

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 06-1 refers to the first Bulletin issued in calendar year 2006; Bulletin 07-1 refers to the first Bulletin issued in calendar year 2007. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 07-1 refers to January 2007; Volume No. 07-2 refers to February 2007; and so forth. Example: The Bulletin published in January of 2007 is cited as Volume 07-1. The December 2006 Bulletin is cited as Volume 06-12.

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 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 only published in the Bulletin and **not** printed in the Administrative Code.*

*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.

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 requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as 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 rule that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

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

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending 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 reviewed by the legislature and not rejected, amended or modified becomes 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 83720-0306, 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 a table 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://adm.idaho.gov/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 38.05.01.200.02.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.*

*“**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 “-”, (38-0501-0701). 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 number:

“DOCKET NO. 38-0501-0701”

“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**).

“0701” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in **calendar year 2007**. A subsequent rulemaking on this same rule chapter in calendar year 2007 would be designated as “0702”. The docket number in this scenario would be 38-0501-0702.

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” denotes the main Section number of the rule to which the citation refers.

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 2007

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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2008

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
08-1	January 2008	*November 14, 2007	January 2, 2008	January 22, 2008
08-2	February 2008	January 4, 2008	February 6, 2008	February 27, 2008
08-3	March 2008	February 8, 2008	March 5, 2008	March 26, 2008
08-4	April 2008	March 7, 2008	April 2, 2008	April 23, 2008
08-5	May 2008	April 4, 2008	May 7, 2008	May 28, 2008
08-6	June 2008	May 2, 2008	June 4, 2008	June 25, 2008
08-7	July 2008	May 30, 2008	July 2, 2008	July 23, 2008
08-8	August 2008	July 3, 2008	August 6, 2008	August 27, 2008
08-9	September 2008	August 1, 2008	September 3, 2008	September 24, 2008
08-10	October 2008	**August 20, 2008	October 1, 2008	October 22, 2008
08-11	November 2008	October 3, 2008	November 5, 2008	November 26, 2008
08-12	December 2008	October 31, 2008	December 3, 2008	December 24, 2006

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

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

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IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS

DOCKET NO. 02-0421-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-207, Idaho Code.

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

Thursday, August 23, 2007 -- 7:00 - 8:00 pm
Nampa Civic Center
311 Third Street South, Nampa, ID 83651

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

This rule updates the rules for importation of animals into Idaho, including the Trichomoniasis, Domestic Cervidae, and Rabies sections, adds sections for the importation of fish, and makes typographical and grammatical corrections.

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: Necessary to protect the public health, safety, or welfare.

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

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. However, this rule was developed with input from the industry segments affected.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2007.

DATED this 10th day of July, 2007.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0421-0701

010. DEFINITIONS.

- 01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (5-3-03)
- 02. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (5-3-03)
- 03. Animals.** All vertebrates, except humans. (5-3-03)
- 04. Approved Brucella Vaccine.** A vaccine product that is approved by and produced under license of the United States Department of Agriculture for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to brucellosis. (5-3-03)
- 05. Approved Feedlot.** A feedlot approved by the Administrator to feed female cattle and domestic bison which have not been officially vaccinated against brucellosis or other bovidae not in compliance with Idaho's rules. (5-3-03)
- 06. Approved Slaughter Establishment.** A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (5-3-03)
- 07. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (5-3-03)
- 08. Brucellosis Surveillance Area or High Risk Areas.** Any area of a state that has been identified by USDA/APHIS/VS or state animal health officials as an area that poses a greater risk for transmission of brucellosis than would be expected based upon the official classification of the state. (5-3-03)
- 09. Camelids.** Llamas, alpacas, vicunas, camels. (5-3-03)
- 10. Cattle.** All bovidae including domestic bison. (5-3-03)
- 11. Certificate.** An official certificate of veterinary inspection or other approved certificate issued by an accredited veterinarian, state or federal animal health official or other approved official at the point of origin of the shipment of animal(s) being imported. (5-3-03)
- 12. Department.** The Idaho State Department of Agriculture. (5-3-03)
- 13. Director.** The director of the Idaho State Department of Agriculture or his designee. (5-3-03)
- 14. Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)
- 15. Domesticated.** Propagated and maintained under the control of a person. (5-3-03)
- 16. Domestic Bison.** All animals in the family Bison that are owned by a person. (5-3-03)
- 17. Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (5-3-03)
- 18. Exposed.** Animals that have had direct contact with other animals, herds, or materials that have

been determined to be infected with or affected by any infectious, contagious, or communicable disease. (5-3-03)

19. Federal Animal Health Official. An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (5-3-03)

20. Feeder Animals. Animals to be fed for slaughter only. (5-3-03)

21. Game Birds. Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse and guineas. (5-3-03)

22. Hatching Eggs. Fertilized eggs. (5-3-03)

23. Livestock. Shall mean cattle, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (5-3-03)

24. Negative. Animals are classified as negative when they have been subjected to official tests for a disease, and the tests performed have failed to disclose evidence of the disease. (5-3-03)

25. Official Identification. The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with the rules governing each species. (5-3-03)

26. Official Vaccinate. Cattle or domestic bison female that was inoculated, in accordance with IDAPA 02.04.20 "Rules Governing Brucellosis" or the Brucellosis Eradication UM&R, with an approved Brucella vaccine. (5-3-03)

27. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (5-3-03)

28. Poultry. The term shall mean chickens, turkeys, ducks, geese, guinea fowl, pigeons, pheasants, domestic fowl, waterfowl and gamebirds. (5-3-03)

29. Quarantine. A written order, executed by the Administrator, to confine or hold animals on a premise or any other location, where found, and prevent movement of animals from a premise or any other location when the administrator has determined that the animals are infected with or exposed to a disease, or are not in compliance with the provisions of this chapter. (5-3-03)

30. Ratites. Ostrich, emu, rhea and cassowaries. (5-3-03)

31. Slaughter Animals. Animals of any kind for immediate slaughter, or those consigned for slaughter within fourteen (14) days of date of shipment. (5-3-03)

32. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication programs. (5-3-03)

33. VHSV Positive Area. Any area or region that has been identified by USDA as affected by VHSV. (9-1-07)T

~~33.~~ **Waterfowl.** Domestic fowl that normally swim, such as ducks and geese. (5-3-03)

~~34.~~ **Wildlife.** Any animal generally living in a state of nature except, domestic bison, domestic cervidae, ~~and~~ domestic fur bearing animals, and fish. (~~5-3-03~~)(9-1-07)T

011. ABBREVIATIONS.

01. APHIS. Animal and Plant Health Inspection Service. (~~5-3-03~~)(9-1-07)T

02.	AVIC. Area Veterinarian in Charge.	(5-3-03)
03.	AZA. American Zoological Association.	(5-3-03)
04.	CF. Complement Fixation Test.	(3-30-07)
05.	CFR. Code of Federal Regulations.	(5-3-03)
06.	CWD. Chronic Wasting Disease.	(5-3-03)
07.	EIA. Equine Infectious Anemia.	(5-3-03)
08.	NAEBA. North American Elk Breeders Association.	(5-3-03)
09.	NPIP. National Poultry Improvement Plan.	(5-3-03)
10.	<u>PCR.</u> Polymerase Chain Reaction.	<u>(9-1-07)T</u>
101.	TB. Tuberculosis.	(5-3-03)
12.	UM&R. Uniform Methods and Rules.	(5-3-03)
123.	USDA. United States Department of Agriculture.	(5-3-03)
14.	<u>VHSV.</u> Viral Hemorrhagic Septicemia Virus.	<u>(9-1-07)T</u>
135.	VS. Veterinary Services.	(5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

220. GRAZING CATTLE.

Cattle herds moved into Idaho or from Idaho to other states for seasonal grazing periods shall be moved only under special grazing permits issued jointly by the Division of Animal Industries and the chief livestock sanitary official in a state which reciprocates with Idaho in honoring grazing permits. (3-30-07)

01. Grazing Permits. Grazing permits shall be for one (1) specified season only and shall be issued on a case-by-case basis. (3-20-04)

02. Tests. The Administrator, in cooperation with the appropriate agency of the reciprocating state, shall have the authority to impose a tuberculosis, brucellosis, trichonomiasis, or other tests on cattle entering for grazing purposes. This test requirement shall be evaluated on an annual basis by the Administrator and the chief livestock sanitary official of the reciprocating state. (~~3-30-07~~)(9-1-07)T

03. Herd Ownership. Cattle herds permitted to move under the provisions of Section 220 shall be established herds. Change of ownership of the herd shall not be allowed while the herd is under the requirements of the grazing permit, and the cattle shall be moved interstate with such certification, identification and testing requirements as the Administrator may require. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

240. TUBERCULOSIS TEST REQUIREMENTS.

Cattle and domestic bison may enter the state of Idaho provided: (5-3-03)

01. Tuberculosis Accredited Free State or Zone. Cattle and bison that originate from a bovine tuberculosis accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, in which there are no animals or herds infected with or exposed to tuberculosis may be imported upon meeting the following requirements: (4-11-06)

a. Cattle of beef breeds may enter the state without a tuberculosis test. (4-11-06)

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho. (4-11-06)

c. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, may enter Idaho for the purpose of participating in shows or exhibitions, by permit, without a tuberculosis test. (4-11-06)

02. Tuberculosis Accredited Free Herd. Cattle and bison that originate in an accredited tuberculosis free herd in either an accredited free state or zone, a modified accredited advanced state or zone, or a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and for which both an accredited herd number and date of last tuberculosis test are shown on the certificate of veterinary inspection, may enter the state without a tuberculosis test. (5-3-03)

03. Tuberculosis Modified Accredited Advanced State or Zone. Cattle and bison that originate from a modified accredited advanced state or zone, as defined by USDA in Title 9, Part 77, CFR, and are not known to be infected with or exposed to tuberculosis, may be imported upon meeting the following requirements: (5-3-03)

a. Steers, spayed heifers, and intact heifers of beef breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef breeds that are consigned directly to a feedlot approved for finish feeding of cattle or bison relative to tuberculosis, may enter without individual identification or testing for tuberculosis; and (3-20-04)

b. All other cattle and bison, except those moving on grazing permits issued by the Administrator under the provisions of Section 220 and those consigned for immediate slaughter at an approved slaughter establishment, shall be tested for tuberculosis with negative results within sixty (60) days prior to entry into Idaho. (3-20-04)

04. Tuberculosis Modified Accredited State or Zone. Cattle and bison that originate in a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that have been individually identified and classified negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

b. The cattle and bison are consigned for immediate slaughter at an approved slaughter establishment; or (5-3-03)

c. The cattle and bison have been subjected to two (2) official tuberculosis tests, the results of which are negative, the first test shall be a whole herd test, the second test shall be at least sixty (60) days, and no more than six (6) months, after the whole herd test and shall be not more than sixty (60) days prior to entry into Idaho. (5-3-03)

05. Tuberculosis Accredited Preparatory State or Zone. Cattle and bison that originate in an accredited preparatory state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that are individually identified and

have been classified negative on two (2) official tuberculosis tests conducted at least sixty (60) days but not more than six (6) months apart with the second test being conducted not more than sixty (60) days prior to entry into Idaho; or (5-3-03)

b. The cattle and bison originate in a tuberculosis accredited free herd, are individually identified, and have been tested negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

c. The cattle and bison are individually identified, are from a herd that has been subjected to a complete tuberculosis herd test with negative results within the past twelve (12) months and the animals being imported have been subjected to two (2) additional official tuberculosis tests with negative results, conducted not less than sixty (60) days apart with the second test being conducted not more than sixty (60) days prior to the date of importation. (5-3-03)

06. Tuberculosis Non-Accredited State or Zone. Cattle and bison that originate in a non-accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, may not enter Idaho except by special permit issued by the administrator and under the conditions specified by the administrator at the time the permit is issued. (5-3-03)

07. Rodeo Stock. All cattle imported into Idaho for rodeo or timed events must have been tested negative for bovine tuberculosis within twelve (12) months prior to importation into Idaho. (9-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

260. TRICHOMONIASIS.

The Certificate of Veterinary Inspection for bulls imported into Idaho shall contain a statement certifying that trichomoniasis is not known to exist in the herd of origin, and: (5-3-03)

01. Virgin Bulls Less Than Twenty-Four Months of Age. The virgin bull(s) are less than twenty-four (24) months of age and have not serviced a cow; or (5-3-03)

02. Tested Bulls. The bull(s) have been tested by culture or PCR for trichomoniasis within thirty (30) days of shipment, were negative to the test, and have not been exposed to female cattle since the test sample was collected. (~~3-30-07~~)(9-1-07)T

03. Exceptions. Exceptions to certification and testing: (5-3-03)

a. Bulls consigned directly to slaughter at an approved slaughter establishment; or (5-3-03)

b. Bulls consigned directly to an approved feedlot; or (5-3-03)

c. Bulls consigned directly to a specifically approved livestock market; or (5-3-03)

d. Rodeo bulls imported by an Idaho based rodeo producer, or rodeo bulls imported to perform at specific rodeos in Idaho. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

500. DOGS AND CATS.

01. Dogs. All dogs imported into the state of Idaho shall be accompanied by an official certificate of veterinary inspection attesting that such dogs are apparently free from any infectious, contagious or communicable disease, and have been officially vaccinated for rabies in accordance with the current recommendations of the National Association of State Public Health Veterinarian's Compendium of Animal Rabies ~~Vaccines~~ Prevention and

Control. Dogs three (3) months of age or older originating from a rabies quarantined area must have a permit from the Division of Animal Industries prior to importation. ~~(5-3-03)~~(9-1-07)T

02. Cats. All cats imported into the state of Idaho shall be accompanied by an official certificate of veterinary inspection attesting that such cats are apparently free from any infectious, contagious or communicable disease. Cats three (3) months of age or older shall have been vaccinated for rabies according to the recommendations of the current National Association of State Public Health Veterinarian's Compendium on Animal Rabies ~~Vaccines~~ Prevention and Control. ~~(5-3-03)~~(9-1-07)T

03. Permits Required. The Administrator may require any dog or cat, from an area that has been determined to pose a significant threat of disease, to have an import permit prior to movement into Idaho. (5-3-03)

501. -- 599. (RESERVED).

600. IMPORTATION OF DOMESTIC CERVIDAE.

Domestic cervidae may enter the state of Idaho, by permit, provided: (5-3-03)

01. Certificate of Veterinary Inspection. The cervidae are accompanied by a certificate of veterinary inspection certifying that they have been inspected within thirty (30) days prior to the date of shipment, that they are free from evidence of infectious, contagious, or communicable diseases, or known exposure thereto during the preceding sixty (60) days; and (5-3-03)

02. Parasiticide. Treated with a parasiticide, that is efficacious against giant liver flukes, by an accredited veterinarian no less than thirty (30) and no more than sixty (60) days prior to importation except domestic cervidae imported directly to an approved slaughter establishment for immediate slaughter do not have to be treated; and ~~(5-3-03)~~(9-1-07)T

023. Meet Testing Requirements. The cervidae shall meet the testing requirements of Section 601. (5-3-03)

601. TESTING REQUIREMENTS.

All cervidae imported into Idaho shall meet the following test requirements, except cervidae that do not originate from a CWD or Tuberculosis endemic area, as determined by the administrator, may be imported directly to an approved slaughter establishment for immediate slaughter; ~~or a domestic cervidae approved feedlot, to be fed for slaughter;~~ without meeting the test requirements. ~~(5-3-03)~~(9-1-07)T

01. Brucellosis. Animals six (6) months of age and older shall be negative to at least two (2) different official brucellosis tests, one (1) of which shall be the rivanol, or the CF, within thirty (30) days prior to entry, or the animals shall originate directly from a Brucellosis certified free herd or a brucellosis class free state for cervidae. (3-30-07)

02. Tuberculosis. Imported domestic cervidae shall be tested according to the provisions in Title 9, Part 77, CFR. (5-3-03)

03. Red Deer Genetic Factor. Elk ~~shall~~ must be either tested negative for red deer genetic factor by a laboratory approved by the Division of Animal Industries, or ~~the elk are~~ registered with NAEBA or the Canadian Food Inspection Agency. ~~(5-3-03)~~(9-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

603. DESTINATION.

Imported domestic cervidae shall be delivered only to approved slaughter establishments, ~~domestic cervidae approved feedlots,~~ or domestic cervidae ranches, which are in compliance with the domestic cervidae rules. ~~(5-3-03)~~(9-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

608. -- 6949. (RESERVED).

650. FISH.

No person shall import, transport, receive or otherwise bring into the State of Idaho any live fish or viable hatching eggs that are listed as Deleterious Exotic Animals in IDAPA 02.04.27 "Rules Governing Deleterious Exotic Animals." (9-1-07)T

651. -- 659. (RESERVED).

660. CERTIFICATE AND PERMIT.

In addition to any permits or certifications required by the Idaho Department of Fish and Game, all live fish and viable hatching eggs imported into Idaho must be accompanied by a certificate of veterinary inspection issued in the state of origin and an import permit issued by the Administrator. (9-1-07)T

661. ORIGIN OF FISH.

All shipments of live fish and viable hatching eggs imported into Idaho must be accompanied by an invoice or bill of lading that clearly describes the origin(s), species, inventory, lot number, and destination of all fish in the shipment. (9-1-07)T

662. -- 669. (RESERVED).

670. VHSV POSITIVE AREAS.

No fish or viable hatching eggs from any VHSV positive area shall be imported into Idaho unless the shipment has been issued and is accompanied by a permit issued by the director of the Idaho Department of Fish and Game. (9-1-07)T

671. -- 699. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

710. DOMESTIC FUR-BEARING ANIMALS.

All domestic fur bearing animals which are transported or moved into the state of Idaho are required to have a certificate of veterinary inspection from the state of origin and an import permit from the Division of Animal Industries. (3-30-07)

01. Certificate and Permit. The certificate and permit shall accompany the shipment of the animals. (3-30-07)

02. Mink. All mink imported into the state of Idaho shall be tested negative for Aleutian Disease using the counterelectrophoresis (CEP) test, within thirty (30) days prior to import. Negative test results shall be recorded on the certificate of veterinary inspection. (3-30-07)

02. Mink. All mink imported into the state of Idaho shall be tested negative for Aleutian Disease using the counterelectrophoresis (CEP) test, within thirty (30) days prior to import. Negative test results shall be recorded on the certificate of veterinary inspection.(3-30-07)

03. Other Tests. The Administrator may approve tests other than CEP for Aleutian Disease testing. (9-1-07)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.29 - RULES GOVERNING TRICHOMONIASIS

DOCKET NO. 02-0429-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-207, Idaho Code.

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

Thursday, August 23, 2007 -- 8:00 pm - 9:00 pm
Nampa Civic Center
311 Third Street South, Nampa, ID 83651

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

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

This rule adds Polymerase Chain Reaction as an official test for Trichomoniasis, requires V branding of bulls infected with Trichomoniasis, approves retesting of bulls as a result of inconclusive Trichomoniasis test results and makes typographical and grammatical corrections.

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: Necessary to protect the public health, safety, or welfare.

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

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted; however, this rule was developed with input from an advisory committee comprised of cattle producers and veterinarians.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2007.

DATED this 28th day of June 2007.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0429-0701

004. INCORPORATION BY REFERENCE.

01. Incorporated Document. IDAPA 02.04.29 incorporates by reference the Official Idaho Protocol for Culture of Trichomoniasis, 2006~~7~~. (3-30-07)(9-1-07)T

02. Availability of Document. Copies of this document may be obtained from the Idaho State Department of Agriculture. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in these rules the following terms have the following meanings: (3-30-07)

01. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (3-30-07)

02. Cattle. All bovidae. (3-30-07)

03. Department. The Idaho State Department of Agriculture. (3-30-07)

04. Division of Animal Industries. Idaho State Department of Agriculture, Division of Animal Industries. (3-30-07)

05. Exposed Cattle. Any cattle that have been in contact with cattle infected with, or affected by Trichomoniasis. (3-30-07)

06. Federal Animal Health Official. An employee of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (3-30-07)

07. Herd. A herd is any group of cattle maintained on common ground for any purpose, or two (2) or more groups of cattle under common ownership or supervision, geographically separated, but which have an interchange or movement of cattle without regard to whether they are infected with or exposed to Trichomoniasis. (3-30-07)

08. Hold Order. A hold order is a form of quarantine that may be used to restrict the movement of cattle while the Trichomoniasis status is being investigated. (3-30-07)

09. Infected Cattle. Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected. (3-30-07)

10. Infected Herd. Any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected. (3-30-07)

11. Negative. Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis. (3-30-07)

12. Positive. Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis. (3-30-07)

13. Quarantine. A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold cattle on a premises or any other location, and to prevent movement of cattle from a premises or any other location when the Administrator has determined that the cattle have been found or are suspected to be exposed to or infected with Trichomoniasis, or the owner is not in compliance with the provisions of this chapter. (3-30-07)

14. Quarantined. Isolation of all cattle diseased or exposed thereto, from contact with healthy cattle and exclusion of such healthy cattle from enclosures or grounds where said diseased or exposed cattle are, or have been kept. (3-30-07)

15. Registered Veterinarians. Veterinarians registered with, and approved by the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. (3-30-07)

16. Restrain. The confinement of cattle in a chute, or other device, for the purpose of efficient, effective, and safe testing approved by the Administrator. (3-30-07)

17. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. (3-30-07)

18. Trichomoniasis. A venereal disease caused by the organism *Tritrichomonas foetus*. (9-1-07)T

19. V Brand. A two by three inch (2" x 3") hot-iron, single-character V brand applied to the left of the tail-head of a bull, signifying that the bull is infected with trichomoniasis. (9-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

200. BULLS FOR SALE.

Bulls presented for sale at specifically approved livestock markets, shows, special sales, or by private contract in Idaho shall be accompanied by a certificate of negative test and a statement signed by the owner certifying "Trichomoniasis has not been diagnosed in the herd of origin;" or (3-30-07)

01. Returned to Home Premises. Such bulls shall be returned to home premises for official testing; or ~~(3-30-07)~~(9-1-07)T

02. Sold Directly to Slaughter. Such bulls shall be sold directly to slaughter at an approved slaughter establishment, an Idaho approved feedlot, as defined in IDAPA 02.04.20, "Rules Governing Brucellosis," or a rodeo producer without test; or (3-30-07)

03. Placed Under a Hold Order. Such bulls shall be placed under Hold Order by the livestock market veterinarian or a private veterinarian and shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis to be eligible to receive a certificate of negative test; or (3-30-07)

04. Virgin Bulls. Virgin bulls, twenty-four (24) months of age or less, which have never serviced a cow shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season. (3-30-07)

05. Period of Validity. For resident breeding bulls sold in Idaho, the negative test shall be valid for up to ninety (90) days provided the bull(s) has had no contact with female cattle from the time of test to the time of sale. (3-30-07)

06. Contact with Female Cattle. Bulls that have had contact with female cattle subsequent to testing must be retested prior to sale. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

210. IMPORTED BULLS.

01. Non-Virgin Bulls. Non-virgin breeding bulls may be imported into the state of Idaho provided they meet the following requirements: (3-30-07)

a. If the bull originates from a herd of bulls wherein all bulls have tested negative for Trichomoniasis since being removed from cows, the bull shall have been tested negative to a Trichomoniasis culture test within thirty (30) days prior to import and shall have had no contact with female cattle from the time of test to the time of import; or (3-30-07)

b. If the bull originates from a herd where one (1) or more bulls or cows have been found infected with Trichomoniasis, the bull shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis, the last test being within thirty (30) days prior to import into Idaho; or (3-30-07)

c. If the bull is a single bull with no prior herd test history or originates from a herd of bulls that is still with cows or that has not been tested for Trichomoniasis since being removed from cows, the bull shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis, the last test being within thirty (30) days prior to import into Idaho. (3-30-07)

d. Upon arrival at their destination in Idaho, all imported bulls shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season, except imported dairy bulls that will be in a dry lot operation are not required to be identified with an official Trichomoniasis tag upon arrival at their destination. (3-30-07)

02. Virgin Bulls. Bulls twenty-four (24) months of age or less that have never serviced a cow are not required to be Trichomoniasis tested prior to import into Idaho, provided that: (3-30-07)

a. Such bulls shall be accompanied by a certificate signed by the owner or the owner's representative attesting that the animals are virgin bulls and have never serviced a cow; and (3-30-07)

b. Upon arrival at their destination in Idaho, such bulls shall be identified by an Idaho accredited veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season. (3-30-07)

03. Bulls for Grazing. Bulls that are entering Idaho for grazing purposes shall meet the Trichomoniasis test requirements of Section ~~02-04-29.220~~100 of this rule. A copy of the certificate of negative Trichomoniasis test shall accompany the grazing permit application. (~~3-30-07~~)(9-1-07)T

211. - 299. (RESERVED).

300. PUBLIC GRAZING.

All bulls that are turned out on public grazing allotments shall be certified and identified as virgin bulls, or tested negative for Trichomoniasis at least forty-five (45) days prior to the turnout date, or before ~~March 31~~ April 15 of each testing season, which ever occurs first. (~~3-30-07~~)(9-1-07)T

01. Grazing Associations. All bulls that are in a public grazing association or run in common on an allotment shall be considered part of one (1) herd. (3-30-07)

02. Positive Tests. If any bull owned by any of the producers in a grazing association or allotment tests positive on a Trichomoniasis test, the rest of the producers in the association or allotment shall be considered part of an infected bull herd and handled in accordance with Section ~~225~~310 of this rule. (~~3-30-07~~)(9-1-07)T

301. -- 309. (RESERVED).

310. INFECTED BULLS AND HERDS.

Any bull or cow that is positive to a Trichomoniasis culture test shall be considered infected. A herd in which one (1)

or more bulls or cows are found infected with Trichomoniasis shall be considered infected. (3-30-07)

01. Quarantine of Infected Herds. Any veterinarian that discovers an infected herd shall immediately place the herd under a Hold Order, and notify the Division of Animal Industries within forty-eight (48) hours that the test was positive. Upon notification of an infected Trichomoniasis herd, a state or federal animal health official shall conduct an epidemiological investigation of the infected herd and issue a quarantine. The quarantine may include a provision requiring all breeding age female cattle in the infected herd to be held in isolation from all bulls for a period of up to one hundred twenty (120) days as determined by the Administrator. (3-30-07)

02. Exposed Herds. Herds identified as exposed through an epidemiological investigation shall be placed under a Hold Order. (3-30-07)

a. Bulls in exposed herds shall be tested as determined by the Trichomoniasis epidemiologist. (3-30-07)

b. All bulls tested in exposed herds and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified with an official Trichomoniasis bangle tag of the correct color for the current testing season and the tag number and status of the bull shall be recorded on an official Trichomoniasis test and report form. (3-30-07)

03. Testing of Infected Herds. Bulls in infected herds shall be tested negative for Trichomoniasis three (3) consecutive times before the quarantine can be released. Each of the tests shall be at least seven (7) days apart. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis to be eligible to receive a certificate of negative test. (3-30-07)

a. All bulls tested in the infected herd and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified with an official Trichomoniasis bangle tag of the correct color for the current testing season and the tag number and status of the bull shall be recorded on an official Trichomoniasis test and report form. (3-30-07)

b. Bulls that have three (3) consecutive negative Trichomoniasis culture tests conducted at least seven (7) days apart shall be considered negative to Trichomoniasis and can be so certified. (3-30-07)

04. Identifying Infected Bulls. All bulls testing positive for trichomoniasis shall, within seven (7) days of diagnosis, be identified with a V hot iron brand applied to the left of the tail-head indicating that the bull is positive for trichomoniasis. (9-1-07)T

311. -- 319. (RESERVED).

