care individuals;  
and ( )

f. No individual will be admitted to the hourly adult care program that requires skilled nursing or for whom the facility cannot adequately provide services and supervision. ( )

**346. -- 349. (RESERVED).**

**350. REQUIREMENTS FOR HANDLING ACCIDENTS, INCIDENTS, OR COMPLAINTS.**

The administrator must assure that the facilities policies and procedures are implemented. ( )

**01. Notification of Accidents, Incidents, and Complaints.** The administrator or person designated by the administrator must be notified of all accidents, incidents, reportable, or complaints according to the facility's policies and procedures. ( )

**02. Administrator or Designee Investigation within Thirty Days.** The administrator or designee must complete an investigation and written report of the finding within thirty (30) calendar days for each accident, incident, complaint, or allegation of abuse, neglect or exploitation. ( )

**03. Resident Protection.** Any resident involved must be protected during the course of the investigation. ( )

**04. Written Response to Complaint Within Thirty Days.** The person making the complaint must receive a written response from the facility of the action taken to resolve the matter or reason why no action was taken within thirty (30) days of the complaint. ( )

**05. Facility Notification to Appropriate Agencies.** The facility must notify the Idaho Commission on Aging or its Area Agencies on Aging, and law enforcement in accordance with Section 39-5303, Idaho Code. ( )

**06. Corrective Action for Known Allegations.** When an allegation of abuse, neglect or exploitation is known by the facility, corrective action must be immediately taken and monitored to ~~ensure~~ assure the problem does not recur. ( )

**07. Notification of Licensing and Survey Agency within Twenty-Four Hours.** When a reportable incident occurs, the administrator or designee must notify the Licensing and Survey Agency within twenty-four (24) hours of the incident. ( )

**351. -- 399. (RESERVED).**

**400. REQUIREMENTS FOR FIRE AND LIFE SAFETY STANDARDS.**

A facility's buildings must meet all requirements of the local and state codes that are applicable to residential care or assisted living facilities for fire and life safety standards. ( )

**401. FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS HOUSING THREE THROUGH ~~FIFTEEN~~ SIXTEEN RESIDENTS.**

A newly constructed facility or a building converted to a residential care or assisted living facility after January 1, 2006, housing three (3) through ~~fifteen~~ sixteen (156) residents on the first story only must comply with one (1) of the following: ( )

**01. NFPA, Standard #101.** NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 32, New Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capability. Exceptions: ( )

a. The minimum water supply for a residential sprinkler system can be equal to the water demand rate times ten (10) minutes, and ( )

b. Section 32.7, Operational Features do not apply. ( )

**02. NFPA, Standard 101A.** NFPA Standard 101A, 2001 Edition, Fire Safety Evaluation System for Board and Care Occupancies, Chapter 7, Impractical Evacuation Capability. ( )

**402. FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS HOUSING ~~SIXTEEN~~ SEVENTEEN OR MORE RESIDENTS AND MULTI-STORY BUILDINGS.**

A newly constructed facility or a building converted to a residential care or assisted living facility after January 1, 2006, housing ~~sixteen~~ seventeen (167) residents or more, or any building housing residents on stories other than the first story must comply with requirements of NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 18, New Health Care/Limited Care Occupancies. ( )

**403. FIRE AND LIFE SAFETY STANDARDS FOR EXISTING BUILDINGS LICENSED FOR THREE THROUGH ~~FIFTEEN~~ SIXTEEN RESIDENTS PRIOR TO JANUARY 1, 2006.**

**01. Existing Buildings Housing Three Through Nine Residents.** Existing facilities licensed prior to January 1, 2006, and housing three (3) through nine (9) residents on the first story only, can continue to comply with the requirements of the NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 21, Residential Board and Care Occupancies, Small Facilities, Prompt Evacuation Capability. With the exception, of the requirement for a door closure on the sleeping room door, which will not apply. ( )

**02. Existing Buildings Housing Ten Through ~~Fifteen~~ Sixteen Residents for Facilities.** Existing facilities licensed prior to January 1, 2006, and housing ten (10) through ~~fifteen~~ sixteen (156) residents on the first story only, can continue to comply with the requirements of the NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 21, Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capability. With the exception, of the requirement for a door closure on the sleeping room door, which will not apply. ( )

**03. Any Change in Ownership of Facility.** When there is any change in ownership, existing buildings housing three (3) through ~~fifteen~~ sixteen (156) beds will be required to comply with NFPA Standard #101, Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Occupancies, Impractical Evacuation Capability. ( )

**404. FIRE AND LIFE SAFETY STANDARDS FOR EXISTING BUILDINGS LICENSED FOR ~~SIXTEEN~~ SEVENTEEN OR MORE RESIDENTS AND MULTI-STORY BUILDINGS PRIOR TO JANUARY 1, 2006.**

**01. Existing Buildings Housing ~~Sixteen~~ Seventeen or More Residents and Multi-Story Buildings.** Existing facilities with buildings housing ~~sixteen~~ seventeen (167) or more residents or any building housing residents on stories other than the first story licensed prior to January 1, 2006, can continue to comply with NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 13, Existing Health Care/Limited Care Occupancies. ( )

**02. Any Change in Ownership of Facility.** When there is any change in ownership, existing buildings housing ~~sixteen~~ seventeen (167) residents or more or any building housing residents on stories other than the first story will be required to comply with NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 19, Existing Health Care/Limited Care Occupancies. ( )

**405. ADDITIONAL FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS AND FACILITIES.**

**01. Electrical Installations and Equipment.** Electrical installations and equipment must comply with applicable local or state electrical requirements to include the following: ( )

- a. Equipment designed to be grounded must be maintained in a grounded condition; and ( )
- b. Extension cords and multiple electrical adapters are prohibited, with the exception of approved grounded multiple electrical adapters with a built-in breaker. ( )

**02. Fire Alarm Smoke Detection System.** An electrically-supervised, manually-operated fire alarm

smoke detection system must be installed throughout each building housing residents. The system must have a control panel, manual pull stations, smoke detectors, sounding devices, power backup and any sprinkler flow or alarm devices. The system, including devices, their location, and installation must be approved by the Licensing and Survey Agency prior to installation. ( )

**03. Medical Gases.** Handling, use and storage of medical gas must be according to NFPA Standard 99, Standard for Health Care Facilities, 2003 Edition. ( )

**04. Solid Fuel Heating Devices.** Solid fuel heating devices must be installed according to standards in NFPA Standard #211, Standard for Chimneys, Fireplaces, Vents, and Solid Burning Appliances, 2000 Edition. ( )

**05. Structure, Maintenance, Equipment to Assure Safety.** The facility must be structurally sound, maintained, and equipped to assure the safety of residents, personnel, and the public including: ( )

**a.** Furnishings, decorations, or other objects cannot be placed so as to obstruct exit access or exits; ( )

**b.** All ramps, open porches, sidewalks, and open stairs must be maintained free of snow and ice buildup; ( )

**c.** Wood stoves must have railings or other protection designed to prevent residents from coming into contact with the stove surfaces; ( )

**d.** All fireplaces must have heat tempered glass fireplace enclosures or its equivalent; ( )

**e.** Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; ( )

**f.** Portable heating devices of any kind are prohibited; Portable electric space heaters and moveable fuel-fired heaters are considered portable comfort heating devices. Exceptions: Heated mattress pads, electric blankets and heating pads when ordered by an authorized provider, physician; ( )

**g.** Flammable and highly combustible materials deemed hazardous by the Licensing and Survey Agency cannot be stored in the facility unless the building is protected throughout by an approved automatic fire extinguishing system. ( )

**06. Natural or Man-Made Hazards.** When natural or man-made hazards are present on the facility property or border the facility property, suitable fences, guards, railing, or a combination must be installed to provide protection for the residents. ( )

**07. Exit Door Locks.** Any locks on exit doors must be single action and easily operable from the inside without the use of keys or any special knowledge. Special locking arrangements as permitted in Chapter 7 of the NFPA, Standard 101, Life Safety Code, 2000 Edition, can be used. ( )

**08. Portable Fire Extinguishers.** Portable fire extinguishers must be installed throughout each building used as a facility. Each extinguisher must be installed according to the standards in NFPA Standard #10, Standard for Portable Fire Extinguishers, 2002 Edition. ( )

**09. Resident Placement.** Any resident requiring assistance in ambulation must reside on the first story, unless the facility complies with Sections 401 through 404 of these rules. ( )

**10. Telephone.** The facility must have a telephone on the premises available for staff use in the event of an emergency. Emergency telephone numbers must be posted near the telephone. ( )

**11. Weeds and Trash.** The premises and all buildings used as a facility must be maintained free from the accumulation of weeds and trash. ( )

**406. -- 409. (RESERVED).**

**410. REQUIREMENTS FOR EMERGENCY PREPAREDNESS.**

Each facility must implement its emergency preparedness plan in the event of fire, explosion, flood, earthquake, high wind, or other emergency. ( )

**01. Written Agreement for Relocation.** The facility must have a written agreement developed between the facility and the location to which residents would be relocated in the event the building cannot be reoccupied. ( )

**02. Fire Drills.** All personnel and residents must participate in a minimum of one (1) fire drill per shift per quarter. Fire drills must be unannounced. ( )

**03. Report of Fire.** A separate report on each fire incident occurring within the facility must be submitted to the Licensing and Survey Agency within thirty (30) days of the occurrence. The reporting form, "Facility Fire Incident Report," issued by the Licensing and Survey Agency is used to secure specific data concerning date, origin, extent of damage, method of extinguishment, and injuries, if any. A fire incident is considered any activation of the building's fire alarm system other than a false alarm, during testing of the fire alarm system, or during a fire drill. ( )

**411. -- 414. (RESERVED).**

**415. MAINTENANCE OF EQUIPMENT AND SYSTEMS FOR FIRE AND LIFE SAFETY.**

**01. Maintenance of Equipment and Systems.** The facility must assure that all equipment and systems are properly maintained to assure the safety of the residents. ( )

**02. Fuel-Fired Heating.** Fuel-fired heating devices and systems, including wood stoves, must be inspected/serviced/cleaned at least annually by a person professionally engaged in the business of servicing these devices or systems. ( )

**03. Portable Fire Extinguisher Service and Testing.** Portable fire extinguishers must be serviced in accordance with NFPA Standard #10, Standard for Portable Fire Extinguishers, 2002 Edition. In addition, portable fire extinguishers must be examined at least monthly by a designated person in the facility to determine that: ( )

**a.** Each extinguisher is in its designated location; ( )

**b.** Each extinguisher seal or tamper indicator is not broken; ( )

**c.** Each extinguisher has not been physically damaged; ( )

**d.** Each extinguisher gauge, if provided, shows a charged condition; and ( )

**e.** The inspection tag attached to the extinguisher shall show at least the initials of the person making the monthly examination and the date of the examination. ( )

**04. Fire Alarm Smoke Detection System Service and Testing.** ( )

**a.** The facility's fire alarm smoke detection system must be inspected, tested, and serviced at least annually by a person or business professionally engaged in the servicing of such systems; and ( )

**b.** The fire alarm smoke detection system must be inspected and tested at least monthly by a designated facility employee. ( )

**05. Automatic Fire Extinguishing System Service and Testing.** All automatic fire extinguishing systems must be inspected, tested, and serviced at least annually by a sprinkler system contractor licensed by the Idaho State Fire Marshal's office. ( )



**06. Fire Watch.** The facility must institute a fire watch during any time the fire alarm, smoke detection, or sprinkler system is inoperable for greater than four (4) hours. ( )

**416. -- 419. (RESERVED).**

**420. USE OF MODULAR (I.E., FACTORY BUILT) BUILDINGS AND MANUFACTURED HOMES.**

Modular Buildings as defined in Section 39-4105, Idaho Code, must conform to the requirements of the International Building Code unless approved for use as a facility prior to July 1, 1999, and may continue to be licensed when evaluated on a case-by-case basis for fire and life safety issues. Manufactured Homes as defined in Section 39-4105, Idaho Code, that meet International Building Code requirements can be considered for use as residential care or assisted living facilities. ( )

**421. -- 429. (RESERVED).**

**430. REQUIREMENTS FOR FURNISHINGS, EQUIPMENT, SUPPLIES, AND BASIC SERVICES.**

Each facility must provide at no additional cost to the resident: ( )

**01. Common Shared Furnishings.** Appropriately designed and constructed furnishings to meet the needs of each resident, including reading lamps, tables, and comfortable chairs or sofas; all items must be in good repair, clean, and safe. ( )

**02. Resident Sleeping Room Furnishings.** Comfortable furnishings and individual storage, such as a dresser, for personal items for each resident in each sleeping room; all items must be in good repair, clean, and safe. ( )

**03. Resident Bed.** Each resident must be provided his own bed, which will be at least thirty-six (36) inches wide, substantially constructed, clean, and in good repair. Roll-away beds, cots, folding beds, or double bunks are prohibited. Bed springs must be in good repair; and clean and comfortable. Bed mattresses must be standard for the bed, clean and odor free. A pillow must be provided. ( )

**04. Resident Telephone Privacy.** The facility must have at least one (1) telephone that is accessible to all residents. The telephone must be placed in such a manner as to provide the resident privacy while using the telephone. ( )

**05. Basic Services.** The following are basic services to be provided by the facility at no additional cost to the resident: room, board, activities of daily living services, supervision, assistance and monitoring of medications laundering of linens owned by the facility, coordination of outside services, arrangement for emergency transportation, emergency interventions, first aid, housekeeping services, maintenance, utilities, and access to basic television in common areas. ( )

**06. Basic Supplies.** The following are to be supplied by the facility at no additional cost to the resident: ~~Linens~~, towels, wash cloths, soap, shampoo, comb, hairbrush, toilet paper, sanitary napkins, first aid supplies, electric razors or other means of shaving, toothbrush, and toothpaste. ( )

**07. Resident Furnishings.** If a resident chooses to provide his own furnishings, the facility must ~~ensure~~ assure that the resident's furnishings meet the minimum standards as identified in Subsections 430.01 through 430.06 of these rules. ( )

**431. -- 449. (RESERVED).**

**450. REQUIREMENTS FOR FOOD AND NUTRITIONAL CARE SERVICES.**

The facility must meet the standards in the Idaho Food Code, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," as incorporated in Section 004 of these rules. The facility must also implement the operational policies as described in Section 158 of these rules. ( )

**451. MENU AND DIET PLANNING.**

The facility must provide each resident with at least the minimum food and nutritional needs in accordance with the Recommended Dietary Allowances established by the Food and Nutrition Board of the National Academy of Sciences. These recommendations are found in the Idaho Diet Manual incorporated by reference in Section 004 of these rules. The menu must be adjusted for age, sex, and activity as approved by a registered dietitian. ( )

**01. Menu.** The facility must have a menu planned or approved, signed and dated by a registered dietitian prior to being served to the resident. The planned menu must meet nutritional standards. ( )

**a.** Menus will provide a sufficient variety of foods in adequate amounts at each meal. ( )

**b.** Menus must be different for the same days each week and adjusted for seasonal changes. ( )

**c.** Food selections must include foods that are served in the community, in season, as well as residents' preferences, food habits, and physical abilities. ( )

**d.** The menus must be prepared in advance and available to residents on request. ( )

**e.** The facility must serve the planned menu and if substitutions are made the menu must be corrected to reflect the substitutions. ( )

**02. Snacks.** Snacks must be available and offered to residents between meals and at bedtime. ( )

**03. Therapeutic Diets.** The facility must have a therapeutic diet menu planned or approved, signed and dated by a registered dietitian prior to being served to a resident. ( )

**a.** The therapeutic diet planned menu, to the extent it is possible, must meet nutritional standards; ( )

**b.** The therapeutic diet menu must be planned as close to a regular diet as possible; and ( )

**c.** The facility must have for each resident on a therapeutic diet, an order from a physician or authorized provider. ( )

**04. Facilities Licensed for ~~Fifteen~~ Sixteen Beds or Less.** In facilities licensed for ~~fifteen~~ sixteen (15~~6~~) beds or less, menus must be planned in writing at least one week in advance. ( )

**05. Facilities Licensed for ~~Sixteen~~ Seventeen Beds or More.** Facilities licensed for ~~sixteen~~ seventeen (16~~7~~) beds or more must: ( )

**a.** Develop and implement a cycle menu which covers a minimum of two (2) seasons and is four (4) to five (5) weeks in length; ( )

**b.** Follow standardized recipes; and ( )

**c.** Have available in the kitchen a current diet manual approved by the Licensing and Survey Agency. ( )

**452. -- 454. (RESERVED).**

**455. FOOD SUPPLY.**

The facility must maintain a seven (7) day supply of nonperishable foods and a two (2) day supply of perishable foods. The facility's kitchen must have the types and amounts of food to be served readily available to meet the planned menu. ( )

**456. -- 459. (RESERVED).**

**460. FOOD PREPARATION AND SERVICE.**

**01. Food Preparation.** Foods must be prepared by methods that conserve nutritional value, flavor, and appearance. ( )

**02. Frequency of Meals.** ( )

**a.** The facility must provide residents at least three (3) meals daily, at regular times comparable to normal mealtimes in the community; ( )

**b.** There must not be more than fourteen (14) hours between a substantial evening meal and breakfast; ( )

**c.** The facility must ~~ensure~~ assure that residents who are not in the facility for the noon meal ~~receive~~ are offered a substantial evening meal; and ( )

**d.** The facility must offer evening snacks. ( )

**03. Food Preparation Area.** ( )

**a.** No live animals or fowl will be kept or maintained in the food service preparation or service area. ( )

**b.** Neither food preparation nor food service areas will be used as living quarters for staff. ( )

**04. Disposable Items.** The facility will not use single use items except in unusual circumstances for a short period of time or for outdoor outings. ( )

**461. -- 499. (RESERVED).**

**500. REQUIREMENTS FOR NOTICE OF MONTHLY FEE INCREASE.**

The resident or resident's legal guardian, or conservator must be notified in writing of an increase in the facility monthly rates at least thirty (30) calendar days prior to such a raise taking effect. ( )

**501. -- 504. (RESERVED).**

**505. REQUIREMENTS FOR HANDLING OF RESIDENT FUNDS.**

**01. Separate Trust Account Established.** If a facility agrees to handle resident funds, a separate trust account must be established for each resident and an accounting record maintained. There can be no commingling of resident funds with facility funds. Borrowing between resident accounts is prohibited. ( )

**a.** The facility cannot require a resident to purchase goods or services from the facility for other than those designated in the admission policies, or the admission agreement, or both; ( )

**b.** Each transaction must be documented at the time of the transaction, with facility personnel and resident signatures for the transaction; and ( )

**c.** The facility must ~~ensure~~ assure that the resident has access to his personal funds during reasonable hours. ( )

**02. Resident's Funds Upon Permanent Discharge.** When the facility manages the resident's funds and the resident permanently leaves the facility, the facility can only retain room and board funds prorated to the last day of the thirty (30) day notice, except in situations described in Subsections ~~220.01.h.iv~~ 220.08.c.i and ~~220.01.h.v~~ 220.08.c.ii of these rules. All remaining funds are the property of the resident. In the event of the resident's death, the resident's facility's fees cease accruing fifteen (15) days after death. ( )

**506. -- 509. (RESERVED).**

**510. REQUIREMENTS TO PROTECT RESIDENTS FROM ABUSE.**

The administrator must assure that policies and procedures are implemented to ~~ensure~~ assure that all residents are free from abuse. ( )

**511. -- 514. (RESERVED).**

**515. REQUIREMENTS TO PROTECT RESIDENTS FROM EXPLOITATION.**

The administrator must assure that policies and procedures are implemented to ~~ensure~~ assure that all residents are free from exploitation. ( )

**516. -- 519. (RESERVED).**

**520. REQUIREMENTS TO PROTECT RESIDENTS FROM INADEQUATE CARE.**

The administrator must assure that policies and procedures are implemented to ~~ensure~~ assure that all residents are free from inadequate care. ( )

**521. -- 524. (RESERVED).**

**525. REQUIREMENTS TO PROTECT RESIDENTS FROM NEGLECT.**

The administrator must assure that policies and procedures are implemented to ~~ensure~~ assure that all residents are free from neglect. ( )

**526. -- 549. (RESERVED).**

**550. REQUIREMENTS FOR RESIDENTS' RIGHTS.**

The administrator must assure that policies and procedures are implemented to ~~ensure~~ assure that residents' rights are observed and protected: ( )

**01. Resident Records.** The facility must maintain and keep current a record of the specific information on each resident. Upon request a resident must be provided access to information in his record. ( )

**a.** A copy of the resident's current Negotiated Service Agreement and physician or authorized provider's order; ( )

**b.** Written acknowledgement that the resident has received copies of the rights; ( )

**c.** A record of all personal property and funds that the resident has entrusted to the facility, including copies of receipts for the property; ( )

**d.** Information about any specific health problems of the resident that may be useful in a medical emergency; ( )

**e.** The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; ( )

**f.** Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record; and ( )

**g.** The current admission agreement between the resident and the facility. ( )

**02. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups. ( )

**03. Humane Care and Environment.** ( )

- a. Each resident has the right to humane care and a humane environment, including the following: ( )
  - i. The right to a diet that is consistent with any religious or health-related restrictions; ( )
  - ii. The right to refuse a restricted diet; and ( )
  - iii. The right to a safe and sanitary living environment. ( )
- b. Each resident has the right to be treated with dignity and respect, including: ( )
  - i. The right to be treated in a courteous manner by staff; ( )
  - ii. The right to receive a response from the facility to any request of the resident within a reasonable time; and ( )
  - iii. The right to be communicated with, orally or in writing, in a language they understand. If the resident's knowledge of English or the predominant language of the facility is inadequate for comprehension, a means to communicate in a language familiar to the resident must be available and implemented. There are many possible methods such as bilingual staff, electronic communication devices, family and friends to translate. The method implemented must assure the resident's right of confidentiality, if the resident desires. ( )
- 04. Personal Possessions.** Each resident has the right to: ( )
  - a. Wear his own clothing; ( )
  - b. Determine his own dress or hair style; ( )
  - c. Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity; and ( )
  - d. Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property. ( )
- 05. Personal Funds.** Residents whose board and care is paid for by public assistance will retain, for their personal use, the difference between their total income and the applicable board and care allowance established by Department rules. ( )
  - a. A facility must not require a resident to deposit his personal funds with the facility; and ( )
  - b. Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph. ( )
- 06. Management of Personal Funds.** Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows: ( )
  - a. The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a non-interest bearing account or petty cash fund; ( )
  - b. The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record; and ( )

c. Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the Department, the remaining balance of funds must be refunded to the Department. ( )

**07. Access and Visitation Rights.** Each facility must permit: ( )

a. Immediate access to any resident by any representative of the Department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician; ( )

b. Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives; ( )

c. Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and ( )

d. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. ( )

**08. Employment.** Each resident must have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident must be consistent with state and federal law. ( )

**09. Confidentiality.** Each resident must have the right to confidentiality of personal and clinical records. ( )

**10. Freedom from Abuse, Neglect, and Restraints.** Each resident must have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints. ( )

**11. Freedom of Religion.** Each resident must have the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others. ( )

**12. Control and Receipt of Health-Related Services.** Each resident must have the right to control his receipt of health related services, including: ( )

a. The right to retain the services of his own personal physician, dentist, and other health care professionals; ( )

b. The right to select the pharmacy or pharmacist of his choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility; ( )

c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; and ( )

d. The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter. ( )

i. The facility must document the resident and his legal guardian have been informed of the consequences of the refusal; and ( )

ii. The facility must document that the resident's physician or authorized provider has been notified of the resident's refusal. ( )

**13. Grievances.** Each resident must have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. ( )

**14. Participation in Resident and Family Groups.** Each resident must have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility. ( )

**15. Participation in Other Activities.** Each resident must have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. ( )

**16. Examination of Survey Results.** Each resident must have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Licensing and Survey Agency with respect to the facility and any plan of correction in effect with respect to the facility. ( )

**17. Access by Advocates and Representatives.** A residential care or assisted living facility must permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to: ( )

**a.** Visit, talk with, and make personal, social, and legal services available to all residents; ( )

**b.** Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals; ( )

**c.** Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, that may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation; ( )

**d.** Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights; ( )

**e.** Communicate privately and without restrictions with any resident who consents to the communication; and ( )

**f.** Observe all common areas of the facility. ( )

**18. Access by Protection and Advocacy System.** A residential care or assisted living facility must permit advocates and representatives of the protection and advocacy system designated by the governor under 42 U.S.C. Section 15043 and 42 U.S.C. Section 10801 et seq., access to residents, facilities, and records in accordance with applicable federal statutes and regulations. ( )

**19. Access by the Long Term Care Ombudsman.** A residential care or assisted living facility must permit advocates and representatives of the long term care ombudsman program pursuant to 42 U.S.C. Section 3058, Section 67 5009, Idaho Code, and IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program," access to residents, facilities and records in accordance with applicable federal and state law, rules, and regulations. ( )

**20. Transfer or Discharge.** Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay. In non-emergency conditions, the resident must be given at least thirty (30) calendar days notice of discharge. A resident has the right to appeal any involuntary discharge. ( )

**21. Citizenship Rights.** Each resident has a right to be encouraged and assisted to exercise rights as a citizen, including the right to be informed and to vote. ( )

**22. Advanced Directives.** Residents have the right to be informed, in writing, regarding the

formulation of an advanced directive to include applicable State law, Section 39-4510, Idaho Code. ( )

**551. -- 559. (RESERVED).**

**560. NOTICE OF RESIDENTS' RIGHTS.**

Each facility must; ( )

**01. Inform Residents Orally and in Writing.** Inform each resident, orally and in writing at the time of admission to the facility, of his legal rights during the stay at the facility. ( )

**02. Written Statements.** Make available to each resident, upon reasonable request, a written statement of such rights and when the rights change the resident is notified. ( )

**03. Written Description of Rights.** Assure the written description of legal rights under Section 560 must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department respecting resident abuse and neglect and misappropriation of resident property in the facility. ( )

**04. Posting of Resident Rights.** Conspicuously post the residents' rights in the facility at all times. ( )

**561. -- 599. (RESERVED).**

**600. REQUIREMENTS FOR STAFFING STANDARDS.**

**01. On-Duty Staff During Residents' Sleeping Hours for Facilities of Fifteen Beds or Less.** For facilities licensed for fifteen (15) beds or less, there must be at least one (1), or more qualified and trained staff, immediately available, in the facility during resident sleeping hours. If any resident has been assessed as having night needs or is incapable of calling for assistance staff must be up and awake. ( )

**02. On-Duty Staff Up and Awake During Residents' Sleeping Hours for Facilities Licensed for Sixteen Beds or More.** For facilities licensed for sixteen (16) beds or more, qualified and trained staff must be up and awake and immediately available, in the facility during resident sleeping hours. ( )

**03. Detached Buildings or Units.** Facilities with residents housed in detached buildings or units, must have at least one (1) staff present, and available in each building or unit when residents are present in the building or unit. The facility must also ~~ensure~~ assure that each building or unit complies with the requirements for on-duty staff during resident sleeping hours in accordance with the facility's licensed bed capacity as provided in Subsections 600.01 and 600.02 of these rules. The Licensing and Survey Agency will consider a variance based on the facility's written submitted plan of operation. ( )

**04. Mental Health Bed Contract Facility.** Facilities that have entered into a Mental Health Bed contract with the Department must be staffed with at least one (1) staff up and awake at night to assure the safety of all residents. ( )

**05. Supervision.** The administrator must provide supervision for all personnel to include contract personnel. Staff who have not completed the orientation training requirements must work under the supervision of a staff who has completed the orientation training. ( )

**06. Sufficient Personnel.** The facility will employ and the administrator will schedule sufficient personnel to: ( )

**a.** Provide care, during all hours, required in each resident's Negotiated Service Agreement, to assure residents' health, safety, comfort, and supervision, and to assure the interior and exterior of the facility is maintained in a safe and clean manner; and ( )

**b.** To provide for at least one (1) direct care staff with certification in first aid and cardio-pulmonary



resuscitation (CPR) in the facility at all times. Facilities with multiple buildings or units will have at least one (1) direct care staff with certification in first aid and CPR in each building or each unit at all times. ( )

**601. -- 619. (RESERVED).**

**620. REQUIREMENTS FOR TRAINING OF FACILITY PERSONNEL.**

The facility must follow structured written training programs designed to meet the training needs of personnel in relation to responsibilities, as specified in the written job description, to provide for quality of care and compliance with these rules. Signed evidence of personnel training, indicating hours and topic, must be retained at the facility. ( )

**621. -- 624. (RESERVED).**

**625. ORIENTATION TRAINING REQUIREMENTS.**

**01. Number of Hours of Training.** A minimum of sixteen (16) hours of job-related orientation training must be provided to all new personnel before they are allowed to provide unsupervised personal assistance to residents. The means and methods of training are at the facility's discretion. ( )

**02. Timeline for Completion of Training.** All orientation training must be completed within one (1) month of hire. ( )

**03. Content for Training.** Orientation training must include the following: ( )

**a.** The philosophy of residential care or assisted living and how it guides care giving; ( )

**b.** Resident Rights; ( )

**c.** Cultural awareness; ( )

**d.** Providing assistance with activities of daily living and instrumental activities of daily living;( )

**e.** How to respond to emergencies; ( )

**f.** Documentation associated with resident care needs and the provision of care to meet those needs; ( )

**g.** Identifying and reporting changes in residents' health and mental condition or both; ( )

**h.** Documenting and reporting adverse outcomes (~~e.g.,~~ such as resident falls, elopement, lost items); ( )

**i.** Advance Directives and do not resuscitate (DNR) orders; ( )

**j.** Relevant policies and procedures; ( )

**k.** The role of the Negotiated Service Agreement; and ( )

**l.** All staff employed by the facility, including housekeeping personnel, or contract personnel, or both, who may come into contact with potentially infectious material, must be trained in infection control procedures for universal precautions. ( )

**626. -- 629. (RESERVED).**

**630. TRAINING REQUIREMENTS FOR FACILITIES ADMITTING RESIDENTS WITH DIAGNOSIS OF DEMENTIA, MENTAL ILLNESS, DEVELOPMENTAL DISABILITY, OR TRAUMATIC BRAIN INJURY.**

A facility admitting and retaining residents with diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury must train staff to meet the specialized needs of these residents. The means and methods of training are at the facility's discretion. The training ~~must~~ should address the following areas: ( )

- 01. Dementia:** ( )
  - a. Overview of dementia; ( )
  - b. Symptoms and behaviors of people with memory impairment; ( )
  - c. Communication with people with memory impairment; ( )
  - d. Resident's adjustment to the new living environment; ( )
  - e. Behavior management; ( )
  - f. Activities of daily living; and ( )
  - g. Stress reduction for facility personnel and resident. ( )
- 02. Mental Illness:** ( )
  - a. Overview of mental illnesses; ( )
  - b. Symptoms and behaviors specific to mental illness; ( )
  - c. Resident's adjustment to the new living environment; ( )
  - d. Behavior management; ( )
  - e. Communication; ( )
  - f. Activities of daily living; ( )
  - g. Integration with rehabilitation services; and ( )
  - h. Stress reduction for facility personnel and resident. ( )
- 03. Developmental Disability:** ( )
  - a. Overview of developmental disabilities; ( )
  - b. Interaction and acceptance; ( )
  - c. Promotion of independence; ( )
  - d. Communication; ( )
  - e. Behavior management; ( )
  - f. Assistance with adaptive equipment; ( )
  - g. Integration with rehabilitation services; ( )
  - h. Activities of daily living; and ( )
  - i. Community integration. ( )

- 04. Traumatic Brain Injury:** ( )
- a.** Overview of traumatic brain injuries; ( )
- b.** Symptoms and behaviors specific to traumatic brain injury; ( )
- c.** Adjustment to the new living environment; ( )
- d.** Behavior management; ( )
- e.** Communication; ( )
- f.** Integration with rehabilitation services; ( )
- g.** Activities of daily living; ( )
- h.** Assistance with adaptive equipment; and ( )
- i.** Stress reduction for facility personnel and resident. ( )

**631. -- 639. (RESERVED).**

**640. CONTINUING TRAINING REQUIREMENTS.**

Each employee must receive a minimum of eight (8) hours of job-related continuing training per year. ( )

**01. Staff Not Trained in Appropriate Areas.** When a resident is admitted with a diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury, or a resident acquires one (1) of these diagnoses, if staff have not been trained in the appropriate areas outlined in Section 630 of these rules, staff must be trained within thirty (30) calendar days. In the interim the facility must meet the resident's needs. ( )

**02. Additional Training Related to Changes.** When policies or procedures are added, modified, or deleted staff must receive additional training relating to the changes. ( )

**641. -- 644. (RESERVED).**

**645. ASSISTANCE WITH MEDICATION CERTIFICATION REQUIREMENT.**

Before staff can begin assisting residents with medications, the staff must have successfully completed a Board of Nursing approved medication assistance course. This training is not included as part of the minimum of sixteen (16) hours of orientation training or minimum of eight (8) hours of continuing training requirement per year. ( )

**646. -- 649. (RESERVED).**

**650. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR PRIVATE PAY RESIDENTS.**

**01. Facility Responsibility For Assessing Private-Pay Residents.** The facility must develop, identify, assess, or direct a uniform assessment for private-pay residents who seek admission to the residential care or assisted living facility. The Department's uniform assessment tool may be used as the facility's identified uniform assessment. ( )

**02. Information Included in a Uniform Assessment.** The uniform assessment used by the facility will include, but not be limited to identification/background information, medical diagnosis, medical and health problems, prescription and over the counter medications, behavior patterns, cognitive function, and functional status. ( )

**03. Qualifications of Person Making Uniform Assessment.** The uniform assessment can only be conducted by persons who are trained and knowledgeable in administering the facility's identified uniform

assessment. ( )

**04. Time Frames for Completing the Uniform Assessment.** The assessment must be completed no later than fourteen (14) calendar days after admission. The assessment will be reviewed when there is a change in the resident's medical condition or mental, ~~or social~~ status or every twelve (12) months, whichever comes first. ( )

**05. Use of Uniform Assessment for Determining the Ability of Facility to Meet Private-Pay Resident Needs.** The results of the assessment must be used to evaluate the ability of an administrator and facility to meet the identified residents' needs. The results of the assessment must also be used to determine the need for special training in caring for certain residents. ( )

**651. -- 654. (RESERVED).**

**655. USE OF THE UNIFORM ASSESSMENT CRITERIA IN DETERMINING FACILITY STAFFING.** A facility will have sufficient numbers and types of personnel to provide care and supervision to all residents within the facility's care in accordance with each resident's Negotiated Service Agreement based on the uniform assessment and in accordance with all rules and statutes governing the facility. The facility must include both private-pay and residents who are clients of the Department in the total number when determining staffing requirements. ( )

**656. -- 659. (RESERVED).**

**660. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR DEPARTMENT CLIENTS.** Department clients will be assessed by the Department in compliance with IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients". ( )

**661. -- 699. (RESERVED).**

**700. RECORDS.**

The administrator must ~~ensure~~ assure that facility policies and procedures for record keeping are implemented and followed as described in Sections 700 through 750 of these rules. ( )

**01. Records Information.** Entries must include date, time, name, and title of the person making the entry. Staff must sign each entry made by him during his shift. ( )

**02. Availability of Records.** Resident care records must be available at all times to caregivers when on duty. ( )

**03. Electronic Records.** Electronic records must be able to be printed in the facility at the request of the resident, legal guardian, payer, or survey agency. ( )

**701. -- 704. (RESERVED).**

**705. RESIDENT BUSINESS RECORDS.**

Resident business records must contain the records described in Subsection 705.01 through 705.09~~8~~ of these rules. ( )

**01. Individual Responsible for Payment.** Name, address, and telephone number of the individual responsible for payment. ( )

**02. Written Admissions Agreement.** Written admission agreement that is signed and dated by the administrator, the resident, or his legal guardian or conservator. ( )

**03. Payment Schedule.** A copy of the payment schedule and fee structure signed and dated by the resident, or his legal guardian or conservator, if such is separate from the admission agreement. ( )

**04. Resident Rights.** A signed copy of the resident's rights as identified in Section 550 of these rules or a signed and dated statement that the resident or his legal guardian or conservator has read and understands his rights

as a resident of the facility. ( )

**05. Personal Property Inventory.** An inventory of all of the resident's personal items. ( )

**06. Completion of Admissions Process.** Name, title of the facility representative who completed the admission process with the resident, legal guardian, or conservator. ( )

**07. Agreement to Handle Resident's Funds.** If the facility handles resident funds, there must be a signed and dated written agreement between the facility and the resident or the resident's legal guardian or conservator setting the terms. Documentation of each financial transaction at the time the transaction occurs with signatures by the administrator or his designee and the resident. ( )

~~**08. Financial Transaction Documentation.**~~ ( )

**098. Emergency Condition Advisory.** Documentation indicating that the resident has been advised of actions required under emergency conditions. ( )

**706. -- 709. (RESERVED).**

**710. RESIDENT CARE RECORDS.**

The administrator must assure that the facility's policies and procedures for resident care records are implemented and meet the requirements described in Subsections 710.01 through 710.098 of these rules. ( )

**01. Resident Demographics.** Records required for admission to the facility must include: ( )

**a.** Name; ( )

**b.** Permanent address, if other than the facility; ( )

**c.** Marital Status; ( )

**d.** Gender; ( )

**e.** Date and Place of Birth; ( )

**f.** Name and address of emergency contact(s); and ( )

**g.** Admission date and where admitted from. ( )

**02. Providers of Choice.** Providers of choice including address and telephone numbers; ( )

**a.** Physician or authorized provider; ( )

**b.** Dentist; ( )

**c.** Pharmacy; and ( )

**d.** Others; such as outside service providers, e.g., home health, hospice, psychosocial services rehabilitation specialist, case manager. ( )

**03. Religious Affiliation.** Religious affiliation, if the resident chooses to state. ( )

**04. Prior History and Physical.** Results of a history and physical examination performed by a physician or authorized provider within six (6) months prior to admission. ( )

**05. Prescribed Medication and Treatment List.** A list of medications, diet, treatments, and any limitations, prescribed for the resident that is signed and dated by a physician or authorized provider giving the order.

- ( )
- 06. Social Information.** Social information, obtained by the facility through interviews with the resident, family, legal guardian, conservator or outside service provider. The information must include the resident's social history, hobbies, and interests. ( )
- 07. Initial Uniform Assessment.** The resident's initial uniform assessment. ( )
- 08. Initial Interim Plan and Negotiated Service Agreement.** The resident's initial signed and dated interim plan and Negotiated Service Agreement. ( )
- 09. ~~Result of Tuberculosis Screening.~~ Documentation of the outcome of the tuberculosis screening.** ( )

**711. ONGOING RESIDENT CARE RECORDS.**

The administrator must assure that the facility's policies and procedures for ongoing resident care records are implemented and meet the requirements described in Subsections 711.01 through 711.14 of these rules. ( )

- 01. Behavior Management Records.** The facility must have behavior management records for residents when applicable. These records must document requirements in ~~Subsections~~ 225 and Subsection 320.02 of these rules. The records must also include the following: ( )
- a. The date and time a specific behavior was observed; ( )
  - b. What interventions were used; and ( )
  - c. The effectiveness of the intervention. ( )
- 02. Complaints.** The facility must assure that the individual resident's record documents complaints and grievances, the date received, the investigation, outcome, and the response to the individual who made the complaint or grievance. ( )
- 03. Involuntary Discharge.** The facility's records must maintain documentation of: ( )
- a. The facility's efforts to resolve the situation; and ( )
  - b. A copy of the signed and dated notice of discharge. ( )
- 04. Refusal of Care Consequences.** Documented evidence that if the resident refuses care or services, the resident has been informed of the consequences of the refusal and the notification of the resident's physician or authorized provider being notified. ( )
- 05. Assessments.** The resident's uniform assessment, including the admission assessment, and all assessments for the prior eighteen (18) months after the admission to the facility. ( )
- 06. Negotiated Services Agreement.** Signed and dated negotiated services agreements, including the admission Negotiated Service Agreement, and any modification and new agreements for the prior eighteen (18) months. ( )
- 07. Care Plans.** Signed and dated copies of all care plans prepared by outside service agencies, if appropriate, to include who is responsible for the integration of care and services. ( )
- 08. Care Notes.** Care notes that are signed and dated by the person providing the care and services must include: ( )
- a. ~~Care and services provided~~ When the Negotiated Service Agreement is not followed, such as resident refusal, and the facility's response; ( )

- b.** Delegated nursing tasks, such as treatments, wound care, and assistance with medications: ( )
- bc.** Unusual events such as incidents, reportable incidents, accidents, altercations, ~~residents refusing treatments or care~~ and the facility's response; ( )
- d.** Calls to the physician or authorized provider, reason for the call, and the outcome of the call: ( )
- e.** Notification of the licensed professional nurse of a change in the resident's physical or mental condition: and ( )
- ef.** Notes of care and services provided by outside contract entities, ~~e.g.,~~ such as nurses, home health, hospice, case managers, psychosocial rehabilitation specialists, or service coordinator. ( )
- ~~**09.** Changes in Physical and Mental Status. Documentation of significant changes in the resident's physical or mental status and the facility's response. ( )~~
- 109.** **Current List of Medications, Diet and Treatments.** A current list of medications, diet, treatments prescribed for the resident which is signed and dated by a physician or authorized provider giving the order. ( )
- 110.** **Six Month Review of Medications.** Written documentation, signed and dated by the physician or authorized provider ~~and pharmacist~~, documenting their every six (6) month review, for possible dose reduction, of the resident's use of psychotropic or behavioral modifying medications. ( )
- 121.** **Medications Not Taken.** Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. ( )
- 132.** **PRN Medication.** Documentation of all PRN medication with the reason for taking the medication. ( )
- 143.** **Nursing Assessments.** ~~Monthly~~ Nursing assessments, signed and dated, from the licensed professional nurse documenting the requirements in Section 305 of these rules. ( )
- 14.** **Discharge Information.** Date of discharge, location to where the resident was discharged, and disposition of the resident's belongings. ( )

712. -- 714. (RESERVED).

**715. MENTAL HEALTH CONTRACT BED RECORDS.**

The administrator must assure that the facility's records for mental health contract beds are maintained as described in Subsections 715.01 and 715.02, of these rules. ( )

**01. Contract With Department.** The facility must maintain on file a written contract with the Department outlining the responsibilities of both parties and lists the names and telephone numbers of individuals who may be contacted if questions arise regarding the resident's care. ( )

**02. Department Assessment.** Results of the Department assessment for each mental health contract resident, which clearly assures that the resident is not a danger to himself or others must be in the resident's care record. ( )

716. -- 719. (RESERVED).

**720. ADULT HOURLY CARE RECORDS.**

The administrator must assure that the facility's hourly adult care records are maintained as described in Subsections 720.01 and 720.02 of these rules. ( )

**01. Required Records for Each Hourly Adult Care Individual.** The facility must maintain a record for each hourly adult care individual which includes: ( )

**a.** Admission identification information including responsible party and emergency telephone numbers of family members and the physician or authorized provider; ( )

**b.** Pertinent health and social information relevant to the supervision of the individual; and ( )

**c.** Care and services provided to the individual including medication assistance. ( )

**02. Length of Time Records Kept for Adult Hourly Care.** The records for each adult hourly care individual must be maintained for ~~five~~ three (53) years. ( )

**721. -- 724. (RESERVED).**

**725. FACILITY ADMINISTRATIVE RECORDS FOR ADMISSIONS AND DISCHARGE REGISTER.** The administrator must assure that the facility's administrative records for admission and discharge are maintained as described in Subsections 725.01 through 725.02 of these rules. ( )

**01. Admission and Discharge Register.** Each facility must maintain an admission and discharge register listing the name of each resident, date admitted, ~~the place from which the resident was admitted,~~ date discharged, ~~reason for discharge, and adequate identification of the facility to which the resident is discharged or the home address.~~ The admissions and discharge register must be ~~maintained~~ produced as a separate document, apart from the individual resident records, and must be kept current. ( )

**02. Hourly Adult Care Log.** A log of hourly adult care individuals, including the dates of service, must be maintained and kept for ~~five~~ three (53) years. ( )

**726. -- 729. (RESERVED).**

**730. FACILITY ADMINISTRATIVE RECORDS FOR PERSONNEL AND STAFFING.** The administrator must assure that the facility's personnel and staffing records are maintained as described in Subsections 730.01 through 730.03 of these rules. ( )

**01. Personnel.** A record for each employee must be maintained and available which includes the following: ( )

**a.** Name, address, phone number, and date of hire; ( )

**b.** Job description that includes purpose, responsibilities, duties, and authority; ( )

**c.** Evidence that on or prior to hire, staff were notified in writing that the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance, all staff must be notified of the change in writing; ( )

~~**d.** Documentation of the outcome of the tuberculosis screening;~~ ( )

**ed.** A copy of a current license for all nursing staff and verification from the Board of Nursing that the license is in good standing or identification of restrictions; ( )

**fe.** Signed evidence of training; ( )

**gf.** CPR, first aid, and assistance with medication certification; ( )

**hg.** Criminal history clearance as required by Section 56-1004A, Idaho Code, and IDAPA 16.05.05, "Criminal History and Background Checks in Long Term Care Settings"; ( )



**ih.** Documentation by the licensed professional nurse of delegation to unlicensed staff to assist residents with medications and other nursing tasks; ( )

**ji.** Documentation by the licensed professional nurse regarding assessment; and ( )

**kj.** A signed document authorizing by position title of, the individual responsible for acting on behalf of the administrator in his absence. ( )

**02. Work Records.** Work records must be maintained in writing for the previous ~~five~~ three (3) years which reflect: ( )

**a.** Personnel on duty, at any given time; and ( )

**b.** The first and last names, of each employee, and their position. ( )

**03. Contract Records.** Copies of contracts with outside service providers and contract staff. ( )

**731. -- 734. (RESERVED).**

**735. FACILITY ADMINISTRATIVE RECORDS FOR HANDLING OF MEDICATIONS AND CONTROLLED SUBSTANCES.**

The administrator must assure that the facility's records for handling of medications and controlled substances are maintained as described in Subsections 735.01 through 735.04 of these rules. ( )

**01. Documentation of Cold Storage Temperature.** Daily monitoring documentation of the refrigerated temperature where biologicals and other medications requiring cold storage are stored to ~~ensure~~ assure the temperature is maintained at thirty-eight to forty-five degrees (38-45°F) Fahrenheit for the previous twelve (12) months. ( )

**02. Return Medication Agreement.** If appropriate, the written agreement between the facility and the pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09. "Rules Governing the Medicaid Assistance Program," Section 817, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy". ( )

**03. Documentation of Medication Disposal.** A written record of all drug disposals must be maintained in the facility and include: ( )

**a.** A description of the drug, including the amount; ( )

**b.** Name of resident for prescription medication; ( )

**c.** The reason for disposal; ( )

**d.** The method of disposal; ( )

**e.** The date of disposal; and ( )

**f.** Signatures of responsible facility personnel and witness. ( )

**04. Tracking Controlled Substances Documentation.** The facility must maintain a written record tracking all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, IDAPA 27.01.01 "Rules of the Idaho Board of Pharmacy," Section 495, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Section 490. ( )

**736. -- 739. (RESERVED).**

**740. FACILITY ADMINISTRATIVE RECORDS FOR DIETARY.**

The administrator must assure that the facility's records for dietary are maintained as described in Subsections 740.01 and 740.02 of these rules. ( )

**01. Menu Plan Documentation.** The facility must maintain copies of menus, including therapeutic menus planned, approved, signed, and dated by a dietitian in the facility. ( )

**02. Length of Time Documentation Kept for Menu Plans.** The facility must maintain three (3) months of as served menus, including therapeutic menus, corrected to reflect substitutions. ( )

**741. -- 744. (RESERVED).**

**745. FACILITY ADMINISTRATIVE RECORDS FOR WATER SUPPLY.**

The administrator must assure that the facility's records for water supply are maintained. Copies of the laboratory reports documenting the bacteriological examination of testing private water supply must be kept on file in the facility. ( )

**746. -- 749. (RESERVED).**

**750. FACILITY ADMINISTRATIVE RECORDS FOR FIRE AND LIFE SAFETY.**

The administrator must assure that the facility's records for fire and life safety are maintained as described in Subsections 750.01 through 750.06 of these rules. ( )

**01. Fire Drill Documentation.** Written documentation of each fire drill, one (1) per shift per quarter, must be maintained on file at the facility and must contain a description of each drill, the date and time of the drill, response of the personnel and residents, problems encountered and recommendations for improvement. ( )

**02. Report of Fire Documentation.** A copy of the reporting form, "Facility Fire Incident Report," must be completed and submitted to the Licensing and Survey Agency. The specific data must include, date of incident, origin, extent of damage, method of extinguishment, and injuries if any. ( )

**03. Fuel-Fired Heating Inspection Documentation.** The facility will maintain a copy of the annual results of the inspection in the facility. ( )

**04. Portable Fire Extinguisher Examination Documentation.** The facility must maintain records of the monthly examination of the Portable Fire Extinguishers documenting the following: ( )

**a.** Each extinguisher is in its designated location; ( )

**b.** Each extinguisher seal or tamper indicator is not broken; ( )

**c.** Each extinguisher has not been physically damaged; ( )

**d.** Each extinguisher gauge, if provided, shows a charged condition; and ( )

**e.** The inspection tag attached to the extinguisher shall show at least the initials of the person making the monthly examination and the date of the examination. ( )

**05. Fire Alarm Smoke Detection System Service and Testing.** The facility must maintain on file in the facility the following reports: ( )

**a.** The results of the annual inspection and test, by a person or business professionally engaged in the servicing of such systems; and ( )

**b.** The results of the monthly inspection and testing of the fire alarm, smoke detection system ~~by a~~ designated facility employee. ( )

**06. Automatic Fire Extinguishing System Service and Testing.** The facility must maintain on file in

the facility the results of the annual inspection, testing and service, by a person or business professionally engaged in servicing of such systems. ( )

**751. -- 899. (RESERVED).**

**900. ENFORCEMENT ACTIONS.**

The Department will consider the facility's compliance history, change of ownership, the number of deficiencies, and scope and severity of the deficiencies when determining an enforcement action. The Department can impose any of the enforcement actions, independently or in conjunction with others, as described in Sections 900 through 940 of these rules. ( )

**01. Immediate Danger to Residents.** When the Department finds that the facility's deficiency(s) immediately places the health or safety of its residents in danger, the Director of the Department or his designee may impose one (1) or more of the following: ( )

- a. Appoint temporary management; or ( )
- b. Summarily suspend the facility's license and transfer residents ( )

**02. Not an Immediate Danger to Residents.** When the Department finds that the facility's deficiency does not immediately place the residents' health or safety in danger, the Department will initiate one (1) of the Enforcement Actions "A" through "C" described in Subsections 900.03 through 900.05 of these rules, or "Enforcement Remedy of Revocation of License" described in Section 940 of these rules. ( )

**03. Enforcement Action "A".** ( )

- a. The facility has forty-five (45) days from the date the facility was found out of compliance with core issue requirements to comply; ( )
- b. An acceptable Plan of Correction is required as described in Section 130.08 of these rules; and ( )
- c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may take Enforcement Action "B". ( )
- d. A follow-up survey for Enforcement Action "A" will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements. During this survey, if the deficiency still exists or a new core issue deficiency is issued, Enforcement Action "B" will be taken. ( )

**04. Enforcement Action "B".** ( )

- a. The facility has forty-five (45) days, from the date of the follow-up survey for Enforcement Action "A" in which the facility was found out of compliance with core issue requirements, to comply; ( )
- b. An acceptable Plan of Correction for core issues is required as described in Section 130.08 of these rules; ( )
- c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may take Enforcement Action "C." ( )
- d. In addition the Department may impose the following enforcement actions: ( )
  - i. A provisional license may be issued; ( )
  - ii. Admissions to the facility may be limited; or ( )

iii. The facility may be required to hire a consultant who submits periodic reports to the Licensing and Survey Agency. ( )

e. A follow-up survey for Enforcement Action “B” will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements. During this survey, if the deficiency still exists or a new core issue deficiency is issued, Enforcement Action “C” will be taken. ( )

**05. Enforcement Action “C”.** ( )

a. The facility has forty-five (45) days, from the date of the follow-up survey for Enforcement Action “B” in which the facility was found out of compliance with core issue requirements to comply; ( )

b. An acceptable Plan of Correction for core issues is required as described in Section 130.08 of these rules; ( )

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may initiate the remedy of revocation of license as described in Section 940 of these rules; ( )

d. In addition the Department may impose the following enforcement actions: ( )

i. The provisional license will be continued; ( )

ii. Limit on admissions; ( )

iii. Temporary management; ( )

iv. Civil monetary penalties as described in Section 925 of these rules; ( )

e. A follow-up survey for Enforcement Action “C” will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements; and ( )

f. When the facility fails to comply with this enforcement action, the Department may initiate an enforcement remedy of revocation of license as described in Section 940 of these rules. ( )

**901. -- 904. (RESERVED).**

**905. CORE ISSUES DEFICIENCY.**

The Licensing and Survey Agency will issue a deficiency and appropriate agencies will be notified when core issue deficiencies are found during a survey. When the Department finds that the facility's deficiency does not immediately place the residents' health or safety in danger, the Department will initiate one (1) of the Enforcement Actions “A” through “C” described in Subsections 900.03 through 900.05 of these rules, or “Enforcement Remedy of Revocation of License” described in Section 940 of these rules. ( )

**906. -- 909. (RESERVED).**

**910. NON-CORE ISSUES DEFICIENCY.**

The Licensing and Survey Agency will issue a deficiency for non-core issues that are found during a survey. ( )

**01. Evidence of Resolution.** Acceptable evidence of resolution as described in Subsection 130.09 of these rules, must be submitted by the facility to the Licensing and Survey Agency. If acceptable evidence of resolution is not submitted within sixty (60) days from when the facility was found to be out of compliance, the Department may impose enforcement actions as described in Subsection 910.02.a. through 910.02.c. of these rules. ( )

**02. First Follow-Up Survey.** When the Licensing and Survey Agency finds on the first follow-up

survey that repeat non-core deficiencies exist, the Department may initiate any of the following enforcement actions: ( )

- a. A provisional license may be issued; ( )
- b. Admissions to the facility may be limited; or ( )
- c. The facility may be required to hire a consultant who submits periodic reports to the Licensing and Survey Agency. ( )

**03. Second Follow-Up Survey.** When the Licensing and Survey Agency finds on the second follow-up survey that repeat non-core deficiencies still exist, the Department may initiate the “Enforcement Remedy of Civil Monetary Penalties,” as described in Section 925 of these rules. ( )

**911. -- 919. (RESERVED).**

**920. ENFORCEMENT REMEDY OF LIMIT ON ADMISSIONS.**

**01. Notification of Limit on Admissions.** The Department will notify the facility limiting admissions or limiting admissions of residents with specific diagnosis to the facility pending correction of deficiencies. Limits of admissions to the facility remain in effect until the Department determines the facility has achieved full compliance with requirements or have received written evidence and statements from the outside consultant that the facility is in compliance. ( )

**02. Reasons for Limit on Admissions.** The Department may limit admissions for the following reasons: ( )

- a. The facility is inadequately staffed or the staff is inadequately trained to handle more residents. ( )
- b. The facility otherwise lacks the resources necessary to support the needs of more residents. ( )
- c. Enforcement Action “B” or “C” is taken as described in Sections 900.04 and 900.05, of these rules. ( )
- d. Enforcement Remedy for Revocation of License as described in Section 940 of these rules. ( )

**921. -- 924. (RESERVED).**

**925. ENFORCEMENT REMEDY OF CIVIL MONETARY PENALTIES.**

**01. Civil Monetary Penalties.** Civil monetary penalties are based upon one (1) or more deficiencies of noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to the survey or complaint investigation through which they are identified. Actual harm to a resident or residents does not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. ( )

**02. Assessment Amount for Civil Monetary Penalty.** When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of compliance. The amounts below are multiplied by the total number of occupied licensed beds according to the records of the Department at the time ~~of the survey non-~~ compliance is established. ( )

- a. Initial deficiency is eight dollars (\$8). Example below:

Number of <u>Occupied</u> Beds in Facility	Initial Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$8.00	45 days	\$3960

( )

b. Repeat deficiency is ten dollars (\$10). Example below:

Number of <u>Occupied</u> Beds in Facility	Repeat Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$10.00	30 days	\$3300

( )

c. In any ninety (90) day period, the penalty amounts may not exceed the limits shown in the following table:

Limits on Accruing Civil Monetary Amount.		
Number of <u>Occupied</u> Beds in Facility	Initial Deficiency	<del>Initial</del> <u>Repeat</u> Deficiency
3-4 Beds	\$1440	\$2880
5-50 Beds	\$3200	\$6400
51-100 Beds	\$5400	\$10,800
101-150 Beds	\$8800	\$17,600
151 or More Beds	\$14,600	\$29,200

( )

**03. Notice of Civil Monetary Penalties and Appeal Rights.** The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment and the facility's appeal rights. ( )

**04. Payment of Penalties.** The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received, unless the facility requests an administrative review of the decision to assess the penalty. The amount of a civil monetary penalty determined through administrative review must be paid within thirty (30) calendar days of the facility's receipt of the administrative review decision unless the facility requests an administrative hearing. The amount of the civil monetary penalty determined through an administrative hearing must be paid within thirty (30) calendar days of the facility's receipt of the administrative hearing decision unless the facility files a petition for judicial review. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrual will begin one (1) calendar day after: ( )

a. The date of the initial assessment of the penalty; ( )

~~b. If the facility waives its right to a hearing and opts to pay the penalty, the amount of the civil monetary penalty will be reduced by thirty five percent (35%); or ( )~~

~~eb.~~ The date of the issuance of the administrative review, administrative hearing or the final judicial review. ( )

**05. Failure to Pay.** Failure of a facility to pay the entire penalty, together with any interest, is cause for

revocation of the license or the amount will be withheld from Medicaid payments to the facility. ( )

**926. -- 929. (RESERVED).**

**930. ENFORCEMENT REMEDY OF TEMPORARY MANAGEMENT.**

**01. Need for Temporary Management.** The Department may impose the remedy of temporary management in situations where there is a need to oversee operation of the facility and to assure the health and safety of the facility's residents: ( )

**a.** During an orderly transfer of residents of the facility to other facilities; or ( )

**b.** Pending improvements to bring the facility into compliance with program requirements. ( )

**02. Notice of Temporary Management.** The Department will give written notice to the facility of the imposition of temporary management. ( )

**03. Who May Serve as a Temporary Manager.** The Department may appoint any person or organization that meets the following qualifications: ( )

**a.** The temporary manager must not have any pecuniary interest in or preexisting fiduciary duty to the facility to be managed; ( )

**b.** The temporary manager must not be related, within the first degree of kinship, to the facility's owner, manager, administrator, or other management principal; ( )

**c.** The temporary manager must possess sufficient training, expertise and experience in the operation of a facility as would be necessary to achieve the objectives of temporary management. If the temporary manager is to serve in a facility, the manager must possess an Idaho Residential Care Administrator's license; and ( )

**d.** The temporary manager must not be an existing competitor of the facility who would gain an unfair competitive advantage by being appointed as temporary manager of the facility. ( )

**04. Powers and Duties of the Temporary Manager.** The temporary manager has the authority to direct and oversee the management, hiring and discharge of any consultant or personnel, including the administrator of the facility. The temporary manager has the authority to direct the expenditure of the revenues of the facility in a reasonable and prudent manner, to oversee the continuation of the business and the care of the residents, to oversee and direct those acts necessary to accomplish the goals of the program requirements and to direct and oversee regular accounting. When the facility fails or refuses to carry out the directions of the temporary manager, the Department will revoke the facility's license. ( )

**a.** The temporary manager must observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager must make reports to the Department; ( )

**b.** The temporary manager may be liable for gross, willful or wanton negligence, intentional acts of omissions, unexplained shortfalls in the facility's fund, and breaches of fiduciary duty; ( )

**c.** The temporary manager does not have authority to cause or direct the facility, its owner, or administrator to incur debt, unless to bring the facility into compliance with these rules, or to enter into any contract with a duration beyond the term of the temporary management of the facility; ( )

**d.** The temporary manager does not have authority to incur, without the permission of the owner, administrator or the Department, capital expenditures in excess of two thousand dollars (\$2,000), unless the capital expenditures are directly related to correcting the identified deficiencies; ( )

**e.** The temporary manager does not have authority to cause or direct the facility to encumber its assets

or receivables; ( )

**f.** The temporary manager does not have authority to cause or direct a facility, which holds liability or casualty insurance coverage, to cancel or reduce its liability or casualty insurance coverage; and ( )

**g.** The temporary manager does not have authority to cause or direct the sale of the facility, its assets or the premises on which it is located. ( )

**05. Responsibility for Payment of the Temporary Manager.** All compensation and per diem costs of the temporary manager must be paid by the licensee. ( )

**06. Termination of Temporary Management.** A temporary manager may be replaced under the following conditions: ( )

**a.** The Department may require replacement of any temporary manager whose performance is deemed unsatisfactory by the Department. No formal procedure is required for such removal or replacement, but written notice of any action will be given to the facility. ( )

**b.** A facility subject to temporary management may petition the Department for replacement of a temporary manager whose performance it considers unsatisfactory. The petition must include why the replacement of a temporary manager is necessary or appropriate. ( )

**931. -- 934. (RESERVED).**

**935. ENFORCEMENT REMEDY OF PROVISIONAL LICENSE.**

A provisional license may be issued when a facility is cited with one (1) or more core issue deficiencies, or when non-core issues have not been corrected or become repeat deficiencies. The provisional license will state the conditions the facility must follow to continue to operate. See Subsections 900.04, 900.05 and 910.02 of these rules. ( )

**936. -- 939. (RESERVED).**

**940. ENFORCEMENT REMEDY OF REVOCATION OF FACILITY LICENSE.**

**01. Revocation of Facility's License.** The Department may revoke a license when the facility endangers the health or safety of residents, or when the facility is not in substantial compliance with the provisions of Title 39, Chapter 33, Idaho Code, or this chapter of rules. ( )

**02. Reasons for Revocation or Denial of a Facility License.** The Department may revoke or deny any facility license for any of the following reasons: ( )

**a.** The licensee has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a license; ( )

**b.** When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; ( )

**c.** Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the facility. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation; ( )

**d.** The licensee has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a facility; ( )

**e.** The licensee has violated any of the conditions of a provisional license; ( )

**f.** The facility lacks adequate personnel, as required by these rules or as directed by the Department, ( )



to properly care for the number and type of residents residing at the facility; ( )

**g.** Licensee refuses to allow the Department or the Protection and Advocacy agencies full access to the facility environment, facility records, and the residents as described in Subsections ~~010.21~~, 130.04 through 130.06, and 550.18 through 550.19 of these rules; ( )

**h.** The licensee or administrator has been guilty of fraud, gross negligence, abuse, assault, battery, or exploitation with respect to the operation of a health facility or residential care or assisted living facility or certified family home; ( )

**i.** The licensee or administrator is actively affected in his performance by alcohol or the use of drugs classified as controlled substances; ( )

**j.** The licensee or administrator has been convicted of a criminal offense other than a minor traffic violation within the past five (5) years; ( )

**k.** The licensee or administrator is of poor moral and responsible character or has been convicted of a felony or defrauding the government; ( )

**l.** The licensee or administrator has been denied, or the licensee's wrong doing, has caused the revocation of any license or certificate of any health facility, residential care or assisted living facility, or certified family home; ( )

**m.** The licensee or administrator has been convicted of operating any health facility or residential care or assisted living facility without a license or certified family home without a certificate; ( )

**n.** The licensee is directly under the control or influence of any person who has been the subject of proceedings as described in Subsection 940.02.m. of these rules; ( )

**o.** The licensee is directly under the control or influence of any person who is of poor moral and responsible character or has been convicted of a felony or defrauding the government; ( )

**p.** The licensee is directly under the control or influence of any person who has been convicted of a criminal offense other than a minor traffic violation in the past five (5) years; ( )

**q.** The licensee fails to pay civil monetary penalties imposed by the Department as described in Section 925 of these rules; ( )

**r.** The licensee fails to take sufficient corrective action as described in Sections 900, 905 and 910 of these rules; or ( )

**s.** The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve. ( )

**03. Failure to Pay.** Failure of a facility to pay the entire penalty, together with any interest, is cause for revocation of the license or the amount will be withheld from Medicaid payment to the facility. ( )

**941. -- 999. (RESERVED).**

**OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR  
IDAHO DEPARTMENT OF ADMINISTRATION**

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

**16.04.03 - RULES GOVERNING FEES FOR COMMUNITY MENTAL HEALTH CENTER SERVICES**

**DOCKET NO. 16-0403-0600**

**NOTICE OF CORRECTION TO FINAL RULE**

**AUTHORITY:** In compliance with Sections 67-5204, 67-5224, and 67-5291, Idaho Code, notice is hereby given that the Office of the Administrative Rules Coordinator is correcting an error that occurred during the publication of the 1995 Idaho Administrative Code. The original action is authorized pursuant to Sections 39-3133, 39-3137, and 56-1007, Idaho Code.

**DESCRIPTIVE SUMMARY OF CORRECTION:** The following is a non-technical explanation of the substance of this correction notice:

This notice corrects a transcription error made during the publication of the 1995 Idaho Administrative Code. During the publication of the 1995 Code, data being converted from one database to a new rules database for the Code publication was inadvertently replaced by old data that was being changed through the proposed rulemaking that published in the September 1993 Idaho Administrative Bulletin, Volume 93-3. Changes that were promulgated in accordance with Section 67-5204 and 67-5224 and adopted as final in the January 1994 Idaho Administrative Bulletin, Volume 94-1, were incorrectly transcribed into the 1995 Idaho Administrative Code.

The changes promulgated under Docket No. 16-0403-9302 and codified in the 1994 Administrative Code were incorrectly transcribed and the text that was published was the text as it appeared before the changes were promulgated and adopted as final. Many of the errors that were found involved numbers, some of which are fees. To avoid any confusion as to what the correctly promulgated rule is, the entire chapter is being reprinted here in the correct and legally promulgated final version as adopted in January 1994.

A rulemaking was promulgated on Section 100 and Subsection 100.10 was added to the rule under Docket No. 16-0403-9701 as was approved as final during the 1998 Legislative session. The effective date of this Subsection is July 1, 1998.

**EFFECTIVE DATE:** The effective dates of the affected Subsections are the original effective dates on which the rules were promulgated and adopted in compliance with Title 67, Chapter 52, Idaho Code. The original effective date of those Sections is January 1, 1994 with the exception of Subsection 100.10. The effective date of that Subsection 100.10 is July 1, 1998.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this correction notice or the text of the rule, contact Dennis Stevenson at (208) 332-1820.

DATED this 12th day of December, 2005.

Dennis R. Stevenson  
Administrative Rules Coordinator  
Office of the Administrative Rules Coordinator  
Department of Administration  
P.O. Box 83720 - Boise, ID 83720-0306  
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**THE FOLLOWING IS THE TEXT OF IDAPA 16.04.03 AS CODIFIED.**

**IDAPA 16**  
**TITLE 04**  
**CHAPTER 03**

**16.04.03 - RULES GOVERNING FEES FOR COMMUNITY MENTAL HEALTH CENTER SERVICES**

**000. LEGAL AUTHORITY.**

Pursuant to Sections 39-3133, 39-3137, and 56-1007, Idaho Code, the Board of Health and Welfare and the Director are authorized to adopt rules for the charging of fees for services provided by Regional Community Mental Health Centers. (5-1-82)

**001. TITLE AND SCOPE.**

These rules govern the assessment of fees by the Department of Health and Welfare, Community Mental Health Centers, for services rendered to eligible persons and are to be cited as Idaho Department of Health and Welfare Rules and Regulations Title 4, Chapter 3, "Rules Governing Fees for Community Mental Health Center Services". (5-1-82)

**002. POLICY.**

Community Mental Health Center service recipients or the responsible party will pay for the cost of services provided. However, by these rules it is required that the amount charged for each service be in accordance with the client's or responsible guardian's ability to pay as determined by a discount schedule. In addition, liable third-party sources including, but not limited to, private, Medicaid, and Medicare, must be included in developing a person's total ability to pay. (9-22-91)

**01. Ability to Pay.** Charges are organized into a discount schedule based upon the number of dependents and income. (5-1-82)

**a.** Ability determination will be made on the first visit, if possible, utilizing a fee determination form. (5-1-82)

**b.** Redetermination of ability will be made: (5-1-82)

**i.** At least annually; or (5-1-82)

**ii.** Upon the person receiving services' request; or (9-22-91)

**iii.** At any time changes occur in family size, income, or allowable deductions. (5-1-82)

**c.** Information regarding third-party payors including, but not limited to, Medicaid, Medicare, or insurance, must be identified and developed in order to determine a person's total ability to pay and to maximize reimbursement for the cost of service provided. (9-22-91)

**d.** A follow-up system will be established and maintained by the Community Mental Health Center to obtain required information not available at the time of the initial financial interview. (5-1-82)

**e.** Service recipients may be required to produce necessary supporting documentation. (9-22-91)

**02. Time of Payment.** Normally charges for services will be due upon delivery of the service unless other arrangements are made, such as for monthly billing. (5-1-82)

**03. Nondiscrimination.** In accordance with Section 39-3137, Idaho Code, no Regional Mental Health Program shall refuse service to any person because of race, color, religion, or because of ability or inability to pay, however, refusal to pay by someone who is determined able to pay may result in denial of services. (5-1-82)

**04. Admission to Service.** A person's admission to service will be determined by the Regional Mental Health Services Program in accordance with the priority populations as outlined in the Idaho Mental Health Services Program Plan. (9-22-91)

**003. DEFINITIONS.**

For the purposes of the rules contained in Title 4, Chapter 3, the following terms are used, as herein defined: (5-1-82)

**01. Ability to Pay.** The financial capacity that is available to pay for the program services after allowable deductions in relation to gross income and family size exclusive of any liability of third party payor sources. (5-1-82)

**02. Adjusted Gross Income.** Total family annual income less allowable annual deductions. (5-1-82)

**03. Allowable Deductions.** In determining a person's ability to pay for services, acceptable adjustments to income which are limited to the following: (9-22-91)

**a.** Court-ordered obligations paid annually; and (5-1-82)

**b.** Annual dependent support payments; and (5-1-82)

**c.** Annual child care payments necessary to availability of employment; and (5-1-82)

**d.** Annual medical expenses. (5-1-82)

**04. Annual Charge Period.** The month of admission into the program and the subsequent eleven (11) calendar months, and each twelve (12) month period thereafter during which the person continues to receive services. Admission and/or readmissions to the program during the twelve (12) month period do not change the period. (9-22-91)

**05. Annual Child Care Payments.** The annual expense to a family for necessary child care as a result of a parent working. (5-1-82)

**06. Annual Dependent Support Payments.** The annual expense to a family for dependent support. This can be for children, spouse, or parents. This deduction is not allowed when the same person or persons are claimed as members of the household unit. (5-1-82)

**07. Annual Medical Expense Payments.** The amount of gross annual income that is being paid for medical expense. (1-7-94)

**08. Charge.** The determined dollar amount a person is expected to pay for each service received during the annual charge period. (9-22-91)

**09. Charge Adjustment.** Any change in an established charge. (5-1-82)

**10. Community Mental Health Center.** Pursuant to Section 39-3135, Idaho Code, a community facility of the Department of Health and Welfare the purpose of which is to provide for area, space, personnel and equipment for diagnostic and therapeutic services to mentally ill adults. (9-22-91)

**11. Cost.** The amount equal to total cost of services provided. (5-1-82)

**12. Court-Ordered Obligations.** Those obligations upon which a court has made a decision and a written order of liability has been issued. Such liabilities paid on a monthly basis can be allowed as a deduction from

- annual gross income as long as the amount is currently being paid. (5-1-82)
- 13. Department.** The Idaho Department of Health and Welfare. (5-1-82)
- 14. Dependent.** A person dependent on the family income for over fifty percent (50%) of his support. The discount schedule is based on the number of dependents in household, including the head of household (applicant). (5-1-82)
- 15. Director.** The Director of the Department of Health and Welfare or his designee. (12-31-91)
- 16. Equity.** Just and uniform treatment for all persons. (5-1-82)
- 17. Family Unit.** Husband (man) and/or wife (woman) and their dependent children. (5-1-82)
- 18. Gross Income.** Total family income before allowances for taxes and other deductions. In the case of self-employed persons, it is total income after business expenses have been deducted. (5-1-82)
- 19. Mental Illness.** A substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to respond and adapt to reality, and requires a person to have care and treatment at a facility (Section 66-317(m), Idaho Code). (5-1-82)
- 20. Client Liability.** The determined dollar amount for which the person or responsible person is legally responsible as a result of a service provided. (9-22-91)
- 21. Present Balance.** Any monies owed by a person or responsible parties to the program for current or previous services. (9-22-91)
- 22. Provider.** The Community Mental Health Center responsible for providing the services. (5-1-82)
- 23. Responsible Person.** The spouse of a person receiving services, the parents of a minor, or a guardian or conservator of the service recipient's estate. (9-22-91)
- 24. Services.** The diagnostic, therapeutic, or support programs offered by the Community Mental Health Center to assist persons suspected of or having a mental illness. Such programs include, but are not limited to, the following: (5-1-82)
- a. Outpatient Services.** Nonresidential services for persons with mental illness, designed to ameliorate or remove a disability and restore more effective functioning or to maintain present levels of functioning; and (9-22-91)
- b. Emergency Services.** Response and intervention services for persons experiencing psychiatric emergencies. The basic elements include twenty-four (24) telephone response to screen, provide help, identify and divert, and Center-based and outreach emergency intervention, evaluation and treatment; and (5-1-82)
- c. Community Support/Aftercare Services.** Hospital alternative services for the chronically mentally ill. Elements include such services as outreach, case management, medication management, day treatment, vocational development, and residential development. (9-22-91)
- d. Consultation and Training.** Professional technical assistance to organizations and other human service providers on organizational development and/or treatment of an individual client. Such contacts focus on the way in which others can respond therapeutically or supportively to the problems of a specific target population or individual receiving services; and (9-22-91)
- e. Prevention and Education.** Informational services for communities which relate to prevention of mental and emotional problems and/or recognition of symptoms of mental and emotional problems and/or access to resources for helping persons with mental and emotional problems; and (5-1-82)

**f.** Screening. Preadmission evaluation services for adults allegedly needing psychiatric hospitalization or other inpatient placement. The purpose is to prevent unnecessary hospitalization or other inpatient placement; and (9-22-91)

**g.** Commitment Evaluation Services. Screening, evaluation, investigation, diversion, court appearances, and disposition for persons who are thought to be mentally ill and likely to injure themselves or others, or unable to provide for their basic human needs due to mental illness, or persons charged with an offense who have entered formal intent to rely on mental illness as a defense or incompetency to stand trial; and (5-1-82)

**h.** Follow-up Services. Tracking and monitoring persons released from hospitalization or other inpatient treatment facilities. This service typically involves intermittent care reviews and supportive services and supplements the Community Support/Aftercare Services and Outpatient Services; and (5-1-82)

**i.** Inpatient Services. Provision or arrangement for twenty-four (24) hour residential care for persons needing a protective treatment setting.; and (9-22-91)

**j.** Transitional/Liaison Services. Assurance of appropriate discharge planning for individuals who are released from inpatient care. Service includes liaison contact with staff of the inpatient facility, with other service recipients, and with the person receiving service regarding progress toward treatment goals, and after requirements such as assurance of appropriate living arrangements, follow-up services, or community support services. The purpose of this service is to maintain continuity of care when a client moves from an inpatient to a community-based program in order to facilitate reintegration into the community; and (9-22-91)

**k.** Case Management. Individualized attention emphasizing some type of intervention or participation in the natural environment of the individual involving one (1) or more of the following activities: identification or engagement of a potential service recipient; assessment of the person and planning for a range of services, entitlements and assistance; implementation of the plan; and follow-up to ensure continuity of care. (9-22-91)

**25. Third Party Payor.** A payor other than a person receiving service or responsible person who is legally liable for all or part of the person's care. (9-22-91)

**004. -- 099. (RESERVED).**

**100. FEE DETERMINATION.**

The service recipient, parent or guardian must make application for Mental Health Program services and complete a "Fee Determination Form" (HW-0733) prior to delivery of services. The fee determination process includes the following procedures: (1-1-94)

**01. Charges.** An amount will be charged based on family size, income assets and allowable deductions, exclusive of third-party liable sources, but in no case will the amount charged for care services as specified in the table of charges exceed the cost of the services. (5-1-82)

**02. Equity.** To achieve equity in determining amounts to be charged, a "Discount Schedule" (HW-0734) will be employed. The "Discount Schedule" takes into consideration income, family size, and average expenditures by family size, and is shown in the TABLE in Subsection 100.03. (12-31-91)

**03. Discount Schedule - TABLE.** Incomes below the five percent (5%) level are to be charged the zero percent (0%) minimum rate.