320. MOVEMENT OF INFECTED ~~ANIMALS~~ CATTLE.

All infected ~~bulls and cows~~ cattle shall be consigned to slaughter at an approved slaughter establishment or consigned to a specifically approved livestock market for sale to an approved slaughter establishment and shall remain under quarantine until moved to slaughter. All infected ~~bulls and cows~~ cattle being moved from the premise of origin to a specifically approved livestock market for sale to slaughter, or directly to an approved slaughter establishment for slaughter, shall move on a VS 1-27 form issued by an accredited veterinarian or a state or federal animal health official. (~~3-30-07~~)(9-1-07)T

01. Slaughter Within Thirty Days. All infected ~~bulls and cows~~ cattle shall be moved to slaughter within thirty (30) days of the issuance of the quarantine. All infected ~~bulls and cows~~ cattle shall be kept separate and apart from cattle or domestic bison of the opposite sex. The infected ~~bulls and cows~~ cattle will remain under quarantine until moved to slaughter. (~~3-30-07~~)(9-1-07)T

02. Exceptions. The Division of Animal Industries may grant an extension of time after the owner submits a written request for extension of time for movement to slaughter to the Division of Animal Industries. (3-30-07)

03. Contents of Request for Extension of Time. The written request shall outline the reasons for the

extension request and the length of extended time being requested. The total length of time an individual infected bull may remain under quarantine before being required to move to slaughter, including any and all requested extensions, shall not exceed ninety (90) days. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

330. OFFICIAL LABORATORIES.

Only laboratories approved by the Division of Animal Industries as official laboratories shall test official Trichomoniasis samples. (3-30-07)

01. Protocols. Official laboratories shall operate in accordance with the "Official Idaho Protocol for Culture of Trichomoniasis," 2006~~7~~. (~~3-30-07~~)(9-1-07)T

02. Check Test. Official laboratories shall pass an annual check test administered by the Division of Animal Industries. (3-30-07)

331. OFFICIAL TRICHOMONIASIS TESTS.

01. Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, within forty-eight (48) hours of collection and such sample is tested according to the "Official Idaho Protocol for Culture of Trichomoniasis." Samples in transit for more than forty-eight (48) hours will not be accepted for official testing and shall be discarded. Samples, which have been frozen or exposed to high temperatures, shall also be discarded. (3-30-07)

02. Polymerase Chain Reaction. Polymerase Chain Reaction is accepted as an official test when completed by a qualified laboratory, approved by the Administrator, and the sample is received by the laboratory within forty-eight (48) hours of collection. (9-1-07)T

023. Other Official Tests. Other tests for Trichomoniasis may be approved by the Division of Animal Industries, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

500. INFECTIONS WITH OTHER TYPES OF TRICHOMONADS.

Bulls that have had a positive culture result for Trichomoniasis testing may be further evaluated to determine if the organism is *Tritrichomonas foetus* or another species of Trichomonad. Bulls having positive Trichomoniasis culture results on the initial test will not be considered positive for Trichomoniasis under the provisions of this rule if they meet the following criteria: (3-30-07)

01. Trichomonad Organisms Identified. The culture media containing the organisms that have been collected from the bull is forwarded to a laboratory, approved by the Administrator, that has the ability to identify ~~the different species of~~ Trichomonad organisms ~~and the laboratory is able to identify and report the species of~~ Trichomonad organisms present in the culture through Polymerase Chain Reaction; and (~~3-30-07~~)(9-1-07)T

02. Tritrichomonas foetus Not Present. None of the Trichomonad organisms in the submitted culture are identified as *Tritrichomonas foetus*. (3-30-07)

03. Inconclusive Test Results. The Administrator may approve retesting of bulls with inconclusive Trichomoniasis test results. If the bulls are found to be Trichomoniasis negative on three (3) consecutive tests that are separated by at least seven (7) days, the bulls may be considered Trichomoniasis negative and released from quarantine. (9-1-07)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.01 - RULES GOVERNING THE PURE SEED LAW

DOCKET NO. 02-0601-0701

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 22-418.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2007.

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

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

To add a definition for the term "condition."

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Section Manager or Choice Rawson, Technical Records Specialist at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2007.

DATED this 22nd day of June, 2007.

Pamela L. Juker, Chief of Staff
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0601-0701

010. DEFINITIONS.

~~The Department adopts~~ In addition to the definitions set forth in ~~Title 22, Chapter 4, Idaho Code,~~ Section 22-414, Idaho Code, the Department adopts the following definition: "Condition" means drying, cleaning, scarifying and other operations which could change the purity or germination of the seed and require the seed lot to be retested to determine the label information. (3-30-06)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.06 - RULES CONCERNING UNIFORM PLUMBING CODE

DOCKET NO. 07-0206-0701

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2007.

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

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

The proposed rule change is needed to authorize the plumbing industry to utilize improvements and advanced techniques in plumbing installations. The changes specify when and under what circumstances sidewall venting and air admittance valves may be used in plumbing systems.

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

No fees or charges are being imposed or increased.

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

This rulemaking will not result in any negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the lack of opposition from the industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephen L. Keys, Deputy Administrator - Operations, at (208) 332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2007.

DATED this 29th day of June, 2007.

Stephen L. Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Meridian, ID 83642
P. O. Box 83720, Boise, Idaho 83720
(208) 332-8986 phone / (208) 855-2164 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0206-0701

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE 2003 UNIFORM PLUMBING CODE.

The 2003 Uniform Plumbing Code, including Appendices “A, B, D, E, G, H, I, J, and L,” (herein U.P.C.) is adopted and incorporated by reference with the following amendments. The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814. (4-6-05)

01. Section 218. Delete definition of “Plumbing System.” Incorporate definition of “Plumbing System” as set forth in Section 54-2604, Idaho Code. (3-15-02)

02. Section 316.1.6. PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1. (4-6-05)

03. Section 420.0. Pressure balance or thermostatic mixing valves are not required for high flow (over eight (8) g.p.m.) tub filler valves with hand shower sets attached. (3-15-02)

04. Section 421.0. Delete. (4-6-05)

05. Section 604.1. Materials. Crosslinked Polyethylene (PEX) Tubing manufactured to ASTM – F876/F877 and tested, approved, and listed to ANSI/NSF 14 and 61, for potable water along with all applicable installation standards may be used for hot and cold water distribution systems within a building or cold water distribution systems outside of a building. Listed PE (polyethylene) water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. (4-6-05)

06. Section 609.4. Testing. Deleting the phrase “Except for plastic piping,” at the beginning of the third sentence and add the following sentence at the end of the section: Plastic piping is to be tested in accordance with manufacturer’s installation standards. (4-6-05)

07. Section 609.10. Water hammer. Does not apply to residential construction. (7-1-98)

08. Table 6-4 and Table A-2. Change fixture unit loading value for bathtub or combination bath/shower, and clotheswashers to two (2) fixture units. (3-15-02)

09. Section 610.2. All new one (1) and two (2) family residences must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. (3-30-07)

10. Section 611.4. Sizing of Residential Softeners. Amend Footnote 3 to read: Over four (4) bathroom groups, softeners shall be sized according to the manufacturer’s standards. (4-6-05)

11. Table 7-3. Maximum unit loading and maximum length of drainage and vent piping. (EXCEPTION) The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines (ref: Section 717.0). Change fixture unit loading value for clotheswashers, domestic to two (2) fixture units. (3-15-02)

12. Section 703.1 - Underground Drainage and Vent Piping. No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-15-02)

13. Section 703.2 and 710.5. Add Exception. In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-15-02)

14. Section 704.2. Two inch (2”) and smaller double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (4-6-05)

15. **Section 704.3.** Delete. (5-3-03)
16. **Table 7-5.** Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (7-1-98)
17. **Section 707.4 Cleanouts.** A full-sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer (ref.: Section 719.1). Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-15-02)
18. **Section 712.1.** In the first sentence, delete the phrase “except that plastic pipe shall not be tested with air.” (4-6-05)
19. **Section 801.2.3.** Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five point four (25.4) mm). (5-3-03)
20. **Section 801.4. Drains.** Provisions must be made for the discharge of the water softener to terminate in an approved location. The drain line for a water softener must be three-fourths inch ($\frac{3}{4}$ ”) minimum. A washer box with a dual outlet is an approved location as long as it is on the same floor or one (1) floor below the softener unit and the water softener drain line is a minimum three-fourths inch ($\frac{3}{4}$ ”). (3-30-07)
21. **Section 807.4.** A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-15-02)
22. **Section 906.1.** Delete the existing provision and replace with the following: ()
- a.** Roof venting. When conventional roof venting is utilized, each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six (6) inches (152 mm) above the roof nor less than one (1) foot (305 mm) from any vertical surface. ()
- b.** Sidewall venting. When sidewall venting is utilized, the vent shall extend flush with the eaves/gable end, shall turn down using a ninety (90) degree ell, and shall terminate as close to the roof peak as possible. The vent end must be properly screened. Sidewall venting is acceptable on new or remodel construction on cabins, log homes, and residential or commercial buildings. ()
- c.** Sidewall venting must meet the intent of Section 906.2. ()
223. **Section 908. Exception - Vertical Wet Venting.** A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 are met. (7-1-98)
24. **Section 909.0.** Add: Parameters for the limited use of Air Admittance Valves (A.A.V.). ()
- a.** An A.A.V. may be used only in residential buildings. ()
- b.** In remodels, an A.A.V. may be used with island fixtures or remotely located sinks such as in bar, kitchen, or laundry tray locations. An A.A.V. shall not be used in bathroom groups. ()
- c.** In new construction, an A.A.V. may be used on island fixture sinks. ()
- d.** Each A.A.V. may be used to vent only one (1) floor. ()
- e.** Each A.A.V. must be readily accessible. ()
- f.** The cross-sectional area of venting must remain the same and must meet the largest required

building drain. ()

g. An A.A.V. shall only be installed in accordance with the manufacturer's installation standards as per ASSE 1051. ()

h. An A.A.V. may not be used in an attic, crawl space, outside installation, or in connection with chemical or acid waste systems. ()

235. **Section 1002.3.** Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. (3-15-02)

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.13 - RULES GOVERNING THE IDAHO OPPORTUNITY SCHOLARSHIP PROGRAM

DOCKET NO. 08-0113-0701 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 33-105 and 33-107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2007.

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:

New legislation passed in the 2007 Legislative session created a new need-based scholarship program. The State Board of Education is charged with promulgation of rules to determine the academic and financial eligibility for the purpose of awarding the Idaho Opportunity Scholarship.

The rules for the application process will establish the actual process and an application form, and related eligibility criteria. The rules related to selection will establish the selection process, selection criteria, and timing of the scholarship application, notification and awards.

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

The new legislation requires the rules to be in place by August 1, 2007. Therefore, the temporary rules are necessary in order to be in compliance with 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: 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:

An appropriation of \$2 million dollars was approved by the Legislature in 2007. Those funds are to be used for the distribution of scholarships for school year 2007 - 2008. Also, the legislature appropriated \$10 million dollars to be set in a trust account.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The State Board of Education worked in conjunction with the Governor's Office and the Financial Aid Officers at the state's higher education institutions. Because of the need to have the rule in place by August 1, 2007, there was not adequate time to conduct any further negotiations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dana Kelly at (208) 332-1574.

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 August 22, 2007.

DATED this 14th day of June, 2007.

Karen L. Echeverria, Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0113-0701

IDAPA 08
TITLE 01
CHAPTER 13

08.01.13 - RULES GOVERNING THE IDAHO OPPORTUNITY SCHOLARSHIP PROGRAM

000. LEGAL AUTHORITY.

In accordance with Sections 33-105, 33-5605, and 33-5606(2)(c), Idaho Code the State Board of Education (Board) shall promulgate rules implementing the provisions of Title 33, Chapter 56, Idaho Code. (6-14-07)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 08.01.13, "Rules Governing the Opportunity Scholarship Program." (6-14-07)T

02. Scope. These rules constitute the requirements for the Opportunity Scholarship Program. (6-14-07)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, written interpretations, if any, of the rules of this chapter are available at the Board. (6-14-07)T

003. ADMINISTRATIVE APPEALS.

Unless otherwise provided for in the rules of the Board or in the Board Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (6-14-07)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (6-14-07)T

005. OFFICE INFORMATION.

01. Office Hours. The offices of the Board are open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. (6-14-07)T

02. Street Address. The offices of the Board are located at 650 W. State Street, Boise, Idaho. (6-14-07)T

03. Mailing Address. The mailing address of the Board is P.O. Box 83720, Boise, Idaho 83720-0037. (6-14-07)T

04. Telephone Number. The telephone number of the Board is (208) 334-2270. (6-14-07)T

05. Facsimile. The facsimile number of the Board is (208) 334-2632. (6-14-07)T

06. Electronic Address. The electronic address of the Board is www.boardofed.idaho.gov. (6-14-07)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (6-14-07)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Educational Costs. Is defined in Section 33-5604(1), Idaho Code and means the dollar amount determined annually by the state board of education as necessary for student tuition, fees, room and board, books and such other expenses reasonably related to attendance at an eligible Idaho postsecondary educational institution. (6-14-07)T

02. Eligible Idaho Postsecondary Educational Institution. Is defined in Section 33-5604(2), Idaho Code, and means:

a. A public postsecondary organization governed or supervised by the state board, the board of regents of the university of Idaho, a board of trustees of a community college established pursuant to the provisions of Chapter 21, Title 33, Idaho Code, or the state board for professional technical education; or (6-14-07)T

b. Any educational organization located in Idaho which is: (6-14-07)T

i. Operated privately; (6-14-07)T

ii. Classified as not-for-profit under the Idaho Code; (6-14-07)T

iii. Under the control of an independent board and not directly controlled or administered by a public or political subdivision; and (6-14-07)T

iv. Accredited by an organization recognized by the state board, as provided in Section 33-2402, Idaho Code. (6-14-07)T

03. Eligible Student. Is defined in Section 33-5604(3), Idaho Code, and means a student who: (6-14-07)T

a. Is an Idaho resident; (6-14-07)T

b. Has or will graduate from an accredited high school or equivalent in Idaho as determined by the state board; (6-14-07)T

c. Has enrolled or applied as a full-time student to an eligible Idaho postsecondary educational institution; and (6-14-07)T

d. Is pursuing an undergraduate degree, certificate, or diploma. (6-14-07)T

04. Financial Eligibility. Is defined in Section 33-5604(4), Idaho Code, and means the extent of a person's inability to meet the educational costs associated with attending an eligible Idaho postsecondary educational institution through a model of shared responsibility, taking into account the required and expected contributions of

such person's parents, family and personal resources. (6-14-07)T

05. Grade Point Average or GPA. Means the average grade earned by a student, figured by dividing the grade points earned by the number of credits attempted. (6-14-07)T

06. Opportunity Scholarship Program. Is defined Section 33-5604(5), Idaho Code and means the scholarship program described in Title 33, Chapter 56, Idaho Code, and these rules. (6-14-07)T

010. -- 099. (RESERVED).

100. OBJECTIVES OF THE OPPORTUNITY SCHOLARSHIP PROGRAM.

The legislature has recognized and declared an intent to create a scholarship fund to provide financial resources to Idaho students who are economically disadvantaged to close the gap between the estimated cost of attending an eligible Idaho institution of higher education and the expected student and family contribution toward such educational costs, and to encourage the educational development of such students in eligible Idaho postsecondary educational institutions. These rules set forth academic and financial eligibility requirements and other criteria for purposes of awarding opportunity scholarships. (6-14-07)T

101. ELIGIBILITY.

01. Idaho Resident. An eligible student must be an Idaho resident, as defined in Section 33-3717, Idaho Code, and IDAPA 08.01.04, "Residency Classification," Subsection 005.01. (6-14-07)T

02. Undergraduate Student. An eligible student must be pursuing an undergraduate degree, certificate, or diploma. A student who is enrolled in a graduate program, but who has not yet earned a baccalaureate degree, is not eligible for an opportunity scholarship. A student enrolled in an undergraduate program is eligible for consideration for an opportunity scholarship, even if some of the student's courses are at the graduate level. (6-14-07)T

03. Academic Eligibility. (6-14-07)T

a. Applicants for the opportunity scholarship are selected as recipients, in part, on the basis of their GPA. An eligible student's GPA, which will be weighted to equalize secondary and postsecondary academic performance, will constitute thirty percent (30%) of the weighting for the selection of recipients of opportunity scholarships. (6-14-07)T

b. To be eligible to apply for an opportunity scholarship, an applicant must meet minimum academic eligibility criteria, as follows: (6-14-07)T

i. A student who has not yet graduated from secondary school or its equivalent in the state of Idaho must have an un-weighted minimum grade point of average of three point zero (3.0) or better on a scale of four point zero (4.0) to be academically eligible to apply for an opportunity scholarship. (6-14-07)T

ii. A student who has obtained a general equivalency diploma must have taken the ACT assessment examination administered by the College Board (ACT), and received a minimum composite score of twenty (20) or better, or the equivalent SAT I assessment examination (SAT I) with an equivalent weighted score, to be academically eligible to apply for an opportunity scholarship. (6-14-07)T

iii. A student currently enrolled in an eligible Idaho postsecondary educational institution must have a minimum grade point average of two point zero (2.0) or better on a scale of four point zero (4.0) at such institution in order to be academically eligible to apply for an opportunity scholarship. (6-14-07)T

04. Financial Eligibility. (6-14-07)T

a. Applicants for the opportunity scholarship are selected as recipients, in part, on the basis of demonstrated financial need. The primary tool that will be used by Opportunity Scholarship Program officials to determine financial need will be the federal Free Application for Federal Student Aid (FAFSA), used by the United

States Department of Education to determine eligibility for financial aid and a family's expected contribution to a student's postsecondary education. The financial need of an applicant for an opportunity scholarship will be based upon the validated expected family contribution, as identified by the FAFSA report. (6-14-07)T

b. The financial need factor, as determined by FAFSA, will constitute seventy percent (70%) of the weighting for the selection of recipients of opportunity scholarships. (6-14-07)T

05. Additional Eligibility Requirements. (6-14-07)T

a. A student who has not yet graduated from high school, or its equivalent, in the state of Idaho must be at least in his junior year to be eligible to apply for an opportunity scholarship. (6-14-07)T

b. To be eligible to receive an opportunity scholarship, an eligible student must: (6-14-07)T

i. Have taken the ACT assessment examination, or the equivalent SAT I assessment examination, or the Writing Skills, Reading Skills, and Algebra areas of the ACT Compass examination; (6-14-07)T

ii. Be enrolled full-time in an eligible Idaho postsecondary educational institution; and (6-14-07)T

iii. Be pursuing an undergraduate degree, certificate, or diploma. (6-14-07)T

c. A student must accept all federal grant aid that is made available to such student to be eligible to receive an Idaho opportunity scholarship. (6-14-07)T

d. To be eligible to receive an opportunity scholarship, the student must not be in default on a student educational loan, or owe a repayment on a federal grant, and must be in good financial standing with the Opportunity Scholarship Program. (6-14-07)T

06. Student Responsibility. The Board will, by resolution each year, establish the annual amount of the expected student contribution toward his education through employment or other contributions (student responsibility). It is expected that a student will contribute an amount equal to a student working a minimum of twenty (20) hours per week during the time that a postsecondary educational institution is in session, and a minimum of forty (40) hours per week during the summer recess. This expectation will be one (1) of the factors the Board will use to set the amount of student responsibility. The Board may consider other factors as well, such as summer living expenses, and transition time between the academic year and the summer, as examples. (6-14-07)T

102. -- 200. (RESERVED).

201. APPLICATION PROCESS (EFFECTIVE JULY 1 THROUGH DECEMBER 31, 2007).

01. Initial Applications. (6-14-07)T

a. An eligible student who has enrolled in an eligible Idaho postsecondary educational institution for the 2007 – 2008 academic year, and who completed and submitted the FAFSA on or prior to March 1, 2007, shall be eligible for consideration for an opportunity scholarship award for the 2007 – 2008 academic year. Eligible Idaho postsecondary educational institutions shall transmit to the Board enrolled students who meet the eligibility requirements of these rules. (6-14-07)T

b. After this selection process is performed, eligible students will be contacted by Opportunity Scholarship Program officials and must agree to the terms of the program, including these rules, by signing and electronically submitting an application to the Board. (6-14-07)T

02. Announcement of Award. Announcement of the award of initial scholarships for the 2007 – 2008 academic year will be made no later than September 30, 2007, with awards to be effective at the beginning of that academic year. (6-14-07)T

03. Communication with State Officials. Applicants for initial scholarships must respond by the date

specified to any communication from officials of the Opportunity Scholarship Program. Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved. (6-14-07)T

202. APPLICATION PROCESS (EFFECTIVE JANUARY 1, 2008).

01. Initial Applications. (6-14-07)T

a. An eligible student who has not yet graduated from an accredited high school or its equivalent in the state of Idaho must complete and submit the Opportunity Scholarship Program application to the Board electronically on or before the date specified in the application, but not later than March 1. An applicant without electronic capabilities may submit an application on the form established by the Board through the United States Postal Service, which must be postmarked not later than March 1. An applicant who is in his junior year must complete and submit the FAFSA 4caster on or prior to March 1 of their junior year. All applicants must complete and submit the FAFSA on or prior to March 1 of his last year of secondary school (including applicants who were secondary school juniors that previously submitted the FAFSA 4caster). (6-14-07)T

b. An eligible student currently enrolled in an eligible Idaho postsecondary educational institution must complete and submit the Opportunity Scholarship Program application to the Board electronically on or before the date specified in the application, but not later than March 1. An applicant without electronic capabilities may submit an application on the form established by the Board through the United States Postal Service, which must be postmarked by March 1. A current postsecondary educational institution student must complete and submit the FAFSA on or prior to March 1. (6-14-07)T

02. Announcement of Award. Announcement of the award of initial scholarships will be made no later than the first business day after June 15 of each year, with awards to be effective at the beginning of the first full term following July 1 of that year. (6-14-07)T

03. Communication with State Officials. Applicants for either initial or continuing scholarships must respond by the date specified to any communication from officials of the Opportunity Scholarship Program. Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved. (6-14-07)T

203. -- 299. (RESERVED).

300. SELECTION OF SCHOLARSHIP RECIPIENTS.

01. Selection Process. The selection of applicants for the receipt of an opportunity scholarship will be based on the availability of funding for the Opportunity Scholarship Program. In addition, opportunity scholarships will be awarded to applicants, based on ranking and priority, in accordance with the following criteria: (6-14-07)T

a. Applicants will be ranked to determine the eligible students with the greatest demonstrated financial need, based on the financial eligibility requirements of these rules, and the eligible students with the highest quantified academic ranking, based on the academic eligibility requirements of these rules. The ranking of applicants will be based on rating criteria that assigns seventy percent (70%) to financial eligibility, and thirty percent (30%) to academic eligibility. In the event that this weighted score results in a tie, an eligible student who submitted his application to the Board earliest in time will be assigned a higher rank. (6-14-07)T

b. Notwithstanding Subsection 300.01.a. of these rules, the priority for the selection of recipients of opportunity scholarship awards shall be to scholarship recipients who received a previous opportunity scholarship award, and have continuing eligibility based upon financial need and other criteria provided in these rules. (6-14-07)T

02. Monetary Value of the Opportunity Scholarship. (6-14-07)T

a. The Board will, by resolution each year, establish the maximum annual amount that a student may receive under the Opportunity Scholarship Program. In addition, the Board will, by resolution each year, establish the

educational costs for attending an eligible Idaho postsecondary educational institution for purposes of the Opportunity Scholarship Program. The educational costs will be established as a not to exceed amount for each eligible Idaho postsecondary educational institution. (6-14-07)T

b. The monetary value of the opportunity scholarship award to a student shall be based on the educational costs for attending an eligible Idaho postsecondary educational institution, less the following: (6-14-07)T

i. The amount of the assigned student responsibility, established by the Board annually; (6-14-07)T

ii. The amount of federal grant aid, as identified by the federal Student Aid Report (SAR); (6-14-07)T

iii. The amount of other financial aid awarded the student, from private or other sources. (6-14-07)T

c. The amount of an opportunity scholarship award to an individual student shall not exceed the maximum amount established by the Board annually, and shall not exceed the cost of tuition at an Idaho public postsecondary educational institution, or if the student attends or will attend an Idaho private postsecondary educational institution, the average tuition or matriculation fees at Idaho's public four (4) year postsecondary educational institutions. (6-14-07)T

301. OPPORTUNITY SCHOLARSHIP AWARD.

01. Payment. Payment of opportunity scholarship awards will be made in the name of the recipient and will be sent to a designated official at the eligible Idaho postsecondary educational institution in which the recipient is enrolled. The official must transmit the payment to the recipient within a reasonable time following receipt of the payment. (6-14-07)T

02. Duration. Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, quarters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to, or on behalf of, a scholarship recipient. The scholarship covers up to one (1) educational year or equivalent for attendance at an eligible Idaho postsecondary educational institution. (6-14-07)T

03. Eligibility. If a student receives an opportunity scholarship payment and it is later determined that the student did not meet all of the Opportunity Scholarship Program eligibility requirements, then the student is considered in overpayment status, and must return program funds in accordance with the eligible Idaho postsecondary educational institution's refund policy. (6-14-07)T

302. CONTINUING ELIGIBILITY.

To remain eligible for renewal of an opportunity scholarship, the recipient must comply with all of the provisions of the Opportunity Scholarship Program and these rules, in addition to the following requirements: (6-14-07)T

01. Renewal Application. A scholarship recipient must complete and submit a renewal application in order to be considered for a continuing scholarship for each succeeding year. A completed application for the renewal of an opportunity scholarship must be submitted to the Board electronically by the date established on the application, but not later than January 31. An applicant without electronic capabilities may submit an application on the form established by the Board through the United States Postal Service, which must be postmarked not later than January 31. In addition, a scholarship recipient must update and submit the FAFSA on or prior to March 1. (6-14-07)T

02. Credit Hours. To remain eligible for renewal of an opportunity scholarship, the scholarship recipient must have completed a minimum of twelve (12) credit hours or its equivalent each semester that the student received an opportunity scholarship award. (6-14-07)T

03. Satisfactory Academic Progress. To remain eligible for renewal of an opportunity scholarship, the scholarship recipient must have maintained a minimum grade point average of two point zero (2.0) on a scale of four point zero (4.0) during the time that the recipient received an opportunity scholarship award, and must be maintaining satisfactory academic progress, consistent within federal financial regulations as implemented at the eligible Idaho postsecondary educational institution at which the scholarship recipient was enrolled. (6-14-07)T

04. Maximum Scholarship Award. The award of an opportunity scholarship shall not exceed the equivalent of eight (8) semesters or the equivalent of four (4) academic years. (6-14-07)T

05. Eligibility Following Interruption of Continuous Enrollment. A scholarship recipient whose continuous enrollment is interrupted for more than four (4) months for any reason but who intends to re-enroll in an eligible Idaho postsecondary educational institution must file a letter of intent to interrupt continuous enrollment no later than sixty (60) days prior to the first day of the academic term of the discontinued attendance. Failure to do so may result in forfeiture of the scholarship. The Board will review each request for interruption and notify the individual of approval or denial of the request. In addition, the individual must file a statement with the Board declaring his intent to re-enroll as a full-time undergraduate student in an academic or professional-technical program in an eligible Idaho postsecondary educational institution for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the individual intends to re-enroll. (6-14-07)T

303. -- 399. (RESERVED).

400. RESPONSIBILITIES OF ELIGIBLE IDAHO POSTSECONDARY EDUCATIONAL INSTITUTIONS.

01. Statements of Continuing Eligibility. An eligible Idaho postsecondary educational institution participating in this Opportunity Scholarship Program must submit statements of continuing student eligibility to the Board by the 30th day of each academic term. Such statements must include verification that the scholarship recipient is still enrolled, attending full time, maintaining satisfactory academic progress, and has not exceeded the award eligibility terms. (6-14-07)T

02. Other Requirements. An eligible Idaho postsecondary educational institution must: (6-14-07)T

a. Be eligible to participate in Federal Title IV financial aid programs, and must supply documentation to the Board verifying this eligibility, and prompt notification regarding any changes in this status; (6-14-07)T

b. Have the necessary administrative computing capability to administer the Opportunity Scholarship Program on its campus, and electronically report student data records to the Board; (6-14-07)T

c. Provide data on student enrollment and federal, state, and private financial aid for students to the Board, and (6-14-07)T

d. Agree to permit periodic Opportunity Scholarship Program audits to verify compliance with Idaho law and these rules related to the program. (6-14-07)T

401. ADMINISTRATION.

The Board is responsible for: (6-14-07)T

a. Releasing any public information regarding the Opportunity Scholarship Program; (6-14-07)T

b. Determination of scholarship recipients; (6-14-07)T

c. Determination of procedures for payment of scholarships to recipients; (6-14-07)T

d. Maintaining fiscal controls and accounting procedures; (6-14-07)T

e. Preparing annual reports as required, and (6-14-07)T

f. Authorizing release of all forms, affidavits, and certification necessary for the operation of the program. (6-14-07)T

402. -- 500. (RESERVED).

501. APPEALS.

Any opportunity scholarship applicant or recipient adversely affected by a decision made under provisions of these rules may appeal such adverse decision as follows. The opportunity scholarship applicant or recipient must appeal no later than thirty (30) days following notice of the decision, and the written statement must include a statement of the reason the opportunity scholarship applicant or recipient believes the decision should be changed. The appeal must be submitted to the President of the Board. The Board must acknowledge receipt of the appeal within seven (7) days. The President of the Board may or may not agree to review the action, or may appoint a subcommittee of three (3) persons, including at least one (1) financial aid administrator at an eligible postsecondary educational institution in Idaho. (6-14-07)T

01. Transmittal to Subcommittee. If the appeal is transmitted to the subcommittee, the subcommittee will review the appeal and submit a written recommendation to the President of the Board within fifteen (15) days from the time the subcommittee receives the appeal document. The opportunity scholarship applicant or recipient initiating the appeal will be notified by the chairperson of the subcommittee of the time and place when the subcommittee will consider the appeal and will be allowed to appear before the subcommittee to discuss the appeal. (6-14-07)T

02. Subcommittee Recommendations. Following the subcommittee's decision, the President of the Board will present the subcommittee's recommendation to the full Board at the next regularly scheduled meeting of the Board. The opportunity scholarship applicant or recipient initiating the appeal may, at the discretion of the President of the Board, be permitted to make a presentation to the Board. (6-14-07)T

03. Board Decision. The decision of the Board is final, binding, and ends all administrative remedies, unless otherwise specifically provided by the Board. The Board will inform the opportunity scholarship applicant or recipient in writing of the decision of the Board. (6-14-07)T

502. -- 999. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-105 and Section 33-107, Idaho Code.