**TABLE 100A  
Poverty Guidelines per the Federal Register as of February 12, 1993  
Standard Fee Percentage Schedule (Sliding Fee Scale)**

Number of Persons in Household									
1	2	3	4	5	6	7	8	9+	Client%
\$26,406	\$36,862	\$45,045	\$54,364	\$63,684	\$73,004	\$82,323	\$91,943	\$100,963	100%
\$25,244	\$35,241	\$43,064	\$51,974	\$60,883	\$69,793	\$78,703	\$87,613	\$96,522	95%
\$24,088	\$33,627	\$41,091	\$49,593	\$58,095	\$66,597	\$75,098	\$83,600	\$92,102	90%
\$22,941	\$32,025	\$39,135	\$47,232	\$55,328	\$63,425	\$71,522	\$79,619	\$87,719	85%
\$21,849	\$30,500	\$37,271	\$44,982	\$52,964	\$60,405	\$68,116	\$75,828	\$83,539	80%
\$20,808	\$29,048	\$35,496	\$42,840	\$50,185	\$57,529	\$64,873	\$72,217	\$79,561	75%
\$19,798	\$27,638	\$33,774	\$40,762	\$47,749	\$54,737	\$61,725	\$68,712	\$75,700	70%
\$18,802	\$26,247	\$32,074	\$38,710	\$35,346	\$51,982	\$58,618	\$65,254	\$71,890	65%
\$17,805	\$24,855	\$30,373	\$36,657	\$42,941	\$49,225	\$55,509	\$61,794	\$68,078	60%
\$16,813	\$23,471	\$28,681	\$34,615	\$40,549	\$46,483	\$52,417	\$58,351	\$64,285	55%
\$15,817	\$22,080	\$26,981	\$32,563	\$38,146	\$43,728	\$49,310	\$54,893	\$60,475	50%
\$14,823	\$20,693	\$25,287	\$30,519	\$35,750	\$40,982	\$46,214	\$51,446	\$56,678	45%
\$13,841	\$19,321	\$23,611	\$28,495	\$33,380	\$38,265	\$43,150	\$48,035	\$52,920	40%
\$12,851	\$17,940	\$21,923	\$26,458	\$30,994	\$35,530	\$40,065	\$44,601	\$49,137	35%
\$11,866	\$16,565	\$20,242	\$24,430	\$28,619	\$32,807	\$36,995	\$41,183	\$45,371	30%
\$10,876	\$15,183	\$18,554	\$22,393	\$26,231	\$30,070	\$33,909	\$37,748	\$41,586	25%
\$9,888	\$13,803	\$16,867	\$20,357	\$23,847	\$27,337	\$30,826	\$34,316	\$37,806	20%
\$8,900	\$12,424	\$15,182	\$18,323	\$21,464	\$24,605	\$27,746	\$30,888	\$34,029	15%
\$7,911	\$11,044	\$13,495	\$16,287	\$19,079	\$21,871	\$24,664	\$27,456	\$30,248	10%
\$6,970	\$9,730	\$11,890	\$14,350	\$16,810	\$19,270	\$21,730	\$24,190	\$26,650	5%

Clients with income below the Department’s minimum level may have their fee established at zero (0) when properly authorized. (7-1-93)

**04. Forms.** To achieve simplicity of operation, two (2) basic documents are used to determine ability to pay: a “Fee Determination Form” and a “Discount Schedule”. (5-1-82)

**a.** The “Fee Determination Form,” when properly completed, contains the economic factors -- income/allowable deductions/size of family -- necessary to determine the charge by easy referral to the “Discount Schedule”. (5-1-82)

**b.** The “Discount Schedule” reflects variations in the cost of living by family size and adjusted gross income. (5-1-82)

**05. Review of Fees.** A review of ability determinations will be made: (5-1-82)

**a.** On petition of the person receiving services; or (1-1-94)

**b.** If circumstances are known to have changed; or (5-1-82)

c. Annually for the purpose of updating the determinations to current conditions which may or may not have changed during the previous year. (5-1-82)

**06. Allowable Deductions From Income.** The only allowable deductions from income are for expenses projected to occur during the annual charge period: (5-1-82)

a. Court-ordered obligations paid annually; and (5-1-82)

b. Annual child care expenses necessary to availability for employment; and (5-1-82)

c. Annual dependent support payments for children not included in dependents for calculating percent of fee; and (5-1-82)

d. Annual medical expenses. (1-1-94)

**07. Adjustments to Established Fee.** Adjustments, such as a waiver or reduction of fees, may only be made upon signature authorization of the Director. Clinical criteria based on the following guidelines may be used as a basis for adjustment: (12-31-91)

a. There is reasonable expectation that without receiving the service, the mentally ill person would severely regress and require more intensive and costly care or institutionalization; and (5-1-82)

b. Adjustments to other agencies or organizational units may be negotiated and established by contract with the Department. (12-31-91)

**08. Established Fee.** The maximum fee charged for Community Mental Health Center services shall be that established by the Department of Health and Welfare. The fees for services based on Medicaid reimbursement rates may vary according to Medicaid inflationary increases. Fees will be reviewed and adjusted as the Medicaid rates vary. Current information regarding services and fee charges can be obtained from Mental Health Centers. (1-1-94)

**09. Charges for Community Mental Health Center Services.** (1-1-94)

a. Diagnostic: (1-1-94)

i. Psychiatric examination: sixty-three dollars per hour (\$63/hr); (1-1-94)

ii. Psychosocial examination: sixty-three dollars per hour (\$63/hr); (1-1-94)

iii. Psychological testing: sixty-three dollars per hour (\$63/hr); (1-1-94)

iv. Medical: sixty-three dollars per hour (\$63/hr). (1-1-94)

b. Treatment Service: (1-1-94)

i. Individual therapy: sixty-three dollars per hour (\$63/hr); (1-1-94)

ii. Family/Couple therapy: sixty-three dollars per hour (\$63/hr); (1-1-94)

iii. Group therapy: twenty-four dollars per hour (\$24/hr); (1-1-94)

iv. Inpatient service: sixty-three dollars per hour (\$63/hr); (1-1-94)

v. Emergency service: sixty-three dollars per hour (\$63/hr). (1-1-94)

c. Medical Service: (1-1-94)



- i. Chemotherapy visit: thirty-two dollars per visit (\$32/visit); (1-1-94)
- ii. Blood drawing: ten dollars per occurrence (\$10/occurrence); (1-1-94)
- iii. Nursing service: thirteen dollars per visit (\$13/visit); (1-1-94)
- iv. Injections: eight dollars (\$8) plus cost of medication. (1-1-94)
- d. Collateral Contact (Interview with collaterals - service recipient seen or not seen)\*: sixty-three dollars per hour (\$63/hr).
- e. Community Support Service (Day Treatment/Partial Care): fourteen dollars per hour (\$14/hr). (1-1-94)
- f. Other Nonclient Specific (Consultation/Education): sixty-three dollars per hour (\$63/hr). (1-1-94)
- g. Transportation: twenty-five cents per mile (\$.25/mile). (1-1-94)

\*This activity includes those instances in which collaterals having primary treatment relationship to the client are interviewed regarding a client with the client included or intentionally excluded. This category does not include case management and other agency collaterals or service coordination activities. (1-1-94)

**10. Obligation to Pay Difference Between Insurance and Mental Health Charges.** If the person responsible for payment has insurance coverage, then the private insurance obligation will be one hundred percent (100%) of the amount contained in the policy, but not to exceed the Mental Health Charge. If the insurance company pays less than the Mental Health charge, then the participant will be responsible to pay towards the difference between what the insurance paid and the original Mental Health charge based upon their ability to pay as determined by the sliding fee schedule. (7-1-98)

**101. -- 995. (RESERVED).**

**996. ADMINISTRATIVE PROVISIONS.**

Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings". (12-31-91)

**997. CONFIDENTIALITY.**

Before any information about a client, registrant, applicant, or recipient contained in Department records may be released to the person who is the subject of the record, to another Department unit, to another governmental agency, or to a private individual or organization, the unit of the Department with custody of the record must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records (Confidentiality)". (5-1-82)

**998. INCLUSIVE GENDER.**

For the purpose of these rules, words used in the masculine gender include the feminine or vice versa, where appropriate. (5-1-82)

**999. SEVERABILITY.**

Idaho Department of Health and Welfare Rules and Regulations, Title 4, Chapter 3 are severable. If any rule, 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. (5-1-82)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES**  
**DOCKET NO. 16-0411-0501 (CHAPTER REPEAL)**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective on July 1, 2006, following the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, page 211.

**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. There will not be any fiscal impact to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cameron Gilliland (Division of FACS) at (208) 334-5512.

DATED this 11th day of October, 2005.

Sherri Kovach  
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**DOCKET NO. 16-0411-0501 - PENDING RULE (CHAPTER REPEAL)**

**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 05-8, August 3, 2005, page 211.](#)**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.04.11 - DEVELOPMENTAL DISABILITIES AGENCIES**

#### **DOCKET NO. 16-0411-0502 (CHAPTER REWRITE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective on July 1, 2006, following the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4601 et seq., Idaho Code.

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

Changes were made to the text of the pending rule based on comments received during the public comment period (August 3 through 24, 2005), including those submitted at the three public hearings held for this docket. The public hearings were held in Boise, Coeur d'Alene, and Idaho Falls.

Changes made to the text include:

1. Clarified requirements under mandatory criminal history section and added "people first" language.
2. Clarified several definitions and added a new definition for "staff".
3. Added "administrator" to the list of those for whom the Department does not have to consider an application for certification from for five years after denial or revocation or their DDA license or certification.
4. Under the application for initial certification section, clarified that the code of ethics must contain standards for maintaining participant confidentiality, and clarified that evidence of staff compliance with the criminal history and background check requirements be included in the application.
5. Clarified agency requirements for reporting any changes to optional services provided when requesting renewal of a certificate.
6. Under the enforcement process section, clarified remedies that the Department may apply when an agency fails to comply with the rules.
7. Under the general staffing requirements section, added clarification stating those duties for which the agency administrator is responsible; also added language requiring agencies to maintain documentation of staff qualifications.
8. Added clarifications to general training requirements section including listing which staff required to complete the twelve hours of formal training each calendar year.
9. Under the staff qualifications section, added the Blended Early Childhood/Early Childhood Special Education (EC/ECSE) certificate to the options for a developmental specialist providing services to children birth to three and clarified the requirements for paraprofessionals delivering developmental therapy to children birth to three.
10. Under the facility standards section, added clarification that agencies must document the amount of time it took to evacuate the building when conducting their quarterly fire drills.
11. Clarified that the forty-five day requirement for completion of the comprehensive assessments does not apply to participant plans of service authorized under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".
12. Under the section listing the types of comprehensive assessments, clarified that psychological testing and the psychiatric diagnostic interview are both included under the psychological assessment.
13. Under the section with requirements for providing DDA services to participants eighteen years of age or older (and Idaho State School and Hospital Waiver participants), added clarifications regarding those participants to whom this section does not apply.
14. Under the section with requirements for providing DDA services to children three through seventeen, added distinction between categorical and functional eligibility, clarified definition for duration of service, added clarification that a physician's signature is not needed on the plan of service for adults under an Individual Program Plan (IPP), added clarification that service objectives under the IPP must be age-appropriate, and clarified that

deviations beyond the limits specified require documentation of a participant-based reason.

15. Under the Infant Toddler section, clarified that the rules apply specifically to DDA services delivered to children birth to three years of age, not to all services available under the Idaho Infant Toddler program.

16. Clarified requirements under the program implementation plan section.

17. Added clarifications to the program documentation requirements section.

18. Added clarifications to the general record requirements section.

19. Clarified the documentation requirements for DDAs providing services to school-age children.

20. Added a new section of requirements that applies to the delivery of all DDA services.

21. Under the developmental therapy section, clarified that developmental therapy provided must be age appropriate and can not include tutorial activities or assistance with educational tasks.

22. Clarified that Program Implementation Plans are not required for collateral contact.

23. Added requirement that after July 1, 2006, each agency seeking to begin providing Intensive Behavioral Intervention (IBI) services must have provided developmental therapy for at least a year.

24. Rewrote the section regarding IBI authorization of the reviews required throughout the year.

25. Clarified requirements for the comprehensive IBI assessment.

26. Added clarification that the IBI transition plan may not be used as a substitute for the transition plan required under the plan of service.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, pages 212 through 257.

**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. There will not be any fiscal impact to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Cameron Gilliland (Division of FACS) at (208) 334-5512.

DATED this 10th day of November, 2005.

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**DOCKET NO. 16-0411-0502 (CHAPTER REWRITE) - PENDING RULE**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 212 through 257.**

**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.**

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0411-0502

**Section 009 (Entire Section)**

**009. MANDATORY CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Verification of Compliance.** The agency must verify that all employees, subcontractors, agents of the agency, and volunteers delivering *DDA* services to *participants with developmental disabilities* have complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ( )

**02. When Agency Employees May Begin Working.** Once an employee, subcontractor, agent of the agency, or volunteer delivering *DDA* services to *participants with developmental disabilities* has completed a self-declaration form and has been fingerprinted, he may begin working for the agency on a provisional basis while awaiting the results of the criminal history check. ( )

**03. Requirement to Report Additional Criminal Convictions.** Once an employee, subcontractor, agent of the agency, or volunteer delivering *DDA* services to *participants with developmental disabilities* has received a criminal history clearance, any additional criminal convictions must be reported to the Department or its designee when the agency learns of the conviction. ( )

**04. Requirement to Report Pending Investigations or Charges.** Once an employee, subcontractor, agent of the agency, or volunteer delivering *DDA* services to *participants with developmental disabilities* has received a criminal history clearance, the agency must immediately report to the Department when any of them is charged with criminal charges, is charged with or is under investigation for abuse, neglect, or exploitation of any vulnerable adult or child, or when an adult protection or child protection complaint against them is substantiated. ( )

**Subsections 010.07, 010.17.b., 010.20, and 010.23**

**010. DEFINITIONS -- A THROUGH O.**

For the purposes of these rules, the following terms are used as defined below: ( )

**07. Comprehensive Assessment.** An assessment used for diagnostic and evaluation purposes that contains uniform criteria used to *contribute to the determination of* a person's eligibility for *DDA* services and the need for those services. ( )

**17. Individual Program Plan (IPP).** An initial or annual plan of service developed by the *DDA* for providing *DDA* services to: ( )

**b.** Participants up to age twenty-one (21) who are receiving *IBI or additional DDA services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program*; or ( )

**20. Intensive Behavioral Intervention (IBI).** Individualized, comprehensive interventions *that have been shown to be effective and are* used on a short term, one-to-one basis that: ( )

**a.** Produce measurable outcomes that diminish behaviors that interfere with the development and use of language and appropriate social interaction skills; or

**b.** Broaden an otherwise severely restricted range of interest; *and* ( )

- c. Increase the child's ability to participate in other therapies and environments. ( )

**23. Objective.** A behavioral outcome statement developed to address a particular need identified for a participant. An objective is written in measurable terms that specify a target date for completion, no longer than *one (1)* year in duration, and include criteria for successful attainment of the objective. ( )

### ***Subsections 011.07 and 011.23 through 011.25***

#### **011. DEFINITIONS -- P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below: ( )

**07. Plan of Service.** An initial or annual plan that identifies services and supports. Plans are *developed* annually. In this chapter of rules, "plan of service" may refer to any of the following: IFSP, IPP, or ISP. ( )

**23. Staff.** Employees or contractors of an agency who provide services, including those persons with whom the agency has a formal, written agreement. ( )

**24. Supervision.** Initial direction and procedural guidance by a qualified professional and periodic inspection of the actual work performed at the service delivery site. ( )

**25. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. ( )

### ***Subsection 200.03***

#### **200. DDA CERTIFICATION.**

**03. Effect of Previous Revocation or Denial of a Certificate or License.** The Department is not required to consider the application of any operator, *administrator*, or owner of an agency *who* has had *his* license or certification denied or revoked until five (5) years have lapsed from the date of denial or revocation. ( )

### ***Subsections 201.04.g., 201.04.i., and 201.04.k.***

#### **201. APPLICATION FOR INITIAL CERTIFICATION.**

**04. Content of Application for Certification.** Application for certification must be made on the Department-approved form available by contacting the Department as described in Section 005 of these rules. The application and supporting documents must be received by the Department at least sixty (60) days prior to the planned opening date. The application must include all of the following: ( )

**g.** Written code of ethics policy adopting a code of ethics relevant to professional activities with participants and colleagues, in practice settings. The policy must articulate basic values, ethical principles and standards for *confidentiality*, conflict of interest, exploitation, and inappropriate boundaries in the developmental disabilities agency's relationship with participants and with other agencies. The code of ethics adopted must reflect nationally-recognized standards of practice; ( )

**i.** Staff qualifications including resumes, job descriptions, *evidence of compliance with criminal history and background check requirements in Subsections 009.01 through 009.03 of these rules*, and copies of state

licenses and certificates for staff when applicable; ( )

**k.** Staff and participant illness policy, communicable disease policy, and other health-related policies and procedures in accordance with Section 510 of these rules; ( )

***Section 202 (Entire Section)***

**202. CHANGES EACH DDA IS REQUIRED TO REPORT.**

**01. Change of Ownership or Physical Location. ( )**

**a.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change in ownership or physical location. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change(s). An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**b.** When an agency plans to provide center-based services in a new physical location, on a temporary or permanent basis, the Department will conduct a site review within two (2) weeks of receipt of the notification. Included with the notification required under Subsection 202.01.a. of these rules, the agency must provide: ( )

**i.** Evidence of review and approval by the local fire and building authorities, including issuance of occupancy permit; and ( )

**ii.** A checklist that verifies compliance with the ADA requirements in accordance with Section 500 of these rules. ( )

**02. Change in Geographic Service Area.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change(s) in the geographic service area. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change(s). An agency that fails to notify the Department of such changes is operating without a certificate. ( )

***Subsections 203.01.b. and 203.02***

**203. ISSUANCE OF CERTIFICATE.**

**01. Certificate. ( )**

**b.** Renewal of Certificate. A certificate is issued by the Department when it determines, in accordance with the provisions of these rules, that the agency requesting certification is in substantial compliance with these rules. Agencies found to be in substantial compliance with these rules may be issued a certificate. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ( )

**02. Provisional Certificate.** When a DDA is found to be *out of* substantial compliance with these rules but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If so, then certification will be granted. If not, the certificate will be denied or revoked. ( )

***Subsections 204.01.a. and 204.01.b.***

**204. RENEWAL AND EXPIRATION OF THE CERTIFICATE.**

**01. Renewal of Certificate.** The Department issues certificates that are in effect for a period of no greater than two (2) years. ( )

**a.** To ensure that there is no lapse in certification, an agency must request renewal of its certificate no less than ninety (90) days before the expiration date of the certificate. The request must contain *any changes in optional services provided and* outcomes of the internal quality assurance processes in accordance with Section 900 of these rules. ( )

**b.** Each agency seeking renewal of its certificate must *be surveyed* by the Department. ( )

**Subsections 300.05 and 300.06**

**300. ENFORCEMENT PROCESS.**

**05. Repeat Deficiencies.** If the Department finds a repeat deficiency in a DDA, it may impose any of the remedies listed in Subsection 300.02 of this rule, as warranted. The Department may monitor the DDA on an “as needed” basis, until the DDA has demonstrated to the Department's satisfaction that it is in compliance with all requirements governing DDAs and that it is likely to remain in compliance. ( )

**06. Failure to Comply.** *The Department may impose one (1) or more of the remedies specified in Subsection 300.02 of this rule if:* ( )

**a.** *The DDA has not complied with any requirement in these rules within three (3) months after the date it was notified of its failure to comply with such requirement; or* ( )

**b.** *The DDA has failed to correct the deficiencies stated in the DDA's accepted plan of correction and as verified by the Department, via resurveys.* ( )

**Subsections 301.01 and 301.02.i.**

**301. REVOCATION OF CERTIFICATE.**

**01. Revocation of the DDA's Certificate.** The Department may revoke a DDA's certificate when persuaded by *the* preponderance of the evidence that the DDA is not in substantial compliance with the requirements in this chapter of rules. ( )

**02. Causes for Revocation of the Certificate.** The Department may revoke any DDA's certificate for any of the following causes: ( )

**i.** Repeat *deficiencies* by the agency of any requirement of these rules or of the Idaho Code; ( )

**Section 302**

**302. NOTICE OF ENFORCEMENT REMEDY.**

The Department will notify the following of the imposition of any enforcement remedy on a DDA: ( )

**Subsections 400.01, 400.03, and 400.04**

**400. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Administrative Staffing.** Each DDA must have an agency administrator who is accountable for all



service elements of the agency and *who* must be employed on a continuous and regularly scheduled basis. *The agency administrator is accountable for the overall operations of the agency including assuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program.* ( )

**03. Records of Licenses or Certifications.** *The agency must maintain documentation of the staff qualifications required under Section 420 of these rules, including copies of applicable licenses and certificates.* ( )

**04. Parents of Participants.** A DDA may not hire the parent of a participant to provide services to the parent's minor or adult child. ( )

### **Section 405**

#### **405. STANDARDS FOR PARAPROFESSIONALS PROVIDING DEVELOPMENTAL THERAPY AND IBI.**

When a paraprofessional provides either developmental therapy or IBI, the agency must assure adequate supervision by a qualified professional during its service hours. All paraprofessionals must meet the training requirements under Section 415 of these rules and must meet the qualifications under Section 420 of these rules. A paraprofessional providing IBI must be supervised by an IBI professional; a paraprofessional providing developmental therapy must be supervised by a Developmental Specialist. Paraprofessionals providing developmental therapy to children birth to three (3) must work under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. For paraprofessionals to provide developmental therapy or IBI in a DDA, the agency must adhere to the following standards: ( )

### **Section 415, Subsections 415.01.b., 415.02.b., 415.02.c., and 415.03.e.**

#### **415. GENERAL TRAINING REQUIREMENTS FOR DDA STAFF.**

**01. Yearly Training.** The DDA must ensure *that each developmental specialist, IBI professional, paraprofessional, or volunteer who provides a DDA service completes a minimum of twelve (12) hours of formal training each calendar year.* ( )

**b.** Each agency employee providing services to participants must be certified in CPR and first aid within ninety (90) days of hire and maintain current certification thereafter. ( )

**i.** The agency must assure that CPR and first aid trained staff are present or accompany participants when services or DDA-sponsored activities are being provided. ( )

**ii.** *Each agency staff person* must have the appropriate CPR *and* first aid certification for the participants he serves. ( )

**02. Sufficient Training.** Training of all professional and direct service staff and volunteers must include the following as applicable to their work assignments and responsibilities: ( )

**b.** Optimal independence of all *participants* is encouraged, supported and reinforced through appropriate activities, opportunities, and training; ( )

**c.** Correct and appropriate use of assistive technology used by *participants*; ( )

**03. Additional Training Requirements for IBI Professionals and IBI Paraprofessionals.** Qualified

IBI professionals and IBI paraprofessionals must complete and pass a Department-approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of IBI and ethical standards. Specifically, the curriculum must include: ( )

e. Successful completion of a student project that includes an observation of demonstrated competencies for all individuals applying for initial certification or recertification after July 1, 2003. ( )

**Subsections 420.04, 420.06.a., 420.08.a.ii., 420.08.a.iii.(7), 420.08.b., 420.08.c., 420.09.c., 420.09.d., 420.10, and 420.22**

**420. STAFF WHO ARE QUALIFIED TO PROVIDE SERVICES FOR AGENCIES.**

**04. Marriage and Family Therapist. ( )**

a. *Licensed Marriage and Family Therapist.* A person licensed to practice as a marriage and family therapist in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists". ( )

b. *Registered Marriage and Family Therapist Intern.* A person registered to practice as a marriage and family therapist intern under the direct supervision of a Licensed Marriage and Family Therapist, in accordance with Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists". ( )

**06. Developmental Specialist for Children Three through Seventeen.** A Developmental Specialist providing developmental assessment and therapy services to children ages three (3) through seventeen (17) must meet the requirements for a Developmental Specialist for adults, and must also meet the following requirements: ( )

a. *Successfully* complete a competency course approved by the Department that relates to developmental assessment and therapy for children; and ( )

**08. Developmental Specialist for Children Birth to Three. ( )**

a. To provide developmental assessments and therapy to children birth to three (3) years of age, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: ( )

i. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or ( )

ii. *A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate;* ( )

iii. A bachelor's or master's degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: ( )

b. *Electives closely related to the content under Subsection 420.08.a.iii.* may be approved by the Department with a recommendation from an institution of higher education. ( )

c. Developmental specialists who possess a bachelor's or master's degree listed above under Subsection 420.08.a.ii. of this rule, have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services *in accordance with their approved, conditional hiring agreement.* ( )

**09. Developmental Therapy Paraprofessionals Delivering Services to Children Birth to Three.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children birth to three (3) years of age if they are under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. Developmental therapy paraprofessionals serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )

c. Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) *semester credits from an accredited college or university* in child development, special education or closely-related coursework; or ( )

d. Have three (3) years of documented experience providing care to infants, toddlers, or children *less than five (5) years of age with developmental delays or disabilities* under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. ( )

**10. Intensive Behavioral Intervention (IBI) Professional Delivering Services to Participants Three to Twenty-One.** A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: ( )

a. Degree. A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science or counseling field from a nationally accredited university or college. ( )

b. Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )

c. Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under Section 415 of these rules. ( )

**22. Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. ( )

### ***Subsections 500.01 and 500.04.a.***

**500. FACILITY STANDARDS FOR AGENCIES PROVIDING CENTER-BASED SERVICES.** The requirements in Section 500 of these rules, apply when an agency is providing center-based services. ( )

**01. Accessibility.** Agencies designated under these rules must be responsive to the needs of persons receiving services and accessible to persons with disabilities as defined in Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (ADA), and the uniform federal accessibility standard. The DDA must submit a completed checklist to the Department to verify compliance with the ADA requirements. This checklist must be provided to the Department with the application for certification. ( )

**04. Evacuation Plans.** Evacuation plans must be posted throughout the center. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building. ( )

**a.** The DDA must conduct quarterly fire drills. At least two (2) times each year these fire drills must include complete evacuation of the building. *The DDA must document the amount of time it took to evacuate the building;* and ( )

### **Subsection 510.04**

#### **510. HEALTH REQUIREMENTS.**

**04. Incident Reports.** Each DDA must complete incident reports for all accidents, injuries, or other events that endanger a participant. Each report must document that the adult participant's legal guardian, if he has one, or, in the case of a minor, the minor's parent or legal guardian, has been notified or that the participant's care provider has been notified if the participant or the participant's parent or legal guardian has given the agency permission to do so. A documented review of all incident reports must be completed at least annually with written recommendations. These reports must be retained by the agency for five (5) years. ( )

### **Subsections 511.03 and 511.04.c.**

#### **511. MEDICATION STANDARDS AND REQUIREMENTS.**

**03. Self-Administration of Medication.** When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a *physician or other practitioner of the healing arts*, licensed nurse, or other qualified professional has evaluated the participant's ability to self-administer medication and has found that the participant: ( )

**04. Assistance with Medication.** An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place: ( )

**c.** The participant's health status does not require nursing assessment, *as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing,"* before receiving the medication nor nursing assessment of the therapeutic or side effects after the medication is taken; ( )

### **Subsection 600.04**

#### **600. COMPREHENSIVE ASSESSMENTS CONDUCTED BY THE DDA.**

Assessments must be conducted by qualified professionals defined under Section 420 of these rules for the respective discipline or areas of service. ( )

**04. Assessment Must Be Completed Within Forty-Five Days.** ( )

**a.** *With the exception noted under Subsection 600.04.b. of this rule,* each assessment must be

completed within forty-five (45) calendar days of the date it was recommended by the physician or other practitioner of the healing arts. If the assessment is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. ( )

*b. This forty-five (45) day requirement does not apply to participant plans of service authorized under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".* ( )

**Subsection 601.03.d.**

**601. GENERAL REQUIREMENTS FOR ASSESSMENT RECORDS.**

**03. Psychological Assessment.** A current psychological assessment must be completed or obtained: ( )

**d.** When a participant has been diagnosed with mental illness; *or* ( )

**Subsections 604.09**

**604. TYPES OF COMPREHENSIVE ASSESSMENTS.**

**09. Psychological Assessment.** A psychological assessment includes psychological testing for diagnosis and assessment of personality, psychopathology, emotionality, or intellectual abilities (IQ test). The assessment must include a narrative report. *Psychological assessment encompasses psychological testing and the psychiatric diagnostic interview.* ( )

**a. Psychological Testing.** Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of a person's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses or functional impairments. ( )

*i.* Psychological testing may be provided when in direct response to a specific assessment question. ( )

*ii.* The psychological report must contain the reason for the performance of this service. ( )

*iii.* Agency staff may deliver this service if they meet one (1) of the following qualifications: ( )

*(1)* Licensed Psychologist; ( )

*(2)* Psychologist Extender; *or* ( )

*(3)* A qualified therapist listed in Subsection 712.02 of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. ( )

**b. Psychiatric Diagnostic Interview.** A psychiatric diagnostic interview must be conducted in accordance with Section 722 of these rules. ( )

**Section 700**

**700. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO PERSONS EIGHTEEN YEARS OF AGE OR OLDER AND ISSH WAIVER PARTICIPANTS.**

Section 700 of these rules does not apply to adults who receive *IBI or additional DDA services prior authorized under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program as described in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program"*. DDAs must comply with the requirements under Section 701 of these rules for *those* adults. ( )

**Section 701, Subsections 701.01, 701.01.a., 701.01b., 701.01c., 701.02, 701.04.d., 701.05.b., 701.05.e., 701.05.e.iii., 701.05.e.iv., 701.05.e.xi., and 701.06.b.**

**701. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN AGES THREE THROUGH SEVENTEEN AND ADULTS RECEIVING *IBI OR ADDITIONAL DDA SERVICES PRIOR AUTHORIZED UNDER THE EPSDT PROGRAM*.**

Section 701 of these rules does not apply to participants receiving ISSH Waiver services. DDAs must comply with the requirements under Section 700 of these rules for all ISSH Waiver participants. ( )

**01. Eligibility Determination.** Prior to the delivery of any DDA services, the DDA must determine *and document* the participant's eligibility in accordance with Section 66-402, Idaho Code. For eligibility determination, the following assessments must be obtained or completed by the DDA: ( )

**a. Medical Assessment.** This must contain medical information that accurately reflects the current status of the person and establishes *categorical* eligibility in accordance with Section 66-402(5)(a), Idaho Code; or ( )

**b. Psychological Assessment.** If the medical assessment does not establish *categorical* eligibility, the DDA must obtain or conduct a psychological assessment that accurately reflects the current status of the person and establishes *categorical* eligibility in accordance with Section 66-402(5)(a), Idaho Code. ( )

**c. Standardized Comprehensive Developmental Assessment.** This must contain developmental information regarding functional limitations that accurately reflects the current status of the person and establishes *functional* eligibility *based on substantial limitations* in accordance with Section 66-402(5)(b), Idaho Code. ( )

**02. Intake.** The DDA must obtain information that accurately reflects the current status and needs of the participant prior to the delivery of services. ( )

**04. Individual Program Plan (IPP) Definitions.** The delivery of each service on a plan of service must be defined in terms of the type, amount, frequency, and duration of the service. ( )

**d.** Duration of service is the length of time. This is typically *the length of the plan year*. For ongoing services, the duration is one (1) year; services that end prior to the end of the plan year must have a specified end date. ( )

**05. Individual Program Plan (IPP).** For participants three (3) through seventeen (17) years of age who do not use ISSH Waiver services, and for adults receiving EPDST services, the DDA is required to complete an IPP. ( )

**b.** The planning process must include the participant and his parent or legal guardian, if applicable, and others the participant or his parent or legal guardian chooses. The participant's parent or legal guardian must sign the IPP indicating their participation in its development. The parent or legal guardian must be provided a copy of the completed IPP. If the participant and his parent or legal guardian are unable to participate, the reason must be documented in the participant's record. A physician or other practitioner of the healing arts and the parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan, *except as provided under*

*Subsection 700.02.b.ii. of these rules.* ( )

**e.** The IPP must promote self-sufficiency, the participant's choice in program objectives and activities, encourage the participant's participation and inclusion in the community, *and contain objectives that are age-appropriate*. The IPP must include: ( )

**i.** The participants name and medical diagnosis; ( )

**ii.** The name of the assigned Developmental Specialist, the date of the planning meeting, and the name and titles of those present at the meeting; ( )

**iii.** The *dated* signature of the physician or other practitioner of the healing arts indicating his recommendation of the services on the plan; ( )

**iv.** The type, amount, frequency and duration of therapy to be provided. For developmental therapy, the total hours of services provided cannot exceed the amount recommended on the plan. The amount and frequency of the type of therapy must not *deviate* from the *IPP* more than twenty percent (20%) over a period of a four (4) weeks, unless there is documentation of *a participant-based reason*; ( )

**xi.** A transition plan. The transition plan is designed to facilitate the participant's independence, personal goals, and interests. The transition plan must specify criteria for participant transition into less restrictive, more integrated settings. These settings may include integrated classrooms, community-based organizations and activities, vocational training, supported or independent employment, volunteer opportunities, or other less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation *of services* from a DDA. ( )

**06. Documentation of Plan Changes.** Documentation of required plan of service or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum: ( )

**b.** Documentation of coordination with other services providers, where applicable; ( )

***Subsections 702.01.a., 702.01.b., 702.02.a., 702.03, 702.03.a., and 702.03.e.***

**702. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN BIRTH TO THREE YEARS OF AGE (INFANT TODDLER).**

Services provided by a DDA to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. For children birth to age three (3), the IFSP will be used in lieu of the Individual Program Plan (IPP). ( )

**01. Eligibility Determination.** For a child birth to three (3) years of age, prior to the delivery of any DDA services: ( )

**a.** In accordance with 34 CFR 303.321(e), the Department's regional Infant Toddler Program will determine eligibility *for DDA services* in accordance with Section 66-402, Idaho Code. ( )

**b.** Upon request from the DDA, and after receiving consent from the parent or legal guardian for release of information, the Department's regional Infant Toddler Program will provide the DDA with documentation

of the child's eligibility including a copy of the current IFSP, addendum(a) to the IFSP, assessments, and service records related to current *DDA* services. ( )

**02. Intake.** Prior to the delivery of *DDA* services: ( )

**a.** The *DDA* must obtain both a copy of the current IFSP and a copy of all current assessment(s) used by the Department's regional Infant Toddler Program to determine eligibility for *DDA* services; and ( )

**03. Individualized Family Service Plan (IFSP).** The Department or its designee will develop the initial IFSP for each eligible child, birth to three (3) years of age. Each *DDA* that provides *DDA* services to an eligible child, birth to three (3) years of age, must implement services according to the IFSP for that child as required by the Individuals with Disabilities Education Act, (P.L. 108-446, December 2004), Part C, Section 636 (d) and Title 16, Chapter 1, Idaho Code. The *DDA* must use the Department-approved IFSP form in accordance with 34 CFR 303.344. The procedures for IFSP development, review, and assessment must be in accordance with 34 CFR 303.342. ( )

**a.** Development of the IFSP. For a child who has been evaluated for the first time and has been determined to be eligible for *DDA* services, the initial IFSP developed by the Department must be completed within a forty-five (45) day time period in accordance with 34 CFR 303.321(e). ( )

**e.** There must be an order by a physician or other practitioner of the healing arts for all *DDA* services included on the IFSP. ( )

***Section 703, Subsections 703.02, 703.04, 703.08, and 703.08.a.***

**703. PROGRAM IMPLEMENTATION PLAN REQUIREMENTS.**

For each participant, the *DDA* must develop a Program Implementation Plan for each *DDA* objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The Program Implementation Plan must include the following requirements in Subsections 703.01 through 703.07 of this rule: ( )

**02. Baseline Statement.** A baseline statement addressing the participant's skill *level* and abilities related to the specific skill to be learned. ( )

**04. Written Instructions to Staff.** These instructions may include curriculum, interventions, *task analyses*, activity schedules, type and frequency of reinforcement and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. ( )

**08. IBI Implementation Plans.** *In addition to the requirements under Subsections 703.01 through 703.07 of these rules, the following are also required for IBI Implementation Plans:* ( )

**a.** All IBI Implementation Plans must *be* completed on the Department-approved form. ( )

***Subsections 704.01.c, 704.01.d., and 704.02***

**704. PROGRAM DOCUMENTATION REQUIREMENTS.**

Each *DDA* must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. ( )



**01. General Requirements for Program Documentation.** For each participant the following program documentation is required: ( )

**c.** A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by *the qualified professional*. The review must include the *qualified professional's* dated initials. ( )

**d.** *When a participant receives developmental therapy*, documentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of *the* participant's progress toward the achievement of therapeutic goals, and why he continues to need services. ( )

**02. Additional Requirements for Participants Eighteen Years or Older and for ISSH Waiver Participants.** For participant's eighteen (18) years of age or older and ISSH Waiver Participants, DDAs must also submit provider status reviews to the plan monitor *in accordance with IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services"*. ( )

***Section 705, Subsections 705.01.d., and 705.01.f.***

**705. RECORD REQUIREMENTS.**

Each DDA certified under these rules must maintain accurate, current and complete participant and administrative records. These records must be maintained for at least five (5) years. Each participant record must support the individual's choices, interests, and needs that result in the type and amount of each service provided. Each participant record must clearly document the date, time, duration, and type of service, *and include the signature of the individual providing the service*, for *each* service provided. *Each* signature must be accompanied both by credentials and the date signed. Each agency must have an integrated participant records system to provide past and current information and to safeguard participant confidentiality under these rules. ( )

**01. General Records Requirements.** Each participant record must contain the following information: ( )

**d.** Current profile sheet containing the identifying information about the participant, including *residence and living arrangement*, contact information, emergency contacts, physician, current medications, allergies, special dietary or medical needs, and any other information required to provide safe and effective care; ( )

**f.** When assessments are completed or obtained by the agency, the participant's record must include *assessment results*, test scores *when applicable*, and narrative reports, signed with credentials and dated by the respective evaluators. ( )

***Subsections 706.01.a. and 706.01.b.***

**706. REQUIREMENTS FOR COLLABORATION WITH OTHER PROVIDERS.**

When participants are receiving rehabilitative or habilitative services from other providers, each DDA must coordinate each participant's DDA program with these providers to maximize skill acquisition and generalization of skills across environments, and to avoid duplication of services. The DDA must maintain documentation of this collaboration. This documentation includes other plans of services such as the Individual Education Plan (IEP), Personal Care Services (PCS) plan, Residential Habilitation plan, and the Psychosocial Rehabilitation (PSR) plan. The participant's file must also reflect how these plans have been integrated into the DDA's plan of service for each participant. ( )

**01. Requirements for Participants Three to Twenty-One.** ( )

**a.** For participants who are children enrolled in school, the local school district is the lead agency as required under IDEA, Part B. DDAs must inform the child's home school district if they are serving the child during the hours that school is typically in session. The participant's record must contain an Individualized Education Plan (IEP), including any recommendations for Extended School Year, if there are any. The DDA must *document that they have provided* a current copy of the child's Individual Program Plan (IPP) to his school. The DDA may provide additional services beyond those that the school is obligated to provide during regular school hours. ( )

**b.** For participants of mandatory school attendance age, seven (7) through sixteen (16), who are not enrolled in school, *the DDA must document that it has referred* the child to the local school district for enrollment in educational and related services under the provisions of the Individuals with Disabilities Education Act (IDEA). ( )

**Section 708 (New Section)**

**708. REQUIREMENTS FOR DELIVERY OF DDA SERVICES.**

**01. Comprehensive Assessment and Plan Requirements.** *Prior to the delivery of a service, a comprehensive assessment must be completed by a professional qualified to deliver the service and it must document the participant's need for the service. All services must be included on the participant's plan of service. Program Implementation Plans must be developed for each objective listed on the plan of service.* ( )

**02. Service Requirements.** *All services must be:* ( )

**a.** *Recommended by a physician or other practitioner of the healing arts;* ( )

**b.** *Based on participant needs, interests, or choices; and* ( )

**c.** *In compliance with all applicable rules of this chapter.* ( )

**709. (RESERVED).**

**Section 710 (Entire Section)**

**710. REQUIRED SERVICES.**

Each DDA is required to provide developmental therapy, and, in addition, also must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. *Developmental therapy must be provided by qualified employees of the agency. Psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy must either be provided by qualified employees of the agency or through a formal written agreement.* ( )

**01. Sufficient Quantity and Quality.** All required services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified individuals in accordance with the requirements in Section 420 of these rules. ( )

**02. When a Required Service Is Not Available.** When a required service, *other than developmental therapy*, is not provided by the agency due to a documented shortage of available providers in a specific geographic area, the DDA must document its effort to secure the service or facilitate the referral for the needed service, including notifying the service coordinator, when the participant has one. ( )

**Section 711 (Entire Section)**

**711. DEVELOPMENTAL THERAPY.**

Developmental therapy services must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on a comprehensive developmental assessment completed prior to the delivery of developmental therapy. ( )

**01. Areas of Service.** These services must be directed toward the rehabilitation or habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. ( )

**02. Age-Appropriate.** *Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate.* ( )

**03. Tutorial Activities and Educational Tasks are Excluded.** *Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the participant's disability.* ( )

**04. Settings for Developmental Therapy.** Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices. ( )

**05. Staff-to-Participant Ratio.** When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. Additional staff must be added, as necessary, to meet the needs of each individual served. ( )

### **Subsection 712.02.i.**

#### **712. PSYCHOTHERAPY.**

**02. Staff Qualifications for Psychotherapy Services.** Psychotherapy services must be provided by one (1) of the following qualified professionals: ( )

**i.** *Registered Marriage and Family Therapist Intern whose provision of psychotherapy is supervised as described in Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists".* ( )

**j.** Licensed Masters Social Worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; or ( )

**k.** A Psychologist Extender, registered with the Bureau of Occupational Licenses, whose provision of psychotherapy is supervised as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". ( )

### **Subsection 724.03**

#### **724. COLLATERAL CONTACT.**

Collateral contact is consultation with or treatment direction given to a person with a primary relationship to a participant for the purpose of assisting the participant to live in the community. Collateral contact must: ( )

**03. On the Plan of Service.** Have a goal and objective stated on the plan of service that identifies the purpose and outcome of the service and is conducted only with individuals specifically identified on the plan of service. *Program Implementation Plans are not required for collateral contact objectives.* ( )

### **Section 725 (Entire Section)**

#### **725. INTENSIVE BEHAVIORAL INTERVENTION (IBI).**

01. **Compliance with Sections 800 through 899.** DDAs that choose to offer Intensive Behavioral Intervention (IBI) must provide IBI services in accordance with Sections 800 through 899 of these rules. ( )

02. **Established Developmental Therapy Program.** After July 1, 2006, agencies must have provided developmental therapy for at least one (1) year, and not be operating under a provisional certification, prior to providing IBI services. ( )

03. **Exception.** Agencies that were providing IBI services prior to July 1, 2006, are exempt from the requirement under Subsection 725.02 of these rules. ( )

### Section 800 and Subsection 800.01

#### 800. INTENSIVE BEHAVIORAL INTERVENTION (IBI) SERVICE DESCRIPTION AND ELIGIBILITY.

01. **Individualized and Comprehensive Interventions.** IBI consists of individualized, comprehensive interventions that have been shown to be effective and are used on a short term, one-to-one basis. These interventions: ( )

### Section 801 (Entire Section)

#### 801. IBI AUTHORIZATION AND REVIEW.

IBI services must be reviewed and prior authorized for each service year as follows: ( )

01. **Initial IBI Authorization.** The Department determines IBI eligibility based on information submitted by the DDA and other information gathered by the Department as deemed necessary. At least twenty (20) working days prior to the intended start date of IBI services, the DDA must use Department-approved forms to submit; ( )

- a. Evidence of the child's eligibility for Intensive Behavioral Intervention; ( )
- b. The comprehensive IBI assessments; ( )
- c. The Program Implementation Plans; ( )
- d. The number of hours of service requested; and ( )
- e. Measurable objectives. ( )

02. **Three-Month Review.** The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )

03. **Sixth-Month Review and Authorization.** At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: ( )

- a. The three (3) month review; ( )
- b. Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for those six (6) months; and ( )
- c. When continuing IBI services are requested, the Program Implementation Plans, the number of hours of service requested, and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. ( )

04. **Nine-Month Review.** The agency must conduct and document a formal review of therapy

objectives and direction for future therapy for each objective. ( )

**05. Annual Review and Authorization.** *At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit:* ( )

*a. The nine (9) month review;* ( )

*b. Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for that year; and* ( )

*c. When continuing IBI services are requested:* ( )

*i. A new SIB-R that reflects the child's current status and any additional information required to establish continuing eligibility;* ( )

*ii. The Program Implementation Plans; and* ( )

*iii. The number of hours of service requested and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services.* ( )

**Subsections 802.01 and 802.03.a.**

**802. COMPREHENSIVE IBI ASSESSMENT.**

A comprehensive IBI assessment must be completed by a certified IBI professional prior to the initial provision of IBI or IBI Consultation. The results of the assessment must form the basis for planning interventions. The assessment must include the following: ( )

**01. Review of Assessments and Relevant Histories.** ( )

**a.** Medical history, medications, and current medical status; ( )

**b.** Medical/social history that includes a developmental history and onset of developmental disability; ( )

**c.** Comprehensive developmental assessment reflecting the child's current status; ( )

**d.** Specific skill assessment, when such an assessment is completed; ( )

**e.** SIB-R Maladaptive Index and a list of the child's maladaptive behaviors; ( )

**f.** Baseline of the child's maladaptive behavior(s), if available; ( )

**g.** Psychological assessments and results of psychometric testing, or for very young children, a developmental assessment with equivalent age-appropriate social-emotional status, *if available;* ( )

**h.** A mental health or social and emotional assessment, such as the Child and Adolescent Functional Assessment Scale (CAFAS), when one has been completed; ( )

**i.** Public school or Infant Toddler Program records including relevant birth records, multidisciplinary team assessments, recommendations, and Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs); and ( )

**j.** Other relevant assessments that may be available, including those for speech and hearing and physical and occupational therapy. ( )

**03. Observation of the Child.** Observations of the child must occur in environments in which the child spends significant amounts of time and where problem behaviors have been reported. Results of the observations must include the following: ( )

- a. Specific descriptions *and frequencies* of problem behaviors; ( )

### **Section 803**

#### **803. IBI TRANSITION PLAN.**

An IBI transition plan must be developed when it is anticipated that IBI services will be terminated within the next Department or agency review period and the child will be moving into natural learning environments or less intensive therapy settings. *The IBI transition plan may not be used as a substitute for, nor does it replace the transition plans required under Sections 701 and 702 of these rules.* IBI transition plans must include the following steps to support the transition and the timelines for those steps: ( )

#### **Subsection 804 (Partial Section)**

#### **804. IBI CONSULTATION.**

Professionals may provide IBI consultation to parents and other family members, professionals, paraprofessionals, school personnel, child care providers, or other caregivers who provide therapy or care for *an IBI eligible* child in other disciplines to assure successful integration and transition from IBI to other therapies, services, or types of care. IBI consultation objectives and methods of measurement must be developed in collaboration with the person receiving IBI consultation. ( )

#### **Subsections 915.03, 915.10.a., and 915.10.b.**

#### **915. POLICIES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND APPROPRIATE BEHAVIORS.**

Each DDA must develop and implement written policies and procedures that address the development of participants' social skills and management of inappropriate behavior. These policies and procedures must include statements that: ( )

**03. Function of Behavior.** Address the possible underlying causes or function of the behavior and identifying what *a* participant may be attempting to communicate by the behavior. ( )

**10. Appropriate Use of Interventions.** Ensure that interventions used to manage a participant's inappropriate behavior are never used: ( )

- a. For disciplinary purposes; ( )

- b. For the convenience of staff; ( )

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

### **16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS AND DECLARATORY RULINGS**

**DOCKET NO. 16-0503-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, 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.

This rule change is needed in order to clarify the following issues: when an appeal is to be filed; the hearing officer must dismiss an untimely appeal; and a proposed order of default must be issued if someone fails to appear for a hearing allowing fourteen (14) days to show just cause to the hearing officer as to why the hearing was missed. There are two changes to the proposed rule based on comments received. The first change will protect the integrity of both this rule and IDAPA 16.02.19 "Food Safety and Sanitation Standards for Food Establishments," by deleting the current information regarding appeals for food establishments in these rules and replacing that with a cross reference to the "Appeal Process" in the "Food Safety and Sanitation Standards for Food Establishments" rules. The second change will add consistency to the rule by changing the term "the appellant" to "that party" in the "Default" section.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 356 through 364.

Pursuant to Section 67-5228, Idaho Code, a correction has been made in Section 16.05.03.005. The Fax number for submitting electronic filings relating to administrative procedures to the Department has been changed. The Section and corrected Fax number are being reprinted with the pending rule to show the correction.

**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. There is no fiscal impact to the State General Fund due to this rule making.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeanne T. Goodenough, Division Chief, Department of Health and Welfare, Office of Attorney General at (208) 334-6558.

DATED this 26th day of October, 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

DOCKET NO. 16-0503-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 356 through 364.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0503-0501

*Section 005*

**005. ADMINISTRATIVE PROCEDURES SECTION.**

Petitions for adoption of rules, petitions for declaratory rulings, and appeals ~~shall~~ must be filed with: Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036. Phone: (208) 334-5564. FAX: ~~332-7347~~ 334-6558. ~~(3-30-01)(\_\_\_\_\_)~~

*Section 106*

**106. DEFAULT.**

If a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer ~~may~~ must enter a proposed default order against that party. The default order ~~shall~~ must be set aside if, within fourteen (14) days of the date of mailing, ~~the appellant~~ that party submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. ~~(3-30-01)(\_\_\_\_\_)~~

*Section 402*

**402. FOOD ESTABLISHMENTS.**

~~A notice of action or intended action to deny, suspend, revoke, or fail to renew a license shall become final and effective unless an appeal is filed with the appropriate health district by the applicant or license holder within fourteen (14) days of receipt of the notice. The health district shall conduct an administrative review and issue a decision, which shall become final and effective unless an appeal is filed with the Department within fourteen (14) days. If an appeal is received timely, a hearing shall be scheduled and a decision issued within twenty one (21) days of receipt of the appeal. Appeal procedures will be as provided in Section 861, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments".~~ ~~(3-30-01)(\_\_\_\_\_)~~



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

**DOCKET NO. 16-0601-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-805(2), 56-1003, and 56-1004, Idaho Code; also 42 U.S.C. 673C(3).

**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 September 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 162 through 164.

**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. There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5700.

DATED this 3rd day of October, 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) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**DOCKET NO. 16-0601-0501 - PENDING RULE**

**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 05-9, September 7, 2005, pages 162 through 164.](#)**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING**

**DOCKET NO. 16-0602-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1004 and 56-1005(8), Idaho Code, and Section 39-1217, Idaho Code, regarding the maximum Department visitation interval under the Child Care Licensing Reform Act.

**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 October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 368 through 370.

**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. There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5700.

DATED this 26th day of October, 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) 334-6558 fax  
kovachs@idhw.state.id.us e-mail

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**DOCKET NO. 16-0602-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 368 through 370.**

**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 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.08 - RULES AND MINIMUM STANDARDS FOR DUI EVALUATORS**

**DOCKET NO. 16-0608-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 18-8005(9), 39-111 and 56-1003, Idaho Code.

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

The proposed rules have been amended in response to public comment received. The definition for the term "defendant" was expanded to more clearly state their legal status with the courts. The term "Advanced Certified Alcohol/Drug Counselor" was added to ensure this group was included with others eligible for a DUI License. It was also requested to add an Idaho Licensed Marriage and Family Therapist or a Registered Marriage and Family Therapist Intern to the list of qualified persons. The last item amended was changing the length of time to maintain public files from three (3) years to five (5) in order to ensure consistency within the chapter of rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05, pages 262 through 272.

**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.

There is no fiscal impact to the state general fund due to this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Sherry Johnson at (208) 334-5934.

DATED this 10th day of November, 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

DOCKET NO. 16-0608-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 262 through 272.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0608-0501

*Subsections 010.03 and 010.08.*

**03. Defendant.** A Person who has been charged with, pled guilty to, or found guilty of driving under the influence of alcohol, drugs or any other intoxicating substances; or any crime as set forth under Title 18, Chapter 80, Idaho Code. ( )

**08. Idaho Board of Alcohol/Drug Counselor's Certification, Inc. (IBADCC).** Affiliated with the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), the IBADCC is the certifying agency that oversees credentialing of Certified Alcohol/Drug Counselors (CADC), Advanced Certified Alcohol/Drug Counselors (ACADC), Certified Clinical Supervisors (CCS), and Certified Prevention Specialists (CPS) in the state of Idaho. The IBADCC may be contacted at the following address and telephone number: 270 N. 27th Street, Suite B, Boise, ID 83702 (208) 395-1078. ( )

*Subsections 225.01.b.i and 225.01.b.iv.*

**225. QUALIFICATIONS.** In addition to the requirements in Section 200 of these rules, an individual must also meet the following qualifications for licensure. ( )

**01. Evaluator Qualifications.** In order for the applicant to be licensed as a DUI evaluator, the applicant must meet the following criteria: ( )

**b.** Holds one (1) of the following professional certifications or licenses: ( )

**i.** Is an IBADCC Certified Alcohol/Drug Counselor or IBADCC Advanced Certified Alcohol/Drug Counselor; or ( )

**iv.** Is an Idaho Licensed Marriage and Family Therapist or Idaho Registered Marriage and Family Therapist Intern; and ( )

### *Subsection 250.03*

**250. RENEWAL OF LICENSE.**

The licensee is responsible for renewing the license in accordance with this chapter and requesting a renewal packet from the Department. No license will be renewed, except as provided in Section 250 of these rules. ( )

**03. Current Copy of Certification or License.** *The licensee must have a copy of current Idaho Board of Alcohol/Drug Counselor's Certification; copy of Idaho Licensed, Licensed Clinical, or Licensed Masters Social Worker license; Idaho Licensed Professional Counselor license; Idaho Licensed Marriage and Family Therapist license; or Idaho Registered Marriage and Family Therapist Intern license. A licensee must at all times hold a current certification or professional license in order to meet the educational requirement in Subsection 225.01 of these rules.* ( )

### *Subsection 500.01*

**500. DUI EVALUATIONS.**

**01. Record System.** The DUI evaluator must maintain a record system of client files for a minimum of ~~three~~ *five* (35) years. Client files will minimally include the written evaluation, ~~and~~ supporting documents, ~~identified in Subsections 500.02 and 500.03~~ and use the same client identifier to correspond with the data collected for statistical reporting as described in Section 600 of these rules. (~~4-5-00~~)( )

# IDAPA 17 - INDUSTRIAL COMMISSION

## 17.02.08 - MISCELLANEOUS PROVISIONS

### DOCKET NO. 17-0208-0501

#### NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is April 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, and 72-723, Idaho Code, and Section 72-803 of the Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule: Proposes using the Resource-Based Relative Value Scale (RBRVS) and the Relative Value Unit (RVU) assigned for all medical services with a Physicians' Current Procedural Terminology (CPT) code. A Conversion Factor for various categories of CPT coded services is proposed. Unnecessary language is proposed to be deleted from the rule.

**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:

This temporary rule is needed to comply with the statutory directive to have initial conversion factors set by January 1, 2006, and be reviewed by germane legislative committees prior to the effective date of April 1, 2006.

**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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Mindy Montgomery, Director, 208-334-6000.

DATED this 16th day of November, 2005.

Mindy Montgomery  
Director  
317 Main Street  
P.O. Box 83720  
Boise, ID 83720-0041

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0208-0501

#### 031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby ~~substitutes~~ adopts the following ~~for the January 28, 1975 amendment to the "Rules and Regulations Governing Charges for Medical Services Provided under the Idaho Workers' Compensation Law," dated May 2, 1973~~ rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law: (6-1-92)(4-1-06)T

~~01- Acceptable Charges Under the Idaho Workers' Compensation Law. Payors shall pay a Provider's reasonable charge for Medical Services furnished to industrially injured patients.~~ (6-1-92)

**021. Definitions.** Words and terms used in this rule are defined in the subsections which follow. (6-1-92)

**a.** “Provider” means any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical services related to the treatment of an industrially injured patient which ~~are~~ is compensable under Idaho’s Workers’ Compensation Law. ~~(6-1-92)~~(4-1-06)T

**b.** “Payor” means the legal entity responsible for paying medical benefits under Idaho’s Workers’ Compensation Law. (6-1-92)

**c.** “Medical Services” means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, ~~prostheses~~ prosthesis, and related services, ~~facilities~~ facility, equipment and ~~supplies~~ supply. ~~(7-1-95)~~(4-1-06)T

**d.** “Reasonable;” ~~except as provided in Subsections 031.02.g. and 031.02.h.,~~ means a charge does not exceed the Provider’s “usual” charge and does not exceed the “customary” charge, as defined below. ~~(7-1-95)~~(4-1-06)T

**e.** “Usual” means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. ~~(7-1-95)~~(4-1-06)T

**f.** “Customary” means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ~~(7-1-95)~~(4-1-06)T

~~**g.** *Provided, however, that for medical services which are not represented by CPT codes, reasonableness of charges shall be determined based on all relevant evidence available, including industry standards, invoices and catalog prices.* (7-1-95)~~

~~**h.** *Provided, further, that where a Medical Service is one that is exceptional, unusual, variable, rarely provided, or so new that a determination cannot be made as to whether the charge for the Medical Service meets the criteria of Subsections 031.02.d. through 031.02.f. above, or where the Industrial Commission staff determines that its database is statistically unreliable, reasonableness of charges shall be determined based on all relevant evidence available.* (7-1-95)~~

**02. Acceptable Charge.** Payors shall pay providers the acceptable charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is less. (4-1-06)T

**a.** Adoption of Standard. The Commission hereby adopts the current Resource-Based Relative Value Scale (RBRVS), published annually by the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law. (4-1-06)T

**b.** Conversion Factors. The following conversion factors shall be applied to the Relative Value Unit (RVU) found in the current RBRVS for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended: (4-1-06)T

<u>CPT CODE:</u>	<u>DESCRIPTION:</u>	<u>CONVERSION FACTOR:</u>
<u>00000 to 09999</u>	<u>Anesthesiology</u>	<u>\$58.19</u>
<u>10000 to 69999:</u>	<u>Surgery:</u>	
<u>10000 to 19999</u>	<u>Integumentary System</u>	<u>\$ 63.63</u>
<u>20000 to 29999</u>	<u>Musculoskeletal System</u>	<u>\$123.00</u>

<u>CPT CODE:</u>	<u>DESCRIPTION:</u>	<u>CONVERSION FACTOR:</u>
<u>30000 to 39999</u>	<u>Respiratory/Cardiovascular</u>	<u>\$123.00</u>
<u>40000 to 49999</u>	<u>Digestive System</u>	<u>\$ 95.00</u>
<u>50000 to 59999</u>	<u>Urinary/Genital</u>	<u>\$ 71.00</u>
<u>60000 to 69999</u>	<u>Endocrine/Nervous/Eye</u>	<u>\$133.00</u>
<u>70000 to 79999</u>	<u>Radiology &amp; Nuclear Medicine</u>	<u>\$111.25</u>
<u>80000 to 89999</u>	<u>Pathology</u>	<u>\$ 94.00</u>
<u>90000 to 96999</u>	<u>General Medicine (Part 1)</u>	<u>\$ 73.00</u>
<u>97000 to 98999</u>	<u>Physical Medicine</u>	<u>\$ 63.00</u>
<u>99000 to 99199</u>	<u>General Medicine (Part 2)</u>	<u>\$ 73.00</u>
<u>99200 to 99499</u>	<u>Evaluation and Management</u>	<u>\$ 63.63</u>
<u>99500 to 99999</u>	<u>General Medicine (Part 3)</u>	<u>\$ 73.00</u>

(4-1-06)T

**c.** The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units currently assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Codes 01995 and 01996. (4-1-06)T

**d.** Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year. The Commission shall determine the adjustment, which shall equal the percent change in the all item consumer price index for the west urban area, as published by the U.S. Department of Labor, for the twelve (12) month period ending with December of the prior year. (4-1-06)T

**e.** Services Without CPT Code. The acceptable charge for medical services that do not have a CPT code will be the reasonable charge for that service, based upon the usual and customary charge and other relevant factors, as determined by the Commission. (4-1-06)T

**032. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.**

**01. Authority and Definitions.** Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule augmenting IDAPA 17.02.08.031 ~~(formerly 17.01.03.803.A, which became effective June 1, 1992)~~. The definitions set forth in IDAPA 17.02.08.031 are incorporated by reference as if fully set forth herein. (1-1-93)(4-1-06)T

**02. Time Periods.** None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (1-1-93)

**03. Provider to Furnish Information.** A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of Medical Services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the Medical Service was provided, the diagnosis, if any, and the amount of the charge or charges. (1-1-93)

**a.** **CPT and ICD Coding.** A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. (7-1-95)



**b.** Contact Person. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (1-1-93)

**c.** Report to Accompany Bill. If required by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04.322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 032.04 and 032.06, below, shall not begin to run until the Payor receives the Report. (7-1-95)

**04. Prompt Payment.** If the Payor acknowledges liability for the claim and does not send a Preliminary Objection to, or Request for Clarification of, any charge, as provided in Subsection 032.06, below, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder. (1-1-93)

**05. Partial Payment.** If the Payor acknowledges liability for the claim and, pursuant to Subsection 032.06 below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection and/or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. The Commission will strictly apply all time limits and deadlines established by this rule. However, a reasonable good faith effort to comply with the other provisions of this rule will generally be sufficient to protect a party's rights hereunder. (7-1-95)

**06. Preliminary Objections and Requests for Clarification.** (1-1-93)

**a.** Preliminary Objection. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (1-1-93)

**b.** Request for Clarification. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (1-1-93)

**c.** Provider Contact. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual the Provider may contact regarding the Preliminary Objection or Request for Clarification. (1-1-93)

**d.** Failure of Payor to Object or Request. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill and/or a Request for Clarification within thirty (30) calendar days of receipt of the bill, it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (1-1-93)

**07. Provider Reply to Preliminary Objection and/or Request for Clarification.** (1-1-93)

**a.** Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection and/or Request for Clarification. (1-1-93)

**b.** Failure of Provider to Reply to Preliminary Objection. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (1-1-93)

**c.** Failure of Provider to Reply to Request for Clarification. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (1-1-93)

**08. Payor Shall Pay or Issue Final Objection.** The Payor shall pay the Provider's bill in whole or in

part and/or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (1-1-93)

**09. Failure of Payor to Finally Object.** Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (1-1-93)

**10. Investigation of Claim Compensability.** Where a Payor is investigating the compensability of a claim as to which a Provider has submitted a bill, the Payor must send a Notice of Investigation of Claim Compensability to the Provider and the Patient within fifteen (15) calendar days of receipt of the Provider's bill. The Payor shall complete its investigation of claim compensability and notify the Commission, the Provider and the Patient of its determination within thirty (30) calendar days of the date the Notice of Investigation of Claim Compensability is sent. Where a Payor does not timely notify the Commission, the Provider and the Patient of its determination, the Payor shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (1-1-93)

**a. Single Objection Sufficient.** A single objection stating that liability has been denied shall be sufficient for each Provider from whom a bill is received. (1-1-93)

**b. Effect of Commission Determination of Claim Compensability.** The thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall recommence running on the date of entry of a final Commission order determining that the claim is compensable. (1-1-93)

**c. Effect of Determination of Compensability.** If the Payor, absent a Commission determination of claim compensability, concludes that it is liable for a claim, the thirty (30) day period in which the Payor must pay the bill or send a Preliminary Objection and/or Request for Clarification shall begin running on the date the Payor notifies the Commission, Provider and Patient that it accepts liability for the claim. (1-1-93)

**11. Dispute Resolution Process.** If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors as Referenced in IDAPA 17.02.08.031 and 032 ~~(formerly 17.01.03.803.a. and 803.b.)~~. (1-1-93)(4-1-06)T

**~~12. Requirements Regarding Disputes Arising Before the Effective Date of This Rule.~~** (1-1-93)

~~**a. Written Demand Required.** If, prior to January 1, 1993, a Payor notifies or has notified a Provider that it does not intend to fully pay any charge for Medical Services incurred prior to January 1, 1993, the Provider seeking payment for such charge must send a written Demand for Payment to the Payor no later than January 31, 1993. (Note: Should the matter ultimately proceed to the dispute resolution phase set forth in the Judicial Rule, the Commission will resolve the dispute by applying the administrative rule which was in effect at the time the charge was incurred. Hence, if the charge in dispute was incurred prior to June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.01.03.803, then in effect. However, if the charge in dispute was incurred on or after June 1, 1992, the Commission will use this dispute resolution process to determine whether the Provider's charge is acceptable pursuant to the provisions of IDAPA 17.02.08.031, now in effect.)~~ (1-1-93)

~~**b. All Provisions of this Rule Will Apply.** Such a Demand shall substitute for the bill and Report referenced in Subsection 032.03 above, and must contain all the information required by that section. Service of a timely Demand for Payment will bring the other provisions of this rule into operation.~~ (1-1-93)

~~**c. Failure of Provider to Make Written Demand.** Providers failing to make a written Demand for Payment within thirty (30) calendar days of the effective date of this rule shall be forever barred from invoking the Dispute Resolution Process set forth in the applicable Judicial Rule. Demands and/or billings submitted previously either to the Payor or to the Commission will not suffice.~~ (1-1-93)

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.09 - SENIOR CONSUMER PROTECTION IN ANNUITY TRANSACTIONS RULES OF THE DEPARTMENT OF INSURANCE

#### DOCKET NO. 18-0109-0501 (NEW CHAPTER)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211 and 41-1940, 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 purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed. This rule will apply to any recommendation to purchase or exchange an annuity made to a senior consumer by a producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 273 through 278.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Shad Priest at (208) 334-4250.

DATED this 9th day of November, 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

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#### DOCKET NO. 18-0109-0501 - PENDING RULE (NEW CHAPTER)

**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 05-8, August 3, 2005, pages 273 through 278.**

**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 18 - DEPARTMENT OF INSURANCE**  
**18.01.10 - PRODUCERS HANDLING OF FIDUCIARY FUNDS**  
**DOCKET NO. 18-0110-0501 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 41-211 and 41-1024, 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 purpose of this rulemaking is to develop rules to implement amendments to Section 41-1024, Idaho Code, which were enacted this year and will require that all insurance producers (agents and brokers) maintain a trust account to hold all fiduciary funds received by the producer.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, to correct a reference to an applicable section. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 278 through 284.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Shad Priest at (208) 334-4250.

DATED this 9th day November, 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

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**DOCKET NO. 18-0110-0501 PENDING RULE (NEW CHAPTER)**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-8, August 3, 2005, pages 278 through 284.](#)

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.

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 18-0110-0501

*Subsection 014.03*

**014. FIDUCIARY FUND ACCOUNT.**

**01. Payable to an Insurer.** Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to an insurer as described in Subsection 010.02.d. shall be remitted to the insurer within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, then within twenty one (21) days of receipt. (1-1-06)T

**02. Payable to a Policyholder.** Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to a policyholder or claimant as described in Subsection 010.02.c. shall be remitted to the policyholder or claimant within fourteen (14) days of receipt or as required by the terms of the policy of insurance, the insurer, or applicable law. (1-1-06)T

**03. All Other Fiduciary Funds.** All other fiduciary funds received by the producer, except as described under Subsections 014.01 *and 014.02* must be deposited into a fiduciary fund account according to the following schedule: ~~(1-1-06)T( )~~

**IDAPA 18 - DEPARTMENT OF INSURANCE**

**18.01.18 - OPEN LINES FOR EXPORT - SURPLUS LINES**

**DOCKET NO. 18-0118-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 41-211 and 41-1216 of the 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.

At the request of the Idaho Surplus Lines Association, the Department is making changes to the listing of lines of insurance that are considered to be "open lines" for purposes of treatment as surplus lines insurance. The insurance lines included in this listing represent lines of insurance for which there appears to be no reasonable or adequate market among insurers authorized to do business in this state. The Department is also making some technical changes to the rule to replace outdated or unnecessary wording.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 285 through 294.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Shad Priest at (208) 334-4250.

DATED this 9th day of November, 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

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**DOCKET NO. 18-0118-0501 - PENDING RULE**

**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 05-8, August 3, 2005, pages 285 through 294.](#)**

**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 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 - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211 and Chapter 44, Title 41, Idaho Code, and "The Medicare Prescription Drug, Improvement, and Modernization Act of 2003" (Public Law No. 108-73).

**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 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. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2005 Idaho Administrative Bulletin, Vol. 05-7, pages 22 through 53.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Joan Krosch at (208) 334-4250.

DATED this 9th day of November, 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

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#### DOCKET NO. 18-0154-0501 - PENDING RULE

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

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-7, July 6, 2005, pages 22 through 53.**

**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 18 - DEPARTMENT OF INSURANCE

### 18.01.73 - RULE TO IMPLEMENT THE INDIVIDUAL HEALTH INSURANCE AVAILABILITY ACT PLAN DESIGN

DOCKET NO. 18-0173-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 41-211 and 41-5511(4), Idaho Code.

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

Senate Bill 1198 amended Section 41-5511(4), Idaho Code, this year to require that the Individual High Risk Reinsurance Pool Board design a Health Savings Account (HSA) compatible health insurance plan to be available through the Idaho High Risk Reinsurance Pool Program. This rule sets forth the design of the new plan. The plan will allow persons who may not otherwise be able to obtain coverage due to health conditions to have the option of purchasing a high deductible plan coupled with a federally qualified Health Savings Account, in addition to the other types of plans available through the High Risk Pool Program.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, in response to public comments. These changes are: Section 004 of the rule has been changed to clarify that copayments will count toward out-of-pocket expense maximums and that a calendar year will be used for purposes of the out-of-pocket maximum; Section 010 of the rule has been changed to apply to all High Risk Pool plans; and Section 012 has been changed to clarify that benefit maximums for all plans are determined on a calendar year basis and to provide that pharmacy benefits for all High Risk Pool plans will be limited to a 30 day supply. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 167 through 175.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Joan Krosch at 208-334-4250.