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

August 17, 2007 -- 1:00 p.m.
Joe R. Williams Building
West Conference Room
700 West State Street, Boise, ID 83720

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

This change adds further definition to the Requirements for Professional Growth. Though it has always been the intention, these changes specifically define “educationally related” credits as being tied to content area, pedagogical best practices, school leadership and/or district need as designated by an administrator.

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

This rule will confer a Benefit on Pre K – 12 Educators. This rule change responds to a statewide challenge in meeting federal guidelines for Highly Qualified status and teacher shortages. Additionally it promotes professionalism and increased content competency among teachers.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 August 22, 2007.

DATED this 14th day of June, 2007

Karen L. Echeverria
Deputy Director
State Board of Education

650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0701

060. APPLICATION PROCEDURES / PROFESSIONAL DEVELOPMENT.

01. Application for Idaho Certificate. To obtain, renew, or reinstate an Idaho certificate, the applicant will submit an application on a form supplied by the State Department of Education or the State Division of Professional-Technical Education. (3-16-04)

02. State Board of Education Requirements for Professional Growth. (4-1-97)

a. Credits taken for recertification must be educationally related to the professional development of the applicant. (4-1-97)

i. Credits must be specifically tied to content areas and/or an area of other endorsement; or (6-14-07)T

ii. Credits must be specific to pedagogical best practices or for administrative/teacher leadership; or (6-14-07)T

iii. Credits must be tied to a specific area of need designated by district administration. (6-14-07)T

b. Graduate or undergraduate credit will be accepted for recertification. Credit must be college transferable and completed through an accredited college or university. (4-1-97)

c. All requests for equivalent inservice training to apply toward recertification must be made through the State Department of Education upon recommendation of the board of trustees consistent with the State Department of Education guidelines. Individuals holding Professional-Technical Specialist Certificates must receive State Division of Professional-Technical Education approval of inservice training and course work prior to applying for renewal. (3-16-04)

d. At least fifteen (15) hours of formal instruction must be given for each hour of inservice credit granted. (4-1-97)

e. Recertification credits may not be carried over from one (1) recertification period to the next. (4-1-97)

f. Certificated personnel teaching in subjects outside their major area of preparation will be encouraged to complete the courses required for major certification endorsement. (4-1-97)

03. State Board of Education Professional Development Requirements. (4-1-97)

a. Districts will have professional development plans. (4-1-97)

b. All certificated personnel will be required to complete at least six (6) semester hours or the equivalent within the five (5) year period of validity of the certificate being renewed. (4-1-97)

c. At least three (3) semester credits will be taken for university or college credit. Verification will be by official transcript. (4-1-97)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0702

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-105 and Section 33-107, Idaho Code.

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

August 17, 2007 -- 1:00 p.m.
Joe R. Williams Building
West Conference Room
700 West State Street, Boise, ID 83720

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

This change allows out-of-state certificate holders to waive Idaho Praxis II requirements provided they can supply evidence of passing another state's approved content, pedagogy and/or performance area assessment(s).

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

This rule will confer a Benefit on K-12 Teachers and Administrators. This rule change responds to a statewide challenge in meeting federal guidelines for Highly Qualified status and teacher shortages. This allows for greater flexibility and a shorter timeline for bringing highly qualified, out-of-state teachers into Idaho classrooms.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 August 22, 2007.

DATED this 14th day of June, 2007,

Karen L. Echeverria
Deputy Director
State Board of Education

650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0702

017. CONTENT, PEDAGOGY AND PERFORMANCE ASSESSMENT FOR CERTIFICATION.

01. Assessments. State Board of Education approved content, pedagogy and performance area assessments shall be used in the state of Idaho to ensure qualified teachers are employed in Idaho's classrooms. The Professional Standards Commission shall recommend assessments and qualifying scores to the State Board of Education for approval. ~~(3-16-04)~~(6-14-07)T

02. Out-of-State Waivers. An out-of-state applicant for Idaho certification holding a current certificate may request a waiver from the above requirement. The applicant shall provide evidence of passing a state approved content, pedagogy and performance area assessment(s) or hold current National Board for Professional Standards Teaching Certificate. (6-14-07)T

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0703

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-105 and Section 33-107, Idaho Code.

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

August 17, 2007 -- 1:00 p.m.
Joe R. Williams Building
West Conference Room
700 West State Street, Boise, ID 83720

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 State Department of Education/Certification Department will evaluate transcripts and experience to determine allowable credits toward certification requirements. Professional Standards Commission may grant an extension to the current three (year) period designated to attain a certificate through the state-approved alternate route. The extension will be granted only under extenuating circumstances in order to protect Highly Qualified status.

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

This rule will confer a Benefit on K-12 Pupil Personnel, Administrators, Higher Education Pupil Personnel and Administrator Preparation Programs. This rule change responds to a statewide challenge in meeting federal guidelines for Highly Qualified status and teacher shortages. It also allows for more local control and flexibility in meeting certification requirements, especially in consideration of rural districts. This rule also provides an opportunity to extend Alternative Authorization status on an emergency basis to maintain Highly Qualified status while finishing Pupil Personnel Services alternative certification.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 August 22, 2007.

DATED this 14th day of June, 2007.

Karen L. Echeverria
Deputy Director
State Board of Education

650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0703

047. ALTERNATIVE AUTHORIZATION - PUPIL PERSONNEL SERVICES.

The purpose of this alternative authorization is to allow Idaho school districts to request emergency endorsement/certification when a position requiring the Pupil Personnel Services certificate cannot be filled with someone who has the correct endorsement/certification. The exception to this rule is the School Nurse endorsement. The requirements for this endorsement are already defined in Subsection 027.03, of these rules. (6-14-07)T

01. Term of Validity. Alternative authorization in this area is valid for three (3) years and will be reviewed annually and is nonrenewable. (6-14-07)T

02. Initial Qualifications. The applicant must complete one of the following options: (6-14-07)T

a. Option I - The applicant must complete the following: (6-14-07)T

i. Prior to application, a candidate must hold a Bachelor's and/or a Master's degree in an area closely related to the certificate/endorsement area being pursued; and (6-14-07)T

ii. Before granting the alternative authorization, the candidate must have been accepted into an approved program and have an approved university plan of graduate study that meets the requirements for the appropriate Pupil Personnel Services certificate/endorsement; and (6-14-07)T

iii. The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (6-14-07)T

b. Option II - The applicant must complete the following: (6-14-07)T

i. Prior to application, a candidate must hold a Masters degree and hold a current Idaho license from the Bureau of Occupational Licenses in the area of desired certification; and (6-14-07)T

ii. The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (6-14-07)T

03. Alternative Route Preparation Program. (6-14-07)T

a. The candidate must work toward completion of the alternative route preparation program through a participating college/university and the employing school district. (6-14-07)T

b. The candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (6-14-07)T

c. The participating college/university or the State Department of Education will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (6-14-07)T

d. The candidate must meet all requirements for the endorsement/certificate as provided herein. (6-14-07)T

0478. -- 059. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0704 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) Idaho Code Section 33-105 and Section 33-107, Idaho Code.

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

August 17, 2007 -- 1:00 p.m.
Joe R. Williams Building
West Conference Room
700 West State Street, Boise, ID 83720

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

This change will provide certification to meet the special needs of virtual schools, distance education and public school/postsecondary partnerships. Postsecondary faculty wishing to teach in K-12 classrooms could qualify for proposed Postsecondary Specialist in order to meet Highly Qualified status without having to earn a standard teaching certificate.

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

This rule will confer a Benefit on K-12 Teachers, Administrators and Post Secondary Faculty. This rule change responds to a statewide challenge in meeting federal guidelines for Highly Qualified status through appropriate certification and content requirements. This rule also promotes greater flexibility and increased content competency among teachers and valid certification for higher education faculty serving K-12 classrooms. This rule also allows for greater opportunity to create public school/post-secondary education partnerships.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: The fee is the same as currently in effect for a basic teaching certificate as established in Section 066 of these rules

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 August 22, 2007.

DATED this 14th day of June, 2007.

Karen L. Echeverria
Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037
Boise, ID 83720-0037
(208) 332-1567 phone
(208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 08-0202-0704

~~032. --033.~~ **(RESERVED).**

032. POSTSECONDARY SPECIALIST.

A Postsecondary Specialist certificate will be granted to a current faculty member from any accredited Idaho postsecondary institution. To be eligible to teach in the public schools under this postsecondary specialist certificate, the candidate must supply a recommendation from the employing institution (faculty's college dean). The primary use of this state-issued certificate will be for distance education, virtual classroom programs, and for public and postsecondary partnerships. (6-14-07)T

01. Renewal. This certificate is good for five (5) years and is renewable. To renew the certificate, the renewal application must be accompanied with a new written recommendation from the postsecondary institution (faculty's college dean level or higher). (6-14-07)T

02. Fees. The fee is the same as currently in effect for a basic teaching certificate as established in Section 066 of these rules. (6-14-07)T

03. Qualifications. The candidate must: (6-14-07)T

a. Hold a masters degree or higher in the content area being taught; (6-14-07)T

b. Be currently employed by the post secondary institution in the content area to be taught; and (6-14-07)T

c. Complete a criminal history check as required according to Section 33-130, Idaho Code. (6-14-07)T

033. (RESERVED).

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0705

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) Idaho Code Section 33-105 and Section 33-107, Idaho Code.

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

August 17, 2007 -- 1:00 p.m.
Joe R. Williams Building
West Conference Room
700 West State Street, Boise, ID 83720

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 Idaho Technology Competency Assessment (ITCA) is no longer a relevant measurement of necessary technology requirements in Idaho classrooms. Idaho teacher preparation program evaluations include an assessment of the integration of relevant technology that covers the intention of the original ITCA. The ITCA should be removed as a requirement for teacher certification, however, out-of-state applicants and other applicants for interim certification may be reviewed by the hiring district for deficiencies in technology skills, on a case by case basis.

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

This rule will confer a Benefit on K-12 Teachers, Administrators and Post Secondary Faculty. The original intention of the Idaho Technology Competency Assessment when it was written ten years ago was to ensure that Idaho educators were proficient with basic technology. All teachers who were certificated prior to 2006 have passed this exam. In almost every case, new teachers entering the classroom are far more proficient in technology than as minimally required by the ITCA. Therefore, it is no longer necessary to require technology testing on a statewide basis. Technology competency will be assessed on a case by case basis and mandated only according to individual district requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 August 22, 2007.

DATED this 14th day of June, 2007.

Karen L. Echeverria
Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0705

011. TECHNOLOGY STANDARDS.

The proliferation of technology in our daily lives makes it essential that certificated educators are technologically literate. The State Board of Education has established a statewide goal that teachers and administrators be trained in the use of technology for education. (5-3-03)

01. Preservice Competency. All applicants for initial Idaho certification (Kindergarten through grade 12) from an Idaho approved teacher education program must demonstrate ~~beginning technology skills by passing a basic educational technology competency assessment~~ proficiency in relevant technology skills and practices to enhance classroom management and instruction. (5-3-03)(6-14-07)T

02. ~~Renewal~~ Out-of-State Applicants. ~~Out-of-state applicants will be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve his technology skills.~~ (5-3-03)(6-14-07)T

~~a. For certificate renewal purposes, all individuals holding a valid Idaho certificate (pre-kindergarten through grade 12) shall demonstrate technology competency by passing a basic educational technology assessment as approved by the State Board of Education.~~ (5-3-03)

~~b. As part of the certificate renewal process, the applicant shall submit an original certificate of completion, a notarized copy of the certificate, or an official letter of completion from a State Board of Education-approved provider of the technology competency assessment.~~ (5-3-03)

~~c. Evidence of meeting the competency requirement shall be accepted from January 1, 1997, the implementation date as approved by the State Board of Education. For renewal purposes, passing the technology competency assessment is required only once.~~ (5-3-03)

03. Waiver of Technology Competency. (5-3-03)

~~a. When applying for certificate renewal, an automatic waiver of the technology requirement shall be granted for any certificated individual who lives outside of the state of Idaho or who is not currently employed as an educator in the state of Idaho. This waiver applies only as long as the individual remains outside the state of Idaho or as long as the individual is not employed as an educator in the state of Idaho.~~ (5-3-03)

~~b. The State Superintendent of Public Instruction will develop and oversee a process for requests for waivers from certificated educators who would otherwise be covered by this rule.~~ (5-3-03)

04. Out-of-State Applicants. (5-3-03)

~~**a.** An out-of-state applicant for an Idaho certificate shall be granted a three-year, non-renewable interim certificate to allow time to meet the Idaho technology competency requirement. (5-3-03)~~

~~**b.** Those individuals who qualify for an Idaho certificate through the NASDTEC (National Association of State Directors of Teacher Education and Certification) Interstate Contract reciprocity agreement shall be granted a three-year, non-renewable, interim certificate to allow time to meet the Idaho technology competency requirement. (5-3-03)~~

~~**05. Assessment Methods.** Preservice educators, holders of a valid Idaho certificate, and out-of-state applicants may elect to use any State Board of Education-approved technology assessment, including: (5-3-03)~~

~~**a.** The Idaho Technology Competency Exam; (5-3-03)~~

~~**b.** The Idaho Technology Portfolio Assessment; (5-3-03)~~

~~**c.** The Idaho Technology Performance Assessment; or (5-3-03)~~

~~**d.** Another process which meets the express approval of the State Board of Education to demonstrate the required basic technology competency. (5-3-03)~~

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0706

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) Idaho Code Section 33-105 and Section 33-107, Idaho Code.

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

August 17, 2007 -- 1:00 p.m.
Joe R. Williams Building
West Conference Room
700 West State Street, Boise, ID 83720

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 new version changes the incorrectly cited AAS degree to an AS degree as originally intended. It also allows for para-educators with a minimum of 32 credits of formal education to be considered for the program instead of being limited to an Associates Degree.

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

This rule will confer a Benefit on Paraprofessionals and Administrators. This rule corrects inaccurate information contained in the rule and also clarifies the minimum education requirements for initial qualification for Alternative Authorization qualified paraprofessionals.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. This proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote. This proposed rule change was approved by the Commission at the meeting held on June 1st, 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

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 August 22, 2007.

DATED this 14th day of June, 2007

Karen L. Echeverria
Deputy Director
State Board of Education

650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0706

046. PARA-EDUCATOR TO TEACHER (EFFECTIVE JULY 1, 2006).

The purpose of this alternative route to certification is to encourage qualified para-educators employed in Idaho classrooms to become certificated teachers. The alternative route preparation program must be completed within five (5) calendar years from the date of admission to the program. (3-20-04)

01. Initial Qualifications. Prior to application: the candidate must hold an ~~AA/AAS~~ or AS degree or equivalent, meet state para-educator standards, and be employed as a para-educator. Districts shall identify potential candidate with appropriate dispositions for teaching, and continue to employ candidate as para-educators. District/school provides orientation for candidate as deemed appropriate. ~~(3-20-04)~~(6-14-07)T

02. Alternative Route Preparation Program-College University Preparation. (3-20-04)

a. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. A candidate must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions to receive a recommendation for full certification. (3-20-04)

b. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (3-20-04)

c. Candidate shall complete all requirements for certification as provided herein. (3-20-04)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0702

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 33-105 and 33-107, 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 August 15, 2007.

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 State Board of Education, in conjunction with the Superintendent of Public Instruction will be consolidating all statewide assessments into the office of the State Board. Subsection 113.03 is being amended to reflect the Board's role in identifying and recognizing schools for rewards.

The State Board of Education will determine adequate yearly progress in compliance with No Child Left Behind. Subsection 112.03 is being amended to reflect the Board's role in determining adequate yearly progress (AYP) for schools and districts in the state. Language is being clarified that AYP must be determined early enough to assure at least thirty days for appeal and final determinations available to schools and districts in time to notify parents before school starts in the fall.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is non-controversial in nature and will not have any impact on the school districts.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sandra DeKlotz at (208) 332-1580.

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 August 22, 2007.

DATED this 14th day of June, 2007.

Karen L. Echeverria
Deputy Director
State Board of Education
650 West State Street
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(208) 332-1567 phone
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0702

112. ACCOUNTABILITY.

The provisions in this section apply for the purposes of meeting the “No Child Left Behind” Act and the state of Idaho accountability requirements. (3-20-04)

01. Student Achievement Levels. There are four (4) levels of student achievement for the ISAT. (3-20-04)

a. Advanced: Exceeds Standards. The student demonstrates thorough knowledge and mastery of skills that allows him/her to function independently above his current educational level. (3-20-04)

i. The student demonstrates a comprehensive understanding of all relevant information. (3-20-04)

ii. The student demonstrates comprehension and understanding of knowledge and skills at or above his/her grade level. ~~(3-20-04)~~()

iii. The student can perform skills or processes independently without significant errors. (3-20-04)

b. Proficient: Meets Standards. The student demonstrates mastery of knowledge and skills that allow him/her to function independently on all major concepts and skills at his/her educational level. (3-20-04)

i. The student demonstrates a comprehensive understanding of all information relevant to the topic, at level. (3-20-04)

ii. The student can perform skills or processes independently without significant errors. (3-20-04)

c. Basic: Below Standards. The student demonstrates basic knowledge and skills usage but cannot operate independently on concepts and skills at his/her educational level. Requires remediation and assistance to complete tasks without significant errors. (3-20-04)

i. The student has an incomplete knowledge of the topic or misconceptions about some information. (3-20-04)

ii. The student requires assistance and coaching to complete tasks without errors. (3-20-04)

d. Below Basic: Critically Below Standards. The student demonstrates significant lack of skills and knowledge and is unable to complete basic skills or knowledge sets without significant remediation. (3-20-04)

i. The student has critical deficiencies of relevant knowledge of topic or misconceptions about some information. (3-20-04)

ii. The student cannot complete any skill set without significant assistance and coaching. (3-20-04)

02. Adequate Yearly Progress (AYP). (3-20-04)

a. Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. (3-20-04)

b. The State ~~Department~~ Board of Education will make AYP determinations for schools and districts each year. Results will be given to the districts ~~no later than~~ at least one (1) month prior to the first day of school. ~~(3-20-04)~~()

c. The baseline for AYP will be set by the Board and shall identify the amount of growth (percentage

of students reaching proficiency) required for each intermediate period. (3-20-04)

03. Adequate Yearly Progress (AYP) Definitions. For purposes of calculating and reporting adequate yearly progress, the following definitions shall be applied. (3-20-04)

a. Full Academic Year (continuous enrollment). (3-20-04)

i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the ~~end of the~~ state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved AYP. A student is continuously enrolled if he/she has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. Students who are expelled but return to another school in the same district are considered continuously enrolled to determine the district AYP. (~~4-6-05~~)(____)

ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the ~~end of the~~ state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (~~4-6-05~~)(____)

iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the ~~end of the~~ state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved AYP. (~~4-6-05~~)(____)

b. Participation Rate. (3-20-04)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved AYP. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-20-04)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (4-6-05)

(2) Students who are absent for the entire state-approved testing window because of a significant medical emergency are exempt from taking the ISAT if such circumstances prohibit them from participating. (4-6-05)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-20-04)

c. Schools. (3-20-04)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-20-04)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (4-6-05)

iii. A high school is any school that contains grade twelve (12). (3-20-04)

iv. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-20-04)

d. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups:

(3-20-04)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-20-04)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-20-04)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-20-04)

iv. Limited English Proficient - individuals who score in the low range on the state-approved language proficiency test and meet one of the following criteria: (4-6-05)

(1) Individuals whose native language is a language other than English; or (4-6-05)

(2) Individuals who come from environments where a language other than English is dominant; or (4-6-05)

(3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (4-6-05)

e. Graduation Rate. The State Board of Education will establish a target for graduation. All high schools must maintain or make progress toward the target each year. The graduation rate will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)

f. Additional Academic Indicator. The State Board of Education will establish a target for an additional academic indicator. All elementary and middle schools must maintain or make progress toward the additional academic indicator target each year. The additional academic indicator target will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)

113. REWARDS.

01. Distinguished Schools. A school may be recognized as a “Distinguished School” 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 reduced the gaps between subgroups listed in Subsection 112.03.d. of this rule. (3-30-07)

02. Additional Yearly Growth (AYG) Award. A school demonstrating improved proficiency levels of subpopulations or in the aggregate by greater than ten percent (10%) shall be considered to have achieved AYG. Such school must have achieved Adequate Yearly Progress (AYP) to be eligible for this award. (3-30-07)

03. Determination by State Department of Education. The State ~~Department~~ Board 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~~ will recognize the schools no later than the annual October Board Meeting. (3-30-07)(____)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0703

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 33-105 and 33-107, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held through presentation of comment in person at the following location: Comments that are presented in non-written form are limited to three minutes and must be submitted in written form as well. Written comments are not limited in length.

August 16, 2007 -- 12:00 noon to 6 p.m.
Boise State University, Student Union Building
Berquist Lounge, Boise, Idaho

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

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

As the State Board of Education moves toward a new delivery model for deaf/hard of hearing and blind/visually impaired students, new standards need to be developed. The new standards will provide guidance for the development of the education programs for students who are deaf or hard of hearing and /or those who are blind or visually impaired.

“Program Standards for Infants, Toddlers, Children, and Youth who are Blind or Visually Impaired” and “Program Standards for Infants, Toddlers, Children, and Youth who are Deaf or Hard of Hearing” are incorporated by reference into this rule.

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

The new standards are necessary to protect the public health, safety, or welfare and confer a benefit on the students who will be receiving these services.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The State Board of Education appointed several working groups beginning in July of 2005. One of those work groups began working on the standards in December of 2006 and met on several occasions since that time. The meetings of the work group were always open to the public and interested parties were allowed to make presentations and offer comments and recommendations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Allison McClintick at (208) 332-1579.

Anyone may submit written comments regarding the proposed rulemaking. Written comments may be made using

the Board's website. If you wish to make comments concerning deaf/hard of hearing standards, individuals may do so at <http://www.boardofed.idaho.gov/ISDB/deaf.asp>. If you wish to make comments concerning blind/visually impaired standards, individuals may do so at <http://www.boardofed.idaho.gov/ISDB/blind.asp>.

Written comments may also be sent to the address below. All written comments must be received no later than 5:00 p.m. on August 22, 2007.

DATED this 14th day of June, 2007.

Karen L. Echeverria, Deputy Director
State Board of Education
650 West State Street
PO Box 83720-0037, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0703

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule: (3-30-07)

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education on November 1, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (3-30-07)

02. The Idaho English Language Development Standards. The Idaho English Language Development Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/lep/index.asp>. (3-30-07)

03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures. The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/lep/index.asp>. (3-30-07)

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/lep/index.asp>. (3-30-07)

05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards. Achievement Standards as adopted by the State Board of Education on ~~August 10, 2006~~ May 30, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (~~3-30-07~~)(6-14-07)T

06. The Idaho Alternative Assessment Extended Content Standards. The Idaho Alternative Assessment Extended Content Standards as adopted by the State Board of Education on April 20, 2006. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>. (11-1-06)T

07. The Idaho Alternative Assessment Extended Achievement Standards. Alternative Assessment

Extended Achievement Standards as adopted by the State Board of Education on April 20, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>.
(11-1-06)T

08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing. As adopted by the State Board of Education on June 14, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>.
(6-14-07)T

09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired. As adopted by the State Board of Education on June 14, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov/index.asp>.
(6-14-07)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.27 - IDAHO RADIATION CONTROL RULES

DOCKET NO. 16-0227-0701

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 Sections 56-1041, 56-1043, 56-1044, and 56-1046, Idaho Code; Senate Bill 1148 (2007); and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, August 15, 2007.

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 section in this chapter that contains the legal authority for rulemaking was updated by deleting obsolete citations to Idaho Code and adding the correct citations. One outdated citation to Idaho Code that was deleted is now administered by the Department of Environmental Quality. Another citation that was deleted referred to obsolete sections of statute related to radiation control that were deleted by Senate Bill 1148 (2007). The legal authority section was also missing the correct citations that state that rulemaking authority for this chapter rests with the Board of Health and Welfare and the Director of the Department; these citations were added.

In addition, the rest of the sections at the beginning of the chapter required by the Administrative Procedure Act (APA) were either updated to meet the Department's plain language standard or added because they are missing. Addition of the missing "required sections" brings the rule chapter into compliance with the APA.

Finally, to facilitate the updating of definitions in the future, the chapter's lengthy "Definitions" section was split into four smaller sections.

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

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rule changes are being made to bring the chapter into compliance with the Idaho Administrative Procedure Act (APA) and to reflect the changes made to Title 39, Chapter 30, Idaho Code ("Radiation and Nuclear Material") under Senate Bill 1148 passed by the 2007 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David Eisentrager at (208) 334-2235 ext. 245.

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 Wednesday, August 22, 2007.

DATED this 14th day of June, 2007.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor

(kovachs@dhw.idaho.gov) e-mail
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0227-0701

000. LEGAL AUTHORITY.

The Idaho Legislature in Title 39, Chapters 1 and 30, Idaho Code, has granted to the Board of Health and Welfare the authority to adopt rules governing the control of radiation to protect the health of the citizens of the state. The Idaho Legislature in Title 39, Chapters 1 and 30, Idaho Code, has granted the Director of the Department of Health and Welfare the authority to enforce rules adopted by the Idaho State Board of Health and Welfare. The Idaho Legislature, under the following Sections of statute has granted authority to the Board of Health and Welfare and the Director of the Department to adopt rules related to x-ray producing machines in order to protect the health of the people of Idaho. Sections 56-1041 and 56-1043, Idaho Code, grant authority to the Board of Health and Welfare to adopt radiation control rules. Section 56-1041, Idaho Code, establishes the Department as the designated agency to regulate, license, and control radiation associated with x-ray machines. Section 56-1044, Idaho Code, requires that radiation machines for mammography be registered with the Department, as provided in rule. Section 56-1046, Idaho Code, grants authority to the Department to establish record-keeping and reporting requirements for those who possess or use an x-ray machine. (7-1-98)()

001. TITLE AND SCOPE.

These rules shall be cited, in full, as Idaho Department of Health and Welfare Rules, The title of these rules is IDAPA 16.02.27, "Idaho Radiation Control Rules." Except as otherwise specifically provided, these rules apply to all persons who possess, use, transfer, own or acquire any radiation machine. (7-1-98)()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference in these rules: National Council of Radiation Protection (NCRP) Report No. 147, entitled: "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to Ten (10) MeV," issued November 19, 2004, by the National Council on Radiation Protection and Measurement. This document may be obtained from: NCRP Publications, 7910 Woodmont, Bethesda, MD 20814. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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 website address is: <http://www.healthandwelfare.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 the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. -- 009. (RESERVED).