DATED this 10th day of November, 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



DOCKET NO. 18-0173-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-9, September 7, 2005, pages 167 through 175.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 18-0173-0501

*Subsections 004.04 and 004.06*

**004. DEFINITIONS.**

For the purposes of this Rule, the following terms will be used as defined below:

(6-30-95)

**04. Copayment.** Copayment is a specified charge that must be paid each time care is received of a particular type or in a designated setting. The instances in which a copayment will be required are specified in the schedule of benefits. The copayments must be paid before any other payment will be made under the policy. The copayment will not count toward any deductible or out-of-pocket expense required under the policy, with the exception of the HSA Compatible Plan where the copayment will count toward the out-of-pocket expense maximum.  
(8-3-05)F( )

**06. Out-of-Pocket Expense Maximum.** Out-of-pocket expense maximum is the maximum medical expense that an insured is obligated to pay, which includes coinsurance as defined in the schedule of benefits. Under the Basic, Standard, and Catastrophic A and B health benefit plans, the out-of-pocket expense maximum does not include deductibles, copayments, pharmacy expenses, expenses for non-covered services and supplies, and charges in excess of the eligible expense. After the out-of-pocket expense maximum has been reached, covered services will be provided at one hundred percent (100%) except for specific deductibles, copayments, pharmacy benefits, non-covered services and supplies, and charges in excess of the eligible expense. The HSA annual Compatible Plan calendar year out-of-pocket expense maximum, subject to any policy limitations, or ineligible out-of-pocket expenses, includes deductibles, copayments, and coinsurance including pharmacy expenses. After the HSA Compatible Plan out-of-pocket expense maximum has been reached, covered services will be provided at one hundred percent (100%) with the exception of services, supplies, and charges in excess of the eligible expense.  
(8-3-05)F( )

*Section 010 (Entire Section)*

**010. COORDINATION OF BENEFITS.**

Coordination of Benefits shall be utilized on the Individual ~~basic, standard, and catastrophic A, catastrophic B plans, and HSA compatible benefit~~ High Risk Reinsurance Pool Plans based upon IDAPA 18.01.74, "Coordination of Benefits".  
(8-3-05)F( )

**Section 012 (Entire Section)**

**012. BENEFITS.**

Based on the provisions of Section 41-5511, Idaho Code, the Guaranteed Issue Schedule of Benefits Attachments for Basic Benefit Plan, Standard Benefit Plan, Catastrophic "A" Benefit Plan, and Catastrophic "B" Benefit Plan have been replaced by the new Idaho Individual High-Risk Plan Designs, as follows: (3-15-02)

<b>BASIC BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas - Lifetime Benefit Maximum per Carrier</b>	\$500,000
Preventive Services - <b>Benefit Area "A" Annual Calendar Year</b> Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
Benefit Areas B, C, D, E, F Calendar Year Deductible - Individual Benefit Percentage Coinsurance Percentage Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$500 50% 50% \$20,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C" Lifetime Maximum Benefit</b>	\$150,000
Skilled Nursing Facility - <b>Benefit Area "C" Annual Calendar Year</b> Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> <i>Annual Calendar Year</i> Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined <i>Annual Calendar Year</i> Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D" Annual Calendar Year</b> Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E" Annual Calendar Year</b> Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined <i>Annual Calendar Year</i> Benefit Maximum	\$5,000

<b>BASIC BENEFIT PLAN</b>	
Pharmacy - <b>Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$250
Benefit Percentage	50%
Coinsurance Percentage	
Does not apply to Out-of-Pocket Expense limit	50%
<i>Benefits are limited to a thirty (30) day supply</i>	

(3-15-02)( )

<b>STANDARD BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas - Lifetime Benefit Maximum per Carrier</b>	\$1,000,000
Preventive Services - <b>Benefit Area "A" Annual Calendar Year</b> Benefit Maximum	
Subject to Deductible and Coinsurance	\$200
Mammography benefits are not limited to the preventive services benefit	
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$1,000
Benefit Percentage	70%
Coinsurance Percentage	30%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$10,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C" Lifetime Maximum Benefit</b>	\$150,000
Skilled Nursing Facility - <b>Benefit Area "C" Annual Calendar Year</b> Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> <i>Annual Calendar Year</i> Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined <i>Annual Calendar Year</i> Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D" Annual Calendar Year</b> Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E" Annual Calendar Year</b> Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$10,000

<b>STANDARD BENEFIT PLAN</b>	
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
<b>Pharmacy - Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$250
Benefit Percentage	50%
Coinsurance Percentage	
Does not apply to Out-of-Pocket Expense limit <i>Benefits are limited to a thirty (30) day supply</i>	50%

(3-15-02)( )

<b>CATASTROPHIC "A" BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas</b> - Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> <i>Annual Calendar Year</i> Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$2,000
Benefit Percentage	70%
Coinsurance Percentage	30%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$10,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	\$150,000
Skilled Nursing Facility - <b>Benefit Area "C"</b> <i>Annual Calendar Year</i> Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> <i>Annual Calendar Year</i> Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined <i>Annual Calendar Year</i> Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$5,000

<b>CATASTROPHIC "A" BENEFIT PLAN</b>	
Ambulance Service - <b>Benefit Area "E"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
<b>Pharmacy - Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$500
Benefit Percentage	50%
Coinsurance Percentage Does not apply to Out-of-Pocket Expense limit <i>Benefits are limited to a thirty (30) day supply</i>	50%

(3-15-02)( )

<b>CATASTROPHIC "B" BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas</b> - Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> <i>Annual Calendar Year</i> Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas B, C, D, E, F</b>	
Calendar Year Deductible - Individual	\$5,000
Benefit Percentage	80%
Coinsurance Percentage	20%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	\$10,000
Normal Maternity Benefit Deductible - <b>Benefit Area "B"</b> Not applicable to involuntary complications of pregnancy	\$5,000
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	\$150,000
Skilled Nursing Facility - <b>Benefit Area "C"</b> <i>Annual Calendar Year</i> Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> <i>Annual Calendar Year</i> Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined <i>Annual Calendar Year</i> Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$5,000

<b>CATASTROPHIC "B" BENEFIT PLAN</b>	
Hospice Care - <b>Benefit Area "D"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> <i>Annual Calendar Year</i> Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined <i>Annual Calendar Year</i> Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b>	
Calendar Year Pharmaceutical Deductible - Individual	\$500
Benefit Percentage	50%
Coinsurance Percentage	
Does not apply to Out-of-Pocket Expense limit <i>Benefits are limited to a thirty (30) day supply</i>	50%

(3-15-02)( )

<b>HSA - COMPATIBLE BENEFIT PLAN</b>	
<b>Schedule of Benefits</b>	
<b>All Benefit Areas -</b> Lifetime Benefit Maximum per Carrier	\$1,000,000
Preventive Services - <b>Benefit Area "A"</b> <i>Annual Calendar Year</i> Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	\$200
<b>Benefit Areas C, D, E, F, G</b>	
Calendar Year Deductible - Individual	\$3,000
Family	\$6,000
Benefit Percentage	60%
Coinsurance Percentage	40%
Individual Out-of-Pocket Expense Maximum including Deductible or copayments, and coinsurance	\$5,000
Family Out-of-Pocket Expense Maximum	\$10,000
Maternity Benefit - <b>Benefit Area "B"</b> Not available under the HSA Compatible Benefit Plan <i>Benefits are provided for involuntary complications of pregnancy</i>	Not Covered
Organ Transplant - <b>Benefit Area "C"</b> Lifetime Maximum Benefit	\$150,000

Skilled Nursing Facility - <b>Benefit Area "C"</b> <del>Annual</del> <u>Calendar Year</u> Benefit Maximum	45 days
Rehabilitation Therapy - <b>Benefit Area "C"</b> <del>Annual</del> <u>Calendar Year</u> Inpatient Benefit Maximum	\$25,000
Rehabilitation Therapy - <b>Benefit Area "D"</b> Combined <del>Annual</del> <u>Calendar Year</u> Outpatient Benefit Maximum	\$2,000
Home Health Care Benefits - <b>Benefit Area "D"</b> <del>Annual</del> <u>Calendar Year</u> Benefit Maximum	\$5,000
Hospice Care - <b>Benefit Area "D"</b> <del>Annual</del> <u>Calendar Year</u> Benefit Maximum	\$5,000
Ambulance Service - <b>Benefit Area "E"</b> <del>Annual</del> <u>Calendar Year</u> Benefit Maximum	\$2,000
Durable Medical Equipment - <b>Benefit Area "E"</b> <del>Annual</del> <u>Calendar Year</u> Benefit Maximum	\$10,000
Psychiatric and Substance Abuse Services - <b>Benefit Area "F"</b> Covered benefit as an inpatient or outpatient combined <del>Annual</del> <u>Calendar Year</u> Benefit Maximum	\$5,000
Pharmacy - <b>Benefit Area "G"</b> Calendar Year Pharmaceutical <u>Benefit Maximum</u> <del>Subject to Deductible and Coinsurance</del> <u>Benefits are limited to a thirty (30) day supply</u>	\$6,000

(8-3-05)F( )

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.02.01 - RULES PERTAINING TO THE FOREST PRACTICES ACT

DOCKET NO. 20-0201-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 58-104, Idaho Code.

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

The pending rules are being made upon the recommendation of the Idaho Forest Practices Act Advisory Committee and public comments received during public hearings and the public comment period. The public comments received were supportive of the proposed rules and contained no substantive changes. They did recommend some edits to help clarify the rules. The Idaho Forest Practices Act Advisory Committee incorporated those recommendations to help clarify rule intent.

The pending rule changes are based upon the 2000 and 2004 Forest Practices Interagency Audit findings. Changes include: amending the stream protection rules pertaining to shade, large organic debris and slash removal from streams; clarifying the rules pertaining to stream crossings; and reuse of existing roads within stream protection zones. New language within the rule is proposed for prescribed burning within stream protection zones.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 190 through 205.

**FISCAL IMPACT:** There is no impact to the State general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Craig Foss, Chief - Bureau of Forestry Assistance at (208) 769-1525.

DATED this 15th day of November, 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



DOCKET NO. 20-0201-0501 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-9, September 7, 2005, pages 190 through 205.](#)

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.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0201-0501

**Section 002**

**002. WRITTEN INTERPRETATIONS.**

*The board does not rely on any written interpretive statements concerning these rules. Pursuant to Idaho Code Section 67-5201(19)(b)(iv), the Department maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals are available for public inspection and copying at the Idaho Department of Lands, 954 West Jefferson Street, Boise, Idaho 83702.* (7-1-96)(\_\_\_\_)

**Subsection 010.09**

**010. DEFINITIONS.**

Unless otherwise required by context as used in these rules:

(10-14-75)

**09. Clear Cut.** A harvest *method* where trees are removed and the residual stocking is below the minimum stocking levels of Subsection 050.04. (\_\_\_\_)

**Subsections 030.07.e.iv., 030.07.e.v., 030.07.e.viii., 030.07.f., 030.07.f.i., and 030.08.d.**

**030. TIMBER HARVESTING.**

**07. Stream Protection.** During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

**e.** Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

i. Leave hardwood trees, shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (10-14-75)

ii. Leave seventy-five percent (75%) of the current shade over the Class I streams. Limit re-entry until shade recovers. (7-1-96)( )

iii. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are not destroyed maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35. (7-1-96)( )

iv. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. ( )

v. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06. ( )

viii. As an alternative to obtain a variance from the standing tree and shade requirements, the operator may notify the department that must develop a site specific riparian management prescription is requested and submit it to the department for approval. The department and operator may jointly develop a plan upon consideration of prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will meet achieve the objective of these rules. (3-13-90)( )

f. Direct ignition of prescribed burns will be limited to hand piles within stream protection zones (SPZ), all other direct ignitions shall occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. ( )

i. Hand piles shall be at least five (5) feet from the ordinary high water-mark of streams. ( )

**08. Maintenance of Productivity and Related Values.** Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)

d. Whenever practical, as determined by the department, plan eClear cutting operations within a single ownership shall be planned so that adequate wildlife escape cover (e.g. topography, vegetation, stream protection zones, etc.) is available within one-quarter (1/4) mile. (10-14-75)( )

### **Subsections 040.02.g. and 040.04.d.**

## **040. ROAD CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE.**

**02. Road Specifications and Plans.** Road specifications and plans shall be consistent with good safety practices. Plan each road to the minimum use standards adapted to the terrain and soil materials to minimize disturbances and damage to forest productivity, water quality, fish, and wildlife habitat. (4-5-00)

**fg.** Stream crossings, including fords, shall be minimum in number and planned and installed in compliance with the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and with culvert sizing requirements of Subsection 040.02.e. Fords are an acceptable stream crossing structure on small, shallow streams with flat, less than four percent (4%) gradients. Fords should cross the stream at right angles and ensure fish passage.

Approaches shall be adequately cross-drained and rocked for at least seventy-five (75) feet. During times of salmonid spawning and egg incubation or to protect active domestic water diversions, use shall be limited to low water, dry, or frozen conditions and hauling or equipment crossing trips limited to minimize sediment delivery to streams.

~~(4-5-00)~~( )

**04. Road Maintenance.** Conduct regular preventive maintenance operations to minimize disturbance and damage to forest productivity, water quality, and fish and wildlife habitat. (4-5-00)

**d. Incidental Haul Road.** An incidental haul road is a multi-use road (residential traffic; its primary purpose is other than forest practices) that has log haul during active harvest activities. Active road maintenance requirements apply. Once active road maintenance is completed, no other maintenance is required under the Idaho Forest Practices Act (FPA). ( )

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.02 - RULES GOVERNING EXPLORATION AND SURFACE MINING IN IDAHO

#### DOCKET NO. 20-0302-0502

#### NOTICE OF RULEMAKING - ADOPTION OF 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 Idaho Code Section 67-5224(5)(c) 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 67-5221(1), Idaho Code, notice is hereby given that the State Board of Land Commissioners has adopted a pending rule. The action is authorized pursuant to Idaho Code Section 58-104.

**DESCRIPTIVE SUMMARY:** The Idaho Department of Lands (IDL) conducted negotiated rulemaking to promulgate temporary rules pertaining to permanent closure of cyanidation facilities permitted to operate in Idaho and performance bond requirements for permanent closure, as required to implement the provisions of Senate Bill 1169. SB 1169 amended Idaho Code Title 47, Chapter 15. The amendments contained in SB 1169 require IDL to review and approve permanent closure plans for cyanidation facilities, and to establish permanent closure bond requirements. SB 1169 directed IDL and the Department of Environmental Quality (DEQ) to promulgate temporary rules by August 1, 2005. To ensure consistency among IDL's and DEQ's rules regarding permanent closure, IDL conducted the negotiated rulemaking in coordination with DEQ.

In conjunction with members of the regulated community and other interested parties, IDL initiated rulemaking and negotiated temporary/proposed rules to establish rules pertaining to permanent closure of cyanidation facilities and performance bond requirements for permanent closure plans. The issues addressed in the temporary rules include, but are not limited to, inclusion of definitions pertaining to the operation and permanent closure of cyanidation facilities, application and performance bond requirements for permanent closure of cyanidation facilities, application fees, and provisions for approving or rejecting an application. The State Board of Land Commissioners ("Board") adopted the temporary rule at its regular meeting on July 12, 2005. The Notice of Rulemaking - Temporary Rule was published in the Idaho Administrative Bulletin, September 7, 2005, Volume 05-9, pages 206 through 234.

The issues addressed in the pending rule consist of the negotiated temporary rule text, which is the substantive content of the pending rule, and other, less substantive changes to IDL's "Rules Governing Exploration and Surface Mining in Idaho," including, but not limited to, miscellaneous technical corrections; correction of internal citation cross-references; clarification and/or simplification of certain current rule language; deletion of redundant text; deletion of language that unnecessarily repeats statutory language and replacing that language with appropriate citations to Idaho Code.

The Notice of Rulemaking - Proposed Rulemaking (Fee Rule) was published in the Idaho Administrative Bulletin on October 5, 2005, Vol. 05-10, pages 377 through 420. After consideration of public comments, the Board adopted the pending rule on November 15, 2005. The pending rule will become final upon the conclusion of the 2006 session of the Idaho Legislature. The pending rule text is in legislative format. Language IDL proposes to add is underlined. Language IDL proposes the delete is struck out.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 377 through 420.

**FEE SUMMARY:** The following is a specific description of the fees being imposed by these rules.

Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fees being imposed are justified and necessary to protect public health, safety, and welfare. Amendments to Section 47-1506(g), Idaho Code, authorized the Board to require a reasonable fee for reviewing and approving a permanent closure plan; the fee may include the cost to employ a qualified independent party to verify the accuracy of the cost estimate to complete permanent closure. IDL lacks the specialized training and expertise necessary to effectively perform these functions. IDL will therefore seek assistance from the DEQ and/or qualified consultants to provide the expertise necessary for permanent

closure plan review. These consultations will be necessary to ensure that appropriate measures are in place, prior to approval of a plan, to protect public health, safety, and welfare.

The pending rule will require an operator of a cyanidation facility to pay an application processing and review fee and a permanent closure cost estimate verification fee. The minimum processing and review fee will be \$5,000 or, upon agreement between the department and the applicant, a sum equal to the department's estimated reasonable costs to review a permanent closure application if greater than \$5,000. The permanent closure cost estimate verification fee will be a sum equal to the reasonable estimated costs for a qualified independent party to review a closure cost estimate provided by a cyanidation facility operator.

The application fees apply only to applications for permanent closure of cyanidation facilities; operators engaged in surface mining operations are not required to pay an application fee.

**FISCAL IMPACT:** No negative impact occurs from this rulemaking; this provision is not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning the pending rule, contact Eric Wilson at (208)334-3488, ewilson@idl.state.id.us.

DATED this 16th day of November, 2005.

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

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**DOCKET NO. 20-0302-0502**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 377 through 420.**

**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.**

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 20-0302-0502**

***Subsections 001.02, 001.04.c., 001.05.a.***

001. TITLE AND SCOPE.

02. Purpose. These rules are intended to provide for the protection of public health, safety, and welfare, by ensuring that all the lands within the state disturbed by exploration and surface mining operations are properly reclaimed and ensuring the proper permanent closure of cyanidation facilities *and thereby* conserve natural resources; aid in the protection of wildlife, domestic animals, and aquatic resources; and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set forth in Executive Order No. 88-23 as it pertains to exploration and surface mining operations and cyanidation facilities operating in the state. These rules are not intended to require reclamation or permanent closure activities in addition to those required by the chapter. ( )

034. Other Laws. Operators engaged in ~~Exploration, operations and~~ surface mining operations, and operation of a cyanidation facility shall comply with all applicable laws and rules ~~and regulations and laws~~ of the state of Idaho including, but not limited to the following: ~~(11-1-89)~~( )

b.c. Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ *as defined in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation"*. ~~(11-1-89)~~( )

045. Applicability. These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, surface mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership, with the following exceptions: ~~(7-1-93)~~( )

a. These rules apply to surface mining operations or exploration operations conducted on all lands within the state, regardless of ownership, commenced after the effective date of these rules. ~~Provided further that~~ ~~These rules~~ shall in no way affect, alter, or modify the terms or conditions of any approved reclamation plan or ~~previously~~ approved amendment thereto; or a performance bond for reclamation obtained prior to January 1, 1997. If a material change ~~in circumstances~~ arises and is regulated in accordance with Subsection 090.01, then the operator shall submit a supplemental reclamation plan. ~~All public or governmental agencies who extract minerals to be used by or for the benefit of such agency must comply with these rules.~~ ~~(7-1-98)~~( )

**Section 002**

**002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.**

*The department maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands, 954 West Jefferson Street, Boise, Idaho 83720.* ( )

**Section 005**

**005. INCLUSIVE GENDER**

For all sections and subsections of these rules, the terms and references used in the masculine *sense* include the feminine *sense* and vice versa, as appropriate. ( )

**Subsections 010.20.b.i. through iii., 010.22, 010.34, 010.39, 010.53, and 010.54**

010. DEFINITIONS.

~~1520.~~ Material Change. ( )

- b.** For cyanidation facilities, a change which causes one (1) of the following to occur: ( )
- i.** A substantial adverse effect to the geotechnical stability of the cyanidation facilities: ( )
- ii.** The need for a substantial change in the water management plan. ( )
- iii.** ~~A significant increase in~~ Increases in overall estimated permanent closure costs by more than fifteen percent (15%). ( )

**22.** Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria. ( )

**34.** Permanent Closure Plan. A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. ( )

**39.** Post Closure. The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. ( )

**53.** Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. ( )

**54.** Weak Acid Dissociable (WAD) Cyanide. The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN<sup>-</sup> I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. ( )

**Subsections 070.04.a. and 070.05.b.**

**070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.**

**04.** Reclamation Plan Requirements ~~for Reclamation Plan.~~ A ~~Reclamation plan~~ must ~~be submitted in map and narrative form and~~ include all of the information required under Subsection 069.05 and the following additional information: (H-1-89)( )

**ea.** The ~~A~~ description of the planned reclamation of tailings or sediment ponds; and (H-1-89)( )

**05.** Operating Plan Requirements ~~for Operating Plan.~~ A complete operating plan shall consist of: (7-1-98)( )

~~gb.~~ *If an operator proposes to utilize Additional information regarding coarse and durable rock armor, if any, is proposed to be used for reclamation of mine facilities, ~~the~~ director may, after considering the type, size, and potential environmental impact of the facility, require the operator ~~to verify the quantities, size, class, and durability of the materials which will be used for final reclamation and armoring. The operator may also be required to specify their plans to schedule, handle, and/or stockpile the coarse and durable materials to ensure that adequate quantities of these materials are available during reclamation.~~ to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following:* (7-1-98)(\_\_\_\_)

**Subsection 071.02.k.ii. and 070.05.a.i.**

**071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.**

**02. Permanent Closure Plan Requirements.** A permanent closure plan shall: (\_\_\_\_)

**k.** Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: (\_\_\_\_)

**i.** Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule: (\_\_\_\_)

**ii.** Assume that permanent closure activities will be completed by a third party whose services are contracted for by the board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: (\_\_\_\_)

**05. Application fee.** The application fee shall consist of two (2) parts: (\_\_\_\_)

**a.** Processing and review fee. (\_\_\_\_)

**i.** The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the department's review; the assumptions on which the department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the department expects to incur, and indirect expenses equal to ten percent (10%) of the department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. (\_\_\_\_)

~~072.~~ -- 079. (RESERVED).

**Subsection 080.03, 080.03a.i., and 080.05**

**080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION TO PERFORM SURFACE MINING, RECLAMATION, AND ORE PROCESSING USING CYANIDE.**

**043.** Decision on ~~Application in Sixty Days~~ Reclamation Plans. The director must notify the applicant in writing of approval or denial within sixty (60) days of receipt of the application, unless prevented from inspecting the proposed surface mining site as provided in Subsection 080.10. If the director fails to deliver a notice of approval or denial within this time period, the application shall be deemed to comply with these rules, and the applicant may proceed, with bonding requirements under Section 120, as though approval for the application had been received. The director shall review a new reclamation plan or an amended or supplemental reclamation plan pursuant to Sections 47-1507 and 47-1508, Idaho Code. (7-1-98)(\_\_\_\_)



~~05a.~~ Approval. ~~Following review of an application for approval of a new reclamation plan, or for amendment of an existing plan, the director shall approve the application if it meets the requirements of the rules, the act, and other pertinent laws and regulations, and shall deliver written notice of the decision to the operator. Operations may then commence after the bonding requirements of Section 120 are met.~~ (H-1-89)(\_\_\_\_)

~~i.~~ Within sixty (60) days of receipt of an application that complies with Subsections 069 and 070 of these rules, the department shall provide written notice to the applicant that the reclamation plan or any amendment(s) or supplementary plan(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the reclamation bond required; or (\_\_\_\_)

~~075.~~ **Nonpoint Source Pollution.** When the director determines, after consultation with the DEQ, that there is a reasonable potential for nonpoint source pollution of adjacent surface and ground waters, the director shall ~~request, and require~~ the operator ~~shall to~~ provide ~~to the director,~~ baseline preproject surface and ground water monitoring information, and furnish ~~ongoing~~ additional monitoring data during the life of the project. This provision shall not require any additional baseline preproject ~~surface water~~ monitoring information or ongoing monitoring data where such ~~information or~~ data is already required to be provided ~~pursuant to~~ under any federal or state law and is available to the director. (H-1-89)(\_\_\_\_)

### Subsection 120.04

#### 120. PERFORMANCE BOND REQUIREMENTS FOR SURFACE MINING.

~~04.~~ **Annual Bond Review.** At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A ~~correlative~~ commensurate increase in the bond will be required for an increase in affected acreage. Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been filed with the department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (H-1-89)(\_\_\_\_)

### Subsection 121.06.c.

#### 121. PERFORMANCE BOND REQUIREMENTS FOR CYANIDATION FACILITIES.

~~06.~~ **Bond Release.** (\_\_\_\_)

~~c.~~ Upon the director's determination that all activities specified in the permanent closure plan have been successfully completed, the department will, in accordance with Section 47-1512(i), Idaho Code, release the balance remaining after partial bond releases. (\_\_\_\_)

### Section 140, Subsections 140.02.a. through 140.02.g., 140.05.a., 140.09.c.iv., and 140.09.d.

#### 140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION ~~INTRODUCTION~~ AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.

*The use of the word "shall" with respect to any practice, act, or result specified in this rule means that employment of such practice, doing of such act, or the attainment of such result is mandated by these rules. The use of the word "should" with respect to any act or result specified in these rules means that the utilization of such practice, the doing of such act, or the attainment of such result is advisable and will constitute compliance with these rules, but*

~~does not mandate utilization of such practice, the doing of such act, or the attainment of such result if other acceptable practices, acts, or results are available.~~ Enumeration of a practice; ~~or act, or result~~ in Section 140 shall not be construed to require its specific inclusion in a reclamation ~~plan submitted for approval under Subsection 070.04~~ or permanent closure plan. (11-1-89)( )

**02. Sediment Control.** In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: ( )

- ~~ia.~~ Keeping the disturbed area to a minimum at any given time through progressive reclamation; ( )
- ~~iib.~~ Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ( )
- ~~iiic.~~ Retaining sediment within the disturbed area; ( )
- ~~iivd.~~ Diverting surface runoff around the disturbed area; ( )
- ~~vle.~~ Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; ( )
- ~~vif.~~ Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and ( )
- ~~viiig.~~ Use of adequate sediment ponds, with or without chemical treatment. ( )

**045. Roads.** (11-1-89)

~~a.~~ Roads shall be constructed to minimize soil erosion. ~~Such construction, which~~ may require, ~~but is not limited to,~~ restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (11-1-89)( )

**089. Tailings Impoundments.** All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life. (11-1-89)

- ~~c.~~ Abandonment and Decommissioning of Tailings Impoundments; (11-1-89)( )
- ~~iv.~~ Reclamation; ~~Following~~ After implementing the required dewatering, detoxification, and surface drainage control measures ~~operations,~~ the reservoir and impounding structure shall be ~~retopped~~ covered with ~~stockpiled~~ topsoils or other ~~soils~~ material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the department, physical or chemical methods ~~of for~~ erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.101, unless ~~otherwise specified in the reclamation plan otherwise.~~ (11-1-89)( )

~~d.~~ Tailings When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs

after ~~abandonment of the mining operation, final reclamation or permanent closure~~ shall be required ~~at the time the operator requests termination of the reclamation plan~~, to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (H-1-89)(\_\_\_\_)

### **Subsection 150.01**

#### **150. TERMINATION OF A PLAN.**

**01. Terminate Upon Request of the Operator.** A reclamation plan shall terminate upon request of the operator, upon ~~completion of inspection by the director, and a determination that~~ all reclamation activity has been completed to the standards specified in the plan, and ~~final inspection and following final~~ approval by the director. Upon termination, the director will release the remaining bond, notify the operator, and any authority to ~~operate under the plan~~ conduct any surface mining operations under the subject plan shall terminate. (H-1-89)(\_\_\_\_)

## **IDAPA 22 - BOARD OF MEDICINE**

### **22.01.05 - RULES GOVERNING LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS**

**DOCKET NO. 22-0105-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2206; 54-2207; 54-2213; 54-2214; 54-2215; 54-2217; 54-2218; 54-2219; and 54-2220, 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 changes are necessary to carry out statutory provisions of House Bills 191 and 192 as adopted by the 2005 Legislature and changes in the "Physical Therapy Practice Act", Title 54, Chapter 22, Idaho Code. The pending rule changes amend the existing language relating to the practice of physical therapy to define the term "physical therapy licensure board"; remove language referencing an advisory committee; provide for a physical therapy licensure board; provide for continuing education requirements for renewal of active licenses; require proof of completion of continuing education requirements; and make other changes to update and clarify rules.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 433 through 445.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

DATED this 16th day of November, 2005.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
Physical Address: 1755 Westgate Drive, Suite 140, Boise, Idaho 83704  
Mailing Address: PO Box 83720, Boise, Idaho 83720-0058  
Telephone (208) 327-7000, Fax (208) 327-7005

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#### **DOCKET NO. 22-0105-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 433 through 445.**

**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 22 - BOARD OF MEDICINE

### 22.01.11 - RULES FOR THE LICENSURE OF RESPIRATORY THERAPISTS AND PERMITTING OF POLYSOMNOGRAPHERS IN IDAHO

DOCKET NO. 22-0111-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-4316, 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 changes are necessary to carry out statutory provisions of Section 54-4309, Idaho Code, as adopted by the 1991 Legislature to amend existing language relating to the proration of fees charged in conjunction with an initial application for a license or temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code, and make other changes to update and clarify rules.

Pursuant to Section 67-5228, Idaho Code, a clerical correction was made to the rule deleting three words in Subsection 034.04 and is being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 446 through 452.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

DATED this 16th day of November, 2005.

Nancy M. Kerr  
Executive Director  
Idaho State Board of Medicine

Physical Address: 1755 Westgate Drive, Suite 140  
Boise, Idaho 83704  
Mailing Address: PO Box 83720  
Boise, Idaho 83720-0058

Telephone (208) 327-7000  
Fax (208) 327-7005

**DOCKET NO. 22-0111-0501 - PENDING RULE**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 446 through 452.**

**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.**

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 22-0111-0501**

***Subsection 034.04***

**034. LICENSE EXPIRATION AND RENEWAL.**

All licenses shall be issued for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the Board and shall become invalid on the expiration date printed on the face of the certificate of the license unless renewed. The failure of any person to renew his renewable license shall not deprive such person of the right to renewal, except as provided for herein and Section 54-4312, Idaho Code. The Board shall collect a fee for each renewal year of a license. The Board may, in its discretion, prorate the application fees charged in conjunction with an application for initial licensure if such license shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code.

~~(3-16-04)~~(\_\_\_\_)

**04. Continuing Education.** Prior to renewal each applicant for renewal, reinstatement or reapplication, shall submit evidence of successfully completing no less than twelve (12) clock hours per year of continuing education acceptable to the Board. Continuing education ~~for licensure renewal~~ must be germane to the practice or performance of respiratory care. Appropriate continuing professional education activities include but are not limited to, the following:

~~(2-23-94)~~(\_\_\_\_)

## **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.01.01 - RULES OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS**

**DOCKET NO. 24-0101-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-312, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 453 through 456.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-0101-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 453 through 456.](#)**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS**

**DOCKET NO. 24-0301-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-707, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 457 through 460.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-0301-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 457 through 460.](#)**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS**

**DOCKET NO. 24-0501-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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(s) 54-2406, 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 October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 461 through 467.

**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 54-2407, Idaho Code. Reduces endorsement, renewal and original license fees from \$60 to \$45.

**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 impact on general funds. This change would reduce the cash balance in dedicated funds for the Board by a total of approximately \$43,000 per year.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233 / (208) 334-3945 fax

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#### **DOCKET NO. 24-0501-0501 - PENDING FEE RULE**

**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 05-10, October 5, 2005, pages 461 through 467.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.06.01 - RULES GOVERNING THE IDAHO BOARD OF HEARING AID DEALERS AND FITTERS**

#### **DOCKET NO. 24-0601-0501 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-2914, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 468.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-0601-0501 - PENDING RULE (CHAPTER REPEAL)**

**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 05-10, October 5, 2005, page 468.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS**

**DOCKET NO. 24-0801-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-1107, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 469 through 475.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-0801-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 469 through 478.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.11.01 - RULES OF THE STATE BOARD OF PODIATRY**

**DOCKET NO. 24-1101-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-605, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 476 through 479.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-1101-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 476 through 479.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**

**DOCKET NO. 24-1401-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-3204, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 480 through 483.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-1401-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 480 through 483.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES

### 24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0501

#### NOTICE OF RULEMAKING - ADOPTION OF 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(s) 54-3404, 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 October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 484 through 491.

**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 54-3411, Idaho Code. The \$25 administration fee for the examination could have a positive impact of approximately \$2000 on the dedicated funds of the Board. This figure is based on the number of licensees from this last fiscal year per section 54-3411, Idaho Code.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233 / (208) 334-3945 fax

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#### DOCKET NO. 24-1501-0501 - PENDING FEE RULE

**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 05-10, October 5, 2005, pages 484 through 491.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD**

**DOCKET NO. 24-1801-0502**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-4106, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 493 through 504.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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#### **DOCKET NO. 24-1801-0502 - PENDING RULE**

**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 05-10, October 5, 2005, pages 493 through 504.](#)**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.19.01 - RULES OF THE BOARD OF RESIDENTIAL CARE FACILITY ADMINISTRATORS**

**DOCKET NO. 24-1901-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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(s) 54-4205, 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 October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 505 through 507.

**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 54-4205, Idaho Code. Increases annual renewal fee from \$75 to \$100.

**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 impact on general funds. There is an impact on dedicated funds. The change will increase the boards revenue by approximately \$8275.00 at \$25.00 times the 331 licensed administrators per Section 54-4205, Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Ste. 220  
Boise, ID 83702  
(208) 334-3233 / (208) 334-3945 fax

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#### **DOCKET NO. 24-1901-0501 - PENDING FEE RULE**

**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 05-10, October 5, 2005, pages 505 through 507.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.21.01 - RULES GOVERNING THE IDAHO STATE CONTRACTORS BOARD**

**DOCKET NO. 24-2101-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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 Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-5206, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 508 through 510.

**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 54-5206, Idaho Code. This is a new board and are presently in the process of receiving registration fees. Fees are as follows: Application fee - \$30; Reciprocal Fee - \$25; Renewal Fee - \$25; and Reinstatement Fee - \$25.

**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 impact on general funds. Fiscal impact on the Board of Contractors is dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Board of Contractors.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83072  
(208) 334-3233 phone / (208) 334-3945 fax

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#### **DOCKET NO. 24-2101-0501 - PENDING FEE RULE**

**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 05-10, October 5, 2005, pages 508 through 510.**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.22.01 - RULES GOVERNING THE IDAHO LIQUEFIED PETROLEUM GAS SAFETY**

**DOCKET NO. 24-2201-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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 Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections [54-5310] and 54-5110, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 511 through 516.

**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 Sections 54-5310 and 54-5110, Idaho Code. This is a new board and are presently in the process of receiving application fees. Fees are as follows: Application Fee - \$30. Individual License and Renewal Fee - \$50. Facility License and Renewal Fee - \$50. Bulk Storage Facility License and Renewal Fee - \$200. Endorsement Fee - \$50. Reinstatement Fee - \$50.

**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 impact on general funds. Fiscal impact on the Liquefied Petroleum Gas Safety Board is dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Liquefied Petroleum Gas Safety Board.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Suite 220  
Boise, ID 83072  
(208) 334-3233 phone / (208) 334-3945 fax

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#### **DOCKET NO. 24-2201-0501 - PENDING FEE RULE**

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**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 05-10, October 5, 2005, pages 511 through 516.](#)**

**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 24 - BUREAU OF OCCUPATIONAL LICENSES**

### **24.23.01 - RULES GOVERNING THE IDAHO BOARD OF SPEECH AND HEARING SERVICES LICENSURE BOARD**

**DOCKET NO. 24-2301-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF 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 Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2910, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 517 through 524.

**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 54-2910, Idaho Code. This is a new board and are presently in the process of receiving registration fees. The fees are as follows: Application fee - \$30; Original License Fee - \$100; Examination/Reexamination Fee - \$50; Provisional Permit - \$100; and Annual Renewal Fee - \$100.

**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 impact on general funds. Fiscal impact on the Speech and Hearing Services Licensure Board is dependant on the number of applications submitted to the Board. These fees are dedicated funds and used to administer the Speech and Hearing Services Licensure Board.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Ste. 220, Boise, ID 83072  
(208) 334-3233 phone / (208) 334-3945 fax

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#### **DOCKET NO. 24-2301-0501 - PENDING FEE RULE**

**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 05-10, October 5, 2005, pages 517 through 524.**

**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 26 - DEPARTMENT OF PARKS AND RECREATION

### 26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0501

#### NOTICE OF RULEMAKING - ADOPTION OF 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(s) 67-5221(1), and 67-4223(a) 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.

Certain portions of this rulemaking pertain to implementation of fee rules, most of which are closely tied to the expected activation of a new reservation system for the Idaho Department of Parks and Recreation (IDPR). In response to a legislative request to eliminate a park and facility access fee, we have reevaluated our fee structure and are recommending implementation of adjusted fees for use of our campgrounds and facilities. These new fees will have a positive impact on various dedicated funds, which in turn is expected to generally offset a projected shortfall based on the adjustment requested by the Legislature. Additionally, several rule clarifications are included that are needed to help better define operational provisions at IDPR parks and facilities.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule. Several clarifications are also included that will help to additionally explain operational guidelines for the IDPR.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 525 through 536.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 67-4223(a), Idaho Code.

26.01.20.250.01 – Primitive Campsite, \$9.00; Campsite, \$12.00; Campsite/W, \$16.00; Campsite/E, \$16.00; Campsite/W, E, \$20.00; Campsite W,E, SWR, \$22.00; Companion Campsite, site type multiplied by 2; Extra Vehicle Charge, \$7.00; Camping Cabins, \$150.00; 26.01.20.250.02 – Reservation service fees, \$10.00.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

DATED this 15th day of November, 2005.

Dean Sangrey  
Division Administrator, Operations  
Idaho Department of Parks and Recreation  
5657 Warm Springs Ave., Boise, ID 83716  
P. O. Box 83720, Boise, ID 83720-0065  
Phone: 208-334-4180 Fax: 208-334-3741

DOCKET NO. 26-0120-0501 - PENDING FEE RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 525 through 536.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 26-0120-0501

*Section 010 (Entire Section)*

**010. DEFINITIONS.**

As used in this chapter:

(1-1-94)

**01. ADA Campsites and Facilities.**

( )

**a. ADA Designated Campsites.** A reservable ADA campsite may only be reserved and occupied by a party that can provide proof of disability upon arrival. If not reserved after 6:00 p.m. and no other non-ADA designated sites of the same site type are available, the site would be available for one (1) night.

( )

**b. ADA Accessible Facilities.** IDPR offers some facilities that provide for ADA accessibility. These facilities are not managed exclusively for ADA use.

( )

**02. Board.** The Idaho Park and Recreation Board, a bipartisan, six (6) member Board, appointed by the Governor.

(3-13-97)

**023. Camper Camping Unit.** A family camping unit or a party of no more than eight (8) persons occupying one (1) camper/vehicle combination or one (1) vehicle with a maximum of two (2) tents is the combined equipment and people capacity that a site or facility will accommodate.

(3-16-04)( )

**a. Campsites.** Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, one (1) vehicle or RV, and up to two (2) tents, provided the combined equipment and people fit within the designated camping area of the site selected.

( )

**b. Facilities.** Maximum capacity limits on each facility are subject to each facility's design and size. The combined equipment and people occupying a facility must fit within the designated areas of the facility selected.

( )

**034. Camping Day.**

( )

**a. For individual and group campsites** the period between 2:00 p.m. of one (1) calendar day and 1:00 p.m. of the following calendar day.

(7-1-99)( )

**b.** For individual and group camping facilities, the period between 3:00 p.m. of one (1) calendar day and 12:00 p.m. (noon) of the following calendar day. ( )

**045. Campsite.** *Site designated for overnight camping, including camping cabins, yurts, and tepees.* (3-7-03)( )

**a.** Individual. An area within an IDPR managed campground designated for camping use by an individual camping unit or camping party. ( )

**b.** Group. An area within an IDPR managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. ( )

**c.** Facility. Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. ( )

**d.** Facility. Group. A camping structure within an IDPR managed campground or area designated for group use. ( )

**056. Day Use.** Use of any non-camping lands and/or facilities between the hours of 7:00 a.m. and 10:00 p.m. unless otherwise posted. (3-7-03)( )

**07. Day Use Fee.** A fee charged for entry to a designated area. ( )

**068. Department.** The Idaho Department of Parks and Recreation. (1-1-94)

**079. Designated Beach.** Waterfront areas designated by the park manager or designee for water-based recreation activities. The length and width of each designated beach shall be visibly *identified with signs*. (3-7-03)( )

**0810. Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. (3-7-03)

**0911. Director.** The Director and chief administrator of the Department, or the designee of the Director. (1-1-94)

**102. Dock and Boating Facility.** Floats, piers and mooring buoys owned or operated by the Department. (3-13-97)

**113. Extra Vehicle.** An additional motorized vehicle (not in tow at time of entry) without built in sleeping accommodations registered to a camp site. (3-13-97)

**14. Facilities.** ( )

**a.** Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. ( )

**b.** Group. A camping structure within an IDPR managed campground or area designated for group use. ( )

**125. Group Use.** Twenty-five (25) or more people, or any group needing special considerations or deviations from normal Department rules or activities. (1-1-94)

**136. Motorized Vehicle.** Every vehicle that is self-propelled except for vehicles moved solely by human power and motorized wheelchairs as defined in Section 49-123(g), Idaho Code. (3-7-03)

**14. Motorized Vehicle Entry Fee (MVEF).** A fee charged for a motorized vehicle to enter a designated

~~area.~~

~~(3-16-04)~~

**157. Park or Program Manager.** The person, designated by the Director, responsible for administering and supervising particular lands, facilities, and staff that are under the jurisdiction of the Department. (3-7-03)

**18. Standard Amenities.** Campsite with no serviced amenities. ( )

**19. Serviced Amenities.** Serviced campsite amenities includes water, electricity, or sewer. ( )

**1620. Primary Season.** The time of the year when the majority of use occurs at a park facility. (3-7-03)

**1721. Vessel.** Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in section 67-7003(22), Idaho Code. (3-7-03)

**1822. Vessel Length.** The distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment. (3-13-97)

### ***Subsections 150.03, 150.04, and 150.07***

#### **150. USE OF MOTORIZED VEHICLES.**

All motorized vehicles shall stay on authorized established Department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and vehicles operated within lands administered by the Department shall be licensed or certified as required under state law. The operators of all vehicles shall comply with the ~~motor vehicle entry~~ day use fee requirements, speed and traffic rules of the Department, and all other federal, state, local laws, and ordinances governing traffic on public roads. ~~(3-7-03)~~( )

**03. Motorcycle and ATV Safety Helmets.** Persons under eighteen (18) years of age shall wear a protective safety helmet when riding upon a motorcycle or an all-terrain vehicle as operator or passenger ~~within Idaho State Parks~~ as provided in Section 49-666, Idaho Code. ~~(3-7-03)~~( )

**04. Snowmobile Operation Limited.** No person shall operate a snowmobile on any regularly plowed park road unless authorized by park manager or designee. Access on non-plowed roads and trails shall only be permitted when authorized by the park manager. ~~(3-30-01)~~( )

**07. Restrictions.** The operation of motorized vehicles within a designated campground is restricted to ingress and egress to a campsite or other in-park destination by the most direct route. ~~(3-7-03)~~( )

### ***Section 200 (Entire Section)***

#### **200. CAMPING.**

**01. Occupancy.** Camping shall be permitted only in designated campsites, with a maximum of one (1) camping unit per campsite, unless the site has been designed to accommodate or has been approved by the park manager or designee for a second unit areas, or facilities. A campsite or facility will be determined occupied only after the required camping fees have been paid and registration information completed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits outlined below. ~~(3-16-04)~~( )

**02. Self Registration.** In those areas so posted, campers shall register themselves for the use of

campsites and facilities, paying the appropriate fees as provided for herein and in accordance with all posted instructions. ( )

**023. Length of Stay.** Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the Department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and “first come first served” customers. The IDPR Operations Division Administrator or designee may authorize ~~shorter or longer periods may be designated for any individual area by the park manager or designee for any individual area.~~ (3-7-03)( )

**034. Registration Required.** All camping fees must be paid and registration information completed prior to occupying a campsite or facility. Saving or holding campsites or facilities for individuals not physically present at the time of registration for “first come first served” camping is prohibited. (3-7-03)( )

**045. Condition of Campsite.** Campers shall keep their individual or group campsite or facility and other use areas clean. (3-7-03)( )

**056. Liquid Waste Disposal.** All gray water and sewage wastes shall be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (3-30-01)

**067. Motorized Equipment.** No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (7-1-93)

**078. Campsite Parking.** All ~~boats, motorcycles, motorized wheeled vehicles and trailers, rigs and motorized vehicles~~ shall fit entirely within the campsite parking ~~spur pad/area~~ provided with the assigned individual or group campsite or facility. All equipment ~~which that~~ does not fit entirely within the designated campsite parking area shall be parked at another location within the campground, or outside the campground, in an area as may be designated by the park manager or designee. If no outside parking is available, the park manager or designee may require the party to register on a second campsite, if available. (3-7-03)( )

**082. Equipment.** All camping equipment and personal belongings of a camper shall be maintained within the assigned individual or group campsite or facility perimeter. (3-13-97)( )

~~0910.~~ **Check Out.** ( )

**a. Campsite.** Campers are required to check out and leave a clean individual or group campsite by 1:00 p.m. of the day following the last paid night of camping. (7-1-99)( )

**b. Facility.** Campers are required to check out and leave a clean individual or group camping facility by 12:00 p.m. (noon) of the day following the last paid night of camping. ( )

**101. Visitors.** Individuals visiting campers shall park in designated areas, except with permission of the park manager or designee. Visitors shall conform to established day use hours and ~~motor vehicle entry~~ day use fee requirements. (3-7-03)( )

**112. Responsible Party.** The individual purchasing an individual or group campsite or facility is responsible for ~~assuring~~ ensuring compliance with the rules within this chapter. (1-1-94)( )

**123. Camping Prohibited.** ~~No camping is permitted outside designated individual or group campsites unless specifically authorized.~~ Camping in individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park manager or designee. (3-13-97)( )

### Subsection 225.04.a. and 225.06

#### 225. FEES AND SERVICES.



**04. Group Use.** (7-1-93)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall ~~have~~ obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic.  
 (~~1-1-94~~)(\_\_\_\_)

**06. Fee Collection Surcharge.** A five dollar (\$5) surcharge may be added to all established fees when the operator of a motorized vehicle or responsible party of a camping unit fails to pay required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the five dollar (\$5) surcharge will be assessed against the registered owner of the motorized vehicle or camping unit.  
 (~~3-16-04~~)(\_\_\_\_)

**Subsection 250.01, 250.03, and 250.05**

**250. FEE SCHEDULE.**

**01. Campsites.**

<b>CAMPSITE FEE TABLE</b>	
Primitive Campsite <i>(may include: table, grill, camp spur, vault toilet, no water.)</i> No amenities at site, camping area not defined	\$ <del>7</del> <u>9</u> /day
<u>Basic Standard</u> Campsite Any defined campsite, either tent pad or RV pad/area (may include: table, and/or grill, camp spur, central water, vault toilets.)	\$ <del>9</del> <u>12</u> /day
<u>Developed Serviced</u> Campsite/ W Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table, and/or grill, camp spur, central water, flush toilets.)	\$ <del>12</del> <u>16</u> /day
<u>Serviced</u> Campsite/ E Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill)	\$ <u>16</u> /day
<u>Serviced</u> Campsite/ W, E Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill)	\$ <u>20</u> /day
<u>Serviced</u> Campsite/ W, E, SWR Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill)	\$ <u>22</u> /day
<u>Deluxe Companion</u> Campsite May be any campsite type, regardless of amenities, that has greater equipment/people capacity (a developed campsite that is designed to accommodate two (2) camper units may include table and/or grill) Fee determined by actual site type.	\$ <u>22</u> /day Site type multiplied by two (2)
<u>Electric hookups at site</u>	additional \$ <u>4</u> /day

CAMPSITE FEE TABLE	
<del>Sewer hookups at site</del>	<del>additional \$2/day</del>
Use of campground showers by noncampers	\$3/person
Limited Income Discount - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of:	\$4/day
Resident Disabled Idaho Veterans - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
<u>Senior Citizen Discount – Pursuant to Section 67-4223, Idaho Code, and at the discretion of the Director, IDPR may provide, at selected under utilized locations and times, a senior citizen discount.</u>	<u>Maximum 50% of RV camping fee</u>
Extra Vehicle Charge	\$ <del>5</del> 7/day
Camping Cabins <del>and</del> ; Yurts; <del>or Teepee</del>	\$ <del>72</del> 150/night
Each additional person above the sleeping capacity of camping cabin; <del>or yurt or teepee</del>	\$12/night

(3-16-04)( )

03. ~~Motorized Vehicle Entry Day Use Fee (MVEF).~~

<del>MOTORIZED VEHICLE ENTRY DAY USE FEE (MVEF) TABLE.</del>	
Daily charge per motorized vehicle. The <del>daily MVEF day use fee</del> expires at 10:00 p.m. on date of purchase <del>unless the party is registered to camp, in which case, the daily MVEF will expire at 1 p.m. the following day or as posted</del> Overnight camping guests are exempt from this fee.	\$ 5
Daily charge per commercial motor coach (no annual pass available)	\$25
Statewide Annual State Park Passport per motorized vehicle	\$35
Disabled Idaho Resident Veterans - The <del>MVEF day use fee</del> is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Second Vehicle Annual Passport.	\$ 5

(3-16-04)( )

05. ~~Group Facility Fees. Reservation service fee, designated group campground or facility.~~

(3-13-97)( )

a. A ~~reservation non-refundable, non-transferable (from one (1) party to another)~~ service charge of twenty-five dollars (\$25) ~~shall will be charged for each reservation of a~~ assessed per designated group area or facility reserved. ~~Additional charges may~~ This fee will be imposed by ~~charged in addition to the park manager or designee depending upon the cost of providing services~~ usage fees for each group or campsite or facility. (3-7-03)( )

b. Groups using overnight facilities shall be charged three dollars (\$3) per person per night camping fees for each individual above the authorized base occupancy rate for the specific site or facility. (3-16-04)( )

c. ~~Unless other arrangements are made with the park manager or designee, all group facility use fees and any applicable deposits are required to be prepaid to confirm a group use facility reservation. Unless otherwise provided for in these rules, all use fees shall be refunded if notice of cancellation is provided not later than 2 p.m.,~~

~~local time, twenty-one (21) days prior to date of scheduled arrival. Unless otherwise provided for in these rules, during the primary season, the percent of fees refunded for cancellations made less than twenty-one (21) days prior to date of scheduled arrival will be based on the ability of the park manager or designee to register the cancelled sites to other parties.~~ (3-7-03)

~~d.~~ Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid prior to check-in. Cleaning/damage deposits shall be fully refunded if the facilities are facility is left in the same condition in which they were it was accepted. (3-7-03)( )

~~d.~~ Group use fees for day use facilities may be negotiated by the park manager or designee and will generally not fall below the cost of providing services. ( )

### Subsections 275.03 through 275.06

#### 275. CRITERIA FOR INDIVIDUAL CAMPSITE, CAMPING CABIN, AND YURT ~~AND TEPEE~~ RESERVATIONS.

~~03. Multiple Campsite and Facility Reservations. Multiple Reservations including ten (10) or more for individual campsites or facilities may be made up to eleven nine (119) months in advance of the scheduled arrival date, with the approval of the park manager or designee. One (1) person may pay all applicable fees. No more than thirty percent (30%) of the total number of campsites may be reserved before the ninety (90) day individual campsite reservation window. Multiple campsite reservation limitations are subject to destination park's campground design and capacity. Reservations may be accepted greater than nine (9) months in advance of arrival only with the approval of the Operations Division Administrator or designee.~~ (3-7-03)( )

#### 04. Reservation Modifications. (3-7-03)

~~a.~~ Individual and group campsite(s) or facilities. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). ~~This service fee will be assessed for each campsite involved.~~ With the exception of the reservation service fees as defined in Subsection 250.02, ~~all any overpaid fees paid~~ will be reimbursed at the time the reservation is modified. (3-7-03)( )

#### 05. Reservation Cancellations. ( )

~~a.~~ Individual Site or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. With the exception of the reservation service fees ~~as defined in Subsection 250.02~~, all fees paid will be reimbursed at the time the reservation is cancelled. (3-7-03)( )

~~b.~~ Designated Group Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs fewer than twenty-one (21) calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge of fifty dollars (\$50.00) will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ( )

**06. Park Manager Authority.** The park manager or designee may deny ~~a~~ entry to, or reservation of any Department unit, campsite, or facility to any individual whose prior documented behavior has violated Department rules or whose in-park activities are incompatible with the park's operation. (3-7-03)( )

### ***Subsections 300.01 and 300.03***

#### **300. RESERVING GROUP USE FACILITIES.**

**01. General.** Unless otherwise provided, designated group use facilities and areas may be reserved through the reservation system up to ~~eleven~~ nine (9) months in advance but at least two (2) days prior to the ~~first day to be reserved~~ date of arrival. ~~Individual campsites within designated group camping areas may be reserved by individual campers if they are not reserved by groups up to ninety (90) days prior to arrival.~~ (3-7-03)( )

**03. Park Manager Authority.** The park manager or designee may deny ~~a~~ entry to, or reservation of any Department unit, campsite, or facility to any group whose prior documented behavior has violated Department rules, whose in-park activities are incompatible with the park's operation, or whose in-park activity will violate Department rules. (3-7-03)( )

### ***Section 400 (Entire Section)***

#### **400. PARK CAPACITIES.**

Where applicable. Park managers may limit or deny access to an area whenever it has reached its designated capacity. Only if special arrangements for the public welfare have been made may the park manager allow that capacity to be exceeded. (1-1-94)( )

### ***Section 625 (Entire Section)***

#### **625. ADVERTISEMENTS/PROMOTIONS/DEMONSTRATIONS.**

**01. Printed Material.** Public notices, public announcements, advertisements, or other printed matter shall only be posted or distributed in a special area approved by the park manager or designee. ( )

**02. Political Advertising.** Political advertising is strictly prohibited within any lands administered by the department. (3-7-03)( )

**03. Demonstrations.** Public demonstrations are limited to areas approved by the park manager and subject to an approved permit issued after arrangements for sanitation, population density limitations, safety of persons and property, and regulation of traffic are made. ( )

## **IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

### **26.01.31 - RULES GOVERNING THE ADMINISTRATION OF IDAHO DEPARTMENT OF PARKS AND RECREATION RECREATIONAL PROGRAM GRANT FUNDS**

**DOCKET NO. 26-0131-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5221(1), and 67-4223(a) Idaho Code.

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

Chapter 31 establishes rules which govern the administration of IDPR state and federal grant funds. Periodically it is necessary, and desirable, to modify and update the rules to ensure that IDPR manages its grant programs in a consistent manner. The proposed changes consist mainly of housekeeping measures to clarify existing terminologies, remove outdated definitions, and eliminate superfluous references.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 537 through 548.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

DATED this 15th day of November, 2005.

Dean Sangrey  
Division Administrator, Operations  
Idaho Department of Parks and Recreation  
5657 Warm Springs Ave., Boise, ID 83716  
P. O. Box 83720, Boise, ID 83720-0065  
Phone: 208-334-4180 Fax: 208-334-3741

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#### **DOCKET NO. 26-0131-0501 - PENDING RULE**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 537 through 548.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 26-0131-0501

*Subsections 010.31 through 010.34*

**010. DEFINITIONS.**

As used in this chapter:

(7-1-99)

~~31. Trails Program. The subdivision of the Department responsible for administering the ORMV Program, Motorbike Program, Recreational Trails Program, Snowmobile Program, Non-Motorized Trails Program, and the Cross-Country Skiing Recreation Program.~~ (7-1-99)

~~32. Trails Program Supervisor. The staff administrator of the Trails Program.~~ (7-1-99)

~~326. Waterways Improvement Fund (WIF). That fund created by Section 57-1501, Idaho Code. These moneys may be used for the protection and promotion of safety, waterways improvements, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and personal property. No such improvements shall be constructed in any county of the state without the approval of the county waterways committee of the plan for such improvements.~~ (7-1-99)( )

~~327. Waterways Improvement Fund Grant Advisory Committee. A six (6) member committee appointed by the Board to advise the Department on matters relating to Waterways Improvement Fund grants.~~ (7-1-99)

*Section 075 (Entire Section)*

**075. ELIGIBLE APPLICANTS.**

~~Applicants eligible for recreational program fund grants are as follows:~~ Public entities as defined in Subsection 010.16, and sponsors as defined by Federal Highway Administration Recreation Trail Program Interim Guidance, are eligible to apply for and receive grants as described on Subsection 001.02 of this chapter. (7-1-99)( )

*Subsection 175.01*

**175. PROJECT TIME PERIOD.**

**01. Grant Cycle.** Applications for ORMV Fund, RV Account, WIF, *Motorbike Recreation Account (MRB), Cutthroat License Plate Fund, (CLP), Recreational Road and Bridge Fund (RRBF),* or STORE ~~projects~~ shall be considered at least once each state fiscal year (July 1 through June 30) dependant upon adequate funding availability. Applications for ~~RTFP or Boat Safety Account~~ projects shall be considered at least once each federal fiscal year (October 1 through September 30) dependent upon adequate funding availability. (7-1-99)( )

**Subsection 250.05**

**250. DISBURSEMENT OF FUNDS.**

**05. Cash Advances.** When approved for an advance grantees ~~and subgrantees~~ shall be paid in advance ~~no sooner than thirty (30) days~~ prior to project start, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the grantee ~~or subgrantee~~. (7-1-99)(\_\_\_\_)

**Subsection 450.04**

**450. REAL PROPERTY.**

**04. Adequate Title and Public Access.** The ~~applicant~~ grantee shall have clear title to, or adequate control and tenure of, the real property (land, land improvement, structures, and appurtenances) to be developed. The term "adequate control and tenure" of real property means a lease or an easement that provides the ~~applicant~~ grantee sufficient control over the real property to permit the proposed development and use for a period of at least twenty-five (25) years from the date of application, unless specifically approved in writing by the ~~appropriate recreational program manager~~ Department for a shorter term. The ~~applicant~~ grantee shall list all outstanding rights or interests held by others in the real property to be developed. If access to the real property to be developed is over private property, then the ~~applicant~~ grantee shall describe the provisions made to ensure adequate public access. In the event the real property becomes unusable for its intended purposes or if such use ceases, the ~~applicant~~ grantee shall be responsible for conversion of the project as described in Section 350 of this chapter. (7-1-99)(\_\_\_\_)

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**  
**26.01.37 - RULES GOVERNING TEST PROCEDURES AND INSTRUMENTS**  
**FOR NOISE ABATEMENT OF OFF HIGHWAY VEHICLES**

**DOCKET NO. 26-0137-0501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5221(1), and 67-4223(a) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. Chapter 37 addresses rules governing test procedures and instruments for noise abatement of off highway vehicles. The Chapter also includes an outdated definition for all terrain vehicle (ATV). This amendment will provide consistency with current Idaho Code and other IDAPA reference.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 549 and 550.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

DATED this 15th day of November, 2005.

Dean Sangrey  
Division Administrator, Operations  
Idaho Department of Parks and Recreation  
5657 Warm Springs Ave.  
Boise, ID 83716  
P. O. Box 83720  
Boise, ID 83720-0065  
Phone: 208-334-4180 Fax: 208-334-3741

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**DOCKET NO. 26-0137-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 549 and 550.**

**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 31 - PUBLIC UTILITIES COMMISSION

### 31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR PUBLIC UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Commission and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Commission has adopted a pending rule. The action is authorized pursuant to Sections 61-515 and 61-115, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 556 and 557.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

DATED this 4th day of November, 2005.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington St. (83702-5983)  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
FAX: (208) 334-3762

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#### DOCKET NO. 31-1101-0501 - PENDING RULE

**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 05-10, October 5, 2005, pages 556 and 557.**

**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 31 - PUBLIC UTILITIES COMMISSION**

### **31.21.01 - CUSTOMER RELATIONS RULES FOR GAS, ELECTRIC AND WATER PUBLIC UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION (THE UTILITY CUSTOMER RELATIONS RULES)**

**DOCKET NO. 31-2101-0402**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Commission and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Commission has adopted a pending rule. The action is authorized pursuant to Sections 61-302, 61-303, 61-307, 61-503, 61-507, and 61-515, 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 Commission is adopting the proposed changes to Rules 311, 701, and some portions of Rule 306 as pending rules. The complete text of these three (3) Rules was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 558 through 562.

Based upon comments received, the Commission clarifies the proposed change to Rule 305.02 as applying to residential customers only. The Commission decided not to change Rule 306 to expand the winter moratorium eligibility to include residential customers receiving Low Income Heating Assistance Program (LIHEAP) benefits. The Commission found that expanding moratorium eligibility to include LIHEAP recipients would significantly alter the moratorium's focus on public health and safety and might result in larger unpaid balances for customers as well as larger utility uncollectibles. The Commission also declined to adopt the proposed change to Rule 306.06 to eliminate the current monetary restrictions on when a customer may participate in a winter payment plan. The Commission clarifies that Rule 306.06 applies to residential customers. The text of pending Rules 305 and 306, which have been amended in accordance with Section 67-5227, Idaho Code, is printed in this bulletin.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 558 through 562.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Beverly Barker, at (208) 334-0302.

DATED this 9th day of November, 2005.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington St. (83702-5983)  
PO Box 83720, Boise, ID 83720-0074  
Telephone: (208) 334-0338  
FAX: (208) 334-3762

**DOCKET NO. 31-2101-0501 - PENDING RULE**

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 558 through 562.

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.

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 31-2101-0501**

***Subsection 305.02***

**305. CONTENTS OF NOTICE OF INTENT TO TERMINATE SERVICE (RULE 305).**

**02. Additional Requirements for Gas and Electric Utilities.** During the months of November, December, January and February, oral and written notices provided by gas and electric utilities to residential customers shall include or be accompanied by an explanation of restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306. ( )

***Subsection 306.06***

**306. TERMINATION OF RESIDENTIAL GAS AND ELECTRIC SERVICE -- WINTER PAYMENT PLAN (RULE 306).**

**06. Successive Participation in Winter Payment Plan.** A residential customer who participates in a Winter Payment Plan one (1) year ~~must~~ shall be allowed to participate in succeeding years if the customer has honored the payment arrangements and the balance owing as of November 1 does not exceed seventy-five dollars (\$75) or the customer's utility bill for the previous thirty (30) days, whichever is greater. ~~However, the utility is not required to connect or reconnect the service of a customer or applicant who does not currently have utility service and owes an unpaid, undisputed bill to the utility.~~ (7-1-93)( )

## **IDAPA 31 - PUBLIC UTILITIES COMMISSION**

### **31.71.03 - RAILROAD SAFETY/SANITATION RULES**

**DOCKET NO. 31-7103-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Commission and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Commission has adopted a pending rule. The action is authorized pursuant to Sections 61-515 and 61-113, 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 October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 563 and 564.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

DATED this 4th day of November, 2005.

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington St. (83702-5983)  
PO Box 83720  
Boise, ID 83720-0074  
Telephone: (208) 334-0338  
FAX: (208) 334-3762

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#### **DOCKET NO. 31-7103-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 563 and 564.](#)**

**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 57 - SEXUAL OFFENDER CLASSIFICATION BOARD**

### **57.01.01 - RULES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD**

**DOCKET NO. 57-0101-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 18-8314, 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 September 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 312 through 317.

**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 on general funds for this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kathy Baird, Management Assistant, at (208) 658-2149.

DATED this 15th day of November, 2005.

Kathy Baird, Management Assistant  
Sexual Offender Classification Board  
1299 N Orchard St Suite 110  
Boise, ID 83706  
(208) 658-2149 phone  
(208) 327-7102 facsimile

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#### **DOCKET NO. 57-0101-0501 - PENDING RULE**

**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 05-9, September 7, 2005, pages 312 through 317.](#)**

**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 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

#### DOCKET NO. 58-0101-0503

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, the Idaho Legislature directed the Department of Environmental Quality (DEQ) to promulgate rules pursuant to House Bill 230 and Senate Bill 1228 (codified at Section 39-115, Idaho Code).

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for commencing the rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 3, 2005, Vol. 05-8, pages 308 through 339. One public comment was received. The rule has not been revised in response to that comment. However, the definition of Modification at Subsection 006.56 has been revised. The sponsors of House Bill 230 and its trailer bill, Senate Bill 1228, acknowledged and agreed that the legislation did not alter the state's existing state only toxic air pollutant program. In revising the definition of Regulated Air Pollutant as a result of the legislation, and in revising the definition of Modification to make the state's minor permitting program consistent with the major program, the state only toxic air pollutant review was inadvertently removed. Subsection 006.56.b clarifies the intent of H230 and S1228 and ensures the state only toxic air pollutant program continues to operate as it has since inception. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 308 through 339.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Martin Bauer at (208) 373-0440, [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov).

DATED this 17th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

DOCKET NO. 58-0101-0503 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 308 through 339.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0101-0503

*Subsection 006.55*

006. GENERAL DEFINITIONS.

~~565.~~ Modification. ( )

a. Any physical change in, or change in the method of operation of, a stationary source or facility which ~~increases the amount of any regulated air pollutant emitted by such stationary source or facility results in an emission increase as defined in Section 007~~ or which results in the emission of any regulated air pollutant not previously emitted. ~~except that routine maintenance, repair and replacement shall not be considered physical changes, and the following shall not be considered a change in the method of operation:~~ (4-5-00)( )

b. ~~Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted.~~ ( )

c. ~~Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law.~~ ( )

d. ~~For purposes of Subsections 006.55.a. and 006.55.b., routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation:~~ ( )

a.i. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

b.ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

e.iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material and use of such fuel or raw material is not specifically prohibited in a permit. (4-5-00)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0504**

**NOTICE OF RULEMAKING**

**ADOPTION OF PENDING RULE AND TEMPORARY RULE**

**EFFECTIVE DATE:** The temporary rule is effective January 4, 2006. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a pending rule and temporary rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 319 through 322. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 319 through 322.

**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 a federal program.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Chris Ramsdell at [christopher.ramsdell@deq.idaho.gov](mailto:christopher.ramsdell@deq.idaho.gov), (208)373-0237.

DATED this 17th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)



DOCKET NO. 58-0101-0504 - PENDING AND TEMPORARY RULE

There are no substantive changes from the proposed rule text.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-9, September 7, 2005, pages 319 through 322.

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.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0504

**389. REGISTRATION INFORMATION.**

Any person owning or operating a facility or source during the previous calendar year or any portion of the previous calendar year for which Sections 387 through 397 apply shall, by April 1, 2003 or within fifteen (15) days following the adjournment of the 2003 regular session of the legislature, whichever is later, and each April 1 thereafter register with the Department and submit the following information as specified in Subsections 389.01 through 389.05 (submittal forms are located at [www.deq.idaho.gov](http://www.deq.idaho.gov)): ~~(4-2-03)(1-4-06)T~~

- 01. Facility Information.** The name, address, telephone number and location of the facility; (5-1-94)
- 02. Owner/Operator Information.** The name, address and telephone numbers of the owners and operators; (5-1-94)
- 03. Facility Emission Units.** The number and type of emission units present at the facility or the Tier I permit number for the facility; and (4-2-03)
- 04. Pollutant Registration.** The emissions from the previous calendar year for oxides of sulfur (SO<sub>x</sub>), oxides of nitrogen (NO<sub>x</sub>), particulate matter (PM), and volatile organic compounds (VOC) ~~based on one (1) or more of the following methods chosen by the registrant:~~ (4-2-03)
  - ~~a. Actual annual emissions; or~~ (4-2-03)
  - ~~b. An estimate of the actual annual emissions calculated using the unit's methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to throughput, actual operating hours, production rates, in-place control equipment, and or the types of materials processed, stored, or combusted, during the preceding calendar year; or~~ (4-2-03)(1-4-06)T
  - ~~c. Allowable emissions based on permit limitations.~~ (3-19-99)
- 05. Radionuclide Registration.** The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. (5-1-94)
- 06. Regulated Air Pollutant Registration Fee.** The registration fee set out in Subsection 389.06 shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee set forth in Section 389 shall be paid as provided in Section 393. (4-2-03)
  - a.** The Tier I annual fee schedule shall be as follows: (3-30-01)

i. A fixed annual fee for Tier I major sources emitting regulated air pollutants listed in Subsection 389.04 as follows: (4-2-03)

- (1) Seven thousand (7,000) tons per year and above shall pay fifty-five thousand dollars (\$55,000); (4-2-03)
- (2) Four thousand five hundred (4,500) tons per year and above shall pay thirty-three thousand dollars (\$33,000); (4-2-03)
- (3) Three thousand (3,000) tons per year and above shall pay twenty-two thousand dollars (\$22,000); (4-2-03)
- (4) One thousand (1,000) tons per year and above shall pay seventeen thousand five hundred dollars (\$17,500); (4-2-03)
- (5) Five hundred (500) tons per year and above shall pay eight thousand five hundred dollars (\$8,500); (4-2-03)
- and (6) Two hundred (200) tons per year and above shall pay five thousand five hundred dollars (\$5,500); (4-2-03)
- (7) Less than two hundred (200) tons per year shall pay two thousand seven hundred fifty dollars (\$2,750); plus (4-2-03)

ii. A per ton annual fee of thirty-three dollars (\$33) per ton for all regulated air pollutant emissions listed in Subsection 389.04 as follows: (4-2-03)

- (1) Greater than or equal to four thousand five hundred (4,500) tons per year not to exceed one hundred ten thousand dollars (\$110,000); (4-2-03)
- (2) Greater than or equal to three thousand (3,000) but less than four thousand five hundred (4,500) tons per year not to exceed fifty-five thousand dollars (\$55,000); (4-2-03)
- (3) Greater than or equal to one thousand (1,000) but less than three thousand (3,000) tons per year not to exceed twenty-seven thousand dollars (\$27,000); (4-2-03)
- (4) Greater than or equal to five hundred (500) but less than one thousand (1,000) tons per year not to exceed nineteen thousand two hundred fifty dollars (\$19,250); (4-2-03)
- (5) Greater than or equal to two hundred (200) but less than five hundred (500) tons per year not to exceed eight thousand two hundred fifty dollars (\$8,250); and (4-2-03)
- (6) Less than two hundred (200) tons per year not to exceed two thousand seven hundred fifty dollars (\$2,750). (4-2-03)

b. The fee-for-service shall be as follows: Sources requesting Section 300 permit modifications or renewals, or receiving program maintenance services, including but not limited to site visits, response to public inquiries, modeling, responses to site questions and opacity readings by the Department shall be assessed a fee for actual time expended and expenses incurred by the Department in the previous calendar year in an amount not to exceed seven thousand five hundred dollars (\$7,500) per facility per year as a fee-for-service. Service shall be conducted by qualified Department staff or contractors. (4-2-03)

**07. Shortfall.** In the event that, on June 30, 2003 or June 30, 2004 the amount of fees assessed by the Department under Subsection 389.06.a. is less than one million one hundred thousand dollars (\$1,100,000), the difference shall be paid by the registrants to which Section 388 applies. (4-2-03)

- a.** The shortfall will be calculated as follows: (4-2-03)

  - i. Dividing the amount of the shortfall by the total tons of pollutants registered for the previous calendar year by all registrants; and (4-2-03)
  - ii. Calculating a per-ton fee which, when multiplied by the total tons registered generates a number in the amount of the shortfall. (4-2-03)
- b.** Each registrant shall then be assessed by September 1 of the year and shall pay by October 1 of the year a supplemental fee to make up any shortfall of the one million one hundred thousand dollars (\$1,100,000) in the amount of the tons of emissions registered for that facility in the previous calendar year multiplied by the per-ton fee calculated in Subsection 389.07.a. (4-2-03)
- c.** Subsection 389.07 of this rule shall apply only in state fiscal years 2004 and 2005. (4-2-03)
- 08. Radionuclide Registration Fee.** (4-2-03)

  - a.** A registration fee of five dollars per curie per year (\$5/curie/year) shall be paid by facilities regulated under 40 CFR Part 61, Subpart H. (4-2-03)
  - b.** The registration fee may be paid as provided in Section 397. (4-2-03)

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0505**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**DESCRIPTIVE SUMMARY:** This rule updates federal regulations incorporated by reference. EPA filed a notice of reconsideration on October 21, 2005 regarding the final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005) (Clean Air Mercury Rule (CAMR)). Consideration by the Board of the CAMR has been postponed pending final decision on reconsideration of the rule by EPA. Section 107 has been revised with the addition of Subsection 107.03.q., which expressly excludes the CAMR from incorporation by reference into IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". The CAMR will be addressed under a new docket pursuant to a public negotiated rulemaking. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 340 through 349.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Martin Bauer at [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov), (208) 373-0440.

DATED this 17th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

DOCKET NO. 58-0101-0505 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 340 through 349.

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.

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0101-0505

*Subsection 107.03.q.*

107. INCORPORATIONS BY REFERENCE.

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

q. The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,267, is expressly excluded from any incorporation by reference into these rules. ( )

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0507

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

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

**DESCRIPTIVE SUMMARY:** This rulemaking includes revisions to the Rules for the Control of Air Pollution in Idaho for certain currently-listed sources that are exempt from obtaining an air quality permit to construct. This pending rule deletes the director's discretion exemption, which is not approved by the federal government as part of the state implementation plan (SIP), and replace it with three specific exemptions. Two of these source exemptions are currently exempt under the Director's discretion. If approved by the Legislature, DEQ intends to submit the final rule as a SIP revision. Facility types affected are certain size crematoriums, certain petroleum remediation sources and dry cleaning facilities that are not major sources. In addition, this rule increases the number of operating hours allowed for stationary internal combustion engines used for emergency purposes. The agency received no public comments, and the rule has been adopted as initially proposed in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 319 through 322. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Martin Bauer at [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov), (208) 373-0440.

DATED this 17th day of November, 2005.

Paula J. Wilson, Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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#### DOCKET NO. 58-0101-0507 - PENDING RULE

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

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-9, September 7, 2005, pages 319 through 322.**

**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 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0508**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent in accordance with Sections 67-5224 and 67-5291, Idaho Code.

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

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, October 5, 2005, Vol. 05-10, pages 704 through 710. The one public comment received is in support of the proposed rule. The rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Martin Bauer at [martin.bauer@deq.idaho.gov](mailto:martin.bauer@deq.idaho.gov), (208) 373-0440.

DATED this 17th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**DOCKET NO. 58-0101-0508 - PENDING RULE**

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

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-10, October 5, 2005, pages 704 through 710.**

**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 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0601

### NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105 and 39-107, Idaho Code.

**MEETING SCHEDULE:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Phyllis Heitman at (208) 373-0256 or [phyllis.heitman@deq.idaho.gov](mailto:phyllis.heitman@deq.idaho.gov).

**February 7, 2006, 9 a.m. to noon**  
**Department of Environmental Quality, Conference Room B**  
**1410 N. Hilton, Boise, Idaho**

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) is tasked with developing a plan to address Regional Haze in Class I Wilderness Areas within Idaho and other Class I areas impacted by Idaho by December 17, 2007 as required by the Federal Clean Air Act, Regional Haze Rule, 40 CFR 51.308. The intent of the Regional Haze Rule is to reduce the impacts of man-made visibility impairing pollutants on Class I areas by 2064. The first implementation plan will cover the time period from 2008 through 2018. The plan will set "Reasonable Progress Goals" and develop control strategies to attain the progress goals. The Regional Haze Rule provides states with two options to meet the progress goals for stationary sources. See 40 CFR 51.308(e). Under the Best Available Retrofit Technology (BART) option, BART eligible sources that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area may be required to install additional controls. The other option is an emission trading program or other alternative that will achieve the same or greater emission reductions than under the BART option.

Through the negotiated rule process, an option will be selected, and rules drafted, that will provide DEQ with the authority to develop "Reasonable Progress Goals," implement control strategies necessary to obtain the goals and satisfy other requirements under 40 CFR 51.308 and Subpart P – Protection of Visibility requirements. The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. BART eligible and other sources of air pollution may be affected by this rulemaking and may wish to participate. Representatives of the industrial community, special interest groups, public officials, federal land managers, metropolitan planning organizations, or members of the public who have an interest in the air quality in Idaho may also wish to participate in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the September 2006 issue of the Idaho Administrative Bulletin and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in November 2006. If adopted, the pending rule will be reviewed by the 2007 Idaho Legislature.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact Mike Edwards at (208) 373-0438 or [mike.edwards@deq.idaho.gov](mailto:mike.edwards@deq.idaho.gov).

Anyone may submit written comments during this negotiated rulemaking by mail, fax or e-mail at the address below. For information regarding submission of written comments on drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 23rd day of November, 2006.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office

1410 N. Hilton, Boise, ID 83706-1255  
(208) 373-0418 / Fax No. (208) 73-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)



## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0503

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

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

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 327 through 337.

Public comments were received. The proposed rule has not been revised in response to comments. However, in Subsection 210.02, the factors for calculating hardness for cadmium have been revised to reflect the most recent information. Also, the acute conversion factor, which was inadvertently struck out in the proposed rule, has been retained. The remaining subsections have been adopted as proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 327 through 337.