00210. DEFINITIONS -- A THROUGH E.

As used in For the purposes of these rules, the following terms ~~have the definitions set forth~~ are used as defined below: (7-1-98)()

01. Accessible Surface. The external surface of the enclosure or housing provided by the manufacturer. (7-1-98)

02. Act. The "Radiation and Nuclear Material Act," Sections 39-3001 through 39-3024, Idaho Code. (7-1-98)

03. Added Filtration. Any filtration added to the inherent filtration. (7-1-98)

04. Aluminum Equivalent. The thickness of aluminum (Type 1100) affording the same attenuation, under specified conditions, as the material in question. (7-1-98)

05. Analytical X-Ray Equipment. Equipment used for x-ray diffraction or fluorescence analysis. (7-1-98)

06. Analytical X-Ray System. A group of components utilizing x-rays or gamma rays to determine the elemental composition or to examine the microstructure of material. (7-1-98)

07. Assembler. Any person engaged in the business of assembling, replacing, or installing one (1) or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his employee or agent who assembles components into an x-ray system that is subsequently used to provide professional or commercial services. (7-1-98)

08. Attenuation Block. A block or stack, having dimensions twenty (20) centimeters by twenty (20) centimeters by three and eight-tenths (3.8) centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation. (7-1-98)

09. Automatic Exposure Control. A device which automatically controls one (1) or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation (see also "Phototimer"). (7-1-98)

10. Beam Limiting Device. A device which provides a means to restrict the dimensions of the x-ray field, such as but not limited to collimator, diaphragm, or cone. (7-1-98)

11. Cabinet Radiography. Industrial radiography using radiation machines, which is conducted in an enclosed, interlocked cabinet, such that the radiation machine will not operate unless all openings are securely closed, and the cabinet is so shielded that every location on the exterior meets conditions for an unrestricted area as specified in Subsection 110.04. (7-1-98)

12. Cabinet X-Ray System. An x-ray system with the x-ray tube installed in an enclosure (hereinafter termed cabinet) which, independently of existing architectural structures except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals and in similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment which may temporarily or occasionally incorporate portable

shielding is not considered a cabinet x-ray system. (7-1-98)

13. Calendar Quarter. Not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year will begin in January and subsequent calendar quarters will be arranged so that no day is included in more than one (1) calendar quarter and no day in any one (1) year is omitted from inclusion within a calendar quarter. (7-1-98)

14. Calibration. The determination of: (7-1-98)

a. The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or (7-1-98)

b. The strength of a source of radiation relative to a standard. (7-1-98)

15. Certified Cabinet X-Ray System. A cabinet x-ray system which has been certified in accordance with 21 CFR 1010.2 as having been manufactured, assembled and maintained pursuant to the provisions of 21 CFR 1020.40. (7-1-98)

16. Certified Components. Components of x-ray systems which are subject to regulations promulgated under P.L. 90-602 which is available at all county law libraries. (7-1-98)

17. Certified System. Any x-ray system which has one (1) or more certified components. (7-1-98)

18. CFR. Code of Federal Regulations. (7-1-98)

19. Collimator. A device or mechanism by which the x-ray beam is restricted in size. (7-1-98)

20. Control Panel. That part of the x-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors. (7-1-98)

21. Dead-Man Switch. A switch so constructed that a circuit-closing contact can be maintained only by continuous pressure on the switch by the operator. (7-1-98)

22. Diagnostic Source Assembly. The tube housing assembly with a beam-limiting device attached. (7-1-98)

23. Diagnostic X-Ray System. An x-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization. (7-1-98)

24. Dose. Absorbed dose or dose equivalent as appropriate. (7-1-98)

a. Absorbed dose is the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest. The special unit of absorbed dose is the rad (see "Rad"). (7-1-98)

b. Dose equivalent is a quantity that expresses on a common scale for all radiation a measure of the postulated effect on a given organ. It is defined as the absorbed dose in rads times certain modifying factors. The unit of dose equivalent is the rem (see "Rem"). (7-1-98)

25. Entrance Exposure Rate. The exposure per unit time at the point where the center of the useful beam enters the patient. (7-1-98)

26. Exposure. The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one (1) sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air (the special unit of exposure is the roentgen (R)). (7-1-98)

27. Exposure Rate. The exposure per unit of time, such as roentgen per minute and milliroentgen per

hour. (7-1-98)

011. DEFINITIONS -- F THROUGH O.

For the purposes of these rules, the following terms are used as defined below: ()

2801. Facility. The location at which one (1) or more radiation machines are installed ~~and~~ or located within one (1) building, vehicle, or under one (1) roof and are under the same administrative control. (~~7-1-98~~)()

2902. Fail-Safe Characteristics. A design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device. (7-1-98)

303. Filter. Material placed in the useful beam to absorb preferentially the less penetrating radiations. (7-1-98)

3104. Fluoroscopic Imaging Assembly. A component which comprises a reception system in which x-ray photons produce a fluoroscopic image, including equipment housings, electrical interlocks if any, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly. (7-1-98)

3205. General Purpose Radiographic X-Ray System. Any radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions. (7-1-98)

3306. Gonadal Shield. A protective barrier for the testes or ovaries. (7-1-98)

3407. Half-Value Layer (HVL). The thickness of a specified substance which, when introduced into the path of a given beam of radiation, reduces the exposure rate by one-half (1/2). (7-1-98)

3508. Healing Arts. Medicine, dentistry, chiropractic, podiatry, osteopathy, and veterinary medicine. (7-1-98)

3609. Healing Arts Screening. The testing of human beings using x-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe such x-ray tests for the purpose of diagnosis or treatment. (7-1-98)

3710. High Radiation Area. Any area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive in any one (1) hour a dose in excess of one hundred (100) millirems. (7-1-98)

3811. Human Use. The internal or external administration of radiation to human beings. (7-1-98)

3912. Image Intensifier. A device, including housing, which instantaneously converts an x-ray pattern into a corresponding light image of higher energy density. (7-1-98)

4013. Image Receptor. Any device, such as a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. (7-1-98)

414. Individual. Any human being. (7-1-98)

4215. Industrial Radiography. The examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation. (7-1-98)

4316. Inherent Filtration. The filtration permanently in the useful beam, including the window of the x-ray tube and any permanent tube or source enclosure. (7-1-98)

4417. Inspection. An official examination or observation including but not limited to, tests, surveys, and

monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the Radiation Control Agency. (7-1-98)

4518. Interlock. A device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur. (7-1-98)

4619. Kilovolts Peak (kVp). See "Peak Tube Potential." (7-1-98)

4720. Lead Equivalent. The thickness of lead affording the same attenuation, under specified conditions, as the material in question. (7-1-98)

4821. Leakage Radiation. Radiation emanating from the diagnostic or therapeutic source assembly except for: (7-1-98)

a. The useful beam; and (7-1-98)

b. Radiation produced when the exposure switch or timer is not activated. (7-1-98)

4922. Leakage Technique Factors. The technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows: (7-1-98)

a. For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being ten (10) millicoulombs, i.e., ten (10) milliamperere seconds, or the minimum obtainable from the unit, whichever is larger. (7-1-98)

b. For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential. (7-1-98)

5023. Light Field. That area of the intersection of the light beam from the beam-limiting device and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth (1/4) of the maximum in the intersection. (7-1-98)

5124. Local Components. Part of an analytical x-ray system including areas that are struck by x-rays such as radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding, but not including power supplies, transformers, amplifiers, readout devices, and control panels. (7-1-98)

525. Normal Operating Procedures. Step-by-step instruction necessary to accomplish the analysis. These procedures must include sample insertion and manipulation, equipment alignment, routine maintenance by the registrant and data recording procedures, which are related to radiation safety. (7-1-98)

5326. Occupational Dose. Exposure of an individual to radiation in a restricted area or exposure in the course of employment in which the individual's duties involve exposure to radiation, provided, that occupational dose will not be deemed to include any exposure of an individual to radiation for the purpose of diagnosis or therapy of such individual. (7-1-98)

5427. Open Beam Configuration. An analytical x-ray system in which an individual could accidentally place some part of his body in the primary beam path during normal operation. (7-1-98)

012. DEFINITIONS -- P THROUGH R.

For the purposes of these rules, the following terms are used as defined below: ()

5501. Particle Accelerator. The term "particle accelerator" is very broad and covers many types of devices. It is generally defined as a device used to impart kinetic energy to electrically charged particles such as electrons, protons, deuterons, and helium ions, and is referred to herein to designate devices that accelerate particles

to energies greater than approximately one (1) MeV, or to neutron generators which operate with a potential of about one hundred fifty (150) kv. Such accelerators as cyclotrons, betatrons, linear accelerators, Van de Graaff accelerators, Cockcroft-Walton type neutron generators, and resonant transformers are included. (7-1-98)

5602. Peak Tube Potential. The maximum value of the potential difference across the x-ray tube during an exposure. (7-1-98)

5703. Permanent Radiographic Installation. An installation or structure designed or intended for radiography and in which radiography is regularly performed. (7-1-98)

5804. Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency thereof, any legal successor, representative, agent or agency of the foregoing. (7-1-98)

5905. Personal Supervision. Supervision in which the authorized operator of an x-ray unit or radioisotopic device is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the assistant or trainee and in such proximity that immediate assistance can be given if required. (7-1-98)

606. Personnel Monitoring. The determination of exposure to a person. (7-1-98)

6407. Personnel Monitoring Equipment. Devices designed to be worn or carried by an individual for the purpose of estimating the dose received, such as film or thermoluminescent dosimetry badges, pocket chambers, pocket dosimeters, or film and thermoluminescent dosimetry rings. (7-1-98)

6208. Phototimer. A method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit which controls the duration of time the tube is activated. (7-1-98)

6309. Physician. An individual licensed by the Idaho State Board of Medicine to practice medicine. (7-1-98)

6410. Position Indicating Device (PID). A device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device. (7-1-98)

6511. Primary Beam. Radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing. (7-1-98)

6612. Protective Apron. Apron made of radiation absorbing materials, used to reduce radiation exposure. (7-1-98)

6713. Protective Barrier. A barrier of radiation attenuating materials used to reduce radiation exposure. (7-1-98)

a. Primary Protective Barrier. A barrier sufficient to attenuate the useful beam to the required degree to assure compliance with Subsections 110.01, 110.03, and 110.04. (7-1-98)

b. Secondary Protective Barrier. A barrier sufficient to attenuate stray radiation to the required degree to assure compliance with Subsections 110.01, 110.03, and 110.04. (7-1-98)

6814. Protective Glove. Glove made of radiation absorbing materials used to reduce radiation exposure. (7-1-98)

6915. Qualified Expert. An individual who has demonstrated to the satisfaction of the Radiation Control Agency that such individual possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. (7-1-98)

7016. Rad. The special unit of absorbed dose. One (1) rad equals one one-hundredth (.01) of a joule per kilogram of material. For example, if tissue is the material of interest, then one (1) rad equals one hundred (100) ergs per gram of tissue. (7-1-98)

717. Radiation. Ionizing radiation, that is, gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other atomic particles. (7-1-98)

7218. Radiation Area. Any area, accessible to individuals, in which there exists radiation at such levels that a major portion of the body could receive in any one (1) hour a dose in excess of five (5) millirem, or in any five (5) consecutive days a dose in excess of one hundred (100) millirem. (7-1-98)

7319. Radiation Control Agency. The Idaho Department of Health and Welfare. (7-1-98)

7420. Radiation Machine. Any device capable of producing radiation except devices which produce radiation only from radioactive material. (7-1-98)

7521. Radiation Safety Officer. An individual who has the knowledge and responsibility to apply appropriate radiation protection principles and rules. (7-1-98)

7622. Radiograph. An image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record. (7-1-98)

7723. Radiographer. Any individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these rules and all conditions of licensure. (7-1-98)

7824. Radiographer's Assistant. Any individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography. (7-1-98)

7925. Radiographic Imaging System. Any system whereby a permanent or semi-permanent image is recorded on an image receptor by the action of ionizing radiation. (7-1-98)

8026. Radiological Physicist. An individual who: (7-1-98)

a. Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, or x- and gamma-ray physics; or (7-1-98)

b. Has a bachelor's degree in one of the physical sciences or engineering and three (3) years full-time experience working in therapeutic radiological physics under the direction of a physicist certified by the American Board of Radiology. The work duties must include duties involving the calibration and spot-checks of a medical accelerator or a sealed source teletherapy unit; or (7-1-98)

c. Has a Master's or a Doctor's degree in physics, biophysics, radiological physics, health physics, or engineering; has had one (1) year's full-time training in therapeutic radiological physics; and has had one (1) year's full-time work experience in a radiotherapy facility where the individual's duties involve calibration and spot-checks of a medical accelerator or a sealed source teletherapy unit. (7-1-98)

8127. Rating. The operating limits as specified by the component manufacturer. (7-1-98)

828. Registrant. Any person who owns or possesses any device capable of emitting radiation which is registered with the Radiation Control Agency. (7-1-98)

8329. Registration. The filing with the Radiation Control Agency of all devices capable of emitting radiation in accordance with these rules. (7-1-98)

8430. Rem. A measure of dose equivalent. One (1) millirem (mrem) equals one one-thousandth (.001) rem. For the purpose of these rules, any of the following is considered to be equivalent to a dose of one (1) rem: (7-1-98)

- a. An exposure of one (1) R of x-, or gamma radiation; or (7-1-98)
- b. An absorbed dose of one (1) rad due to x-, gamma, or beta radiation; or (7-1-98)
- c. An absorbed dose of one-tenth (0.1) rad due to neutrons or high energy protons. (7-1-98)

d. If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron dose in rads, one (1) rem of neutron radiation can, for purposes of these rules, be assumed to be equivalent to fourteen million (14,000,000) neutrons per square centimeter incident upon the body; or, if there exists sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to one (1) rem can be estimated from the following table.

NEUTRON FLUX DOSE EQUIVALENTS TABLE		
Neutron Energy (MeV)	Number of Neutrons per Square Centimeter Equivalent to a Dose of 1 Rem (Neutron/cm ²)	Average Flux to Deliver 100 Millirem in 40 Hours (Neutrons/cm ² per Second)
Thermal	970 x 10 ⁶	670
0.001	720 x 10 ⁶	500
0.005	820 x 10 ⁶	570
0.02	400 x 10 ⁶	280
0.1	120 x 10 ⁶	80
0.5	43 x 10 ⁶	30
1.0	26 x 10 ⁶	18
2.5	29 x 10 ⁶	20
5.0	26 x 10 ⁶	18
7.5	24 x 10 ⁶	17
10.0	24 x 10 ⁶	17
10 to 30	14 x 10 ⁶	10

(7-1-98)

e. An absorbed dose of five one-hundredths (0.05) rad due to particles heavier than protons and with sufficient energy to reach the lens of the eye. (7-1-98)

8531. Restricted Area. Any area access to which is controlled by the licensee or registrant for purposes of protection of individuals from exposure to radiation ~~and/or radioactive material~~. Restricted area does not include any areas used for residential quarters, although a separate room or rooms in a residential building can be set apart as a restricted area. (7-1-98)(_____)

8632. Roentgen. A measure of the exposure of x- or gamma radiation in terms in the electric charge produced in air. One (1) Roentgen (R) is defined as the amount of x- or gamma radiation required to produce by ionization 2.58 x 10⁴ coulomb of ions per kilogram of dry air. (7-1-98)

013. DEFINITIONS -- S THROUGH Z.

For the purposes of these rules, the following terms are used as defined below: ()

8701. Scattered Radiation. Radiation that, during passage through matter, has been deviated or deflected in direction. (7-1-98)

8802. Shielded Room Radiography. Industrial radiography conducted in an enclosed room so shielded that every location on the exterior meets the conditions as specified in Subsection 110.04. (7-1-98)

8903. Shutter. A device, attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly. (7-1-98)

904. Source-Image Receptor Distance (SID). The distance from the source to the center of the input surface of the image receptor. (7-1-98)

9105. Source of Radiation. Any radioactive material, or any device or equipment emitting or capable of producing radiation. (7-1-98)

9206. Spot Film. A radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure. (7-1-98)

9307. Spot Film Device. A device intended to transport ~~and/or~~ position, or both, a radiographic image receptor between the x-ray source and fluoroscopic image receptor, including clip-on cassette holders. (7-1-98)()

9408. SSD (Source Skin Distance). The distance between the source of radiation and the skin of the patient. (7-1-98)

9509. Stray Radiation. The sum of leakage and scattered radiation. (7-1-98)

9610. Survey. An evaluation of the production, use, or release, ~~disposal, and/or presence~~ of sources of radiation under a specific set of conditions to determine actual or potential radiation hazards. When appropriate, such evaluation includes, but is not limited to tests, physical examination, and measurements of levels of radiation or concentration of radioactive material present. (7-1-98)()

9711. Technique Factors. The conditions of operation are specified as follows: (7-1-98)

a. For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs; and (7-1-98)

b. For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses; and (7-1-98)

c. For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs. (7-1-98)

9812. Temporary Job Site. Any location where industrial radiography is performed other than the location(s) listed in a certificate of registration. (7-1-98)

9913. Termination of Irradiation. The stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel. (7-1-98)

1004. Test. The process of certifying compliance with an applicable rules. (7-1-98)

1015. These Rules. Idaho Department of Health and Welfare Rules, IDAPA 16, Title 02, Chapter 27, Sections 000 through 999, "Idaho Radiation Control Rules." (7-1-98)

1026. Traceable to a National Standard. When a quantity or a measurement has been compared to a

national standard directly or indirectly through one (1) or more intermediate steps and when all comparisons have been documented. (7-1-98)

1037. Tube. An x-ray tube, unless otherwise specified. (7-1-98)

1048. Tube Housing Assembly. The tube housing with tube installed, including high-voltage and/or filament transformers and other appropriate elements when contained within the tube housing. (7-1-98)(____)

1059. Tube Rating Chart. The set of curves which specify the rated limits of operation of the tube in terms of the technique factors. (7-1-98)

10620. Unrestricted Area. Any area access to which is not controlled by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive materials, and any area used for residential quarters. (7-1-98)

10721. Useful Beam. The radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam-limiting device when the exposure controls are in a mode to cause the system to produce radiation. (7-1-98)

10822. Variable-Aperture Beam-Limiting Device. A beam-limiting device which has capacity for stepless adjustment of the x-ray field size at a given source to image distance (SID). (7-1-98)

10923. Visible Area. That portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image. (7-1-98)

11024. Worker. An individual engaged in work under a registration issued by the Radiation Control Agency and controlled by a registrant, not including the registrant. (7-1-98)

11125. X-Ray Control. A device which controls input power to the x-ray high-voltage generator and/or the x-ray tube, including equipment such as timers, phototimers, automatic brightness stabilizers and similar devices which control the technique factors of an x-ray exposure. (7-1-98)(____)

1126. X-Ray Equipment. An x-ray system, subsystem or component thereof. (7-1-98)

a. Mobile. X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. (7-1-98)(____)

b. Portable. X-ray equipment designed to be hand-carried. (7-1-98)

c. Stationary. X-ray equipment installed in a fixed location. (7-1-98)

11327. X-Ray Field. That area of the intersection of the useful beam and any one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection. (7-1-98)

11428. X-Ray High-Voltage Generator. A device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential, including but not limited to a means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices and other appropriate elements. (7-1-98)

11529. X-Ray Source. The focal spot of the x-ray tube. (7-1-98)

11630. X-Ray System. An assemblage of components for the controlled production of x-rays, including an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures; additional components which function with the system are considered integral parts of the system. (7-1-98)

~~007~~**31. X-Ray Tube.** Any electron tube which is designed for the conversion of electrical energy into x-ray energy. (7-1-98)

~~003~~**005 014. (RESERVED).**

00615. EXEMPTIONS.

The Radiation Control Agency can, upon application therefor or upon its own initiative, grant such exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety ~~and/or~~ property. (7-1-98)(____)

00716. RECORDS.

Each registrant must keep records showing the receipt, transfer, and disposal of all radiation machines. Additional record requirements are specified elsewhere in these rules. (7-1-98)

00817. INSPECTIONS.

01. Preregistration Inspections. The Agency has the right to conduct preclicensing inspections to verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a registration and whether any special conditions must be attached thereto by visiting the facility or location where radiation machines would be possessed or used. (7-1-98)

02. Inspections of Facilities. Each registrant must afford the Agency at all reasonable times opportunity to inspect radiation machines and the premises and facilities wherein such radiation machines are used or stored. (7-1-98)

03. Inspections of Records. Each registrant will make available to the Agency for inspection, upon reasonable notice, records maintained pursuant to these rules. (7-1-98)

00918. TESTS.

Each registrant must perform or permit the Radiation Control Agency to perform such reasonable tests as the Radiation Control Agency deems appropriate or necessary including, but not limited to, tests of radiation machines, facilities wherein radiation machines are used or stored, radiation detection and monitoring instruments, and other equipment and devices used in connection with utilization or storage of registered radiation machines. (7-1-98)

0102. ADDITIONAL REQUIREMENTS.

The Radiation Control Agency can, by registration condition, impose upon any registrant such requirements in addition to those established in these rules as it deems appropriate or necessary to minimize danger to public health and safety ~~and/or~~ property. (7-1-98)(____)

01120. VIOLATIONS.

An injunction or other court order can be obtained prohibiting any violations of any provision of the Act or any rule, regulation, or order issued thereunder. Any person who willfully violates any provision of the Act or any rule, regulation, or order issued thereunder could be guilty of a crime and, upon conviction, could be punished by fine or imprisonment or both, as provided by law. (7-1-98)

0121. IMPOUNDING.

Radiation machines are subject to impoundment pursuant to Section 39-3014, Idaho Code. (7-1-98)

01322. PROHIBITED RADIATION USES.

01. Radiation Sources Used for Shoe Sizing. It is unlawful to operate any device or machine using fluoroscopic x-ray or radiation principles for fitting or selling footwear. (7-1-98)

02. Unauthorized Use on Humans. It is unlawful to intentionally apply ionizing radiation to human beings except by or under direct supervision of persons, other than veterinarians, licensed to practice healing arts and authorized to use such radiation or as otherwise provided in these rules related to exposures. (7-1-98)

03. General Health and Safety. The Radiation Control Agency shall have the authority to prohibit the use of radiation machines when found to be detrimental to health and safety. (7-1-98)

~~01423.~~ COMMUNICATIONS.

All communications and reports concerning these rules, and applications filed thereunder, may be addressed to the Radiation Control Section, Idaho Department of Health and Welfare, Bureau of Laboratories, 2220 Old Penitentiary Road, Boise, Idaho 83712-8299. (7-1-98)

~~01524.~~ -- 049. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

051. SCOPE.

Radiation machines, unless exempt under Section ~~00615 and~~ or Section 053 of these rules, must be registered with the Radiation Control Agency in accordance with the requirements of Section 090. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

091. ~~ADMINISTRATIVE APPEAL OF FINAL REGISTRATION DECISIONS (RESERVED).~~

~~Within thirty (30) days after a final registration decision has been issued pursuant to Sections 050 through 090 the applicant may petition the Radiation Control Agency to review the decision in accordance with this Section. The thirty (30) day period within which an applicant may request review under this Section begins with the service of notice of the Radiation Control Agency's decision unless a later date is specified in that notice. Any petition for administrative review shall be in writing and state the reasons supporting review. Within a reasonable time following filing of a petition for review, the Radiation Control Agency shall hold a hearing in accordance with Title 67, Chapter 52, Idaho Code, and issue a final decision.~~ (7-1-98)

092. MODIFIED REVOCATION OF REGISTRATION.

01. Modification, Revocation, and Termination of Registrants. Pursuant to amendments to the Act, departmental rules or regulations, or orders issued by the Radiation Control Agency, the terms and conditions of all registrations are subject to amendment, revision, or modification, and are subject to suspension or revocation. (7-1-98)

- a. Any registration can be revoked, suspended, modified, or denied, in whole or in part. (7-1-98)
 - i. For any materially false statement: (7-1-98)
 - (1) In the application; or (7-1-98)
 - (2) In any statement of fact required under provisions of the Act or under these rules; or (7-1-98)
 - ii. Because of the conditions revealed: (7-1-98)
 - (1) By the application; or (7-1-98)
 - (2) By statement of fact; or (7-1-98)
 - (3) By any report; or (7-1-98)
 - (4) By any record; or (7-1-98)

- (5) By any inspection; or (7-1-98)
- (6) By any other means which would warrant the Radiation Control Agency to refuse to grant a registration on an original application; or (7-1-98)
- iii. For violations of or failure to observe any of the terms and conditions: (7-1-98)
 - (1) Of the Act; or (7-1-98)
 - (2) Of the license; or (7-1-98)
 - (3) Of any rule; or (7-1-98)
 - (4) Of any regulation; or (7-1-98)
 - (5) Of an order of the Radiation Control Agency. (7-1-98)

b. Except in cases of willful violation or in which the public health, interest or safety requires otherwise, no registration can be modified, suspended, or revoked unless, prior to the institution of proceedings therefor, the facts or conduct which warrant such actions have been called to the attention of the registrant in writing and the registrant must have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements. (7-1-98)

02. Emergency Action. If the Director finds the public health, safety or welfare requires emergency action, the Director ~~shall~~ will incorporate findings in support of such action in a written notice of emergency revocation issued to the registrant. Emergency revocation ~~shall be~~ is effective upon receipt by the registrant. Thereafter, if requested by the registrant in writing, the Director ~~shall~~ will provide the registrant a revocation hearing and prior notice thereof. Such hearings ~~shall be~~ are conducted in accordance with ~~Title 67, Chapter 52, Idaho Code IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

110. OCCUPATIONAL EXPOSURES.

01. Exposure of Individuals to Radiation in Restricted Areas. Except as provided in Subsection 110.01.b., no registrant may possess, use, receive, or transfer radiation machines in such a manner as to cause any individual in a restricted area to receive in any period of one (1) calendar quarter from all radiation machines in the registrant's possession a dose in excess of the limits specified in Subsection 110.01.a.: (7-1-98)

a. Occupational Exposure Limits.

OCCUPATIONAL EXPOSURE LIMITS	
Rem Per Calendar Quarter	
Whole body, head and trunk, active blood-forming organs, lens of eyes, or gonads	1 1/4
Hands and forearms, feet and ankles	18 3/4
Skin of whole body	7 1/2

(7-1-98)

b. A registrant may permit an individual in a restricted area to receive a dose to the whole body greater than that permitted in the table in Subsection 110.01.a., provided: (7-1-98)

i. During any calendar quarter the dose to the whole body from radiation machines in the registrant's possession does not exceed three (3) rem; and (7-1-98)

ii. The dose to the whole body, when added to the accumulated occupational dose to the whole body, does not exceed five (5) (N-18) rem where "N" equals the individual's age in years at his last birthday; and (7-1-98)

iii. The registrant has determined the individual's accumulated occupational dose to the whole body on a clear and legible record containing all the information required pursuant to Subsection 140.01.a. and has otherwise complied with the requirements of Subsection 110.02 as used in Subsection 110.01.b. "Dose to the whole body" includes any dose to the whole body, gonads, active blood-forming organs, head and trunk, or lens of the eye. (7-1-98)

c. For determining the doses specified in Section 110 a dose from x-rays or gamma rays up to ten (10) MeV can be assumed to be equivalent to the exposure measured by a properly calibrated appropriate instrument in air at or near the body surface in the region of the highest dose rate. (7-1-98)

d. No registrant can change the method observed by him of determining calendar quarter for purposes of these rules except at the beginning of a calendar year from Subsection ~~002.14~~ 010.13. (~~7-1-98~~)(____)

02. Determination of Accumulated Dose. (7-1-98)

a. Each registrant shall require any individual, prior to first entry of the individual into the registrant's restricted area during each employment or work assignment under such circumstances that the individual will receive or is likely to receive in any period of one (1) calendar quarter an occupational dose in excess of twenty-five percent (25%) of the applicable standards specified in Subsections 110.01 and 110.04.a., to disclose in a written, signed statement: (7-1-98)

i. That the individual had no prior occupational dose during the current calendar quarter; or (7-1-98)

ii. The nature and amount of any occupational dose which the individual may have received during the specifically identified current calendar quarter, from radiation machines possessed or controlled by the other persons, and each registrant shall maintain records of such statements until the Agency authorizes disposition. (7-1-98)

b. Before permitting any individual in a restricted area to receive exposure to radiation in excess of the limits specified in Subsection 110.01, each registrant must: (7-1-98)

i. Obtain a signed certificate on a clear and legible record containing all the information required, showing each period of time after the individual attained the age of eighteen (18) in which the individual received an occupational dose of radiation (copies of certificates can be obtained from the Radiation Control Agency); and (7-1-98)

ii. Calculate, on a clear and legible record containing all the information required pursuant to Subsection 140.01.a., the previously accumulated occupational dose received by the individual and the additional dose allowed for that individual under Subsection 110.01.b. (7-1-98)

iii. In the preparation of a clear and visible record containing all the information required, make a reasonable effort to obtain reports of the individual's previously accumulated occupational dose. For each period for which the registrant obtains such report, he must use the dose shown in the report. In any case where a registrant is unable to obtain reports of the individual's occupational dose for a previous complete calendar quarter, it must be assumed that the individual has received the occupational dose specified in the following applicable columns:

ASSUMED OCCUPATIONAL DOSES		
Part of Body	Column 1	Column 2
	Assumed Dose in Rem for Calendar Quarters Prior to January 1, 1961	Assumed Dose in Rem for Calendar Quarters on or After January 1, 1961
Whole Body, gonads, active blood-forming organs, head and trunk, lens of eye	3 3/4	1 1/4

(7-1-98)

iv. The registrant shall retain and preserve all records used until the agency authorizes their disposition. If calculation of the individual's accumulated occupational dose for all periods prior to January 1, 1961, yields a result higher than the applicable accumulated dose value for the individual as of that date, as specified in Subsection 110.01.b., the excess can be disregarded. (7-1-98)

03. Exposure of Minors. Registrants must not possess, use or transfer radiation machines in such a manner as to cause any individual within a restricted area, who is under eighteen (18) years of age, to receive in any period of one (1) calendar quarter from all sources of radiation in such licensee's or registrant's possession a dose in excess of ten percent (10%) of the limits specified in the table in Subsection 110.01.a. For determining the doses specified in Subsection 110.04.a., a dose from x-rays or gamma rays up to ten (10) MeV can be assumed to be equivalent to the exposure measured by a properly calibrated appropriate instrument in air at or near the body surface in the region of the highest dose rate. (7-1-98)

04. Permissible Levels of Radiation from External Sources in Unrestricted Areas. (7-1-98)

a. Except as authorized by the Radiation Control Agency pursuant to Subsection 110.04.c., licensees or registrants must not possess, use, or transfer radiation machines in such a manner as to create in any unrestricted area from such sources of radiation in his possession: (7-1-98)

i. Radiation levels which, if an individual were continuously present in the area, could result in his receiving a dose in excess of two (2) millirem in any one (1) hour; or (7-1-98)

ii. Radiation levels which, if an individual were continuously present in the area, could result in his receiving a dose in excess of one hundred (100) millirem in any seven (7) consecutive days. (7-1-98)

b. It is the intent of Subsection 110.04 to limit radiation levels so that it is unlikely that individuals in unrestricted areas would receive a dose to the whole body in excess of five-tenths (0.5) rem in any one (1) year. If in specific instances, it is determined by the Radiation Control Agency that this intent is not being met, the Radiation Control Agency can, ~~pursuant to~~ under Section 0109 of these rules impose such additional requirements on the licensee or registrant as necessary. (7-1-98)()

c. Any person can apply to the Radiation Control Agency for proposed limits upon levels of radiation in unrestricted areas in excess of those specified in Subsection 110.04.a. resulting from the applicant's possession or use of radiation machines. Such applications must include information as to anticipated average radiation levels and anticipated occupancy times for each unrestricted area involved. The Radiation Control Agency will approve the proposed limits if the applicant demonstrates to the satisfaction of the Radiation Control Agency that the proposed limits are not likely to cause any individual to receive a dose to the whole body in any period of one (1) calendar year in excess of five-tenths (0.5) rem. (7-1-98)

111. -- 119. (RESERVED).

120. PRECAUTIONARY PROCEDURES.

01. Surveys. Each registrant must make or cause to be made such surveys, as defined in Subsection ~~002-96~~ 013.10, as necessary for him to establish compliance with these rules, and as reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. (7-1-98)()

02. Personnel Monitoring. Each registrant must supply appropriate personnel monitoring equipment to, and must require the use of such equipment by: (7-1-98)

a. Each individual who enters a restricted area under such circumstances that he receives, or is likely to receive, a dose in any one (1) calendar quarter in excess of twenty-five percent (25%) of the applicable value specified in Subsection 110.01.a.; and (7-1-98)

b. Each individual under eighteen (18) years of age who enters a restricted area under such circumstances that he receives, or is likely to receive, a dose in any one (1) calendar quarter in excess of five percent (5%) of the applicable value specified in Subsection 110.01.a.; and (7-1-98)

c. Each individual who enters a high radiation area. (7-1-98)

03. Caution Signs, Labels, and Signals. (7-1-98)

a. General: Except as otherwise authorized by the Radiation Control Agency, symbols prescribed by Subsection 120.03 must use the conventional radiation caution colors, magenta or purple on yellow background. The radiation symbol is the conventional three-bladed design as follows: (7-1-98)

i. Cross-hatched area must be magenta or purple; and (7-1-98)

ii. Background must be yellow. (7-1-98)

iii. Design must appear as indicated in Appendix A located at the end of this chapter. (7-1-98)

iv. In addition to the contents of signs and labels prescribed in this Section, a registrant can provide on or near such signs and labels any additional information which could be appropriate in aiding individuals to minimize exposure to radiation. (7-1-98)

b. Radiation Areas. Each radiation area must be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words:

**“CAUTION” (or) “DANGER”
“RADIATION AREA”**

(7-1-98)

c. High Radiation Areas. Each high radiation area must be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words:

**“CAUTION” (or) “DANGER”
“HIGH RADIATION AREA”**

(7-1-98)

i. Each entrance or access point to a high radiation area must be: (7-1-98)

(1) Equipped with a control device which will cause the level of radiation to be reduced below that at which an individual might receive a dose of one hundred (100) millirem in one (1) hour upon entry into the area; or (7-1-98)

(2) Equipped with a control device which will energize a conspicuous visible or audible alarm signal in such a manner that the individual entering the high radiation area and the registrant, or a supervisor of the activity are made aware of the entry; or (7-1-98)

(3) Maintained locked except during periods when access to the area is required, with positive control over each individual entry. (7-1-98)

ii. The controls required by Subsection 120.03.c.ii. must be established in such a way that no individual will be prevented from leaving a high radiation area. (7-1-98)

iii. In the case of a high radiation area established for a period of thirty (30) days or less, direct surveillance to prevent unauthorized entry can be substituted for the controls required by Subsection 120.03.c.ii. (7-1-98)

iv. Any registrant can apply to the Radiation Control Agency for approval of methods not included in Subsections 120.03.c.ii. and 120.03.c.iv. for controlling access to high radiation area. The Radiation Control Agency will approve the proposed alternatives if the registrant demonstrates that the alternative method of control will prevent unauthorized entry into a high radiation area, and that the requirement of Subsection 120.03.c.iii. is met. (7-1-98)

121. -- 139. (RESERVED).

140. RECORDS, REPORTS, AND NOTIFICATIONS.

01. Records of Surveys and Radiation Monitoring. (7-1-98)

a. Each registrant shall maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required under Subsection 120.02. Such records must be kept on clear and legible records containing all the information required below: (7-1-98)

i. Name; and (7-1-98)

ii. Social Security Number; and (7-1-98)

iii. Date of Birth; and (7-1-98)

iv. Name of Registrant; and (7-1-98)

v. Dose Records for the whole body, skin, or hands and forearms, feet and ankles; and (7-1-98)

vi. Whole Body Dose Status; and (7-1-98)

vii. Method of Monitoring; and (7-1-98)

viii. Period of Exposure; and (7-1-98)

ix. X-Ray or Gamma Dose for Period; and (7-1-98)

x. Neutron Dose for Period; and (7-1-98)

xi. Total Dose for Period; and (7-1-98)

xii. Running Dose for Calendar Quarter; and (7-1-98)

xiii. Total Lifetime Accumulated Dose. (7-1-98)

b. The doses entered in the forms or records required above must be for periods of time not exceeding

one (1) calendar quarter. (7-1-98)

c. Each registrant shall maintain records in the same units used in Section 100 showing the results of surveys required by Subsection 120.01. (7-1-98)

d. Records of individual exposure to radiation which must be maintained pursuant to Subsection 140.01.a. must be preserved indefinitely or until the Radiation Control Agency authorizes their disposal. (7-1-98)

e. The discontinuance of or curtailment of activities, does not relieve the registrant of responsibility for retaining all records required by this Section. A registrant can, however, request the Radiation Control Agency to accept such records. Acceptance of the records by the Radiation Control Agency relieves the or registrant of subsequent responsibility only in respect to their preservation as required by this Section. (7-1-98)

f. Records of the results of surveys and monitoring which must be maintained pursuant to Subsection 140.01.c. must be preserved for two (2) years after completion of the survey except that the following records may be maintained until the Agency authorized their disposition: (7-1-98)

i. Records of the results of surveys to determine compliance with Subsection 110.03; and (7-1-98)

ii. In the absence of personnel monitoring data, records of the results of surveys to determine external radiation dose; and (7-1-98)

g. Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Agency rules. (7-1-98)

h. If there is a conflict between the Agency's rules in this part, registration, or other written Agency approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the rules in this part for such records will apply unless the Agency, pursuant to under Section 00615 of this chapter these rules, has granted a specific exemption from the record retention requirements specified in the rules in this part. (7-1-98)()

02. Report of Theft or Loss of Sources of Radiation. Each licensee or registrant must report by telephone to the Radiation Control Agency the theft or loss of any source of radiation immediately after such occurrence becomes known. (7-1-98)

03. Notification of Incidents. (7-1-98)

a. Each registrant must immediately notify the Radiation Control Agency by telephone of any incident involving any radiation machine possessed by him and which may have caused or threatens to cause: (7-1-98)

i. A dose to the whole body of any individual of twenty-five (25) rems or more of radiation; a dose to the skin of the whole body of any individual of one hundred fifty (150) rem or more of radiation; or a dose to the feet, ankles, hands, or forearms of any individual of three hundred seventy-five (375) rems or more of radiation; or (7-1-98)

b. Each registrant must, within twenty-four (24) hours, notify the Radiation Control Agency by telephone of any incident involving any source of radiation possessed by him and which may have caused or threatens to cause: (7-1-98)

i. A dose to the whole body of any individual of five (5) rem or more of radiation; a dose to the skin of the whole body of any individual of thirty (30) rem or more of radiation; or a dose to the feet, ankles, hands, or forearms of seventy-five (75) rems or more of radiation; or (7-1-98)

c. Any report filed with the Radiation Control Agency pursuant to this Section must be prepared in such a manner that names of individuals who have received exposure to radiation will be stated in a separate part of

the report. (7-1-98)

d. Details of any report filed with the Radiation Control Agency pursuant to this Section will be held confidential except as necessary for protection of the public health and to prevent accidental overexposure of individuals. (7-1-98)

04. Reports of Overexposure and Excessive Levels and Concentration. (7-1-98)

a. In addition to any notification required by Subsection 140.03, each registrant must make a report in writing within thirty (30) days to the Radiation Control Agency of: (7-1-98)

i. Each exposure of an individual to radiation in excess of any applicable limit as set forth in Section 100 or as otherwise approved by the Radiation Control Agency; and (7-1-98)

ii. Any incident for which notification is required by Subsection 140.03; and (7-1-98)

iii. Levels of radiation whether or not involving excessive exposure of any individual, in an unrestricted area in excess of ten (10) times any applicable limit as set forth in Section 100 or as otherwise approved by the Radiation Control Agency. Each report required under Subsection 140.04 must describe the extent of exposure of individuals to radiation, including estimates of each individual's exposure as required by Subsection 140.01.b.; levels of radiation; the cause of the exposure, and corrective steps taken or planned to assure against a recurrence. (7-1-98)

b. Any report filed with the Radiation Control Agency pursuant to this Section must include, for each individual exposed, the name, social security number, date of birth, and an estimate of the individual's exposure. The report must be prepared so that this information is stated in a separate part of the report. (7-1-98)

c. In any case where a registrant is required pursuant to the provisions of this Section to report to the Radiation Control Agency any exposure of an individual to radiation, the registrant must, not later than the making of such report to the Radiation Control Agency, also notify such individual of the nature and extent of exposure. Such notice must be in writing and must contain the following statement:

“This report is furnished to you under the provisions of the Radiation Control Agency rules entitled ‘Idaho Radiation Control Rules,’ IDAPA 16, Title 02, Chapter 27, Rules of the Department of Health and Welfare. You should preserve this report for future reference.” (7-1-98)

d. Each report required under Subsection 140.04.d. shall describe the extent of exposures of individuals to radiation, levels of radiation involved, the cause of exposure, levels, and corrective steps taken or planned to assure against a recurrence. (7-1-98)

05. Notifications and Reports to Individuals. (7-1-98)

a. Requirements for notification and reports to individuals of exposure to radiation are specified in Subsection 450.04. (7-1-98)

b. When a registrant is required pursuant to Subsection 140.04 to report to the Radiation Control Agency any exposure of an individual to radiation, the registrant must also notify the individual. Such notice must be transmitted at a time not later than the transmittal to the Radiation Control Agency, and must comply with the provisions of Subsection 450.04.a. (7-1-98)

06. Records and Reports of Misadministrations. (7-1-98)

a. When a misadministration involves any therapy procedure, the registrant shall notify by telephone the Radiation Control Agency. The registrant shall also notify the referring physician of the affected patient and the patient or a responsible relative (or guardian). These notifications must be made within twenty-four (24) hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within twenty-four (24) hours, the registrant shall notify them as soon as practicable. The

registrant is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this. (7-1-98)

b. Within fifteen (15) days after an initial therapy misadministration report to the Radiation Control Agency, the registrant shall report, in writing to the Radiation Control Agency and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative (or guardian) if either was previously notified by the licensee under the provisions of Subsection 140.07.a. The written report must include the registrant's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the registrant informed the patient or the patient's responsible relative (or guardian), and if not, why not. The report must not include the patient's name or other information that could lead to identification of the patient. (7-1-98)

c. When a misadministration involves a diagnostic procedure, the Radiation Safety Officer shall promptly investigate its cause, make a record for review, and retain the record as directed in Subsection 140.07. The registrant shall also notify the referring physician within fifteen (15) days if the misadministration involved the administration of a dosage five (5) fold different from the intended dosage. (7-1-98)

d. Each registrant shall retain a record of each misadministration for ten (10) years. The record must contain the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the event, the effect on the patient, and the action taken, if any, to prevent recurrence. (7-1-98)

e. Aside from the notification requirement, nothing in this section affects any rights or duties of registrants and physicians in relation to each other, patients, or responsible relatives (or guardians). (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

155. PRECAUTIONARY PROCEDURES IN RADIOGRAPHIC OPERATION.

01. Documents Required at Field Radiography Sites. Each registrant conducting industrial radiography at a temporary jobsite must have the following records available at that site for inspection by the Agency: (7-1-98)

- a.** Appropriate certificate of registration. (7-1-98)
- b.** Operating and emergency procedures; (7-1-98)
- c.** Applicable rules and regulations; (7-1-98)
- d.** Survey records required pursuant to Section 155 for the period of operation at the site; (7-1-98)
- e.** Daily pocket dosimeter records for the period of operation at the site; and (7-1-98)
- f.** The latest instrument calibration and leak test records for specific devices in use at the site. Acceptable records include tags or labels which are affixed to the device or survey meter. (7-1-98)

02. Security. During each radiographic operation, the radiographer or radiographer's assistant must maintain a direct surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in Section ~~00211~~ of these rules, except: (7-1-98)(____)

a. Where the high radiation area is equipped with a control device or alarm system as described in Subsection 120.03; or (7-1-98)

- b.** Where the high radiation area is locked to protect against unauthorized or accidental entry. (7-1-98)
- 03. Posting.** Notwithstanding any provisions in Subsection 120.04.c., areas in which radiography is being performed must be conspicuously posted as required by Subsections 120.03.b. and 120.02.c.i. (7-1-98)
- 04. Radiation Surveys and Survey Records.** (7-1-98)
- a.** No radiographic operation will be conducted unless calibrated and operable radiation survey instrumentation, as described in Subsection 153.04, is available and used at each site where radiographic exposures are made. (7-1-98)
- b.** Records must be kept of the surveys required by Subsection 155.04.c. and maintained for inspection by the Radiation Control Agency for two (2) years after completion of the surveys. (7-1-98)
- c.** A physical radiation survey must be made after each radiographic exposure using radiation machines to determine that the machine is "off." (7-1-98)
- 05. Special Requirements and Exemptions for Enclosed Radiography.** (7-1-98)
- a.** Systems for enclosed radiography designed to allow admittance of individuals must: (7-1-98)
- i.** Comply with all applicable requirements of this part and Subsection 110.04. If such a system is a certified cabinet x-ray system, it must comply with all applicable requirements of this part and 21 CFR 1020.40. (7-1-98)
- ii.** Be evaluated at intervals not to exceed one (1) year to assure compliance with the applicable requirements as specified in Subsection 155.05.a. Records of these evaluations must be maintained for inspection by the Radiation Control Agency for a period of two (2) years after the evaluation. (7-1-98)
- b.** Certified cabinet x-ray systems designed to exclude individuals are exempt from the requirements of this part except that: (7-1-98)
- i.** Operating personnel must be provided with either a film badge or a thermoluminescent dosimeter, and reports of the results must be maintained for inspection by the Radiation Control Agency. (7-1-98)
- ii.** No registrant may permit any individual to operate a cabinet x-ray system until such individual has received a copy of and instruction in the operating procedures for the unit and has demonstrated competence in its use. Records which demonstrate compliance with this Subsection must be maintained for inspection by the Radiation Control Agency until disposition is authorized by the Radiation Control Agency. (7-1-98)
- iii.** Tests for proper operation of high radiation area control devices or alarm systems, where applicable, must be conducted, recorded, and maintained in accordance with Subsection 153.09. (7-1-98)
- iv.** The registrant must perform an evaluation, at intervals not to exceed one (1) year, to determine conformance with Subsection 110.04. If such a system is a certified cabinet x-ray system, it must be evaluated at intervals not to exceed one (1) year to determine conformance with 21 CFR 1020.40. Records of these evaluations must be maintained for inspection by the Radiation Control Agency for a period of two (2) years after the evaluation. (7-1-98)
- c.** Certified cabinet x-ray systems must be maintained in compliance with 21 CFR 1020.40 unless prior approval has been granted by the Radiation Control Agency ~~pursuant to~~ under Section ~~006~~15 of these rules. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

203. GENERAL REQUIREMENTS.

The following general requirements must be followed in the use of x-rays in the healing arts. (7-1-98)

01. Administrative Controls. (7-1-98)

a. The registrant will be responsible for directing the operation of the x-ray machines which have been registered with the Radiation Control Agency under Subsection 090.01. Such persons or designated agents will assure that the following provisions are met in the operation of the x-ray machine(s): (7-1-98)

i. An x-ray machine which does not meet the provisions of these rules must not be operated for diagnostic or therapeutic purposes, if so directed by the Radiation Control Agency; and (7-1-98)

ii. Individuals who will be operating the x-ray equipment must be adequately instructed in the safe operating procedures and be competent in the safe use of the equipment. (7-1-98)

b. In the vicinity of each x-ray system's control panel a chart must be provided which specifies, for all examinations which are performed by that system, a listing of current information, including but not limited to the following, for each projection within that examination: (7-1-98)

i. Patient's anatomical size versus technique factors to be utilized; (7-1-98)

ii. Type and size of the film or film-screen combination to be used; (7-1-98)

iii. Type of grid to be used if any, and focal distance; (7-1-98)

iv. Source to image receptor distance to be used; and (7-1-98)

v. Type and location of placement of gonadal shielding to be used. (7-1-98)

c. Written safety procedures and rules will be provided to each individual operating x-ray equipment under the registrant's control; such procedures and rules will include any restrictions of the operating technique required for the safe operating of the particular x-ray system. The operator must be able to demonstrate familiarity with these rules. (7-1-98)

d. Except for patients who cannot be moved out of the room, only the staff and ancillary personnel required for the medical procedure or training can be in the room during the radiographic exposure. For all persons other than the patient being examined, the following must be observed: (7-1-98)

i. All individuals will be positioned such that no part of the body, including the extremities not protected by five tenths (0.5) mm lead equivalent, will be struck by the useful beam; (7-1-98)

ii. Staff and ancillary personnel must be protected from the direct scatter radiation by protective aprons or whole body protective barriers of not less than twenty-five hundredths (0.25) mm lead equivalent; (7-1-98)

iii. Patients who cannot be removed from the room will be protected from the direct scatter radiation by whole body protective barriers of twenty-five hundredths (0.25) mm lead equivalent or will be positioned such that the nearest portion of the body is at least two (2) meters from both the tube head and the nearest edge of the image receptor; and (7-1-98)

iv. When a portion of the body of any staff or ancillary personnel is potentially subjected to stray radiation which could result in that individual receiving one-quarter (1/4) of the maximum permissible dose, as defined in Section 100 additional protective devices can be required by the Radiation Control Agency. (7-1-98)

e. Gonadal shielding of not less than five-tenths (0.5) mm lead equivalent must be used for patients

who have not passed the productive age of eighteen (18) to forty five (45) during radiographic procedures in which the gonads are in the direct (useful) beam, except for cases where this would interfere with the diagnostic procedure. (7-1-98)

f. Persons must not be exposed to the useful beam except for healing arts purposes, each exposure of which has been authorized by a licensed practitioner of the healing arts. Deliberate exposure for the following purposes is specifically prohibited: (7-1-98)

i. Exposure of an individual for training, demonstration or other purposes, unless there are also healing arts requirements and proper prescription has been provided; and (7-1-98)

ii. Exposure of an individual for the purpose of healing arts screening without prior written approval of the Radiation Control Agency. Screening for this purpose will mean an exposure of a person without a prior examination by a licensed practitioner. (7-1-98)

g. When a patient or film must be provided with auxiliary support during a radiation exposure: (7-1-98)

i. Mechanical holding devices will be used when the technique permits. The safety rules required by Subsection 203.01.c. will list individual projections where holding devices cannot be utilized; (7-1-98)

ii. Written safety procedures, as required by Subsection 203.01.c., will indicate the requirements for selecting a human holder and the procedure the holder will follow; (7-1-98)

iii. The human holder will be protected as required by Subsection 203.01.d.; (7-1-98)

iv. No person can be used routinely to hold film or patients; (7-1-98)

v. A record must be made of the examination and must include the name of the human holder, date of the examination, number of exposures and technique factors utilized for the exposure(s); and (7-1-98)

vi. In those cases where the patient must hold the film, except during intraoral examinations, any portion of the body other than the area of clinical interest struck by the useful beam must be protected by not less than five-tenths (0.5) mm lead equivalent material. (7-1-98)

h. Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information must be utilized. This includes but is not limited to: (7-1-98)

i. The speed of film or screen and film combinations, using the fastest speed consistent with the diagnostic objective of the examinations; (7-1-98)

ii. Using the minimum radiation exposure to the patient required to produce images of good diagnostic quality; and (7-1-98)

iii. Portable or mobile equipment only for examinations where it is impractical to transfer patients to a stationary radiographic installation. (7-1-98)

i. Regarding personnel monitoring, all persons who are associated with the operation of an x-ray system are subject to the occupational exposure limits and the requirements for the determination of the doses as stated in Section 100. In addition, the following requirements apply: (7-1-98)

i. When protective clothing or other devices are worn on portions of the body and when a monitoring device is required, at least one (1) such device must be worn at the collar outside of the protective clothing. The dose to the whole body based on the maximum dose attributed to any one (1) critical organ, which includes the gonads, blood forming organs, head and trunk, or lens of the eye, must be recorded in the reports required by Subsection 140.01. If more than one (1) device is used and a record is made of the data, each dose must be identified with the area where the device was worn on the body; and (7-1-98)

ii. Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited. (7-1-98)

j. Any person proposing to conduct a healing arts screening program must not initiate such a program without prior approval of the Radiation Control Agency. When requesting such approval, that person must submit the information outlined in the following Subsections. If any information submitted to the Radiation Control Agency becomes invalid or outdated, the Agency must be immediately notified. Persons requesting that the Radiation Control Agency approve a healing arts screening program must submit the following information and evaluations: (7-1-98)

i. Name and address of the applicant and, where applicable, the names and addresses of agents within this State. (7-1-98)

ii. Diseases or conditions for which the x-ray examinations are to be used in diagnoses. (7-1-98)

iii. A detailed description of the x-ray examinations proposed in the screening program. (7-1-98)

iv. Description of the population to be examined in the screening program, i.e., age, sex, physical condition, and other appropriate information. (7-1-98)

v. An evaluation of any known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used instead of the x-ray examinations. (7-1-98)

vi. An evaluation by a qualified expert of the x-ray system(s) to be used in the screening program. The evaluation by the qualified expert must show that such system(s) do satisfy all requirements of these rules. (7-1-98)

vii. A description of the diagnostic film quality control program. (7-1-98)

viii. A copy of the technique chart for the x-ray examination procedures to be used. (7-1-98)

ix. The qualifications of each individual who will be operating the x-ray system(s). (7-1-98)

x. The qualifications of the individual who will be supervising the operators of the x-ray system(s). The extent of supervision and the method of work performance evaluation must be specified. (7-1-98)

xi. The name and address of the individual who will interpret the radiograph(s). (7-1-98)

xii. A description of the procedures to be used in advising the individuals screened and their private practitioners of the healing arts of the results of the screening procedure and any further medical needs indicated. (7-1-98)

xiii. A description of the procedures for the retention or disposition of the radiographs and other records pertaining to the x-ray examinations. (7-1-98)

02. Exemptions. The Radiation Control Agency can waive compliance with the specific requirements of Section 203 for an existing machine or installation if: (7-1-98)

a. Such compliance would require replacement or substantial modification of the machine or installation; and (7-1-98)

b. The registrant demonstrates to the Radiation Control Agency's satisfaction, achievement through other means of radiation protection equivalent to that required by these rules. (7-1-98)

03. Structural Shielding. Each installation must be provided with primary barriers ~~and~~ or secondary barriers as necessary to assure compliance with Subsections 110.01 and 110.04. This requirement will be deemed to be met if the thicknesses of such barriers are equivalent to those as computed in accordance with National Council of

Radiation Protection Report No. ~~49147, (or its successor)~~ entitled: "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to Ten (10) MeV," ~~which~~ issued November 19, 2004, by the National Council on Radiation Protection and Measurement. This document may be obtained from NCRP Publications, 7910 Woodmont, Bethesda, MD 20814. (7-1-98)(____)

04. Minimum Design Requirements for an X-ray Machine Operator's Booth. (7-1-98)

a. The operator will be allotted not less than seven and five-tenths (7.5) square feet of unobstructed floor space in the booth. The booth must protect the operator from the useful beam and from any radiation which has been scattered only once. (7-1-98)

i. The minimum space, as indicated above, can be any geometric configuration but with no dimension less than two (2) feet. (7-1-98)

ii. The space allotted will not include any encumbrance by the console, such as overhang, cable, or other similar encroachments. (7-1-98)

iii. The booth must be located or constructed such that unattenuated direct scatter radiation originating on the examination table or at the wall cassette does not reach the operator's station in the booth. (7-1-98)

iv. The booth walls must be at least seven (7) feet high and must be permanently fixed to the floor or other structure. (7-1-98)

v. When a door or movable panel is used as an integral part of the booth structure, it must have a permissive device which prevents an exposure when the door or panel is not closed. (7-1-98)

b. The operator's switch for the radiographic machine will be fixed within the booth and: (7-1-98)

i. Must be at least forty (40) inches from any open edge of the booth wall which is proximal to the examining table; and (7-1-98)

ii. Must allow the operator to use the majority of the available viewing window. (7-1-98)

c. Viewing system requirements: (7-1-98)

i. Each booth must have at least one (1) viewing device which will: (7-1-98)

(1) Be so placed that the operator can view the patient during any exposure; and (7-1-98)

(2) Be so placed that the operator can have full view of any occupant of the room and can view any entry into the room. If any door which allows access to the room cannot be seen from the booth, then that door must have a permissive device controlling the exposure which will prevent exposure if the door is not closed. (7-1-98)

ii. If the viewing system is a window, the following requirements also apply: (7-1-98)

(1) The window must have a visible area of at least one (1) square foot, ~~the center of which is five (5) feet above the floor;~~ and (7-1-98)(____)

(2) The window materials must have at least the same lead equivalence as that required in the booth's wall in which it is to be mounted. (7-1-98)

iii. When the viewing system utilizes one (1) or more mirrors, the mirrors must be so located as to accomplish the general requirements as in Subsection 203.04.c.i. (7-1-98)

iv. When the viewing system utilizes electronic means, such as a television: (7-1-98)

(1) The camera must be so located as to accomplish the general requirements in Subsection 203.04.c.i.;

- and (7-1-98)
- (2) There must be an alternate viewing system to serve as a back-up in case of electronic failure. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

211. RADIOGRAPHIC MACHINES USED FOR MAMMOGRAPHY.

In addition to other applicable requirements of these rules, radiation machines used for mammography shall comply with these requirements: (7-1-98)

- 01. General Requirements.** (7-1-98)
- a.** Only radiation machines specifically designed for mammography shall be used; (7-1-98)
- b.** Radiation machines used for mammography shall be evaluated to ensure conformance to the requirements of these rules at intervals not to exceed twelve (12) months, and upon installation prior to being used on human beings. (7-1-98)
- c.** The registrant shall record the results of all tests made to evaluate compliance with these rules, and shall maintain these records available for inspection by the agency for a minimum of three (3) years. (7-1-98)
- 02. Radiation Machine Standards.** (7-1-98)
- a.** X-ray Beam Quality. (7-1-98)
- i.** When used with screen-film image receptors, the useful beam shall have a half-value layer (HVL) between the values of: measured kilovoltage/100 and measured kilovoltage/100 + 0.1 millimeters aluminum equivalent. (7-1-98)
- ii.** All other mammography imaging modalities shall meet the requirements for minimum half-value layer specified in Subsection 204.03.a. of these rules. (7-1-98)
- iii.** Determination of half-value layer for mammography systems shall include the contribution to useful beam equivalent aluminum filtration made by the compression device. (7-1-98)
- iv.** The actual kilovolts-peak (kVp) shall be within plus or minus five percent (5%) of the indicated kVp. (7-1-98)
- b.** Radiation Output. (7-1-98)
- i.** Radiation machines used for mammography shall be capable of producing five hundred (500) milliroentgens/ second (one hundred twenty nine (129) microCoulomb/kilogram/second) for at least three (3) seconds, and producing a minimum output of eight (8) milliroentgens (two point one (2.1) microCoulomb/kilogram) per milliAmpere-second. (7-1-98)
- ii.** The minimum radiation output requirements of this part shall be measured at a point four point five (4.5) centimeters from the surface of the patient support device with the source-to-image receptor distance (SID) at maximum and the output attenuation of the compression device included. (7-1-98)
- c.** X-ray Beam Alignment/Limitation/Transmission. (7-1-98)
- i.** The radiation machine used for mammography shall be provided with means to limit the useful x-ray beam so that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image

receptor at any designated source to image receptor distance except the edge of the image receptor adjacent to the chest wall, where the x-ray field may extend beyond this edge by no more than two percent (2%) of the SID. (7-1-98)

ii. The projected collimator light field shall extend beyond the projected radiation field along both the length or width of the radiation field, at any designated source to image receptor distance, by no more than two percent (2%) of the SID. (7-1-98)

d. Mammographic Exposure Control. (7-1-98)

i. Radiation machines used for mammography shall incorporate means to terminate the exposure at a preset time interval, a preset product of tube current and exposure duration, a preset number of pulses, or a preset radiation exposure at the plane of the image receptor. (7-1-98)

ii. Exposure shall only be possible by the use of an exposure switch of the "deadman" type as defined in Subsection ~~002.30~~ 010.21 of these rules. (7-1-98)(____)

iii. When both manual and automatic exposure control modes are available, the x-ray control panel shall clearly indicate which mode is selected. (7-1-98)

iv. The coefficient of variation between exposures for both automatic and manual exposure modes shall not exceed five one hundredth (0.05). This requirement is met when four (4) successive exposures are made at identical exposure factors, and the standard deviation of the four (4) exposure values divided by the mean exposure value is less than or equal to five one hundredth (0.05). (7-1-98)

v. Exposure control in the automatic exposure mode shall provide the capability of maintaining constant film density to within plus or minus three tenths (0.3) optical density unit of the average optical density over the range of clinically used kilovoltage, for acrylic or BR-12 phantom thicknesses of two (2) centimeters to six (6) centimeters. (7-1-98)

vi. The mammography exposure control system(s) shall limit the mean glandular dose, for one craniocaudal view of a four point five (4.5) centimeter compressed breast composed of fifty percent (50%) adipose fifty percent (50%) glandular tissue, not to exceed these values: (7-1-98)