**IDAHO CODE SECTION 39-107D STATEMENT:** The revisions included in this rule 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this pending rule, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Dated this 16th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

DOCKET NO. 58-0102-0503 - PENDING RULE

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-9, September 7, 2005, pages 327 through 337.

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.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0102-0503

*Subsection 210.02*

**210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.**

**02. Factors for Calculating Hardness Dependent Metals Criteria.** Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a.  $CMC = WER \exp\{m_A[\ln(\text{hardness})] + b_A\} \times \text{Acute Conversion Factor}$ . (5-3-03)

b.  $CCC = WER \exp\{m_C[\ln(\text{hardness})] + b_C\} \times \text{Chronic Conversion Factor}$ .

Metal	$m_A$	$b_A$	$m_C$	$b_C$	<sup>a</sup> Acute Conversion Factor	<sup>a</sup> Chronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	<del>1.0166</del> 0.8367	<del>-3.924</del> -3.560	<del>0.7852</del> 0.6247	<del>-3.490</del> -3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Note to table: The term "exp" represents the base e exponential function.

**Footnotes to table:**

**a.** Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table.

Cadmium

Acute:  $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$  NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic:  $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic):  $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

**b.** Not applicable

**c.** No chronic criteria are available for silver.

(4-6-05)( )

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0504

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

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

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 338 through 358. One public comment letter was received. The proposed rule has not been revised in response to the comments. However, changes have been made to Sections 070, 400 and 401 for the purpose of deleting or revising references to rule sections affected by this rulemaking. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 338 through 358.

**IDAHO CODE SECTION 39-107D STATEMENT:** The revisions included in this rule 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 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this pending rule, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Dated this 16th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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#### DOCKET NO. 58-0102-0504 - PENDING RULE

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 05-9, September 7, 2005, pages 338 through 358.

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.

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0102-0504

**Subsection 070.03**

**070. APPLICATION OF STANDARDS.**

**01. Multiple Criteria.** In the application of the use designation, the most stringent criterion of a multiple criteria applies. (4-5-00)

**02. Application of Standards to Nonpoint Source Activities.** The application of water quality standards to nonpoint source activities shall be in accordance with Section 350. (7-1-93)

**03. Application of Standards to Point Source Discharges.** The application of water quality standards to point source discharges shall be in accordance with Sections 400 ~~through 402, 420 and 440~~ and 401. (7-1-93)(\_\_\_\_)

**04. Applicability of Gas Supersaturation Standard.** The application of gas supersaturation standard shall be in accordance with Section 300. (4-5-00)

**05. Mixing Zones.** The application of water quality standards to mixing zones shall be in accordance with Section 060. (7-1-93)

**06. Application of Standards to Intermittent Waters.** Numeric water quality standards only apply to intermittent waters during optimum flow periods sufficient to support the uses for which the water body is designated. For recreation, optimum flow is equal to or greater than five (5) cubic feet per second (cfs). For aquatic life uses, optimum flow is equal to or greater than one (1) cfs. (3-30-01)

**07. Temperature Criteria.** In the application of temperature criteria, the Director may, at his discretion, waive or raise the temperature criteria as they pertain to a specific water body. Any such determination shall be made consistent with 40 CFR 131.11 and shall be based on a finding that the designated aquatic life use is not an existing use in such water body or would be fully supported at a higher temperature criteria. For any determination, the Director shall, prior to making a determination, provide for public notice and comment on the proposed determination. For any such proposed determination, the Director shall prepare and make available to the public a technical support document addressing the proposed modification. (4-5-00)

**Subsection 400.02.a.**

**400. RULES GOVERNING POINT SOURCE DISCHARGES.**

**02. Limitations to Point Source Restrictions.** (7-1-93)

**a.** So long as a point source discharge or wastewater treatment facility is regulated by the terms and conditions of an authorization pursuant to Subsection 080.02, a Board order, decree or compliance schedule, *or* a valid NPDES permit issued by the EPA, ~~or is subject to the provisions of Subsection 401.05,~~ the discharge or facility

will not be subject to additional restrictions or conditions based on Subsections 080.01, or 400.01.b. and Sections 200, 210, 250, 251, 252, and 253. (4-5-00)(\_\_\_\_\_)

**Subsection 401.01.e.**

**401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.**

~~01. **Appropriate Control Measures.** The Department, through approval or disapproval of plans for wastewater treatment and disposal facilities, the issuance of wastewater discharge permits, orders, compliance schedules, directives or any of the mechanisms at its disposal, will require persons to apply appropriate control measures necessary to achieve and maintain the water quality standards contained herein. (7-1-93)~~

~~02. **Degree of Treatment.** The degree of wastewater treatment required to restore and maintain the standards of quality will be determined in each instance by the Department, based upon the following: (7-1-93)~~

~~a. The uses which are made or desired of the receiving water; (7-1-93)~~

~~b. The volume and nature of flow of the receiving water; (7-1-93)~~

~~e. The quantity and quality of the wastewater to be treated; and (7-1-93)~~

~~d. The presence or absence of other sources of water pollution on the same watershed, stream segment or aquifer. (7-1-93)~~

~~03. **Treatment Requirements.** Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02 or 401.05, wastewaters discharged into surface waters of the state must have the following characteristics: (7-1-93)(\_\_\_\_\_)~~

~~01. **Temperature.** The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)~~

~~i. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)~~

~~ii. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)~~

~~iii. If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C. (3-15-02)~~

~~iv. If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C. (3-15-02)~~

~~v. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then Subsections ~~401.03.a.iii.~~ 401.01.c. and ~~401.03.a.iv.~~ 401.01.d. do not apply and instead wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (3-15-02)(\_\_\_\_\_)~~

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS**

**DOCKET NO. 58-0108-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 359 through 390. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

**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 plan and specification review and facility standard provisions set forth in this rule. Therefore, the changes to the rules 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 engineering standards for design, construction, and operation of public drinking water systems regulate activities that are not regulated by the federal government. These standards were originally promulgated to fulfill the requirements of Section 39-118, Idaho Code, and pre-date the Safe Drinking Water Act. These rules address the review and approval of plans and specifications for public drinking water systems and the standard by which the agency does the review and approval. This is not an activity regulated by the federal government. Therefore, Section 39-107D, Idaho Code, applies.

Section 39-107D(3), Idaho Code, provides that any rule subject to 39-107D that proposes a standard necessary to protect human health and the environment must also include in the rulemaking record and in the notice of rulemaking additional information. This additional information includes any estimates of risk accomplished, identification of populations or receptors addressed by any estimates, and other information related to an estimation of risk. The rules include facility standards which are intended to protect human health and the environment. The standards, however, are for the design and construction of public drinking water facilities. For example, the rules require that water mains be constructed using materials that meet national standards for potable water. The rules are not based upon any express estimate or analysis of risk to public health or the environment. Instead, the facility standards are based upon guidelines set forth in documents, such as the “Recommended Standards for Water Works” and the “American Water Works Association Standards,” that are generally accepted and used throughout the United States by engineers and state regulators.

**IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ’s programs and activities, visit DEQ’s web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this pending rule, contact Tom John at [thomas.john@deq.idaho.gov](mailto:thomas.john@deq.idaho.gov), (208)373-0191.

Dated this 16th day of November, 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  
paula.wilson@deq.idaho.gov

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**DOCKET NO. 58-0108-0501 - PENDING RULE**

**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 05-9, September 7, 2005, pages 359 through 390.](#)**

**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 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0601

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The temporary rule was effective November 17, 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 Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before January 18, 2006. If no such written request is received, a public hearing will not be held.

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 has initiated this rulemaking to allow public drinking water systems the flexibility to use point of use (POU) treatment technology for treating some chemical contaminants such as arsenic. The rule will exempt small public drinking water systems from the requirement in Section 39-118, Idaho Code, to submit engineering plans and specifications if they serve less than 200 service connections and submit technical and managerial documentation to the Department. The rule also allows public drinking water systems serving over 200 service connections the option to apply to the state for a waiver of the engineering plan and specification requirements.

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 February 2006. The pending rule will become final upon the conclusion of the 2007 session of the Idaho Legislature if approved by the Legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is necessary in order to confer a benefit. The benefit is the increased flexibility for public water systems to use point of use treatment devices for treating some chemical contaminants such as arsenic. Additionally, the rule provides a cost savings by waiving engineering plans and specifications required by Section 39-118, Idaho Code, for systems serving less than 200 service connections. It was necessary to make this rule immediately effective to ensure that the point of use treatment alternative is available prior to the revised federal arsenic standard for drinking water becoming effective on January 23, 2006.

**IDAHO CODE SECTION 39-107D STATEMENT:** Previous federal regulation prohibited use of POU treatment devices for compliance with National Primary Drinking Water Regulations. In 1996, the United States Congress removed this prohibition through language in the Safe Drinking Water Act, 42 U.S.C. Section 300g-1(b)(4)(E)(ii).

The revised arsenic standard of 10 parts per billion for drinking water will become effective on January 23, 2006. *See* National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring, 66 Fed. Reg. 6975-7066, incorporated by reference into Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08. In order to assist communities with complying with the revised arsenic standard, DEQ proposes this rule allowing for use of POU treatment devices as allowed per federal law.

Idaho Code Section 39-107D 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. This rule incorporates language from the Safe Drinking Water Act (42 U.S.C. Section 300g-1(b)(4)(E)(ii)). The Safe Drinking Water Act states that POU treatment devices "shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique". *Id.* To that end, this rule includes language DEQ deems necessary in order to ensure that POU

treatment devices are operated and maintained pursuant to federal law.

Although the federal Safe Drinking Water Act does not specifically prohibit use of POU treatment devices for compliance with the nitrate maximum contaminant level (MCL), this rule is more restrictive in that it does not allow POU for the nitrate MCL in community water systems because of the risk of acute illness for infants. POU treatment systems may still be used for compliance with nitrate standards for non-community water systems under certain conditions where the risk of acute illness is low. The nitrate MCL was promulgated in 1975 by the Public Health Service and re-promulgated in 1991 by EPA (56 CFR 3526).

POU treatment devices may be covered under the definition of "material modification" outlined in Section 39-118, Idaho Code, and be subject to plan and specification review. However, because the POU treatment devices are ANSI/NSF certified pre-engineered units and are not being constructed individually onsite, DEQ has determined that these devices will not produce a significant impact on the environment or on public health, and therefore waives plan and specification review for certain small public water systems as specified in the rule. The main public health and environmental concern associated with POU treatment devices pertains to the proper operation and maintenance of the units.

**IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**NEGOTIATED RULEMAKING:** This temporary rulemaking schedule did not allow for negotiated rulemaking.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the temporary and proposed rule, contact Jerri Henry at [jerri.henry@deq.idaho.gov](mailto:jerri.henry@deq.idaho.gov), (208)373-0471.

Anyone may submit written comments regarding this 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 February 1, 2006.

DATED this 16th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0601**

**003. DEFINITIONS.**

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2002, are herein incorporated by reference except for the definition of the terms "action level," "disinfection," "noncommunity water system," and "person". (5-3-03)

***There are no changes to Subsections 003.01 through 003.41***

**42. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in

water which is delivered to any user of a public water system. (11-17-05)T

**423. Maximum Daily Consumption Rate.** The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest on record. (12-10-92)

**434. Maximum Hourly Demand.** The greatest volume of water used in any hour during a one (1) year period. (12-10-92)

**445. Maximum Residual Disinfectant Level (MRDL).** A level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. (4-5-00)

**456. Maximum Residual Disinfectant Level Goal (MRDLG).** The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. (4-5-00)

**467. Method Detection Limit (MDL).** The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. (12-10-92)

**478. New System.** Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. (4-5-00)

**489. Noncommunity Water System.** A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (4-5-00)

**4950. Nontransient Noncommunity Water System.** A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (12-10-92)

**501. Nuclear Facility.** Factories, processing plants or other installations in which fissionable material is processed, nuclear reactors are operated, or spent (used) fuel material is processed, or stored. (12-10-92)

**512. Operating Shift.** That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. (4-5-00)

**523. Owner/Purveyor of Water/Supplier of Water.** The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers and/or is ultimately responsible for the public water system operation. (4-6-05)

**534. Peak Hourly Flow.** The highest hourly flow during any day. (12-10-92)

**545. Person.** A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (12-10-92)

**556. Pesticides.** Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algacides. (12-10-92)

**57. Point of Use (POU) Treatment Device.** A treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap. (11-17-05)T

**58. Point of Use (POU) Treatment System.** A collection of POU treatment devices. (11-17-05)T

**569. Public Notice.** The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. (12-10-92)

**5760. Public Drinking Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district". A public water system is either a "community water system" or a "noncommunity water system". (4-6-05)

**5861. Public Water System/Water System/System.** Means "public drinking water system". (4-5-00)

**5962. Repeat Compliance Period.** Any subsequent compliance period after the initial compliance period. (12-10-92)

**603. Responsible Charge (RC).** Responsible Charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants. (4-5-00)

**614. Responsible Charge Operator.** An operator of a public drinking water system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. (4-6-05)

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

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

**647. Sanitary Survey.** An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: (4-5-00)

- a. Source; (4-5-00)
- b. Treatment; (4-5-00)
- c. Distribution system; (4-5-00)
- d. Finished water storage; (4-5-00)
- e. Pumps, pump facilities, and controls; (4-5-00)
- f. Monitoring and reporting and data verification; (4-5-00)

- g.** System management and operation; and (4-5-00)
- h.** Operator compliance with state requirements. (4-5-00)
- 658. SDWIS-State.** An acronym that stands for “Safe Drinking Water Information System-State Version”. It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. See also the definition of DWIMS. (5-3-03)
- 669. Significant Deficiency.** As identified during a sanitary survey, any defect in a system’s design, operation, maintenance, or administration, as well as any failure or malfunction of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. (5-3-03)
- 670. Special Irrigation District.** An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act. (4-6-05)
- 6871. Spring.** A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. (12-10-92)
- 6972. Substitute Responsible Charge Operator.** An operator of a public drinking water system who holds a valid license at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-6-05)
- 703. Surface Water System.** A public water system which is supplied by one (1) or more surface water sources or groundwater sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. (4-5-00)
- 714. Specific Ultraviolet Absorption (SUVA).** SUVA means Specific Ultraviolet Absorption at two hundred fifty-four (254) nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample’s ultraviolet absorption at a wave length of two hundred fifty-four (254) nm (UV254) (in  $m^{-1}$ ) by its concentration of dissolved organic carbon (DOC) (in mg/l). (4-5-00)
- 725. Total Organic Carbon (TOC).** Total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. (4-5-00)
- 736. Transient Noncommunity Water System.** A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. (10-1-93)
- 747. Treatment Facility.** Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. (4-5-00)
- 758. Turbidity.** A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (12-10-92)
- 769. Uncovered Finished Water Storage Facility.** An uncovered tank, reservoir, or other facility that is used to store water that will undergo no further treatment except residual disinfection. (5-3-03)
- 7780. Unregulated Contaminant.** Any substance that may affect the quality of water but for which a

maximum contaminant level or treatment technique has not been established. (12-10-92)

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

**7982. Very Small Public Drinking Water System.** A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). (4-5-00)

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

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

**825. Waiver.** (12-10-92)

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

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

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

**836. Water for Human Consumption.** Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms. (5-3-03)

**847. Water Main.** A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections. The collection of water mains within a given water supply is called the distribution system. (5-3-03)

**858. Well House.** A structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, distribution line, or a treatment unit. Well houses are often called pump houses in common usage, even though in modern construction these structures may not contain either a well or a pump. These terms are used interchangeably in national standards and trade publications. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. USE OF NON-CENTRALIZED TREATMENT DEVICES.**

**01. Point of Entry Devices.** 40 CFR 141.100, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

**02. Point of Use (POU) Treatment Devices.** (11-17-05)T

a. A public water system may use point of use (POU) treatment in order to achieve compliance with certain maximum contaminant levels (MCL) or treatment techniques, in accordance with Subsection 450.02.b., when the following conditions are met: (11-17-05)T

i. A program for long-term operation, maintenance, and monitoring of the POU treatment system is approved by the Department, pursuant to Section 450.02.d. (11-17-05)T

ii. The public water system or a vendor of POU treatment devices under contract with the public water system shall own, control, and maintain the POU treatment system to ensure proper operation and maintenance and compliance with the MCL or treatment technique. (11-17-05)T

iii. Each POU treatment device is equipped with a mechanical warning mechanism to ensure that customers are automatically notified of operational problems. (11-17-05)T

iv. The POU treatment device must be certified by an accredited American National Standards Institute (ANSI) certification body to meet applicable ANSI/National Sanitation Foundation (NSF) Standards. (11-17-05)T

b. POU treatment devices shall not be used to achieve compliance with a MCL or treatment technique requirement for a microbial contaminant or an indicator of a microbial contaminant. Community water systems may not use POU treatment devices to achieve compliance with a nitrate MCL. (11-17-05)T

c. The Department will waive the plan and specification requirements as described in Subsection 551.04 relating to material modifications for the following systems only to that extent that the material modification proposed is limited to the installation and/or use of a POU treatment device(s): (11-17-05)T

i. Community water systems serving two hundred (200) or fewer service connections. (11-17-05)T

ii. Non-transient non-community water systems. (11-17-05)T

iii. Transient non-community water systems. (11-17-05)T

iv. Community water systems serving more than two hundred (200) service connections if approved by the Department through the waiver process outlined in Subsection 005.01.a. (11-17-05)T

d. A public water system must obtain written approval by the Department before installation of a POU treatment device for the purpose of achieving compliance with a MCL or treatment technique. The public water system shall submit the following documentation for approval to the Department: (11-17-05)T

i. Information identifying the public water system name and number, total number of service connections, contaminant(s) to be treated, type of POU treatment device to be installed, manufacturer and model number of the POU treatment device, type and function of the mechanical warning mechanism (performance indicator) on the POU treatment device, certification verification for ANSI/NSF, installer qualifications, and a proposed date for installation of the POU treatment device(s). (11-17-05)T

ii. The manufacturer's specifications for the POU treatment device including demonstration that the POU treatment device is suited for the water chemistry of the public water system and contaminant(s) of concern and is of sufficient design and capacity for the particular application. (11-17-05)T

iii. Information relating to how other drinking water dispensing units, such as instant hot water dispensers and refrigerator water and ice dispensers, whose primary function is to provide drinking water, will be provided with treated water. If water is transported from a POU treatment device to another drinking water dispensing unit, the conducting tube shall be of non-reactive material. (11-17-05)T

iv. For non-transient non-community water systems and transient non-community water systems, demonstration that the drinking water dispensing units are located in areas adequate to protect public health. (11-17-05)T

v. Demonstration that all POU treatment devices are owned, controlled, and maintained by the public water system or by a vendor of POU treatment devices under contract with the public water system. (11-17-05)T

vi. A sampling plan identifying the location of all service connections and demonstrating how the system will ensure that all POU treatment devices are sampled for compliance with the contaminant(s) being treated during every compliance period or at a frequency designated by the state. (11-17-05)T

vii. Documentation that a customer at each service connection has agreed to installation and use of a POU treatment device and has granted access for installation, maintenance, and sampling. (11-17-05)T

viii. A plan that describes how the public water system will address any non-compliance with Subsection 450.02.d.vii. (11-17-05)T

ix. A maintenance plan that demonstrates how on-going maintenance activities will be performed and on what frequency, including: frequency of treatment media replacements, frequency of POU treatment device replacements, periodic verification that the mechanical warning device is functional, schedule of planned maintenance activities, plan of how the system will address unscheduled maintenance problems, and a plan and method of waste disposal. (11-17-05)T

x. Documentation that the system meets the current requirements for a certified operator pursuant to Section 554. (11-17-05)T

xi. A plan for on-going education and outreach to the customers of the public water system, including rental customers, on POU treatment and health effects of the contaminant(s) of concern. (11-17-05)T

xii. A plan for how the system will ensure real estate disclosures for the POU treatment system. (11-17-05)T

xiii. A statement of recognition that failure to maintain compliance with the MCL, or the failure to operate and maintain compliance with a POU treatment system as approved by the Department, may necessitate installation of centralized treatment. (11-17-05)T

e. Within thirty (30) days of installing the approved POU treatment system, the public water system shall notify the Department in writing that the POU treatment system was installed as approved by the Department. (11-17-05)T

f. Within thirty (30) days of installing the approved POU treatment system, the public water system shall submit samples from each POU treatment device to a certified laboratory for the contaminant(s) being treated by the POU treatment device. The samples shall be used to demonstrate initial compliance with the MCL. (11-17-05)T

g. The water system owner or operator must maintain records for a POU treatment system. Records shall be submitted to the Department at a frequency and in a format specified by the Department. Records to maintain shall include: (11-17-05)T

i. Requirements of Subsection 450.02.d.; (11-17-05)T

ii. All sampling performed on the POU treatment devices; (11-17-05)T

iii. Maintenance logs and schedules; (11-17-05)T

iv. Log of installed units; and (11-17-05)T

v. Contracts, lease agreements, or other legal documents with vendors and consumers. (11-17-05)T

**023.** Use of Bottled Water. 40 CFR 141.101, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)



**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS**

**DOCKET NO. 58-0108-0602**

**NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

**MEETING SCHEDULE:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meetings. The meetings will take place simultaneously and will be connected by telephone. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Tom John at thomas.john@deq.idaho.gov, (208)373-0191.

**February 15, 2006, 9 a.m. to 5 p.m. MST**

**Department of Environmental Quality  
Conference Rooms C and D  
1410 N. Hilton, Boise, Idaho**

**Department of Environmental Quality  
Large Conference Room  
900 N. Skyline, Suite B, Idaho Falls, Idaho**

**Department of Environmental Quality  
Large Conference Room  
2110 Ironwood Parkway, Coeur d'Alene, Idaho**

**February 22, 2006, 9 a.m. to 5 p.m. MST**

**Department of Environmental Quality  
Conference Rooms C and D  
1410 N. Hilton, Boise, Idaho**

**Department of Environmental Quality  
Large Conference Room  
900 N. Skyline, Suite B, Idaho Falls, Idaho**

**Department of Environmental Quality  
Large Conference Room  
2110 Ironwood Parkway, Coeur d'Alene, Idaho**

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to initiate phase two of the effort to comply with Section 2 of Senate Bill 1220 (2005), which directed the Department of Environmental Quality (DEQ) to develop facility and design standards for both drinking water and wastewater systems. This is the drinking water portion. DEQ proposes to revise Sections 549 through 551 to add provisions for drinking water pumping facilities, treatment works, chemical application, source development, and management of treatment waste residuals. This rulemaking will also modify other sections as necessary to reflect these changes and will add or revise existing language based on input from stakeholders and DEQ. In addition, DEQ will take the opportunity during this rulemaking to make housekeeping changes based on feedback from the regulated community and from DEQ staff who routinely use the rules. Drinking water system owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, and the public at large may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2006 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall. If adopted, the pending rule will be reviewed by the 2007 Idaho Legislature.

**PRELIMINARY DRAFT:** By January 16, 2006 the preliminary draft can be obtained at [http://www.deq.idaho.gov/rules/drinking\\_water/58\\_0108\\_0602\\_negotiated.cfm](http://www.deq.idaho.gov/rules/drinking_water/58_0108_0602_negotiated.cfm) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208)373-0418.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact Tom John at [thomas.john@deq.idaho.gov](mailto:thomas.john@deq.idaho.gov), (208)373-0191.

Anyone may submit written comments during this negotiated rulemaking by mail, fax or e-mail at the address below. Written comments on the preliminary draft must be received by January 27, 2006. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 21st day of November, 2005.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418  
Fax No. (208)373-0481  
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## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

#### DOCKET NO. 58-0112-0501 (FEE RULE)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The temporary rule is effective January 4, 2006.

**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 Title 39, Chapters 1 and 36, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before January 18, 2006. If no such written request is received, a public hearing will not be held.

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:** Administration of the loan program is currently paid for by a 4% set-aside from the federal capitalization grants that DEQ receives from the U.S. Environmental Protection Agency (EPA). Federal capitalization grants have decreased substantially over the last few years thereby reducing the funding available from the set-aside to administer the loan program. The amount available from the set-aside each year is no longer sufficient to fund DEQ's administrative costs for the year. This creates a dilemma for DEQ because, while the EPA grant funds available for administering the State Revolving Fund (SRF) are diminishing, the amount of funds available for loans is growing due to the increasing dollar amount of loan repayments each year. The work load to issue new loans is increasing as the SRF funds increase.

The purpose of this rulemaking is to revise the Rules for Administration of Water Pollution Control Loans to allow DEQ to collect a fee in the form of a percentage of each loan. The fees collected will be used to provide funds for loan program administration. The actual interest rate charged on SRF loans will be reduced by the amount of the fee charged so that there is no cost to the communities using the SRF loans. Cities, counties, districts and associations that own and operate public wastewater treatment systems may be interested in participating in this rulemaking.

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 February 2006. The pending rule will become final upon the conclusion of the 2007 session of the Idaho Legislature if approved by the Legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect public health. In addition, the Governor has found that the fee imposed in this rule meets the criteria set out in Section 67-5226(2), Idaho Code. Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program. Imposition of the fee is authorized by Section 39-119 and 39-3627(4), Idaho Code.

**FEE SUMMARY:** Unless this fee is implemented in FY 2006, DEQ will run out of funds necessary to administer the SRF by the end of FY 2006 and will not be able to make loans for improvements to wastewater treatment facilities. In 2004 the Idaho Legislature added a provision for funding administration to Section 39-3626, Idaho Code; however, EPA has determined that the provision conflicts with the Clean Water Act's restrictions on fund interest earnings specified in 33 Section U.S.C. 1383(d)(1)(D) and the authorized types of assistance in 33 Section U.S.C. 1383(d)(7). Therefore DEQ cannot use interest earned on loans to fund administration of the SRF loan program. The agency is left with either requesting additional state general funds or adopting a loan balance fee to maintain the loan program.

Imposition of the fee is authorized by Section 39-119 and 39-3627(4), Idaho Code.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**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 Negotiated Rulemaking was published in the Idaho Administrative Bulletin, October 5, 2005, Vol. 05-10, pages 711 through 712.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the temporary and proposed rule, contact Bill Jerrel at [william.jerrel@deq.idaho.gov](mailto:william.jerrel@deq.idaho.gov), (208)373-0400.

Anyone may submit written comments regarding this 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 February 1, 2006.

DATED this 16th day of November, 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  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0112-0501**

**005. DEFINITIONS.**

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

**01. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

**02. Board.** The Idaho State Board of Environmental Quality. (12-31-91)

**03. Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (5-3-03)

**04. Close or Closing.** The date on which the borrower issues and physically delivers to the Department

the bond or note evidencing the loan to the borrower, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (1-4-06)T

**045. Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

**056. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities; the inspection and supervision of the construction; and for projects funded with federal moneys the costs incurred during the one (1) year project certification period. (1-1-89)

**067. Department.** The Idaho Department of Environmental Quality. (1-1-89)

**078. Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

**089. Eligible Applicant.** A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (3-30-01)

**0910. Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

**101. Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)

**112. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. (5-3-03)

**123. Facility Plan.** Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the scheduled alternative is cost effective. (5-3-03)

**134. Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

**145. Finding of No Significant Impact (FNSI).** A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)

**156. Handbook.** "Wastewater Facilities Loan Account Handbook of Procedures." (5-3-03)

**167. Implementation Plan.** Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the

- anticipated results of the project. (3-30-01)
- 178. Ineligible Costs.** Costs which are described in Section 041.05. (5-3-03)
- 189. Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)
- 1920. Municipality.** Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-30-01)
- 201. National Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)
- 242. Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)
- 223. Nonpoint Source Pollution.** Water pollution that comes from varied, nonspecific, and diffuse sources and can be associated with the general land disturbing activity that causes the pollution. (3-30-01)
- 234. Nonpoint Source Project Sponsor.** Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof. (3-30-01)
- 245. O & M Manual.** For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-30-01)
- 256. Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)
- 267. Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (3-30-01)
- 278. Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)
- 289. Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)
- 2930. Rehabilitation.** The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)
- 301. Reserve Capacity.** That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)
- 372. Sewer Use Ordinance.** An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (1-1-89)

- 323.** **State.** The state of Idaho. (12-31-91)
- 334.** **Supplemental Grants.** A grant awarded to a municipality in conjunction with a loan from the water pollution control loan account. (3-30-01)
- 345.** **Suspension.** An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)
- 356.** **Unified Watershed Assessment.** Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)
- 367.** **Termination.** An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)
- 378.** **User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)
- 389.** **Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)
- 3940.** **Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)
- 401.** **Water Pollution Control Project.** Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**032. LOAN FEE.**

**01. Loan Fee.** The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program. The Department may impose a loan fee on loans scheduled to close after January 4, 2006. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (1-4-06)T

**02. Determination of Loan Fee.** The Department shall determine the amount of the loan fee on a yearly basis and shall charge the same loan fee on all loans closed during any one fiscal year. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: (1-4-06)T

**a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead;** (1-4-06)T

**b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; and** (1-4-06)T

**c.** The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year. (1-4-06)T

**03.** Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the amount of the loan fee. (1-4-06)T

**04.** Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (1-4-06)T

~~0323.~~ -- 039. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. LOAN OFFER AND ACCEPTANCE.**

**01. Loan Offer.** Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

**02. Acceptance of Loan Offer.** Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

**03. Acceptance Executed as a Contract Agreement.** Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer a eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)

**04. Estimate of Reasonable Cost.** All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

**05. Terms of Loan Offers.** The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

**a.** Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; and (5-3-03)

**b.** Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (1-1-89)

**c.** Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; and (1-1-89)

**d.** Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one



hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; and (5-3-03)

**e.** The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; and (5-3-03)

**f.** The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; and (3-30-01)

**g.** The loan fee pursuant to Section 032; and (1-4-06)T

**gh.** All loans must be fully amortized within a period not to exceed twenty (20) years after project completion. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (3-30-01)

**hi.** Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION

DOCKET NO. 58-0113-0501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code. In addition, the Idaho Legislature directed DEQ to promulgate rules to implement the provisions of Senate Bill 1169 (codified at Section 39-118A, Idaho Code).

**DESCRIPTIVE SUMMARY:** Under Senate Bill 1169, the 2005 Idaho Legislature amended Section 39-118A, Idaho Code, and the Surface Mining Act, Chapter 15, Title 47, Idaho Code, with respect to bonding, closure plans, and time frames for rejecting or approving permits for ore processing facilities using cyanide. Senate Bill 1169 directed DEQ and the Idaho Department of Lands (IDL) to promulgate rules implementing the provisions of the legislation by August 1, 2005. This rule is the result of a series of negotiated rulemaking meetings conducted with members of the regulated community, other interested parties, and IDL. The Board of Environmental Quality adopted the temporary rule on June 23, 2005 with an effective date of July 13, 2005.

In addition, under Docket No. 58-0113-0502, DEQ initiated rulemaking for the purpose of making revisions to the Rules for Ore Processing by Cyanidation in response to the Idaho Conservation League's Petition for Initiation of Rulemaking filed with the Board of Environmental Quality in February 2005. Docket No. 58-0113-0502 also addresses an increase in fees associated with the permitting process as well as any other changes deemed necessary to assure consistency with state and federal law and the efficient operation of a system for permitting ore processing by cyanidation within the state of Idaho.

The two public comments received are in support of this rule. However, issues were raised that are outside the scope of Senate Bill 1169 and this rulemaking. Those concerns will be addressed by DEQ in Docket No. 58-0113-0502. The rule has been adopted as initially proposed in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 369 through 388. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule makes revisions to a current existing rule that regulates an activity not regulated by the federal government. The Idaho Legislature directed DEQ to promulgate temporary rules to implement the provisions of Senate Bill 1169 by August 1, 2005. DEQ initiated this rulemaking to meet that statutory directive.

**IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this pending rule, contact Bruce Schuld at [bruce.schuld@deq.idaho.gov](mailto:bruce.schuld@deq.idaho.gov), (208)373-0554.

Dated this 16<sup>th</sup> day of November, 2005.

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**DOCKET NO. 58-0113-0501 - PENDING RULE**

**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 05-8, August 3, 2005, pages 369 through 388.](#)**

**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 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION

DOCKET NO. 58-0113-0502

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) 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 the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 391 through 419. After consideration of public comments, the proposed rule has been revised at Subsection 007.02. During legislative review of the proposed rule, the Legislative Services Office noted that the proposed definition of Best Management Practices (Subsection 007.02) was inconsistent with the definition used in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". The rule has been revised to correct that inconsistency. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 391 through 419.

**FEE SUMMARY:** The existing rule requires applicants to submit a \$100 fee at the time the permit application is submitted to DEQ (Subsection 100.03.j.). This pending rule includes a new fee schedule which increases the permit application fee (Subsection 100.05.). Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

**IDAHO CODE SECTION 39-107D STATEMENT:** These rules regulate an activity not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D (3) and (4), Idaho Code, supporting modifications to these rules. Information relating to Section 39-107D(2) has also been provided. The requirements set forth in these rules are based upon best available peer reviewed science and studies and analyses conducted by the regulated mining community in Idaho and Nevada, the State of Nevada and other states, the U.S. Environmental Protection Agency (EPA), and Idaho Conservation League. These studies indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed.

**Section 39-107D(2)(a), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.**

Standards and performance criteria for construction, operation, maintenance, monitoring and permanent closure of cyanidation facilities were proposed as modifications to the Rules for Ore Processing by Cyanidation by members of the Idaho Mining Association and the Atlanta Gold Corporation. These standards and criteria are derivations of industry accepted standards and performance criteria used in the State of Nevada. These standards and performance criteria have been adopted by the State of Nevada as regulatory requirements. As such, these proven standards and criteria have been reviewed and accepted by Nevada's and Idaho's regulated community and the State of Nevada.

**Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.**

Data was not collected or analyzed as part of this rulemaking process.

**Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of**

*public health effects or environmental effects.*

Release of contaminants from cyanidation facilities may adversely impact beneficial uses in both surface and ground waters. Due to the remote location of most cyanidation facilities, populations and receptors of contaminants generated by these facilities are small domestic and community drinking water systems, recreationists, and wildlife. However, questions have been raised as to whether or not the drinking water supplies for Treasure Valley residents will be adversely affected by contaminants released from the Atlanta Gold Mine, which will be located above tributaries to the Middle Fork of the Boise River. Contaminants of concern with the potential of release from cyanidation facilities include, but are not limited to, cyanide, nitrates, chlorine, heavy metals, and sediment.

*Sections 39-107D(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk.*

Contaminants of concern listed above have been released from numerous cyanidation facilities, including the Stibnite Mine, Princess Blue Ribbon Mine, Champagne Mine, Black Pine Mine, and Grouse Creek Mine, each of which were regulated by the Rules for Ore Processing by Cyanidation as the rules existed prior to July 13, 2005. The pending rules would require significant improvements to design and construction of primary and secondary containment for process waters and pollutants. These changes are anticipated to eliminate future releases similar to those which occurred at those listed mines. Expected risks of exposure to contaminants released from cyanidation facilities which are constructed, operated, maintained and permanently closed according to the pending rules are as follows:

The expected risk for release of cyanide in concentrations, which might be expected to adversely affect surface or ground water is low. Risks of cyanide contamination affecting down-gradient beneficial users of drinking water (either directly or indirectly) are low to non-existent. Risks to other surface water beneficial uses, including cold water biota (and Bull Trout), salmonid spawning and rearing, and primary and secondary contact recreation, are also low. These conclusions are based on the evaluation of annual Environmental Quality Reports, monitoring data and trend analyses of physical chemical and biological parameters submitted to DEQ by current and past operators. The information and conclusions may be found in DEQ's mining files for the Bear Track Mine, Grouse Creek Mine, Champagne Mine, De Lamar Mine, Hecla Yellow Pine Mine, and Stibnite Mine.

Releases of nitrates, chlorine and other neutralizing agents from spent ore disposal portions of the cyanidation facilities are expected, but should not occur in concentrations which might be expected to adversely affect surface or ground water. Risks of nitrate contamination affecting down-gradient beneficial users of drinking water (either directly or indirectly), are low to non-existent. However, the relative effects of additional nitrates on nutrient impaired Clean Water Act Section 303(d) listed streams, such as the lower Boise River, Brownlee, Ox Bow and Hells Canyon reservoirs is unknown. Risks to other surface water beneficial uses, including cold water biota (and Bull Trout), salmonid spawning and rearing, and primary and secondary contact recreation, are low.

Historically, spent ore disposal areas have been the source of heavy metals and sediment releases which adversely affected cold water biota, and salmonid spawning and rearing in surface waters. However, permanent closure criteria, which include source control measures such as caps and covers for waste repositories, will significantly reduce or eliminate releases from these facilities. The information and conclusions may also be found in DEQ's mining files for the Bear Track Mine, Grouse Creek Mine, Champagne Mine, De Lamar Mine, Hecla Yellow Pine Mine, and Stibnite Mine.

*Section 39-107D(3)(d), Idaho Code. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty.*

Studies of the effects of contaminant delivery from cyanidation facilities have been conducted by operators, state and federal agencies, and Native American tribes. However, conclusions regarding the short and long term effects of contaminants released from cyanidation facilities on cold water biota and salmonid spawning and rearing, particularly for anadromous fishes and Bull Trout, are inconclusive.

Toxicology studies indicate that if the contaminants of concern listed above are released in significant concentrations, there may be significant risk to beneficial uses such as drinking water, cold water biota, salmonid spawning and rearing. However, only routine monitoring and evaluation as prescribed by the current and pending rules are recommended.

*Section 39-107D(3)(e), Idaho Code. Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.*

Annual environmental quality monitoring reports for active mines in Idaho, which utilize cyanidation, are available to support the risk evaluations discussed above.

**IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this pending rule; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this pending rule, contact Bruce Schuld at [bruce.schuld@deq.idaho.gov](mailto:bruce.schuld@deq.idaho.gov), (208)373-0554.

Dated this 16th day of November, 2005.

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**DOCKET NO. 58-0113-0502 - PENDING FEE RULE**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-9, September 4, 2005, pages 391 through 419.](#)**

**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.**

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0113-0502**

***Subsection 007.02***

**0027. DEFINITIONS.**

**02. Best Management Practices (BMPs).** Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (7-13-05)T

# **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.16 - WASTEWATER RULES**

### **DOCKET NO. 58-0116-0501 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for commencing the rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 420 through 436. After consideration of public comments, the proposed rule has been revised at Sections 004, 007, 008, 010, 201, 202, 203, 260, 400, 401, 410, 420, 430, 493, and 600. The remaining sections have been adopted as initially proposed. The proposed rule was revised for consistency with Senate Bill 1220, to clarify the applicability of these rules with respect to municipal and nonmunicipal wastewater treatment or disposal facilities, to incorporate by reference sections of the Idaho Standards for Public Works Construction, and to improve the clarity of the rules. The remaining sections have been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov](http://www.deq.idaho.gov) or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 420 through 436.

**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. Part of this rulemaking involves copying certain provisions that were in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements" (WQS), and moving them to the "Wastewater Rules". To the extent DEQ is simply moving and not changing existing standards, Section 39-107D, Idaho Code, does not apply. In addition, there is no federal law or regulation that is comparable to plan and specification review and facility standard provisions set forth in the Wastewater Rules. Therefore, the changes to the rules 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 Wastewater Rules address the review and approval of plans and specifications for sewage treatment plants and other waste treatment and disposal facilities and the standard by which the agency does the review and approval. This is not an activity regulated by the federal government. Therefore, Section 39-107D, Idaho Code, applies.

Section 39-107D(3), Idaho Code, provides that any rule subject to 39-107D that proposes a standard necessary to protect human health and the environment must also include in the rulemaking record and in the notice of rulemaking additional information. This additional information includes any estimates of risk accomplished, identification of populations or receptors addressed by any estimates, and other information related to an estimation of risk. The Wastewater Rules include facility standards which are intended to protect human health and the environment. The standards, however, are for the design and construction of wastewater pipelines. For example, the rules require that joints on wastewater pipes be watertight and be designed to prevent the entrance of roots. The rules are not based upon any express estimate or analysis of risk to public health or the environment. Instead, the facility standards are based upon guidelines set forth in documents, such as the "Recommended Standards for Wastewater Facilities"-2004 edition, that are generally accepted and used throughout the United States by engineers and state regulators.

**IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT:** No negative impact occurs from this rulemaking; provision is not applicable.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact Mark Mason at [mark.mason@deq.idaho.gov](mailto:mark.mason@deq.idaho.gov), (208)373-0266.

Dated this 17th day of November, 2005.

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**DOCKET NO. 58-0116-0501 - PENDING RULE (NEW CHAPTER)**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-9, September 7, 2005, pages 420 through 436.](#)**

**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.**

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**THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0116-0501**

***Section 004 (Entire Section)***

**004. INCORPORATION BY REFERENCE.**

*Sections 401 and 501.3.4 of "Idaho Standards for Public Works Construction," 2005 Edition, are incorporated by reference into these rules. These documents are available at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502 or, for a fee, from the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ( )*

***Section 007 (Entire Section)***

**007. REFERENCED MATERIAL.**

**01. "Recommended Standards for Wastewater Facilities." 2004 Edition, A Report of the**



*Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers* (except Chapters 10, 20, and 30). This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules. This document is available through Health Education Services at <http://www.hes.org>. ( )

**02. Memorandum of Understanding.** The Memorandum of Understanding between the Idaho Department of Environmental Quality and the Idaho Division of Building Safety Plumbing Bureau signed and dated April 4, 2003 provides assistance in determining jurisdiction over water and sewer service lines. Copies of the document are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, [www.deq.idaho.gov](http://www.deq.idaho.gov). ( )

**03. "Idaho Standards for Public Works Construction."** 2005 Edition. This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules. This document is available for a fee through the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ( )

### **Section 008 (Entire Section)**

#### **008. USE OF GUIDANCE IN DESIGN AND REVIEW.**

Guidance documents are to be used to assist both designers and reviewers in determining a reasonable way to achieve compliance with the rules. Nothing in these rules makes the use of a particular guidance or guidance document mandatory. If the plans and specifications comply with applicable facility standards and design standards as set out in these rules, Section 39-118, Idaho Code, requires that the reviewing authority not substitute his or her judgment for that of the design engineer concerning the manner of compliance. If the design engineer needs assistance as to how to comply with a particular rule, the design engineer may use the referenced guidance documents for that assistance. However, the design engineer may also use other guidance or provide documentation to substantiate his or her own professional judgment. ( )

### **Section 010 (Entire Section)**

#### **010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.16, "Wastewater Rules," the following definitions apply: ( )

**01. Available.** Based on public wastewater system size, complexity, and variation in raw waste, a licensed wastewater operator must be on site, on call, or able to be contacted as needed to initiate the appropriate action for normal or emergency conditions in a timely manner. ( )

**02. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. ( )

**03. Biochemical Oxygen Demand (BOD).** *The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C.* ( )

**04. Board.** The Idaho Board of Environmental Quality. ( )

**05. Class A Effluent.** Class A effluent is treated municipal reclaimed wastewater that must be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. For comprehensive Class A Effluent criteria and permitting requirements refer to IDAPA 58.01.17, "Wastewater Land Application Permit Rules". ( )

- 06. Class A Effluent Distribution System.** The delivery system for Class A effluent. The distribution system does not include any of the collection or treatment portions of the wastewater facility and is not subject to operator licensing requirements in Section 203 of these rules. ( )
- 07. Collection System.** That portion of the wastewater system in which wastewater is received from the premises of the discharger and conveyed to the point of treatment through a series of lines, pipes, manholes, pumps/lift stations and other appurtenances. ( )
- 08. Compliance Schedule or Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. ( )
- 09. Department.** The Idaho Department of Environmental Quality. ( )
- 10. Design Flow.** The critical flow used for steady-state wasteload allocation modeling. ( )
- 11. Designated Beneficial Use or Designated Use.** Those beneficial uses assigned to identify waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards," Sections 110 through 160, whether or not the uses are being attained. ( )
- 12. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. ( )
- 13. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. ( )
- 14. Disinfection.** A method of reducing the pathogenic or objectionable organisms by means of chemicals or other acceptable means. ( )
- 15. Disposal Facility.** Any facility used for disposal of any wastewater. ( )
- 16. Effluent.** Any wastewater discharged from a treatment facility. ( )
- 17. EPA.** The United States Environmental Protection Agency. ( )
- 18. Facility Standards and Design Standards.** Facility standards and design standards are described in Sections 400, 410, 420, and 430 of these rules. Facility and design standards found in Sections 410, 420, and 430 of these rules must be followed in the planning, design, construction, and review of *municipal* wastewater facilities. ( )
- 19. Geometric Mean.** The geometric mean of "n" quantities is the "nth" root of the product of the quantities. ( )
- 20. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ( )
- 21. Industrial Wastewater.** Any waste, together with such water as is present, that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater. ( )
- 22. Land Application.** A process or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant removal, or ground water recharge. ( )
- 23. License.** A physical document issued by the Idaho Bureau of Occupational Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code. ( )

**24. Material Deviation.** A change from the design plans that significantly alters the type or location of facilities, requires engineering judgment to design, or impacts the public safety or welfare. ( )

**25. Material Modification.** Material modifications are those that are intended to increase system capacity or to alter the methods or processes employed. ( )

**26. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. ( )

**27. Municipal Wastewater.** *Unless otherwise specified, sewage and associated solids, whether treated or untreated, together with such water that is present. Also called domestic wastewater. Industrial wastewater may also be present, but is not considered part of the definition.* ( )

**28. National Pollutant Discharge Elimination System (NPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. ( )

**29. Natural Background Conditions.** No measurable change in the physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. ( )

**30. Nephelometric Turbidity Units (NTU).** A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. ( )

**31. Nuisance.** Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. ( )

**32. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. ( )

**33. Non-Potable Mains.** The pipelines that collect and convey non-potable discharges from or to multiple service connections. ( )

**34. Non-Potable Services.** The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, reclaimed wastewater system, and other non-potable systems to individual consumers. ( )

**35. Operating Personnel.** Any person who is employed, retained, or appointed to *conduct the tasks associated with the day-to-day operation and maintenance of a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health.* ( )

**36. Owner.** For purposes of Sections 202 through 204, the person, company, corporation, district, association or other organizational entity that owns the public wastewater system, and who provides, or intends to provide wastewater service to system users and is ultimately responsible for the public wastewater system operation. ( )

**37. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. ( )

**38. Point Source.** Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding

operation, or vessel or other floating craft, from which pollutants are, or may be, discharged to surface waters of the state. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ( )

**39. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. ( )

**40. Potable Water.** A water which is free from impurities in such amounts that it is safe for human consumption without treatment. ( )

**41. Potable Water Mains.** Pipelines that deliver potable water to multiple service connections. ( )

**42. Potable Water Service.** Pipelines that convey potable water from a connection to the potable water main across private property to individual consumers. ( )

**43. Primary Treatment.** Processes or methods that serve as the first stage treatment of wastewater, intended for removal of suspended and settleable solids by gravity sedimentation; provides no changes in dissolved and colloidal matter in the sewage or wastes flow. ( )

**44. Public Wastewater System or Wastewater System.** For purposes of Sections 202 through 204, a public wastewater system or wastewater system is any publicly or privately owned collection system or treatment system that generates, collects, or treats two thousand five hundred (2,500) or more gallons of wastewater per day. 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 wastewater system with individual septic tanks and individual pump stations that discharge to a common gravity flow subsurface treatment and distribution system when ownership of each septic tank and pumping station is by individual property owner and ownership of the common system is by a public or private entity; 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. ( )

**45. Quasi-Municipal Corporation.** A public entity, other than community government, created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare. For the purpose of these rules, this term refers to wastewater or sewer districts. ( )

**46. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. ( )

**47. Recharge.** The process of adding water to the zone of saturation. ( )

**48. Recharge Water.** Water that is specifically utilized for the purpose of adding water to the zone of saturation. ( )

**49. Responsible Charge (RC).** For purposes of Sections 202 through 204, 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. ( )

**50. Responsible Charge Operator.** For purposes of Sections 202 through 204, 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. ( )

**51. Reviewing Authority.** For those projects requiring preconstruction approval by the Department,

the Department is the reviewing authority. For those projects allowing for preconstruction approval by others, pursuant to Subsection 400.01.b. of these rules, the qualified licensed professional engineer is also the reviewing authority. ( )

**52. Sanitary Sewer Extension.** As used in Section 400, an extension of an existing wastewater collection system that does not require a lift station or force main and is intended to increase the service area of the wastewater collection system. ( )

**53. 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. ( )

**54. 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. ( )

**55. Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. ( )

**56. Special Resource Water.** Those specific segments or bodies of water which are recognized as needing intensive protection: ( )

**a.** To preserve outstanding or unique characteristics; or ( )

**b.** To maintain current beneficial use. ( )

**57. State.** The state of Idaho. ( )

**58. 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. ( )

**59. Surface Water Body.** All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. This includes, but is not limited to, rivers, streams, canals, ditches, lakes, and ponds. It does not include private waters as defined in Section 42-212, Idaho Code. ( )

**60. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. ( )

**61. Treatment Facility.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment 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 *facility* may also be known as a treatment *system*, waste treatment system, waste treatment facility, or waste treatment plant. ( )

**62. User.** Any person served by a public wastewater system. ( )

**63. 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. ( )

**64. Wastewater Lagoon.** Manmade impoundments for the purpose of storing or treating wastewater. ( )

**65. Wastewater Pipelines.** The pipelines that collect and convey non-potable discharges from or to

multiple service connections. ( )

**66. Wastewater System.** Wastewater system includes any *collection system*, treatment system, or disposal facility. ( )

**67. Wastewater 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 treatment or collection system in order to safeguard the public health and environment. ( )

**68. Water Main Extension.** An extension of the distribution system of an existing public water system that does not require a booster pumping station and is intended to increase the service area of the water system. ( )

**69. 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. ( )

**70. 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. ( )

**71. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. ( )

***Subsection 201.04.b.***

**201. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.**

**04. Treatment Records.** Any person who owns or operates any facility or carries out any operation which results in the discharge of wastewater must furnish to the Department such information concerning quality and quantity of discharged wastewaters and maintain such treatment records as the Department requires to evaluate the effects of any receiving waters. Required information can include, but is not limited to: ( )

- a. Treated wastewater discharge volumes; and ( )
- b. Treated wastewater discharge *biochemical oxygen demand* (BOD); and ( )
- c. Treated wastewater discharge suspended solid concentration; and ( )
- d. Discharge pH; and ( )
- e. Discharge temperatures. ( )

***Section 202***

**202. CLASSIFICATION OF PUBLIC WASTEWATER SYSTEMS.**

***Section 203, Subsections 203.07 and 203.08***

**203. PUBLIC WASTEWATER SYSTEM OPERATOR LICENSURE REQUIREMENTS.**

**07. Land Application Operator Compliance Deadline.** Each *public* wastewater land application system addressed in these rules shall employ, retain or contract with licensed land application operating personnel by April 15, 2007. ( )

**08. Qualifications for Operator Licensure.** All *public* wastewater system operating personnel, including responsible charge and substitute responsible charge operators, must qualify for and hold a valid license issued by the Idaho Bureau of Occupational Licenses. ( )

**Section 260 (Entire Section)**

**260. SUBSURFACE SEWAGE OR WASTE DISPOSAL.**

Subsurface sewage or wastewater disposal facilities must be designed and located so that pollutants cannot be reasonably expected to enter water of the state in concentrations resulting in injury to beneficial uses. *See also IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules"*. ( )

**Section 400, Subsection 400.01.a., 400.01.b., and 400.02**

**400. REVIEW OF PLANS FOR MUNICIPAL WASTEWATER TREATMENT OR DISPOSAL FACILITIES.**

All applicable laws, rules and standards shall be used in the review of plans and specifications for *municipal* wastewater treatment or disposal facilities. "Recommended Standards for Wastewater Facilities," - 2004 edition, *A Report of the Wastewater Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers* (except Chapters 10, 20, and 30) shall be used as guidance in the review of plans and specifications for *municipal* wastewater treatment or disposal facilities. ( )

**01. Plan and Specification Review.** ( )

**a.** Except as provided in Subsection 400.01.b., all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other *municipal* wastewater treatment or disposal facilities, or for material modifications to existing sewage treatment plants or systems, *municipal* wastewater treatment or disposal facilities shall be submitted to the Department for review and approval before construction may begin and all construction shall be in substantial compliance therewith. The Department shall review plans and specifications and endeavor to resolve design issues within forty-two (42) calendar days of submittal such that approval can be granted. If the Department and applicant have not resolved design issues within forty-two (42) calendar days or at any time thereafter, the applicant may file a written demand to the Department for a decision. Upon receipt of such written demand, the Department shall deliver a written decision to the applicant within no more than seven (7) calendar days explaining any reasons for disapproval. The Department shall maintain records of all written demands for decision made pursuant to Subsection 400.01.a. with such records including the final decision rendered and the timeliness thereof. No material deviation shall be made to the approved plans and specifications without the prior approval of the Department. ( )

**b.** Plans developed for sanitary sewer extensions, when such facilities will be owned and operated by a city, county, quasi-municipal corporation or regulated public utility, shall not require preconstruction approval by the Department, provided that such plans and specifications are reviewed and approved by *another* qualified Idaho licensed professional engineer to verify compliance with the requirements of these rules prior to initiation of construction. Any plans approved pursuant to Subsection 400.01.b. shall be transmitted to the Department at the time construction is authorized along with a statement that the plans comply with the requirements of these rules and that construction has been authorized by the city, county, quasi-municipal corporation or regulated public utility that will own and operate the system. At the discretion of the city, county, quasi-municipal corporation or regulated public utility, the plans addressed by this subsection may be referred to the Department for review and approval prior to initiation of construction. ( )

**02. Professional Engineer.** Plans and specifications for construction, alteration or expansion of any

sewage system, sewage treatment plant or system, or other *municipal wastewater treatment or disposal facility* shall be prepared by or under the supervision of an Idaho registered professional engineer and shall bear the imprint of the engineer's seal. Construction shall be observed by a registered professional engineer or a person under the supervision of a registered professional engineer. ( )

**Section 401 (New Section)**

**401. REVIEW OF PLANS FOR NONMUNICIPAL WASTEWATER TREATMENT OR DISPOSAL FACILITIES.**

**01. Plan and Specification Approval Required.** *The construction, alteration or expansion of any nonmunicipal wastewater treatment or disposal facility must not begin before plans and specifications for the proposed facility have been submitted to and approved by the Department. Deviations may be allowed as provided in Subsection 401.02. The Department does not require review of industrial in-plant processes.* ( )

**02. Deviations From Approved Plans.** *No deviations are to be made from the approved plans and specifications without prior approval of the Department.* ( )

**03. Record Plans and Specifications.** *If actual construction deviates from the approved plans and specifications, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed, shall be submitted to the Department for review and approval within thirty (30) days of completion of construction.* ( )

**04. Waiver of Approval Requirement.** *The Department can waive the plan and specification approval required in Subsection 401.01 for any particular facility or category of facilities which will have no significant impact on the environment or on the public health.* ( )

**402. -- 409. (RESERVED).**

**Section 410 and Subsection 410.01**

**410. FACILITY AND DESIGN STANDARDS FOR MUNICIPAL WASTEWATER TREATMENT OR DISPOSAL FACILITIES - ENGINEERING REPORTS AND FACILITY PLANS.**

**01. Engineering Reports and Facility Plans Required.** Engineering Reports and current Facility Plans are required for *municipal wastewater treatment or disposal facilities* and shall address hydraulic capacity, treatment capacity, project financing, and operation and maintenance considerations sufficiently to determine the effects of the project on the overall wastewater infrastructure. Engineering Reports must be completed for minor collection system, pump station, and interceptor projects. *Comprehensive Facility Plans are not required for minor or routine collection systems.* Comprehensive Facility Plans must be completed or have been completed for projects involving new, expanded, upgraded, or rehabilitated *municipal wastewater treatment or disposal facilities* and major collection, interceptor sewer, and pump station projects and address the entire potential service area of the project. The determination of classification as major or minor collection interceptor sewer and pump station projects will be made by the reviewing authority based on review of recommended classification by the owner. ( )

**Section 420 (Entire Section)**

**420. FACILITY AND DESIGN STANDARDS FOR MUNICIPAL WASTEWATER TREATMENT OR DISPOSAL FACILITIES - SUBMISSION OF PLANS AND SUPPORT DOCUMENTS.**

Submissions to the reviewing authority for construction of *municipal wastewater treatment or disposal facilities* shall include sealed plans and specifications, design criteria, the appropriate construction permit applications, review forms, and permit fee if required. The plans and specifications shall contain sufficient detail to allow for the contracting and construction of the wastewater systems. ( )



*Subsections 430.02.i. and 430.02.k.iv.*

**430. FACILITY AND DESIGN STANDARDS FOR MUNICIPAL WASTEWATER TREATMENT OR DISPOSAL FACILITIES - DESIGN AND CONSTRUCTION OF WASTEWATER PIPELINES.**

**02. Details of Design and Construction. ( )**

**i.** Testing. Testing shall conform with Section 501.3.4 of the "Idaho Standards for Public Works Construction". ( )

**k.** Wastewater Pipelines in Relation to Surface Water Bodies. The top of all wastewater pipelines entering or crossing surface water bodies shall be at a sufficient depth below the natural bottom of the bed or otherwise designed to protect the wastewater pipeline. ( )

**iv.** Materials. Wastewater pipelines entering or crossing surface water bodies shall be constructed of *water transmission pressure rated pipe with restrained joints conforming to Section 401 of the 'Idaho Standards for Public Works Construction'* or other suitable pipe with restrained joints *capable of being installed to remain watertight and free from changes in alignment or grade.* Material used to back-fill the trench shall be *concrete slurry, stone, coarse aggregate, washed gravel, or other materials which will not readily erode, cause siltation, damage pipe during placement, or corrode the pipe.* ( )

**Section 493 (Entire Section Deleted)**

**431. -- 599. (RESERVED).**

**Subsection 600.02**

**600. LAND APPLICATION OF WASTEWATER(S) OR RECHARGE WATERS.**  
Land application of wastewater or recharge waters is subject to the following requirements: ( )

**02. Applied Waters Restricted to Premises.** Wastewater(s) or recharge waters applied to the land surface must be restricted to the premises of the application *site. Wastewater discharges to surface water that require a permit under the Clean Water Act must be authorized by the U.S. Environmental Protection Agency.* ( )

## **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.16 - WASTEWATER RULES**

#### **DOCKET NO. 58-0116-0502**

### **NOTICE OF INTENT TO PROMULGATE RULES**

#### **NEGOTIATED RULEMAKING (2ND NOTICE)**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Title 39, Chapter 1, Idaho Code.

**MEETING SCHEDULE:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. The meeting will take place in Boise as a teleconference with connections to the following DEQ regional offices. For information regarding additional meetings, contact Mark Mason at mark.mason@deq.idaho.gov, (208)373-0266.

**January 17, 2006, 9 a.m. to 5 p.m. Mountain Standard Time**

**Department of Environmental Quality, Conference Rooms C and D  
1410 N. Hilton, Boise, Idaho**

**Department of Environmental Quality, Large Conference Room  
900 N. Skyline, Suite B, Idaho Falls, Idaho**

**Department of Environmental Quality, Small Conference Room  
2110 Ironwood Parkway, Coeur d'Alene, Idaho**

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to initiate phase two of the effort to comply with Section 2 of Senate Bill 1220 (2005), which directed the Department of Environmental Quality (DEQ) to develop facility and design standards for both drinking water and wastewater systems. This is the wastewater portion. DEQ proposes to add or modify several sections between Sections 400 and 599 of the Wastewater Rules for wastewater pumping and treatment works. This rulemaking will also modify several other sections to reflect these changes and to add or modify existing language based on input from stakeholders and DEQ. Wastewater system owners and operators, developers, consultants, engineers, cities, counties, industry, wastewater professional organizations, and the public at large may be interested in this rulemaking.

DEQ published notice of this negotiated rulemaking in the December 2005 issue of the Idaho Administrative Bulletin. In the December notice, two meetings were scheduled. The first meeting was held on December 15, 2005 in Boise. The purpose of this notice is to notify the public that the second meeting, scheduled for January 17, 2006 in Boise, will be set up as a teleconference with connections to DEQ's regional offices in Idaho Falls and Coeur d'Alene.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2006 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall. If adopted, the pending rule will be reviewed by the 2007 Idaho Legislature.

**NEGOTIATED RULE:** Negotiated Rule - Draft #2 can be obtained at [http://www.deq.idaho.gov/rules/wastewater/58\\_0116\\_0502\\_negotiated.cfm](http://www.deq.idaho.gov/rules/wastewater/58_0116_0502_negotiated.cfm) or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.idaho.gov](http://www.deq.idaho.gov).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact Mark Mason at (208)373-0266 or

mark.mason@deq.idaho.gov.

Anyone may submit written comments during this negotiated rulemaking by mail, fax or e-mail at the address below. Written comments on Negotiated Rule – Draft #2 must be received by January 24, 2006. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 20<sup>th</sup> day of December, 2005.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
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## **IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM**

### **59.01.03 - CONTRIBUTION RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**DOCKET NO. 59-0103-0501**

#### **NOTICE OF RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the rescission of temporary rule February 1, 2006.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule:

Section 59-1322(1), Idaho Code, requires the Retirement Board (Board) to establish contribution rates to adequately fund the retirement system, subject to certain requirements. In 2003, the Board adopted proposed rules that provided for a series of three annual contribution rate increases beginning July 1, 2004, through July 1, 2006. The first of those increases went into effect, but favorable market conditions significantly improved the funding status of the plan and the board postponed the two subsequent increases for one year, until July 1, 2006, and July 1, 2007, respectively. The Board has now determined that the two additional increases scheduled for July 1, 2006 and July 1, 2007, can each be postponed another year, to July 1, 2007 and July 1, 2008, respectively. The Board will continue to monitor funding and market conditions and will take additional action if appropriate. New rates apply to the first pay period beginning on or after the applicable date. These changes are reflected in a new temporary rule in docket number 59-0103-0601, effective February 1, 2006.

This temporary rule is rescinded the same day, effective February 1, 2006.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the rescission of this temporary rule, contact Alan H. Winkle, Executive Director of PERSI, 334-3365.

DATED this 31st day of October, 2005.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8<sup>th</sup>, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
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## **IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM**

### **59.01.03 - CONTRIBUTION RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**DOCKET NO. 59-0103-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules is February 1, 2006.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

Section 59-1322(1), Idaho Code, requires the Retirement Board (Board) to establish contribution rates to adequately fund the retirement system, subject to certain requirements. In 2003, the Board adopted proposed rules that provided for a series of three annual contribution rate increases beginning July 1, 2004, through July 1, 2006. The first of those increases went into effect, but favorable market conditions significantly improved the funding status of the plan and the board postponed the two subsequent increases for one year, until July 1, 2006, and July 1, 2007, respectively. The Board has now determined that the two additional increases scheduled for July 1, 2006 and July 1, 2007, can each be postponed another year, to July 1, 2007 and July 1, 2008, respectively. The Board will continue to monitor funding and market conditions and will take additional action if appropriate. New rates apply to the first pay period beginning on or after the applicable date.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons: This rule change will confer a benefit on PERSI employees and employers.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rules, contact Alan H. Winkle, Executive Director of PERSI, 334-3365.

DATED this 31st day of October, 2005.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8<sup>th</sup>, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-3365  
FAX: 208-334-3804

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#### **THE FOLLOWING IS TEXT OF DOCKET NO. 59-0103-0601**

##### **026. PERSI EMPLOYER GENERAL MEMBER CONTRIBUTION RATE (RULE 26).**

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, shall be nine point seventy-seven percent (9.77%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point thirty-nine

percent (10.39%) of payroll through June 30, 2006~~7~~. Beginning July 1, 2006~~7~~, the rate shall be eleven percent (11.00%) of payroll through June 30, 2007~~8~~. Beginning July 1, 2007~~8~~, the rate shall be eleven point sixty-one percent (11.61%) of payroll until next determined by the Board.

Statutory Reference: Sections 59-1302(16), 59-1391, 59-1394, and 59-1397, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) (Amended 6-30-05) ~~(6-30-05)~~(2-1-06)T

**027. FIREFIGHTER RETIREMENT FUND EMPLOYER RATE (RULE 27).**

The Firefighter Retirement Fund employer rate shall be: (10-1-94)

**01. Option I And II Firefighters.** For option I and II firefighters hired before October 1, 1980, as follows:

<b>Option I And II Firefighters</b>	
PERSI Employer Contribution Rate:	Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2006 <del>7</del> . Beginning July 1, 2006 <del>7</del> , the rate shall be eleven point thirty-four percent (11.34%) of payroll through June 30, 2007 <del>8</del> . Beginning July 1, 2007 <del>8</del> , the rate shall be eleven point ninety-five percent (11.95%) of payroll until next determined by the Board.
Additional Employer Rate:	One percent (1.00%)
Social Security Rate:	Seven point sixty-five percent (7.65%)
Excess Merger Costs:	Seventeen point twenty-four percent (17.24%) until next determined by the Board.
TOTAL Contribution:	Thirty-six percent (36%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be thirty-six point sixty-two percent (36.62%) of payroll through June 30, 2006 <del>7</del> . Beginning July 1, 2006 <del>7</del> , the rate shall be thirty-seven point twenty-three percent (37.23%) of payroll through June 30, 2007 <del>8</del> . Beginning July 1, 2007 <del>8</del> , the rate shall be thirty-seven point eighty-four percent (37.84%) of payroll until next determined by the Board.

~~(6-30-05)~~(2-1-06)T

**02. Class D Firefighters.** For class D firefighters (firefighters employed on or after October 1, 1980, by a city or fire district that employs paid firefighters who are participating in the Firefighters' Retirement Fund), as follows:

<b>Class D Firefighters</b>	
PERSI Employer Contribution Rate:	Ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2006 <del>7</del> . Beginning July 1, 2006 <del>7</del> , the rate shall be eleven point thirty-four percent (11.34%) of payroll through June 30, 2007 <del>8</del> . Beginning July 1, 2007 <del>8</del> , the rate shall be eleven point ninety-five percent (11.95%) of payroll until next determined by the Board.
Excess Merger Costs:	Seventeen point twenty-four percent (17.24%) until next determined by the Board.

<b>Class D Firefighters</b>	
TOTAL Contribution:	Twenty-seven point thirty-five percent (27.35%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be twenty-seven point ninety-seven percent (27.97%) of payroll through June 30, 2006 <del>7</del> . Beginning July 1, 2006 <del>7</del> , the rate shall be twenty-eight point fifty-eight percent (28.58%) of payroll through June 30, 2007 <del>8</del> . Beginning July 1, 2007 <del>8</del> , the rate shall be twenty-nine point nineteen percent (29.19%) of payroll until next determined by the Board.

Statutory References: Sections 59-1302(16), 59-1391, 59-1394, 59-1397, 72-1403, and 72-1434, Idaho Code. Cross References: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) (Amended 6-30-05) ~~(6-30-05)~~T(2-1-06)T

**03. Class E Members.** For class E members (general members who meet the definition of paid firefighter under Section 59-1391(f), Idaho Code, but are not firefighters as defined in Section 59-1302(16), Idaho Code) the employer general member contribution rate as provided in Rule 26, plus the excess merger costs specified in Subsection 027.01. (3-20-04)

**028. PERSI EMPLOYER CLASS II CONTRIBUTION RATE (RULE 28).**

The PERSI employer contribution rate as provided in Section 59-1322, Idaho Code, for an employee classified as a police officer member excluding those listed in Rule 29 of this chapter when applicable, and firefighters excluding those listed in Rule 27 of this chapter, shall be ten point eleven percent (10.11%) of payroll through June 30, 2004. Beginning July 1, 2004, the rate shall be ten point seventy-three percent (10.73%) of payroll through June 30, 2006~~7~~. Beginning July 1, 2006~~7~~, the rate shall be eleven point thirty-four percent (11.34%) of payroll through June 30, 2007~~8~~. Beginning July 1, 2007~~8~~, the rate shall be eleven point ninety-five percent (11.95%) of payroll until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 7-1-03) (Amended 3-20-04) (Amended 6-30-05) ~~(6-30-05)~~T(2-1-06)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PERSI EMPLOYEE GENERAL MEMBER CONTRIBUTION RATE (RULE 100).**

The PERSI employee contribution rate as provided in Section 59-1333, Idaho Code, for all members not classified as police members or firefighters, shall be five point eighty-six percent (5.86%) of salary through June 30, 2004. Beginning July 1, 2004, the rate shall be six point twenty-three percent (6.23%) of salary through June 30, 2006~~7~~. Beginning July 1, 2006~~7~~, the rate shall be six point sixty percent (6.60%) of salary through June 30, 2007~~8~~. Beginning July 1, 2007~~8~~, the rate shall be six point ninety-seven percent (6.97%) of salary until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) (Amended 6-30-05) ~~(6-30-05)~~T(2-1-06)T

**101. PERSI EMPLOYEE CLASS II CONTRIBUTION RATE (RULE 101).**

The employee contribution rate as provided in Section 59-1334, Idaho Code, for an employee classified as a police officer member is seven point twenty-one percent (7.21%) of salary through June 30, 2004. Beginning July 1, 2004, the rate shall be seven point sixty-five percent (7.65%) of salary through June 30, 2006~~7~~. Beginning July 1, 2006~~7~~, the rate shall be eight point zero-nine percent (8.09%) of salary through June 30, 2007~~8~~. Beginning July 1, 2007~~8~~, the rate shall be eight point fifty-three percent (8.53%) of salary until next determined by the Board.

Statutory References: Cross Reference: (Amended 10-1-94) (Amended 10-1-97) (Amended 10-1-98) (Amended 10-1-99) (Amended 7-1-00) (Amended 3-30-01) (Amended 3-20-04) (Amended 6-30-05) ~~(6-30-05)~~T(2-1-06)T

## **IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM**

### **59.01. 06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

**DOCKET NO. 59-0106-0501**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING 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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1), 33-1228, and 67-5339, 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 text of the pending rule with an explanation of the reasons for the change.

The Board has determined, based on actuarial studies and utilization data, that the current contribution rates for funding the unused sick leave account for public school employees under Section 33-1228, Idaho Code, is inadequate to meet the future obligations created under that section. As a result, those contributions rates, which are expressed as a percentage of employees' salaries, are being increased. The Board has also determined that it is necessary to have multiple rates based on utilization, since some school districts grant more days of sick leave than other districts or permit more days to accrue, as currently permitted by Section 33-1218, Idaho Code, which disproportionately increases liabilities to the fund. The rate increases will be phased in over a three year period beginning July 1, 2006. Other changes have also been made to Rules 550 and 552 to avoid manipulation of hourly rates and daily rates used to calculate benefits under unused sick leave and to maintain equity in contribution rates in the event of non-traditional work weeks. Other technical changes have also made to the rules to update the address of the Coeur d'Alene Office in Rule 2; to correct a typographic error in Rule 6; to clarify the retirement election requirements of Rule 122 and to provide for a default election when a member fails to make one; to change terminology in Rules 142 and 147 that more accurately describes the effect of reemployment on retirement benefits; Rule 701 has been changed to conform to a statutory change allowing inactive members to purchase service. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 713 through 716.

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact Alan H. Winkle, Executive Director of PERSI, 334-3365.

DATED this 31st day of October, 2005.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8<sup>th</sup>, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-3365  
Fax: 208-334-3804



**DOCKET NO. 59-0106-0501 - PENDING RULE**

**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 05-10, October 5, 2005, pages 713 through 716.](#)**

**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.**

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### **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 08 - STATE BOARD OF EDUCATION PO Box 83720, Boise, ID 83720-0037**

**08-0203-0601, Rules Governing Thoroughness.** Clarifies that Department of Education is responsible for calculating rewards for deserving schools using current calculation methodology and clarifies the difference between the two awards. Comment by: 1/25/06.

#### **IDAPA 11 - IDAHO STATE POLICE PO Box 1177, Meridian, ID 83680-1177**

**11-1301-0601, The Motor Carrier Rules.** Updates incorporation by reference citation to comply with change in Code of Federal Regulations. Comment by: 1/25/06.

#### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036**

**16-0305-0601, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled.** Increases the basic allowance from \$67 to \$87 a month for Medicaid Recipients on Medicare residing in Room and Board Homes, Residential and Assisted Living Facilities, and Certified Family Homes to help cover out-of-pocket medical costs for increased prescription and premium costs for their chosen Medicaid Prescription Drug Plan that will no longer be paid for by Idaho's Medicaid Program. Comment by: 1/25/06.

#### **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY 1410 N. Hilton, Boise, ID 83706-1255**

**58-0108-0601, Idaho Rules for Public Drinking Water Systems.** Allows public drinking water systems to use point of use treatment technology for treating some chemical contaminants such as arsenic; exempts small public drinking water systems (serving less than 200 connections) from the requirement in Section 39-118, Idaho Code, to submit engineering plans and specifications and submit technical and managerial documentation to the Department; and allows public drinking water systems serving over 200 service connections the option to apply to the state for a waiver of the engineering plan and specification requirements. Comment by: 2/1/06.

**58-0112-0501, Rules for the Administration of Water Pollution Control Loans.** Allows DEQ to collect a fee in the form of a percentage of each loan that will be used to provide funds for loan program administration. The actual interest rate charged on State Revolving Fund loans will be reduced by the amount of the fee charged so that there is no cost to the communities using the SRF loans. Comment by: 2/1/06.

*Temporary Rules Have Been Adopted in the Following Rulemakings:*

**IDAHO STATE POLICE**

*11-1301-0601* – The Motor Carrier Rules

**DEPARTMENT OF HEALTH AND WELFARE**

*16-0305-0601* – Rules Governing Eligibility for Aid to the Aged, Blind and Disabled

*16-0309-0601* – Rules Governing the Medical Assistance Program

**INDUSTRIAL COMMISSION**

*17-0208-0501* – Miscellaneous Provisions

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

*58-0101-0504* - Rules for the Control of Air Pollution in Idaho

*58-0112-0501*- Rules for Administration of Water Pollution Control Loans

**PUBLIC EMPLOYEES RETIREMENT SYSTEM OF IDAHO**

*59-0103-0601* – Contribution Rules of PERSI

*Negotiated Rulemaking Meetings Are Being Conducted on the Following Dockets:*

*(See January Bulletin for dates, times and locations)*

**DEPARTMENT OF EDUCATION**

*08-0203-0602* - Rules Governing Thoroughness

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

*58-0101-0601* - Rules for the Control of Air Pollution in Idaho

*58-0108-0602* – Idaho Rules for Public Drinking Water Systems

*58-0116-0502* – Wastewater Rules (2<sup>nd</sup> Notice)

Please refer to the Idaho Administrative Bulletin, **January 4, 2006, Volume 06-1** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

**Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.**

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at [adm.idaho.gov/adminrules/](http://adm.idaho.gov/adminrules/) or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**FOR THE ABOVE LINK TO WORK YOU HAVE  
TO BE CONNECTED TO THE INTERNET**

**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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