(1) One (1) milligray (one hundred (100) millirads) for non-grid screen-film imaging modes; (7-1-98)

(2) Three (3) milligray (three hundred (300) millirads) for screen-film systems with grid. (7-1-98)

(3) The technical exposure factors used to determine compliance with this part shall be those used by the facility for its clinical images of a fifty percent (50%) adipose fifty percent (50%) glandular tissue four point five (4.5) centimeter compressed breast, craniocaudal view. (7-1-98)

vii. Determination of mean glandular dose shall be made with a breast phantom in the useful beam. The breast phantom shall be equivalent in attenuation to the RMI 156 breast phantom. (7-1-98)

e. Integral Ancillary Equipment. (7-1-98)

i. Radiation machines used for mammography shall be provided with an integral anti-scatter grid available for use with all image receptor sizes. (7-1-98)

ii. The mammography radiation machine shall be provided with a compression device which is capable of compressing the breast with a force of at least twenty five (25) pounds and no more than forty (40) pounds for a period of at least fifteen (15) seconds. (7-1-98)

iii. The chest wall edge of the compression paddle must be aligned with the chest wall edge of the image receptor to within one percent (1%) of the SID when the compression paddle is placed four point five (4.5) centimeters above the patient support device. (7-1-98)

iv. Radiation machines used for mammography, and which are newly installed after the effective date of these rules shall incorporate a post-exposure milliamperere-seconds indicator when used in automatic exposure control mode. (7-1-98)

03. Quality Assurance Program. (7-1-98)

a. QA Program Responsibilities. The registrant shall maintain, and have in place prior to the initiation of mammography imaging, a written quality assurance program for each mammography x-ray system. The registrant shall be responsible for providing qualified individuals whose duties include: (7-1-98)

i. Conducting equipment performance monitoring functions; (7-1-98)

ii. Analyzing the monitoring results to determine if there are problems requiring correction; (7-1-98)

iii. Carrying out or arranging for the necessary corrective actions when quality assurance testing indicates a standard in these rules is not met. (7-1-98)

b. Image Quality Standards/Processor Performance. (7-1-98)

i. Phantom Image Quality. The mammography x-ray system shall be capable of providing an image of a seventy five one hundredths (0.75) millimeter fiber, a thirty two one hundredths (0.32) millimeter speck group, and a seventy five one hundredths (0.75) millimeter mass. This standard will be met when a mammographic image of an RMI 156 breast phantom demonstrates four (4) fibers, three (3) speck groups and three (3) masses. (7-1-98)

ii. Mid-density (MD) density difference (DD). Deviations from established operating levels for measured values of mid-density (MD) and density difference (DD) on sensitometric control charts shall not exceed one tenth (0.10) Optical Density Units. (7-1-98)

iii. Base + Fog (B + F). The base + fog shall not exceed the established operating level by more than three one hundredths (0.03) Optical Density Units. (7-1-98)

iv. Darkroom Fog. Darkroom fog levels shall not exceed five one hundredths (0.05) Optical Density Units above base + fog. Darkroom fog tests shall be made with film presensitized by exposure to sufficient light from an intensifying screen so that after processing, an Optical Density of one and two tenths (1.2) to one and six tenths (1.6) is achieved. The presensitized film shall be exposed to darkroom safelight conditions for two (2) minutes. (7-1-98)

v. Image Receptor Systems. Image receptor systems and their individual components shall be specifically designed for, and appropriate to mammography imaging. (7-1-98)

vi. Intensifying Screens. Mammography image intensifying screens shall be removed from service and appropriate corrective action implemented if the following standards are not met: (7-1-98)

(1) Screen Speed Uniformity. Intercomparison of the measured optical density in the geometric center of a phantom image obtained with each intensifying screen in use shall be not exceed three tenths (.3) optical density unit between the minimum and maximum density. The technical exposure factors shall be the same for each screen, and the phantom used for these images shall be a four (4) centimeter thick cassette-sized phantom of acrylic or BR-12, or a breast phantom equivalent in attenuation to the RMI 156. (7-1-98)

(2) Screen-film Contact. Cassettes shall not be used for mammography if one or more large areas (\geq one (1.0) centimeters) of poor film-screen contact is visualized on an image made with a forty (40) mesh mammography film- screen contact test tool. (7-1-98)

(3) Screen Identification. Each intensifying screen shall be legibly marked with a unique identification mark for that particular screen, visible on the film outside the area of clinical interest, with a corresponding mark on the outside of the cassette. (7-1-98)

vii. Film Processors. Film processors utilized for mammography shall be adjusted to, and operated at the specifications recommended by the mammographic film manufacturer. Alternative settings which are shown by documented test results to provide equivalent sensitometric performance are acceptable. (7-1-98)

viii. Reject Rate. Corrective action shall be taken if the film reject rate exceeds five percent (5%). The reject rate shall be based upon clinical images which must be repeated. (7-1-98)

c. Quality Assurance Tests/Intervals. The registrant shall ensure that the following quality control tests are performed when applicable equipment or components are initially installed, replaced or repaired, and at least at these specified intervals: (7-1-98)

i. Primary Secondary Barrier Transmission -- Upon initial installation and following each significant modification to the mammography system or the primary secondary barriers. (7-1-98)

ii. Processor performance by sensitometric means -- daily, or each day of use prior to the first patient exposure. For any mammography registrant using film processors at multiple locations, such as mobile mammography services, each processor shall be subject to this requirement. (7-1-98)

iii. Screen Cleanliness Artifacts -- weekly. (7-1-98)

iv. Image Quality -- monthly for stationary systems and prior to performing mammography at each location for mobile systems. (7-1-98)

v. Reject Rate Analysis -- three (3) months. (7-1-98)

vi. Compression Device -- six (6) months. (7-1-98)

vii. Darkroom Integrity (safelight condition, light leaks) -- six (6) months. (7-1-98)

viii. Screen-film Contact -- six (6) months. (7-1-98)

ix. Beam Alignment and Limitation -- twelve (12) months. (7-1-98)

x. Automatic Exposure Control Reproducibility -- twelve (12) months. (7-1-98)

xi. Collimator alignment -- twelve (12) months. (7-1-98)

xii. Focal Spot Size Resolution -- upon initiation installation and at each tube replacement, and at intervals not to exceed twelve (12) months. (7-1-98)

xiii. Half-value Layer -- twelve (12) months. (7-1-98)

xiv. kVp Accuracy -- twelve (12) months. (7-1-98)

xv. Radiation Output Reproducibility and Linearity -- twelve (12) months. (7-1-98)

d. QA Program Annual Review. In addition to the routine quality assurance testing required in these rules, the registrant shall effect a comprehensive review of the effectiveness of all elements of the quality assurance program for each mammography system at intervals not to exceed twelve (12) months. This review shall: (7-1-98)

i. Address all aspects of quality assurance in these rules for each mammography x-ray system; (7-1-98)

ii. Be documented in writing and the results maintained available for inspection by the agency for three (3) years; (7-1-98)

e. Corrective Action. When a mammography x-ray system fails one of the quality assurance tests

required in these rules, unless otherwise specified herein, the mammography x-ray system shall be removed from service until appropriate corrective action is completed. The mammography x-ray system shall not be placed back into service until repeat test results verify adequacy of the corrective action. (7-1-98)

212. -- 299. (RESERVED).

300. RADIATION SAFETY REQUIREMENTS FOR ANALYTICAL X-RAY OPERATIONS.

The rules in Section 300 establish requirements for the use of analytical x-ray machines, as defined in Subsection ~~002-10~~ 010.05 and ~~002-11~~ 010.06 by persons registering such machines under the provisions of Section 090. The provisions of Section 300 are in addition to, and not in substitution for, other applicable provisions of these rules.

(7-1-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

355. -- 4349. (RESERVED).

~~440. PUBLIC AND CONFIDENTIAL INFORMATION.~~

~~**01- Accessibility.** Except as provided in this section or other applicable law, information obtained or submitted pursuant to these rules will be available to the public for inspection and copying during normal working hours. Anyone requesting Radiation Control Agency assistance in collecting, copying or mailing public information must tender, in advance, the reasonable cost of those services. (7-1-98)~~

~~**02- Confidentiality.** Information concerning radiation sources submitted to the Radiation Control Agency pursuant to these rules which, as certified by the owner or operator of such source, relates to production or sales figures or to processed or production unique to the owner or operator, or tends to adversely affect the competitive position of such owner or operator, may be disclosed only to the Board, the Radiation Control Agency or a hearing officer unless: (7-1-98)~~

- ~~**a-** The Board, after a hearing, determines that a claim of uniqueness or adverse effect is unwarranted; (7-1-98)~~
- ~~**b-** The owner or operator expressly consents to disclosure; or (7-1-98)~~
- ~~**c-** Disclosure is required for criminal prosecution of a violation of the Idaho Environmental Protection and Health Act. (7-1-98)~~

~~**03- Department Discretion.** The Radiation Control Agency may decline to release to the public: (7-1-98)~~

- ~~**a-** Inconclusive preliminary data or reports generated as part of ongoing studies; and (7-1-98)~~
- ~~**b-** Information obtained as part of ongoing investigations when release would: (7-1-98)~~
 - ~~**i-** Interfere with enforcement proceedings; (7-1-98)~~
 - ~~**ii-** Deprive a person of a fair or impartial adjudication; (7-1-98)~~
 - ~~**iii-** Discourage informants from disclosing information to the Radiation Control Agency; (7-1-98)~~
 - ~~**iv-** Disclose investigative techniques or proceedings; or (7-1-98)~~
 - ~~**v-** Endanger the safety of Radiation Control Agency personnel. (7-1-98)~~

~~441. -- 449. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

451. -- 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." (7-1-98)~~

~~997. CONFIDENTIALITY OF RECORDS.~~

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records." (7-1-98)~~

~~998. -- 999. (RESERVED).~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006, and October 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 regular rulemaking procedures have been initiated. 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, 56-250, 56-253, 56-255, and 56-257, Idaho Code; Section 1902 of the Social Security Act; and Section 405(c)(1) of the Tax Relief and Health Care Act of 2006 (TRHCA), P.L. 109-432.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2007.

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 Department is making two changes to this chapter of rule as listed below:

1. Because of recent changes made to Section 1902 of the Social Security Act, Centers for Medicare and Medicaid Services (CMS) has reversed a final policy ruling made in July of 2006. It will now deem a baby eligible for Medicaid coverage for his first year of life when the baby was born to a mother covered by emergency Medicaid. This policy change means that all babies born in the United States, whose deliveries are covered by Medicaid, receive the same coverage (i.e., Medicaid for one full year after birth).
2. The Tax Relief and Health Care Act of 2006 (TRHCA) provided clarification to the Deficit Reduction Act of 2005 (DRA) through an amendment to the Social Security Act. Based on this clarification, two additional categories of people who are exempt from the Medicaid requirement to prove their U. S. citizenship and identity will be added to these rules. These groups are Social Security Disability Income (SSDI) recipients and foster care children receiving child welfare services under Title IV-B of the Social Security Act. They are considered exempt because either the Department or the Social Security Administration verifies citizenship and identity before they issue benefits.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is being done to meet federal regulations.

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.

Based on data from the Eligibility Programs Integrated Computer System (EPICS) and the Division of Medicaid, approximately one hundred and sixty newborn children will be added to Medicaid because of this rule change. The average Medicaid cost for a newborn child for one year is \$5,202. This will result in a yearly increase in Medicaid spending of \$832,320 of which \$250,000 is general fund money.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rulemaking is being done to comply with federal regulation.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance

on technical questions concerning the temporary and proposed rule, contact Linda Palmer at (208) 334-5845.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2007.

DATED this 21st day of June, 2007.

Sherri Kovach
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THE FOLLOWING IS THE TEXT FOR DOCKET 16-0301-0701

011. DEFINITIONS (M THROUGH Z).

For the purposes of these rules the following terms are used as defined below: (3-30-07)

01. Newborn Deemed Eligible. A child born to a woman eligible for and receiving medical assistance on the date of the child's birth. A child so born is eligible for Medicaid for the first year of his life. (7-1-06)T

~~**02. Participant.**~~ A person eligible for, and enrolled in, the Idaho medical assistance program. (3-30-07)

023. Premium. A regular, periodic charge or payment for health coverage as set forth in IDAPA 16.03.16, "Premium Assistance." (3-30-07)

034. Relative of Specified Degree. Relatives of specified degree include: father, mother, (natural or adoptive), child, grandfather or grandmother, brother or sister, stepfather or stepmother, stepbrother or stepsister, aunt or uncle, first cousin, first cousin once removed, niece, nephew, and persons of preceding generations denoted by grand, great or great-great. (3-30-07)

~~**045. SSI.**~~ Supplemental Security Income. (3-30-07)

~~**056. SSN.**~~ Social Security Number. (3-30-07)

~~**067. State.**~~ The state of Idaho. (3-30-07)

~~**078. TAFI.**~~ Temporary Assistance for Families in Idaho. (3-30-07)

~~**089. TANF.**~~ Temporary Assistance to Needy Families. (3-30-07)

~~**0910. Title XIX.**~~ Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the States. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-30-07)

101. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP), is a federal and state partnership similar to Medicaid, that expands health insurance to targeted, low- income children. (3-30-07)

112. Transitional Medicaid. Medical assistance for families who become ineligible for AFDC-related Title XIX Medicaid due to an increase in earned income or loss of income disregards. (3-30-07)

123. Working Day. A calendar day in which the regular hours of Department activity occur. Weekends and State holidays are not considered working days. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

225. INDIVIDUALS CONSIDERED AS MEETING THE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

SSI recipients and individuals determined by the SSA to be entitled to or are receiving Medicare are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 221.01 through 221.05 or Sections 223 and 224 of these rules are provided: The individuals listed in Subsections 225.01 through 225.05 of this rule meet the U.S. citizenship and identity requirements and are not required to provide documentation of citizenship and identity. (3-30-07)(10-1-06)T

01. Supplemental Security Income (SSI) Recipients. (10-1-06)T

02. Social Security Disability Income (SSDI) Recipients. (10-1-06)T

03. Individuals Determined by SSA to be Entitled to Receive Medicare. (10-1-06)T

04. Adoptive or Foster Care Children Receiving Assistance Under Title IV-B or Title IV-E of the Social Security Act. (10-1-06)T

226. TITLE IV-E FOSTER CARE CHILD (RESERVED).

The Department will not deny or delay Medicaid for a child receiving Title IV-E Foster Care assistance pending citizenship and identity documentation. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

270. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

An applicant must provide his Social Security Number (SSN), or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. When an SSN is unverified, the applicant is not eligible for Health Care Assistance. The Department must notify the applicant in writing if eligibility is being denied or lost for failure to meet the SSN requirement. (3-30-07)

01. Application for SSN. The applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for, but not issued by the SSA, the Department can not deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-30-07)

02. Failure to Apply for SSN. The applicant may be granted good cause for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (3-30-07)

- a. Is a member of a recognized religious sect or division of the sect; and (3-30-07)
- b. Adheres to the tenets or teachings of the sect, or division of the sect, and for that reason is conscientiously opposed to applying for or using a national identification number. (3-30-07)
- 03. SSN Requirement Waived.** An applicant may have the SSN requirement waived when he is: (3-30-07)
 - a. Only eligible for emergency medical services as described in Section 250 of these rules; or (3-30-07)
 - b. A ~~waived~~ newborn deemed eligible child as described in Section 530 of these rules. (~~3-30-07~~)(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

530. NEWBORN CHILD DEEMED ELIGIBLE FOR MEDICAID.

~~A newborn child is eligible for health care assistance for one (1) year under the conditions listed in Subsections 530.01 and 530.02 of this rule. Other non-financial criteria are not applied until a renewal is made. A child is deemed eligible for Medicaid for his first year of life if:~~ (~~3-30-07~~)(7-1-06)T

01. Mother ~~Under Title XIX~~ Filing an Application. ~~If the newborn's mother is receiving services under Title XIX at the time of the child's birth; or~~ The child is born to a mother who files an application for medical assistance, and (~~3-30-07~~)(7-1-06)T

02. Mother ~~Under Title XXI and Is at 133% to 150% of FPG~~ Is Eligible for Medicaid. ~~If the newborn's mother is receiving services under Title XXI, and is at one hundred thirty-three (133%) to one hundred fifty percent (150%) of the FPG at the time of the child's birth.~~ The mother is at or below one hundred thirty-three (133%) FPG and is eligible for Medicaid coverage of the delivery. (~~3-30-07~~)(7-1-06)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. 16-0305-0701

NOTICE OF RULEMAKING

RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency is vacating the proposed rulemaking previously initiated under this docket and rescinding the temporary rule rulemaking previously adopted under this docket. The action is authorized pursuant to Sections, 56-202(b) and 56-203(g), Idaho Code, and Senate Bill No. 1170 passed during the 2007 Legislative session.

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

Senate Bill 1170, passed during the 2007 Legislative Session, amended existing law relating to the long-term care partnership program. This amendment significantly changed the Idaho Code that this rulemaking was based upon. Therefore, this docket is being rescinded and vacated in order to promulgate a new docket addressing the new statute for the long term partnership program.

The temporary and proposed rule, in Docket 16-0305-0701 was published in the January 3, 2007 Administrative Bulletin, Volume 07-1, pages 90 through 92. This Notice of Rulemaking hereby rescinds the temporary rules, effective November 1, 2006, and vacates the proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the rescission of this temporary rule, contact Susie Cummins at (208) 732-1419.

DATED this 15th day of June, 2007.

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

DOCKET NO. 16-0305-0702

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2007.

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. This rulemaking action is authorized pursuant to Section 56-202, Idaho Code, and SB1170, 2007 Legislature.

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

Date:	August 13, 2007	August 13, 2007
Time:	6:30 p.m.	7:00 p.m.
Place:	Department of Health & Welfare Region IV Office 1720 Westgate Dr., Suite D, Room 119 Boise, Idaho	State Office Building 1118 "F" Street 3rd Floor Conference room Lewiston, Idaho

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

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

During the 2007 Legislative Session, Senate Bill 1170 was passed. This Bill updated Medicaid eligibility criteria in Sections 56-1302 and 56-1303, Idaho Code. This new language in the Idaho statutes follows the intent of Long Term Care Partnership policies as described in the Federal Deficit Reduction Act (DRA) of 2005. The changes in statute eliminate the requirement that the qualified long-term care policy must be exhausted before the individual can be eligible for an asset disregard when eligibility for Medicaid is determined. This rulemaking aligns the eligibility requirements regarding excluded resources with the changes in statute.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is being done to meet federal regulations time lines and confer a benefit.

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

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

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 conducted. The "Notice of Intent to Promulgate - Negotiated Rulemaking" was published in the Idaho Administrative Bulletin, May 2, 2007 - Vol. 07-05, page 58.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Susie Cummins at (208) 732-1419.

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 Wednesday, August 22, 2007.

DATED this 20th day of June, 2007.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0702

710. -- ~~720~~19. (RESERVED).

~~720~~. LONG-TERM CARE RESIDENT AND MEDICAID.

A resident of a long-term care facility must meet the AABD eligibility criteria to be eligible for Medicaid. A long-term care facility is a nursing facility, or an intermediate care facility for the mentally retarded. The need for long-term care is determined using IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (10-1-06)T

01. Resources of Resident. The resident's resource limit is two thousand dollars (\$2,000). Resources of a married person in long-term care are computed using Federal Spousal Impoverishment rules. Under the SSI method, spouses can use the three thousand dollar (\$3,000) couple resource limit if more advantageous. The couple must have lived in the nursing home, in the same room, for six (6) months. (3-20-04)

02. Medicaid Income Limit of Long-Term Care Resident Thirty Days or More. The monthly income limit for a long-term care facility resident is three (3) times the Federal SSI benefit for a single person. To qualify for this income limit the participant must be, or be likely to remain, in long-term care at least thirty (30) consecutive days. (3-20-04)

03. Medicaid Income Limit of Long-Term Care Resident Less Than Thirty Days. The monthly income limit, for the resident of a long-term care facility for less than thirty (30) consecutive days, is the AABD income limit for the participant's living situation before long-term care. Living situations before long-term care do not include hospital stays. (7-1-99)

04. Income Not Counted. The income listed in Subsections ~~720~~04.a. through ~~720~~04.e. of these rules is not counted to compute Medicaid eligibility for a long-term care facility resident. This income is counted in determining participation in the cost of long-term care. (~~3-20-04~~)(1-1-07)T

- a.** Income excluded or disregarded, in determining eligibility for AABD cash, is not counted. (3-20-04)
- b.** The September 1972 RSDI increase is not counted. (3-20-04)
- c.** Any VA Aid and Attendance allowance, including any increment which is the result of a VA Unusual Medical Expense allowance, is not counted. These allowances are not counted for patient liability, unless the veteran lives in a state operated veterans' home. (3-20-04)
- d.** RSDI benefit increases, from cost-of-living adjustments (COLA) after April 1977, are not counted

if they made the participant lose SSI or AABD cash. The COLA increases after SSI or AABD cash stopped are not counted. (3-20-04)

e. Income paid into an income trust exempt from counting for Medicaid eligibility under Subsection 872.02 of these rules is used for patient liability. Income paid to the trust and not used for patient liability, is subject to the asset transfer penalty. (3-20-04)

721. QUALIFIED LONG-TERM CARE PARTNERSHIP POLICY.

Participants who have received, or are entitled to receive, benefits under a Qualified Long-Term Care Partnership policy issued in Idaho after November 1, 2006, will have certain resources disregarded as described in Subsections 721.01 and 721.02 of these rules. (1-1-07)T

01. Value of the Participant's Resources. The total dollar amount of the insurance benefits paid out for a policy holder of a Qualified Long-Term Care Partnership policy is disregarded in calculating the value of the participant's resources for long-term care Medicaid eligibility. The amount that is disregarded is determined on the effective date of an initial application approval for long-term care Medicaid benefits. (1-1-07)T

02. Resource Disregard Excluded From Estate Recovery. The amount of the resources disregarded from a Qualified Long-Term Care Partnership policy under Subsection 721.01 of this rule, is deducted from the assets of the estate for Medicaid estate recovery. (1-1-07)T

(BREAK IN CONTINUITY OF SECTIONS)

737. TREATMENT OF RESOURCES ~~EXCLUDED FROM~~ FOR ASSESSMENT.

~~Resources excluded in determining AABD cash are excluded in determining the couple's total combined FSI resources except:~~ The resource rules used in determining eligibility for AABD cash and Medicaid are also used in determining the couple's total combined resources for the FSI resource assessment with the following exceptions: (3-30-07)(1-1-07)T

01. Resources For Sale. Excess resources offered for sale, are not excluded from the couple's total combined resources for the FSI resource assessment. (3-30-07)

02. Jointly Owned Real Property. Jointly owned real property that is not the principal residence of the participant, is not excluded, if the community spouse is the joint owner. (3-30-07)

03. Long-term Care Partnership Policy. Resources excluded because of a participant's qualified long-term care policy are not excluded for the FSI resource assessment. (1-1-07)T

034. Excluded Home. As defined in 42 U.S.C. 1396r-5(c)(5), an excluded home placed in trust retains its exclusion for purposes of the resource assessment. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0703

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2007.

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), 56-203(g), 56-203(i), and 56-250 through 56-257, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, August 15, 2007.

The hearing sites 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 current process used to determine a Medicaid participant's eligibility for nursing facility care results in delays for nursing facilities and participants. In the current process, after conducting a standard functional assessment on a participant, a nursing facility submits that person's assessment data in the form of the Minimum Data Set (MDS) to the Department. Department nurses then convert this data to a standardized score using the Department's Uniform Assessment Instrument (UAI). This score is used to determine if a participant needs the level of care provided by a nursing facility.

Rule changes are needed to eliminate this extra "conversion" step so that a participant's assessment data can be used directly to determine his eligibility for nursing facility care. This will make the process simpler and more efficient, use less staff time, and result in more rapid eligibility determination while maintaining the same degree of accuracy.

The rules that require UAI scoring be used to determine whether or not a participant needs nursing facility level of care are being moved from the Nursing Facility section of the rules to the Aged or Disabled (A&D) Waiver section.

This rule change will allow Medicaid to accept the MDS scores submitted by nursing facilities as sufficient to determine that a participant needs nursing facility level of care. Medicaid will no longer convert MDS scores to UAI scores. This way, MDS scores will be used directly to determine medical eligibility for nursing facility care. UAI scoring will still be used to determine eligibility for long-term care services covered under the A&D Waiver since the assessment process used to produce the MDS is only applicable to the nursing facility setting.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit.

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

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are being made to make the eligibility process easier for nursing facilities and more efficient for the Department. Informal discussions were held with the Idaho Health Care Association, the proposed changes were welcomed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Scheuerer at (208) 287-1156.

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 Wednesday, August 22, 2007.

DATED this 1st day of June, 2007.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0703

013. DEFINITIONS P THROUGH Z.

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

01. Patient Day. For a nursing facility or an ICF/MR, a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care will be deemed to exist. (3-19-07)

02. Participant. A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

03. Patient. The person undergoing treatment or receiving services from a provider. (3-19-07)

04. Personal Assistance Agency. An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, is the employer of record and in fact, and may provide fiscal intermediary services. (3-19-07)

05. Personal Assistance Services (PAS). Services that include attendant care and personal care services. (3-19-07)

06. Physician. A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (3-19-07)

07. Physician's Assistant. A person who meets all the applicable requirements to practice as licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." (3-19-07)

08. Picture Date. A point in time when case mix indexes are calculated for every nursing facility based on the residents in the nursing facility on that day. The picture date to be used for rate setting will be the first day of the first month of a quarter. The picture date from that quarter will be used to establish the nursing facility's rate for the next quarter. (3-19-07)

- 09. Plan of Care.** A written description of medical, remedial, or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-19-07)
- 10. Private Rate.** Rate most frequently charged to private patients for a service or item. (3-19-07)
- 11. PRM.** The Provider Reimbursement Manual. (3-19-07)
- 12. Property.** The homestead and all personal and real property in which the participant has a legal interest. (3-19-07)
- 13. Property Costs.** Property costs are the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The Department may require and utilize an appraisal to establish which components are an integral part of property costs. (3-19-07)
- 14. Property Rental Rate.** A rate paid per Medicaid patient day to free-standing nursing facilities and ICF/MRs in lieu of reimbursement for property costs other than property taxes, property insurance, and the property costs of major movable equipment at ICF/MR facilities. (3-19-07)
- 15. Provider.** Any individual, partnership, association, corporation or organization, public or private, that furnishes medical goods or services in compliance with these rules and who has applied for and received a Medicaid provider number and has entered into a written provider agreement with the Department in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)
- 16. Provider Agreement.** An written agreement between the provider and the Department, in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)
- 17. Provider Reimbursement Manual (PRM).** The Providers Reimbursement Manual, a federal publication which specifies accounting treatments and standards for the Medicare program, CMS Publications 15-1 and 15-2, which are incorporated by reference in Section 004 of these rules. (3-19-07)
- 18. Psychologist, Licensed.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-19-07)
- 19. 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. (3-19-07)
- 20. Public Provider.** A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (3-19-07)
- 21. Raw Food.** Food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions. (3-19-07)
- 22. Reasonable Property Insurance.** Reasonable property insurance means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year cannot be considered reasonable. (3-19-07)
- 23. Recreational Therapy (Services).** Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, training for Special Olympics, and special day parties (birthday, Christmas, etc.). (3-19-07)

24. **Regional Medicaid Services (RMS).** Regional offices of the Division of Medicaid. (3-19-07)
25. **Regional Nurse Reviewer (RNR).** A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX and Title XXI long term care for the Department. (3-19-07)
26. **Registered Nurse - R.N.** Which in the state of Idaho is known as a Licensed Professional Nurse and who meets all the applicable requirements to practice as a licensed professional nurse under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01 "Rules of the Idaho Board of Nursing." (3-19-07)
27. **Related Entity.** An organization with which the provider is associated or affiliated to a significant extent, or has control of, or is controlled by, that furnishes services, facilities, or supplies for the provider (3-19-07)
28. **Related to Provider.** The provider, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies. (3-19-07)
29. **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. (3-19-07)
30. **Resource Utilization Groups (RUG).** A process of grouping residents according to the clinical and functional status identified by the responses to key elements of the MDS. The RUG Grouper is used for the purposes of rate setting and determining nursing facility level of care. ~~(3-19-07)~~(4-1-07)T
31. **Skilled Nursing Care.** The level of care for patients requiring twenty-four (24) hour skilled nursing services. (3-19-07)
32. **Social Security Act.** 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (3-19-07)
33. **Speech/Language Pathology and Audiology Services.** Diagnostic, screening, preventative, or corrective services provided by a licensed speech pathologist or audiologist, for which a patient is referred by a physician or other practitioner of the healing arts within the scope of his or her practice under state law. Speech, hearing and language services do not include equipment needed by the patient such as communication devices or environmental controls. (3-19-07)
34. **State Plan.** The contract between the state and federal government under 42 U.S.C. section 1396a(a). (3-19-07)
35. **Supervision.** Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (3-19-07)
36. **Title XVIII.** Title XVIII of the Social Security Act, known as Medicare, for the aged, blind, and disabled administered by the federal government. (3-19-07)
37. **Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-19-07)
38. **Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-19-07)
39. **Third Party.** Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a participant of medical assistance. (3-19-07)

- 40. Transportation.** The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-19-07)
- 41. Uniform Assessment.** A set of standardized criteria to assess functional and cognitive abilities. (3-19-07)
- 42. Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities as described in IDAPA 16.03.23 "Rules Governing Uniform Assessments of State-Funded Clients." (3-19-07)
- 43. Utilities.** All expenses for heat, electricity, water and sewer. (3-19-07)
- 44. Utilization Control (UC).** A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants or participants to Title XIX and Title XXI benefits in a nursing facility. (3-19-07)
- 45. Utilization Control Team (UCT).** A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the nursing facilities approved by the Department as providers of care for eligible medical assistance participants. (3-19-07)
- 46. Vocational Services.** Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the participant would be able to participate in a sheltered workshop or in the general work force within one (1) year. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

222. NURSING FACILITY SERVICES - ELIGIBILITY.

Entitlement to medical assistance participation in the cost of long-term care exists when the individual is eligible for medical assistance and the ~~Regional Nurse Reviewer (RNR)~~ Department has determined that the individual meets the criteria for nursing facility services. Entitlement must be determined prior to authorization of payment for such care for an individual who is either a participant of or an applicant for medical assistance. ~~(3-19-07)~~(4-1-07)T

- 01. Criteria for Determination.** The criteria for determining a medical assistance participant's need for nursing facility care is described in Section 223. In addition, the Inspection of Care/Utilization Control (IOC/UC) nurse must determine whether a medical assistance participant's needs could be met by alternatives other than residing in a nursing facility, such as an independent living arrangement or residing in a room and board situation. (3-19-07)
- a.** The participant can select any certified facility to provide the care required. (3-19-07)
- b.** The final decision as to the level of care required by a medical assistance participant must be made by the IOC/UC Nurse. (3-19-07)
- c.** The final decision as to the need for developmental disability (DD) or mental illness (MI) active treatment must be made by the appropriate Department staff as a result of the Level II screening process. (3-19-07)
- d.** No payment will be made by the Department on behalf of any eligible medical assistance participant to any long-term care facility which, in the judgment of the IOC/UC Team, is admitting individuals for care or services which are beyond the facility's licensed level of care or capability. (3-19-07)
- 02. Authorization of Long-Term Care Payment.** If it has been determined that a person eligible for medical assistance is entitled to medical assistance participation in the cost of long-term care, and that the facility selected by the participant is licensed and certified to provide the level of care the participant requires, the Field

Office will forward to such facility an "Authorization for Long-Term Care Payment" form HW 0459. (3-19-07)

223. NURSING FACILITY - CRITERIA FOR DETERMINING NEED.

The participant requires nursing facility level of care when an adult meets ~~or exceeds the functional level described in Subsection 223.06 of these rules~~, one (1) of the Resource Utilization Group (RUG III) classifications or when a child meets one (1) or more of the criteria described in Subsections 223.072, 223.083, 223.094 or 223.105 of ~~these~~ this rules. A child is an individual from age zero (0) through eighteen (18) years; an adult is an individual more than eighteen (18) years of age. ~~(3-19-07)(4-1-07)T~~

01. Required Assessment for Adults. A standard assessment will be ~~administered~~ approved by the Department ~~to~~ for all adults requesting services with requirements for nursing facility level of care. The Department will specify the instrument to be used. ~~(3-19-07)(4-1-07)T~~

~~02. **Functional Level for Adults.** Based on the results of the assessment, the level of impairment of the individual will be established by the Department. In determining need for nursing facility care an adult must require the level of assistance listed in Subsections 223.03 through 223.05, according to the formula described in Subsection 223.06.~~ ~~(3-19-07)~~

~~03. **Critical Indicator—12 Points Each.** (3-19-07)~~

~~a. Total assistance with preparing or eating meals. (3-19-07)~~

~~b. Total or extensive assistance in toileting. (3-19-07)~~

~~e. Total or extensive assistance with medications which require decision making prior to taking, or assessment of efficacy after taking. (3-19-07)~~

~~04. **High Indicator—6 Points Each.** (3-19-07)~~

~~a. Extensive assistance with preparing or eating meals. (3-19-07)~~

~~b. Total or extensive assistance with routine medications. (3-19-07)~~

~~c. Total, extensive or moderate assistance with transferring. (3-19-07)~~

~~d. Total or extensive assistance with mobility. (3-19-07)~~

~~e. Total or extensive assistance with personal hygiene. (3-19-07)~~

~~f. Total assistance with supervision from Section II of the Uniform Assessment Instrument (UAI). (3-19-07)~~

~~05. **Medium Indicator—3 Points Each.** (3-19-07)~~

~~a. Moderate assistance with personal hygiene. (3-19-07)~~

~~b. Moderate assistance with preparing or eating meals. (3-19-07)~~

~~c. Moderate assistance with mobility. (3-19-07)~~

~~d. Moderate assistance with medications. (3-19-07)~~

~~e. Moderate assistance with toileting. (3-19-07)~~

~~f. Total, extensive, or moderate assistance with dressing. (3-19-07)~~

~~g. Total, extensive or moderate assistance with bathing. (3-19-07)~~

- ~~h.~~ Extensive or moderate assistance with supervision from Section II No. 18 of the UAI. (3-19-07)
- ~~06.~~ **Nursing Facility Level of Care, Adults.** In order to qualify for nursing facility level of care, the individual must score twelve (12) or more points in one (1) of the following ways. (3-19-07)
- ~~a.~~ One (1) or more critical indicators = Twelve (12) points. (3-19-07)
- ~~b.~~ Two (2) or more high indicators = Twelve (12) points. (3-19-07)
- ~~c.~~ One (1) high and two (2) medium indicators = Twelve (12) points. (3-19-07)
- ~~d.~~ Four (4) or more medium indicators = Twelve (12) points. (3-19-07)
- 072. Supervision Required for Children.** Where the inherent complexity of a service prescribed by the physician is such that it can be safely and effectively performed only by or under the supervision of a licensed nurse or licensed physical or occupational therapist. (3-19-07)
- 083. Preventing Deterioration for Children.** Skilled care is needed to prevent, to the extent possible, deterioration of the child's condition or to sustain current capacities, regardless of the restoration potential of a child, even where full recovery or medical improvement is not possible. (3-19-07)
- 094. Specific Needs for Children.** When the plan of care, risk factors, and aggregate of health care needs is such that the assessments, interventions, or supervision of the child necessitates the skills of a licensed nurse or a licensed physical therapist or licensed occupational therapist. In such cases, the specific needs or activities must be documented by the physician's orders, progress notes, plan of care, and nursing and therapy notes. (3-19-07)
- 405. Nursing Facility Level of Care for Children.** Using the criteria found in Subsections 223.072, 223.083, and 223.094 of these rules, plus consideration of the developmental milestones, based on the age of the child, the Department's RMS will determine nursing facility level of care. (~~3-19-07~~)(4-1-07)T
- ~~#06.~~ **Conditions of Payment.** (3-19-07)
- ~~a.~~ As a condition of payment by the Department for long-term care on behalf of medical assistance participants, each fully licensed long-term care facility is to be under the supervision of an administrator who is currently licensed under the laws of the state of Idaho and in accordance with the rules of the Bureau of Occupational Licenses. (3-19-07)
- ~~b.~~ Payment by the Department for the cost of long-term care is to include the date of the participant's discharge only if the discharge occurred after 3:00 p.m. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

229. NURSING FACILITY - PREPAYMENT SCREEN AND DETERMINATION OF ENTITLEMENT TO MEDICAID PAYMENT FOR NURSING FACILITY CARE AND SERVICES.

The level of care for Title XIX and Title XXI payment purposes is determined by the ~~Regional Nurse Reviewer(s)~~ Department. Necessity for payment is determined in accordance with 42 CFR 483 Subpart C and Section 1919(e) (7) of the Social Security Act. In the event a required Level II screen was not accomplished prior to admission, entitlement for Medicaid payment as established by the RMS will not be earlier than the date the Level II screen is completed, indicating that nursing facility placement is appropriate. (~~3-19-07~~)(4-1-07)T

- 01. Information Required for Medical Evaluation Determination.** A current Minimum Data Set (MDS) assessment will be provided to the Department. Additional supporting information may be requested. (3-19-07)

02. Information Required for Level I and II Screen Determination. An accurate Level I screen and when required, a Level II screen. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

322. AGED OR DISABLED WAIVER SERVICES - ELIGIBILITY.

The Department provides waiver services to eligible participants: to prevent unnecessary institutional placement; to provide for the greatest degree of independence possible; to enhance the quality of life; to encourage individual choice; and to achieve and maintain community integration. For a participant to be eligible, the Department must find that the participant: (3-19-07)

01. Has a Disabling Condition. Requires services due to a disabling condition which impairs their mental or physical function or independence; and (3-19-07)

02. Safe in a Non-Institutional Setting. Be capable of being maintained safely and effectively in a non-institutional setting; and (3-19-07)

03. Requires Such Services. Would, in the absence of such services, require the level of care provided in a Nursing Facility *under Sections 222 and 223 of these rules.* (~~3-19-07~~)(4-1-07)T

04. Functional Level for Adults. Based on the results of the assessment, the level of impairment of the individual will be established by the Department. In determining need for nursing facility care an adult must require the level of assistance listed in Subsections 322.04 through 322.07 of this rule, according to the formula described in Subsection 322.08 of this rule. (4-1-07)T

05. Critical Indicator - 12 Points Each. (4-1-07)T

a. Total assistance with preparing or eating meals. (4-1-07)T

b. Total or extensive assistance in toileting. (4-1-07)T

c. Total or extensive assistance with medications which require decision making prior to taking, or assessment of efficacy after taking. (4-1-07)T

06. High Indicator - 6 Points Each. (4-1-07)T

a. Extensive assistance with preparing or eating meals. (4-1-07)T

b. Total or extensive assistance with routine medications. (4-1-07)T

c. Total, extensive or moderate assistance with transferring. (4-1-07)T

d. Total or extensive assistance with mobility. (4-1-07)T

e. Total or extensive assistance with personal hygiene. (4-1-07)T

f. Total assistance with supervision from Section II of the Uniform Assessment Instrument (UAD). (4-1-07)T

07. Medium Indicator - 3 Points Each. (4-1-07)T

a. Moderate assistance with personal hygiene. (4-1-07)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.23 - RULES GOVERNING UNIFORM ASSESSMENTS FOR STATE-FUNDED CLIENTS

DOCKET NO. 16-0323-0701

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2007.

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 39-3308, 39-3508, and 56-202(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, August 15, 2007.

The hearing sites 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:

In the "Medicaid Enhanced Plan Benefits" chapter (IDAPA 16.03.10), a rule change is currently being proposed that will simplify the process for determining eligibility for nursing facility care. Specifically, the requirement that functional assessment scores (also known as the Minimum Data Set - MDS) submitted by nursing facilities be converted by Medicaid using its own scoring system (known as the Uniform Assessment Instrument - UAI) is being removed. Medicaid will accept the MDS scores submitted by nursing facilities as sufficient to determine that a participant needs nursing facility level of care. Medicaid will no longer convert MDS scores to UAI scores. This way, MDS scores will be used directly to determine medical eligibility for nursing facility care. This change will make the process more efficient, use less staff time, and result in more rapid eligibility determination while maintaining the same degree of accuracy.

Two rule changes are needed in this chapter to make it consistent with the changes being proposed in the "Medicaid Enhanced Plan Benefits" chapter.

1. The term "nursing facilities" is being removed from the definition of "Supported Living Services Provider" since the Uniform Assessment Instrument (UAI) will no longer be used for nursing facility residents. The UAI will continue to be used for the rest of the supported living services providers listed in the definition.
2. The reference to the use of the UAI for nursing facility resident reassessments is also being removed since the MDS will be able to be used directly as a result of the changes in the "Medicaid's Enhanced Plan Benefits" chapter.

In addition, the sections at the beginning of the chapter required by the Administrative Procedure Act (APA) are being either updated or added where missing, to bring the rule chapter into compliance with the APA.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. There is no anticipated fiscal impact to the state general fund related to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are being made to make the eligibility process easier for nursing facilities and more efficient for the Department. Informal discussions took place with the Idaho Health Care Association, the proposed changes were welcomed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Scheuerer at (208) 287-1156.

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 Wednesday, August 22, 2007.

DATED this 1st day of June, 2007.

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@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0323-0701

001. TITLE AND SCOPE.

01. Title. *These rules are to be cited as the Rules of the Idaho Department of Health and Welfare, The title of these rules is IDAPA ~~16, Title 03, Chapter 16.03.23,~~ "Rules Governing Uniform Assessments for State-Funded Clients."* (4-5-00)(4-1-07)T

02. Scope. These rules contain the minimum requirements and applied standards for uniform assessment of the functional and cognitive ability of persons who seek state-funded supported living services. (4-5-00)

002. WRITTEN INTERPRETATIONS.

These rules are adopted to further the accuracy and consistency of placement and funding decisions affecting persons in supported living settings. The uniform assessment instrument shall be used to develop plans of care and, when required, negotiated service agreements, determine staffing ratios, to determine the capacity and expertise of the care provider to meet the needs of each client. There are no written interpretations for this chapter of rules. (4-5-00)(4-1-07)T

003. ADMINISTRATIVE APPEALS.

Hearings will be conducted in conformance with the Department's Administrative appeals are governed by IDAPA ~~16.05.03,~~ "Rules Governing Contested Case Proceedings and Declaratory Rulings, IDAPA ~~16.05.03, Sections 100 through 102.~~" (4-5-00)(4-1-07)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter of rules. (4-1-07)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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. (4-1-07)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and

Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-1-07)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-1-07)T

04. Telephone. (208) 334-5500. (4-1-07)T

05. Internet Website Address. The website address is: <http://www.healthandwelfare.idaho.gov>. (4-1-07)T

06. Division of Medicaid. The Department's Division of Medicaid is located at 3232 Elder Street, Boise, ID 83705; Phone: (208) 334-5747. (4-1-07)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-1-07)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (4-1-07)T

007. -- 009. (RESERVED).

00410. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (4-1-07)T

01. Activities of Daily Living. Bathing, dressing, toileting, transferring, eating, and walking. (4-5-00)

02. Client. A person for whom the State of Idaho, or a program administered by the State of Idaho, pays all or any part of the cost of the person's care. (4-5-00)

03. Department. The Idaho Department of Health and Welfare. (4-5-00)

04. Instrumental Activities of Daily Living. Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, and light housework. (4-5-00)

05. Service Plan. A plan that describes the type and quantity of services that will be provided to a client, whether called a plan of care, plan for care, negotiated services agreement, individual support plan, or by some other name. (4-5-00)

06. Significant Change in Client's Condition. A major change in the client's status that affects more than one area of the client's functional or health status, and requires review or revision of the care plan or negotiated service agreement. (4-5-00)

07. Supported Living Services. Assistance with activities of daily living, instrumental activities of daily living, and supervision to enable a client to reside safely in the setting of the client's choice. (4-5-00)

08. Supported Living Services Provider. A facility or person that provides supported living services. Such facilities and persons include ~~nursing facilities~~, residential care and assisted living facilities, certified family homes, specialized family homes, personal care service providers, semi-independent facilities, intermediate care facilities for persons with mental retardation, and home and community-based services waiver providers. ~~(4-5-00)~~(4-1-07)T

09. Uniform Assessment. A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities. For participants using the Developmental Disabilities and Idaho

State School and Hospital Waiver services, and adults using Developmental Disabilities Agency services or Targeted Service Coordinator services, or both, the requirement for a uniform assessment is met by the assessment and history required under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services." (3-20-04)

~~005-010: (RESERVED)~~

011. COMPLETION OF THE UNIFORM ASSESSMENT INSTRUMENT.

01. Department's Responsibility for the Uniform Assessment of Clients. The Department *shall will* assess or direct the uniform assessment of clients age eighteen (18) or older who seek supported living services. (4-5-00)(4-1-07)T

02. Qualifications of Persons Making Uniform Assessments. The uniform assessment *shall must* be conducted by persons who are trained by the Department in the use of the uniform assessment instrument. (4-5-00)(4-1-07)T

03. Payment Conditioned on Completion of Assessment. A uniform assessment must be completed as a condition of state payment for supported living services. The Department will not authorize payment for services to a client if the services were rendered prior to the completion of a uniform assessment instrument for that client, unless the Department determines it was beyond the control of the supported living services provider and it is justified by the individual circumstances. In addition, other Department payment requirements must be met. (4-5-00)

04. Time Period for Completing the Assessment. The Department will prioritize pending assessments, and expedite assessments that, in its discretion, it considers emergencies, including reassessments of clients whose needs have changed. (4-5-00)

05. Reassessments. A client *shall must* be reassessed if there is a significant change in the client's condition, or annually, whichever occurs first. ~~For nursing facility residents, after an initial UAI is completed, the federal minimum data set may be substituted for the uniform assessment instrument.~~ (4-5-00)(4-1-07)T

012. USE OF THE UNIFORM ASSESSMENT INSTRUMENT IN DEVELOPING THE CLIENT'S SERVICE PLAN.

The client's unmet needs as identified by the uniform assessment instrument *shall must* be used to develop a service plan. (4-5-00)(4-1-07)T

013. USE OF THE UNIFORM ASSESSMENT INSTRUMENT IN DETERMINING FACILITY STAFFING RATIOS.

A supported living services provider *shall must* have sufficient numbers and types of staff to carry out each client's service plan based on the uniform assessment instrument and to comply with all other rules governing the provider. (4-5-00)(4-1-07)T

014. USE OF THE UNIFORM ASSESSMENT INSTRUMENT FOR DETERMINING THE ABILITY OF THE SUPPORTED LIVING SERVICES PROVIDER TO MEET CLIENTS' NEEDS.

The information from the uniform assessment instrument *shall will* be used to determine the ability of a supported living services provider to meet the identified needs of the client. The information from the uniform assessment instrument *shall will* also be used to determine the need for special training or licenses that may be required in caring for certain clients. (4-5-00)(4-1-07)T

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.06 - RULE TO IMPLEMENT UNIFORM COVERAGE FOR NEWBORN AND NEWLY ADOPTED CHILDREN

DOCKET NO. 18-0106-0601 (NEW CHAPTER)

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 Title 41, Chapters 2 and 13, 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 on or before August 15, 2007.

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

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

This rulemaking creates a new rule clarifying requirements for providing coverage to newborn and newly adopted children. It defines what constitutes a congenital anomaly that must be covered under insurance policies, explains the extent to which congenital anomalies must be covered and sets forth period for payment of premium to secure coverage of a newborn or newly adopted child.

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

There are no fees or charges being imposed through this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Negotiated rule was published in the June 7, 2007 Administrative Bulletin, Volume 07-6, page 106.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joan Krosch at (208) 334-4300.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2007.

DATED this 29th day of June, 2007.

William W. Deal
Idaho Department of Insurance
700 West State St.,
Third Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0106-0601

IDAPA 18
TITLE 01
CHAPTER 06

**18.01.06 - RULE TO IMPLEMENT UNIFORM COVERAGE FOR NEWBORN
AND NEWLY ADOPTED CHILDREN**

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the Director under Title 41, Chapter 2, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. This Rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.06, "Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children." ()

02. Scope. This rule sets forth uniform requirements to be followed by health plans providing coverage to newborn and newly adopted children in accordance with Sections 41-2140, 41-2210, 41-3437, 41-3923, 41-4023 and 41-4123, Idaho Code. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. ()

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. ()

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used in this chapter the following terms shall have the following meanings. ()

01. Congenital Anomaly. “Congenital anomaly” means a condition existing at or from birth that is a significant deviation from the common form or function of the body, whether caused by a hereditary or developmental defect or disease. For the purposes of this chapter, the term significant deviation is defined to be a deviation which impairs the function of the body and includes but is not limited to the conditions of cleft lip, cleft palate, webbed fingers or toes, sixth toes or fingers, or defects of metabolism and other conditions that are medically diagnosed to be congenital anomalies. ()

02. Health Plan. “Health plan” means any type of benefit plan or contract of coverage that is subject to the requirements of Sections 41-2140, 41-2210, 41-3437, 41-3923, 41-4023 or 41-4123, Idaho Code. ()

03. Health Plan Member. “Health plan member” means a person entitled to benefits as a member, subscriber or insured under a health plan and who, under the terms of the health plan contract, may add dependents for coverage under the health plan. ()

04. Newborn Child. “Newborn child” means: ()

a. A child born to a health plan member and added to the health plan as a newborn dependent in accordance with the terms of the health plan contract; or ()

b. An adopted newborn child placed with the adopting health plan member within sixty (60) days of birth and added to the adopting health plan member’s health plan as a newborn dependent in accordance with the terms of the health plan contract. ()

05. Newly Adopted Child. “Newly adopted child” means a child under the age of 18 who is placed with the adopting health plan member more than sixty (60) days after the child’s birth and added to the adopting health plan member’s health plan as a dependent in accordance with the terms of the health plan contract. ()

06. Placed. “Placed” means physical placement in the care of the adopting health plan member. If physical placement is prevented due to the medical needs of the child, “placed” means the date the adopting health plan member signs an agreement for adoption of the child and assumes financial responsibility for the child. ()

011. COVERAGE REQUIREMENTS.

01. Coverage of Newborn and Newly Adopted Children. A health plan subject to this chapter shall provide coverage to: ()

a. A newborn child of a health plan member from the moment of birth; or ()

b. A newly adopted child of a health plan member from the date the child is placed with the adopting health plan member. ()

02. Coverage Requirements. Coverage of newborn and newly adopted children shall be at least equivalent to the coverage afforded other health plan members under the health plan and shall also include, but not be limited to, coverage for the medically necessary care and treatment of congenital anomalies. ()

03. Pre-Existing Conditions. A health plan may not apply a pre-existing condition exclusion to a newborn or newly adopted child. ()

04. Cosmetic Surgery. A health plan may not exclude as cosmetic surgery reconstructive surgery for congenital anomalies of a covered dependent child entitled to congenital anomaly coverage under this chapter. ()

05. Limitations on Coverage for Congenital Anomalies. A health plan may apply exclusions, requirements or benefit limitations, including cost sharing requirements, to coverage for congenital anomalies that are consistent with the requirements of this rule and no more restrictive than exclusions, requirements or benefit

limitations applied to coverage for similar treatments, conditions and services provided under the health plan. ()

012. NOTIFICATION AND PAYMENT REQUIRMENTS.

01. Notification and Payment. ()

a. If notice and payment of additional premium are required for dependent coverage under the health plan contract, the contract may require notice of birth, placement or adoption and payment of required premium as a condition of coverage for newborn and newly adopted children. The notification period shall be not less than sixty (60) days from the date of birth for a newborn child or, for newly adopted children, sixty (60) days from the earlier of the date of adoption or placement for adoption. The due date for payment of any additional premium, if required, shall be not less than thirty-one (31) days following receipt by the health plan member of a billing for the required premium. ()

b. All requirements for notice and payment of premium applied by the health plan for the enrollment of newborn or newly adopted children shall be clearly set forth in the health plan contract and provided to the health plan members in a manner reasonably calculated to provide notice to the members of the requirements. ()

c. If the health plan member fails to provide the required notification, or make the required premium payment, the health plan may decline to enroll a dependent child as a newborn or newly adopted child, but shall treat a newborn or newly adopted child no less favorably than it treats other applicants who seek coverage at a time other than when the applicant was first eligible to apply for coverage. ()

013. PORTABILITY.

The coverage provided by this chapter applies to any subsequent health plan that is issued providing coverage to the newborn or newly adopted child. If there is a break in coverage that exceeds sixty-three (63) days, the health plan may treat a congenital anomaly as a pre-existing condition and apply pre-existing condition exclusions as allowed under the applicable state and federal laws. ()

014. -- 999. (RESERVED).

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE

DOCKET NO. 21-0101-0701

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 65-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2007.

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:

These rules are being proposed to clarify the existing rules sections. The proposed changes will provide definitions of previously undefined terms; clarify definitions; provide increased detail on the basis for discharge from a veterans home; and, revise the look back period for disposal of assets to match federal program requirements.

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

No fees or charges are being imposed or increased.

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

This rulemaking will not result in any negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes simply clarify existing rules or are necessary to meet federal program requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David E. Brasuell, Administrator, at (208) 334-3513.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 22, 2007.

DATED this 28th day of June 2007.

David E. Brasuell, Administrator
Division of Veterans Services
320 Collins Rd., Boise, Idaho 83702
(208) 334-3513 phone
(208) 334-2627 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0101-0701

004. INCORPORATION BY REFERENCE.

IDAPA 21.01.01, "Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure," incorporates by reference 5 U.S.C. Section 2108(1) (a), (b) and (c) (~~October 31, 1998~~ January 6, 2006). Electronic copies are available at uscdo.house.gov/uscaddr.htm. Printed copies are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purposes of the rules contained in this Chapter, the following terms are used as defined: (3-15-02)

01. Applicant. A person who has expressed interest in applying for residency in an Idaho State Veterans Home. (3-30-01)

02. Asset. Real or personal property that is owned in whole or in part by an applicant or resident, including stocks, bonds, goods, rights of action, evidences of debt, and cash or money that is not income. Insurance payments or monetary compensation for loss of or damage to an asset is an asset. Income not expended in the calendar month received is an asset beginning on the first day of the next calendar month. ()

023. Bona Fide Resident. A person who maintains a principal or primary home or place of abode in the state of Idaho coupled with the present intent to remain at that home or abode and return to it after any period of absence pursuant to Section 66-901, Idaho Code. (3-30-01)

~~034.~~ **Commission.** The Idaho Veterans Affairs Commission. (3-30-01)

045. County Service Officer. A person appointed by the county to provide assistance to veterans in accordance with Section 65-601, Idaho Code. (3-30-01)

~~05.~~ **Department.** ~~The Idaho Department of Self-Governing Agencies.~~ (3-30-01)

06. Division. Division of Veterans Services in the Idaho Department of Self-Governing Agencies. (3-30-01)

07. Division Administrator. The Administrator of the Division of Veterans Services in the Department of Self-Governing Agencies, or his designee. The chief officer of the Division of Veterans Services. (3-30-01)

08. Home Administrator. Administrator of an Idaho State Veterans Home. The chief officer of each respective Veterans Home. (3-30-01)

09. Home. An Idaho State Veterans Home. (3-30-01)

10. Idaho State Veterans Home. Pursuant to Section 66-901, Idaho Code, a Home for eligible veterans. (3-30-01)

11. Income. Money received from any source including wages, tips, commissions, private pension and retirement payments, social security benefits, unemployment compensation, veterans assistance benefits, and gifts. ()

~~12.~~ **Legal Dependents.** The mother, father, spouse, or minor children of an applicant or a resident who, by reason of insufficient financial resources, or non-minor children who because of disease, handicap or disability, must have financial support from the applicant or resident in order to maintain themselves. (3-30-07)

123. Liquid Assets. Those assets which are cash or can be liquidated for cash within a reasonable period of time including, but not limited to, money market certificates, certificates of deposit, stocks and bonds, and some tax shelter investments. (3-30-01)(____)

134. Maintenance Charge. A charge made for care and residence at an Idaho State Veterans Home, based upon the current established rate. (3-30-01)

145. Net Income. That income used to compute charges after allowable deductions have been made. (3-30-01)

156. Resident. A person who is a resident of an Idaho State Veterans Home. (3-30-07)

167. Spouse. The husband or wife, under a marriage recognized by Title 32, Idaho Code, of a veteran or the widow or widower of a veteran under a marriage recognized by Title 32, Idaho Code. (3-30-07)

178. VA. United States Department of Veterans Affairs. (3-30-01)

189. Veteran. Shall have the meaning established in Section 65-203, Idaho Code. The separation or discharge considered under this definition shall mean the conditions of the most recent separation or discharge from military service. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

350. ~~PENALTY FOR RESIDENTIAL AND NURSING CARE~~ DISCHARGE OF RESIDENTS.

~~Upon determination that a A resident has failed to comply with an order or rule of a Home or the Division, the Home Administrator must notify the resident, in writing, of pending disciplinary action which can include be discharged, for a period to be determined by the Home Administrator, ~~if~~ for the bases set forth in Section 350. The Home Administrator will provide notice of discharge and the opportunity to appeal a discharge in accordance with Section 982 of these rules. (3-20-04)(____)~~

01. ~~An~~ Emergency ~~Exists~~ Discharge. Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged. (3-20-04)(____)

02. ~~Certain Acts are Committed~~ General Discharge. ~~If~~ The Home Administrator determines that ~~a~~ resident has committed one (1) or more of the following ~~acts~~ is present or has occurred, the resident may be given notice in accordance with Subsection 982.03 of these rules and discharged from the Home: (3-20-04)(____)

a. Possession of a lethal weapon of any kind ~~or by the resident on Division property~~; possession of wine, beer, or liquor; by the resident on Division property; or possession of a controlled substance or medication by the resident, unless prescribed by the resident's ~~primary care~~ physician; (3-30-01)(____)

b. ~~The resident's~~ Excessive or habitual intoxication; (3-30-01)(____)

c. ~~Disturbing~~ Disruption of the peace of the Home by the resident; (3-30-01)(____)

d. ~~The resident~~ ~~Striking~~ strikes or ~~threatening~~ threatens harm to another person; (3-30-01)(____)

e. ~~The resident~~ ~~Willfully~~ ~~destruction~~ destroys or wrongfully appropriates ~~of~~ state or another person's property; (3-30-01)(____)

f. ~~Commission of~~ The resident commits a felony; (3-30-01)(____)

g. ~~The resident uses~~ Abusive language or gestures or intentionally commits assault or battery; (3-30-01)(____)

- ~~h.~~ ~~Willful disobedience or persistent violations of Home~~ The resident fails to comply with the rules of this Chapter or a written directive of the Home Administrator or the Division Administrator; (3-30-01)()
- ~~i.~~ ~~Refusal or failure to pay established charges (see Sections 880 through 980)~~ The financial conditions set forth in Section 950 of these rules are present; (3-30-01)()
- ~~j.~~ ~~Any~~ The resident engages in a pattern of behavior that infringes upon the rights of another person; (3-30-01)()
- ~~k.~~ ~~The resident has unauthorized absences from the Home:~~ in excess of those permitted by Section 352 of these rules; (3-30-01)()
- ~~l.~~ Continued residency at the Home by the resident presents a danger to the resident or other persons. ()
- ~~m.~~ The resident is required by law to register as a sex offender and the Home has determined that the Home must provide resources in excess of those provided to other residents to ensure the safety of the resident or other persons. ()
- ~~n.~~ The resident does not meet the requirements and limitations set forth in Section 100 of these rules. ()

351. ~~PENALTY FOR DOMICILIARY RESIDENTS (RESERVED).~~

~~Upon determination that a resident has failed to comply with an order or rule of a Home or the Division, the Home Administrator must notify the resident, in writing, of pending disciplinary action which can include immediate discharge for a period to be determined by the Home Administrator; if:~~ (3-20-04)

~~01- **An Emergency Exists.** Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged.~~ (3-20-04)

~~02- **Certain Acts Are Committed.** If the Home Administrator determines that a domiciliary resident has committed one (1) or more of the following acts, the resident will be given notice in accordance with Subsection 982.03 and immediately discharged from the Home.~~ (3-20-04)

~~a- **Possession of wine, beer, liquor, controlled substance or medication unless prescribed by the resident's primary care physician, or a lethal weapon of any kind in the Home;**~~ (3-20-04)

~~b- **Excessive intoxication;**~~ (3-30-01)

~~c- **Disturbing the peace;**~~ (3-30-01)

~~d- **Striking or threatening another person;**~~ (3-30-01)

~~e- **Willful destruction or wrongful appropriation of state or another person's property;**~~ (3-30-01)

~~f- **Commission of a felony;**~~ (3-30-01)

~~g- **Abusive language or gestures, assault or battery.**~~ (3-30-01)

~~03- **Acts for Which Notice of Discharge May Be Given.** The resident may be given notice of his eventual discharge in accordance with Subsection 982.03 for any of the following acts:~~ (3-20-04)

~~a- **Habitual intoxication;**~~ (3-30-01)

~~b- **Willful disobedience or persistent violations of Home rules;**~~ (3-30-01)

- ~~e.~~ *Refusal or failure to pay established charges (see Sections 880 through 980);* (3-30-01)
- ~~d.~~ *Any pattern of behavior that infringes upon the rights of another person;* (3-30-01)
- ~~e.~~ *Unauthorized absences.* (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

950. FINANCIAL GROUNDS FOR REJECTION OR DISCHARGE.

The following circumstances may be considered as grounds for rejection of an application for residency or for revocation of residency and subsequent discharge. (When an application is rejected or a resident discharged, the applicant/resident will be given written notification of his intended application rejection or his discharge, in accordance with the provisions in Subsection 982.03.) (3-30-01)

01. Disposal of Assets. If the Home Administrator determines that an applicant/resident has disposed of assets following or within ~~thirty-sixty~~ (360) months preceding initial application for residency, which would have the effect of reducing his maintenance charge, such action can lead to rejection of the application or discharge from a Home. (3-20-04)()

02. Failure to Pay Maintenance Charge. Refusal or failure to pay the established maintenance charge can be cause for discharge from a Home. If the resident is so discharged, or leaves a Home voluntarily, he will not be eligible for readmission to a Home until all indebtedness to the Home is paid in full, or acceptable arrangements have been made with the Home Administrator for repayment. (3-30-01)

03. Failure to Pay for Services. (3-30-01)

a. Residents who are excluded from receiving free services from a VA Medical Center may elect to purchase such services through a sharing agreement or contract between a Home and a VA Medical Center or an outside provider when such sharing agreement or contract exists. In those cases where sharing agreement or contract costs are borne by a Home, the resident must reimburse the Home for the costs of services provided. (3-30-01)

b. Failure to reimburse a Home or a service provider within ten (10) days after receipt of a bill for services provided under a sharing agreement or contract may result in a resident's discharge from the Home. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

982. PROVISIONS FOR CONTESTED CASES.

01. Inapplicability of Idaho Rules of Administrative Procedure of the Attorney General. All contested cases shall be governed by the provisions of these rules. The Veterans Affairs Commission and Administrator of the Division of Veterans Services find that the provisions of IDAPA 04.11.01.000, et seq., Idaho Rules of Administrative Procedure of the Attorney General, are inapplicable and inappropriate for contested cases before the Veterans Affairs Commission, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 67-5206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01.000, et seq., "Idaho Rules of Administrative Procedure of the Attorney General." (3-30-01)

02. Hearing Rights. Through compliance with these rules, residents and applicants have the following rights to a hearing: (3-30-01)

a. If a resident of a Home is notified of pending disciplinary action, including discharge, the resident will be afforded an opportunity for a hearing with the Veterans Affairs Commission. A resident of a Home must attempt to resolve the violations stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing before the Commission. (3-20-04)

b. If an application for residency in a Home is rejected, the applicant may request a hearing before the Veterans Affairs Commission. (3-30-01)

c. If an application for emergency relief is denied, the applicant may request a hearing before the Veterans Affairs Commission. (3-30-01)

03. Notice of Action. The Home Administrator or his designee must notify the applicant/resident of any action to be taken regarding rejection of an application or discharge from a Home. (3-20-04)

a. The notice of intended action must be in writing. (3-30-01)

b. The notice must state the following: (3-30-01)

i. The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; (3-30-01)

ii. The effective date of the action; (3-30-01)

iii. The applicant's/resident's right to request a hearing according to the provisions in Section 982 of these rules; and ~~(3-30-01)~~(____)

iv. The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05 of these rules. ~~(3-30-01)~~(____)

c. The following notification deadlines are established for Domiciliary Care only: (3-30-01)

i. Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsection 354.01 of these rules. ~~(3-20-04)~~(____)

ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)

d. The following notification deadlines are established for Residential Care only: (3-30-01)

i. Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules. ~~(3-20-04)~~(____)

ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)

e. The following notification deadlines are established for Nursing Care only: (3-30-01)

i. Discharge notices must be sent to the resident thirty (30) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01 of these rules. ~~(3-20-04)~~(____)

ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)

04. Notice of Denial of Emergency Relief. The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. (3-30-01)

- a. The notice of denial must be in writing. (3-30-01)
- b. The notice must state the following: (3-30-01)
- i. The reason for denial and a reference to the pertinent rules under which the denial was made; and (3-30-01)
- ii. The applicant's right to request a hearing according to the provisions in these rules; and (3-30-01)
- iii. The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05 of these rules. (~~3-30-01~~)(____)
- c. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. (3-30-01)
- 05. Requesting a Hearing.** (3-30-01)
- a. A request for a hearing from a resident or an applicant for residency in an Idaho State Veterans Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or scheduling before the Commission. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Subsection 982.02.a. of these rules. Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (~~3-30-01~~)(____)
- b. A request for a hearing from an applicant for emergency relief must be submitted through the Veterans Services Program Supervisor to the Division Administrator for possible resolution or scheduling before the Commission. Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (3-30-01)
- c. A request for a hearing must be in writing and signed by the applicant/resident. (3-30-01)
- d. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-30-01)
- e. Pending a hearing, benefits will be continued or held in abeyance as follows: (3-30-01)
- i. Benefits for domiciliary care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Subsection 3540.01.a. of these rules. (~~3-30-01~~)(____)
- ii. Benefits for residential care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Subsection 350.01.a. of these rules. (~~3-30-01~~)(____)
- iii. Benefits for nursing care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Subsection 350.01.a. of these rules. (~~3-30-01~~)(____)
- iv. Benefits for emergency relief applicants will not be granted until the Commission renders a written decision following the hearing. (3-30-01)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.21.01 - RULES OF THE IDAHO STATE CONTRACTORS BOARD
DOCKET NO. 24-2101-0701
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 14, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-5207, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2007.

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

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

This addition to the rules would allow the Board to consider felony convictions when determining eligibility for registration in order to protect the public.

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

To protect the public by allowing the board to consider felony convictions when reviewing applications for registration.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is to assist the board in the application process and protect the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

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 August 22, 2007.

DATED this 28th day of June, 2007.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-2101-0701

151. -- 1764. (RESERVED).

165. ADDITIONAL QUALIFICATIONS FOR REGISTRATION (RULE 165).

Applicants for a registration shall meet the following qualifications in addition to those set forth in Section 54-5210, Idaho Code and these rules. (6-14-07)T

01. Felony Conviction. Not have been convicted of any felony in a state or federal court; provided the applicant may make written request to the board for an exemption review to determine the applicant's suitability for registration, which the board shall determine in accordance with the following: (6-14-07)T

02. Exemption Review. The exemption review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for registration. The board may, at its discretion, grant an interview of the applicant. (6-14-07)T

a. During the review, the board shall consider the following factors or evidence: (6-14-07)T

i. The severity or nature of the felony; (6-14-07)T

ii. The period of time that has passed since the felony under review; (6-14-07)T

iii. The number or pattern of felonies or other similar incidents; (6-14-07)T

iv. The circumstances surrounding the crime that would help determine the risk of repetition; (6-14-07)T

v. The relationship of the crime to the registered practice of construction; and (6-14-07)T

vi. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation. (6-14-07)T

b. The applicant shall bear the burden of establishing his current suitability for registration. (6-14-07)T

03. Fraud in Application Process. The registration application and supporting documents are free from any fraud or material misrepresentations. (6-14-07)T

166. -- 174. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

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

September 6, 2007 -- 4:00 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution in Idaho are consistent with federal regulations. This proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2007. Sections 200, 204, and 205 also include citations to federal regulations incorporated by reference in the state rules. DEQ proposes to revise Sections 200, 204, and 205 to eliminate the need to annually revise the effective date of the Code of Federal Regulations in those sections.

This rulemaking also deletes references to the clean unit and pollution control project provisions, which are expressly excluded from incorporation by reference into the state rules. These references, which are found at Subsections 107.03.a.i., 107.03.d., 204.01., and 205.01, are no longer necessary because EPA recently adopted a final rule eliminating the pollution control project and clean unit provisions from the federal regulations.

Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulations of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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.

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

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 6, 2007.

DATED this 29th day of June, 2007.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
pwilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0701

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)
- h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

08. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is "marginal" or "moderate," one hundred (100) tpy or more, if the area is "serious," fifty (50) tpy or more, if the area is "severe," twenty-five (25) tpy or more, and if the area is "extreme," ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

11. Part 70. Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2006, are hereby incorporated by reference. (~~3-30-07~~)()

12. Permit Revision. Any permit modification, administrative amendment or reopening. (3-19-99)

13. Phase II Source. A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

14. Phase II Unit. A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

15. Proposed Permit. The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)

16. Section 502(b)(10) Changes. Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)

17. Tier I Operating Permit. Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- and
- a. All federal publications: U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; (3-20-04)
 - b. All documents herein incorporated by reference: (7-1-97)
 - i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)
 - ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)
- 03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)
- a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans and Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Parts 51 revised as of July 1, 2006. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (~~3-30-07~~)(____)
 - i. ~~The clean unit and pollution control project provisions in 40 CFR 51.165;~~ (~~3-30-07~~)
 - ii. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)
 - iii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)
- b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - c. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, 40 CFR 51.301, 51.304(a), 51.307, and 51.308, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - d. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, ~~excluding the clean unit and pollution control project provisions in 40 CFR 52.21;~~ revised as of July 1, 2006. (~~3-30-07~~)(____)
 - e. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - f. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - g. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - h. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - i. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - j. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - k. Permits, 40 CFR Part 72, revised as of July 1, 2006. (~~3-30-07~~)(____)
 - l. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2006. (~~3-30-07~~)(____)

- m. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2006~~7~~. ~~(3-30-07)~~(____)
- n. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- o. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2006~~7~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. ~~(3-30-07)~~(____)
- p. 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. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.

The purposes of Sections 200 through 228 is to establish uniform procedures and requirements for the issuance of "Permits to Construct." As used throughout Sections 200 through 228 and 578 through 581, major facility shall be defined as major stationary source in 40 CFR 52.21(b), ~~revised as of July 1, 2005~~ incorporated by reference into these rules at Section 107, and major modification shall be defined as in 40 CFR 52.21(b), ~~revised as of July 1, 2006~~ incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.gpoaccess.gov/ecfr. ~~(3-30-07)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.

New major facilities or major modifications proposed for location in a nonattainment area and which would be major for the nonattainment regulated air pollutant are considered nonattainment new source review (NSR) actions and are subject to the requirements in Section 204. Section 202 contains application requirements and Section 209 contains processing requirements for nonattainment NSR permitting actions. The intent of Section 204 is to incorporate the federal nonattainment NSR rule requirements. (4-6-05)

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 51.165, ~~excluding the clean unit and pollution control project provisions, revised as of July 1, 2005~~, are ~~hereby~~ incorporated by reference into these rules at Section 107. Requirements contained in the following subparts of 40 CFR 52.21, ~~revised as of July 1, 2006~~, are ~~hereby~~ incorporated by reference at Section 107 of these rules. These CFR sections have been codified in the electronic CFR which is available at www.gpoaccess.gov/ecfr

40 CFR Reference	40 CFR Reference Title
40 CFR 51.165(a)(1)	Definitions
40 CFR 51.165(a)(2)(ii)(A) - (J)	Applicability Provisions

40 CFR Reference	40 CFR Reference Title
40 CFR 51.165(a)(6)(i) - (v)	Applicability Provisions
40 CFR 52.21(aa)	Actual PALs

(3-30-07)()

02. Additional Requirements. The applicant must demonstrate to the satisfaction of the Department the following: (4-6-05)

a. LAER. Except as otherwise provided in Section 204, the new major facility or major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: (4-6-05)

i. A new major facility would meet the lowest achievable emission rate at each new emissions unit which emits the nonattainment regulated air pollutant; and (4-5-00)

ii. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit which has a net emissions increase of the nonattainment regulated air pollutant. (4-5-00)

b. Required offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, facilities, and/or mobile sources in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the requirements for emission reduction credits (Section 460) and provide for a net air quality benefit which satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct shall not be issued for the new major facility or major modification until the offsetting reductions are made enforceable through the issuance of operating permits. The new major facility or major modification may not commence operation, and an operating permit for the new major facility or major modification shall not be effective before the date the offsetting reductions are achieved. (4-5-00)

c. Compliance status. All other sources in the State owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such person, are in compliance with all applicable emission limitations and standards or subject to an enforceable compliance schedule. (5-1-94)

d. Effect on visibility. The effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from Section 204 by the Department. (3-30-07)

03. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 51.165 or 40 CFR 52.21 incorporated in Section 204, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.

The prevention of significant deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. Section 202 contains application requirements and Section 209 contains processing requirements for PSD permit actions. The intent of Section 205 is to incorporate the federal PSD rule requirements. (4-6-05)

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 52.21, ~~excluding the clean unit and pollution control project provisions, revised as of July 1, 2006,~~ are ~~hereby~~ incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.gpoaccess.gov/ecfr.

40 CFR Reference	40 CFR Reference Title
40 CFR 52.21(a)(2)	Applicability Procedures
40 CFR 52.21(b)	Definitions
40 CFR 52.21(i)	Review of Major Stationary Sources and Major Modifications - Source Applicability and Exempting
40 CFR 52.21(j)	Control Technology Review
40 CFR 52.21(k)	Source Impact Analysis
40 CFR 52.21(r)	Source Obligation
40 CFR 52.21(v)	Innovative Control Technology
40 CFR 52.21(w)	Permit Rescission
40 CFR 52.21(aa)	Actual PALS

(3-30-07)()

02. Effect on Visibility. The applicant must demonstrate that the effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from this requirement by the Department.

(3-30-07)

03. Exception to Incorporation by Reference of 40 CFR 52.21. Every use of the word Administrator in 40 CFR 52.21 means the Department except for the following: (4-6-05)

a. In 40 CFR 52.21(b)(17), the definition of federally enforceable, Administrator means the EPA Administrator. (4-6-05)

b. In 40 CFR 52.21(l)(2), air quality models, Administrator means the EPA Administrator. (4-6-05)

c. In 40 CFR 52.21(b)(43), permit program approved by the Administrator, Administrator means the EPA Administrator. (4-6-05)

d. In 40 CFR 52.21(b)(48)(ii)(c), MACT standard that is proposed or promulgated by the Administrator, Administrator means the EPA Administrator. (4-6-05)

e. In 40 CFR 52.21(b)(50)(i), regulated NSR pollutant as defined by Administrator, Administrator means the EPA Administrator. (4-6-05)

04. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 52.21 incorporated in Section 205, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. (4-6-05)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants" (Grant Rules), for consistency with the environmental review of IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans," (Loan Rules), Section 042. The two sets of rules have different requirements for environmental information document preparation and there is no need for the difference. The current structure of the Grant Rules requires that the grant applicant prepare an environmental information document of a uniform scope, regardless of the need for mitigation. Compliance with the Grant Rules adds a burden to both the applicant and DEQ when a project qualifies for a categorical exclusion. An efficiency would be achieved by adopting the process used for wastewater facility loans, in which categorical exclusions are specifically allowed with a lower level of effort. Section 042 of the Loan Rules will be used as a model for the environmental review process for grants.

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of references to construction and other obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Cities, counties, districts and associations that own and operate wastewater treatment facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 61, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0104-0701

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and Chapter 36, Title 39, Idaho Code, ~~did~~ adopted the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho. (5-3-03)(____)

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." (5-3-03)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program for providing financial assistance to qualifying entities ~~for the construction of wastewater treatment facilities to prepare a preliminary engineering report or facility plan.~~ (3-15-85)(____)

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (5-3-03)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (____)

0034. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (5-3-03)(____)

02. Availability of Referenced Material. The "Wastewater Facilities Loan Account Handbook of Procedures" (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (____)

005. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

0046. POLICY.

It is the policy of the Idaho State Board of Environmental Quality through the Department of Environmental Quality to administer the Wastewater Treatment Facility Grant Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (5-3-03)()

0057. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. Any qualifying entity making application for wastewater treatment facility grant funds. (5-3-03)

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 information document~~ nor an environmental impact statement is required. (5-3-03)()

04. 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. (3-15-85)

~~**05. 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, other action necessary in the construction of wastewater treatment facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)~~

065. Department. The Idaho Department of Environmental Quality. (1-3-78)

076. Director. The Director of the Idaho Department of Environmental Quality or ~~his/her~~ the Director's designee. (5-3-03)()

087. Domestic Wastewater. Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. (3-15-85)

~~**098. Eligible Costs.** Costs which are necessary for planning, and/or designing and/or constructing wastewater treatment facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)()~~

~~**109. 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 responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)()~~

~~**110. Environmental Impact Statement (EIS).** A document prepared by the ~~grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook~~ applicant when the Department determines that the proposed ~~drinking~~ wastewater ~~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. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. ~~(5-3-03)()~~

121. Facility Plan. A plan that describes the overall system, including the collection system, the treatment system, and the disposal system. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. The plan also includes a 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 selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. ~~(5-3-03)()~~

132. Finding of No Significant Impact (FONSI). 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~~ information document or a summary of it and shall note any other environmental documents related to it. ~~(5-3-03)()~~

143. Handbook. "Wastewater Facilities Loan Account Handbook of Procedures." ~~(5-3-03)()~~

154. Ineligible Costs. Costs which are described in Subsection 041.065. ~~(5-3-03)()~~

165. 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. (3-15-85)

~~**17. 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. (5-3-03)~~

186. 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). (5-3-03)

197. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)

2018. O & M Manual. A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. (10-6-88)

~~**21. Phasing.** One (1) portion of a design or construction project needed to complete the total eligible project. Each phase may be made up of several engineering or construction contracts. (1-1-82)~~

~~**22. Plan of Operation.** A schedule of specific actions and completion dates for construction, start up, operator training and operation of the wastewater treatment facility. (10-6-88)~~

19. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). ()

230. 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. (5-3-03)

241. 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. (3-15-85)

252. Preliminary Engineering Report. An engineering report ~~which compares~~ that addresses specific portions of the system(s) as they are being contemplated for design. These reports address specific purpose and scope, design requirements, a comparison of wastewater treatment facility alternatives, solutions and identify the most cost effective, environmentally sound alternative. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. A preliminary engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a preliminary engineering report may be found in the Handbook. ~~(10-6-88)()~~

263. Priority List. A list of proposed projects rated by severity as described in Section 020. (5-3-03)

274. Qualifying Entity. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater; ~~municipality.~~ ~~(1-1-87)()~~

285. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)

296. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-82)

3027. Sewer Use Ordinance/Sewer Use Resolution. An ordinance ~~adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law~~ or resolution 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. ~~(10-6-88)()~~

3128. State. The state of Idaho. (3-15-85)

32. Supplemental Grant. ~~A grant awarded to a municipality in conjunction with a loan from the wastewater facility loan program.~~ ~~(5-3-03)~~

3329. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (10-6-88)

340. Termination. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (10-6-88)

351. Treatment Plant. That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)

362. 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, ~~and~~ operation, and maintenance, and replacement of the wastewater treatment facility. ~~(10-6-88)()~~

373. 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. (3-15-85)

384. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and

appurtenances thereof, 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 and land disposal systems. (10-6-88)

~~006.--009: (RESERVED).~~

~~010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.~~

~~No grants shall be awarded for the design and construction phases of projects unless the applicant has demonstrated that it has the legal, institutional, managerial, and financial capability to insure construction, operation and maintenance, including equipment replacement, of the proposed wastewater treatment facility, and including the qualifying entity's share of the cost of the project. (5-3-03)~~

~~01. Information Needed. The applicant must submit legal, institutional, managerial and financial information on a form prescribed by the Department. (5-3-03)~~

~~02. Incorporated Nonprofit Applicants. To fully meet the requirements of Subsection 010.01, incorporated nonprofit applicants must demonstrate that all of the following items are included in its Articles of Incorporation and/or Bylaws: (5-3-03)~~

- ~~a. The corporation is nonprofit and incorporated according to Title 30, Chapter 3, Idaho Code. (5-3-03)~~
- ~~b. Membership in the corporation is limited to property owners only, with one (1) vote per lot or parcel. (5-3-03)~~
- ~~c. Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining. (5-3-03)~~
- ~~d. Corporation membership is not eliminated by cancellation of voting rights. (5-3-03)~~
- ~~e. The purpose of the corporation is clearly defined. (5-3-03)~~
- ~~f. Funds generated to operate one (1) function of a multipurpose corporation, i.e., one (1) providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function. (5-3-03)~~
- ~~g. The corporation owns the system it intends to maintain. (5-3-03)~~
- ~~h. Mutually agreeable access to a system owned by the corporation is provided by the property owners. (5-3-03)~~
- ~~i. Membership and share, if any, in the corporation is tied to land ownership such that successive owners must acquire the preceding owner's membership, or voting shares, if any. (5-3-03)~~
- ~~j. New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation. (5-3-03)~~
- ~~k. No provision(s) restricts ownership of improved property. (5-3-03)~~
- ~~l. The corporation is capable of raising revenue by fixing and collecting user charges. (5-3-03)~~
- ~~m. The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership. (5-3-03)~~
- ~~n. The corporation is capable of suing and of being sued, and will maintain the capability to impose liens on the real property of those members (shareholders) who become delinquent in user charges and further has the capability to suspend services, providing such suspension will not jeopardize use by other members. (5-3-03)~~

~~o.~~ Operation and maintenance functions of the corporation are identified in a manual for that purpose that is or will be approved by the Department. No changes can be made to the manual without consent by the Department. (5-3-03)

~~p.~~ The conditions for dissolution of the corporation are specified in the Declaration of Covenants. Dissolution is limited to connection to municipal facilities or merger with another approved nonprofit entity having financial and management capability for the merged system. (5-3-03)

~~q.~~ Except as provided in Subsection 010.02.p., the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval. (5-3-03)

~~r.~~ A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance. (5-3-03)

~~s.~~ The corporation is able to plan and control how and at what time additional service functions will be extended or added. (5-3-03)

~~t.~~ If the Articles of Incorporation and/or Bylaws provide for proxy voting, such proxies will not be binding on a new purchaser of the property. (5-3-03)

~~u.~~ Developers will contribute to the operation and maintenance functions until such time as the nonprofit corporation is self-sustaining. Consider either a specified period or when a specified number of lots or parcels have been sold. (5-3-03)

~~v.~~ The corporation has defined service area boundaries. (5-3-03)

~~03.~~ **Cost Allocation.** An applicant proposing to construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (5-3-03)

~~a.~~ The basis upon which the costs are allocated; and (3-15-85)

~~b.~~ The formula by which the costs are allocated; and (3-15-85)

~~c.~~ The manner in which the cost allocation system will be administered. (3-15-85)

~~04.~~ **Waiver.** The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)

~~a.~~ Such an agreement is already in place; or (3-15-85)

~~b.~~ There is documentation of a service relationship in the absence of a formal agreement; or (3-15-85)

~~c.~~ The entity providing wastewater treatment exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying wastewater fails to participate. (3-15-85)

~~0108.~~ -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria. (5-3-03)(____)

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system wherein each succeeding prevention, control or abatement need is weighted less heavily than the preceding need. Priority criteria, listed herein in descending numerical weight, shall contain the following points: (3-15-85)

a. Public health emergency certified by the ~~Department~~ Idaho State Board of Environmental Quality or by a District Board of Health - fifty (50) points. (~~10-6-88~~)()

b. Documented public health hazard identified by a District ~~Boards of Health~~ Department or the Department - fifteen (15) points. (~~3-15-85~~)()

c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, ~~Section 102~~, "Water Quality Standards" - fifteen (15) points. (~~12-31-91~~)()

d. Potential public health hazard and/or water quality impact: (1-1-87)

i. Potential public health hazard which is suspected but may not be documented by District Boards of Health or the Department three (3) or five (5) or seven (7) points. (3-15-85)

ii. Potential water quality impacts other than public health which may affect the intended use of surface or groundwaters as identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards" - three (3) or five (5) or seven (7) points. (3-15-85)

e. The points in Subsections 020.02.d.i. and 020.02.d.ii. shall be selected based on the proportion of the population in contact with the pollutant, or the quantity of wastewater discharged in relation to the volume of the receiving water, or the relation of the pollutant quantity to other pollutant sources. (12-31-91)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-15-85)

05. Priority Target Date. A qualifying entity whose project is on the approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (5-3-03)

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project(s) that are ready to proceed. A ~~municipality~~ qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (~~3-15-85~~)()

021. -- 029. (RESERVED).

030. PROJECT FUNDING.
Grant funds awarded under this program will be used entirely to prepare a preliminary engineering report or facility plan which identifies the most cost effective, environmentally sound wastewater system alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1251 et seq., and which is approvable by the Department. ()

01. ~~Project Step Funding.~~ ~~Projects may be funded in four (4) steps:~~ Preliminary Engineering Report or Facility Plan. (~~5-3-03~~)()

~~a. Step 1. Facilities planning, which will include:~~ The preliminary engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The preliminary engineering report or facility plan shall include, as a minimum, the following: (3-15-85)()

~~i. Preliminary engineering report prepared by an engineer licensed in the state of Idaho and on a form prescribed by the Department; or~~ Description of existing conditions for the proposed project area; (3-15-85)()

~~ii. Facility plan prepared in accordance with the Handbook.~~ Description of future conditions for the proposed project area; (5-3-03)()

~~iii. Development and initial screening of alternatives;~~ ()

~~iv. Final screening of principal alternatives and plan adoption;~~ ()

~~v. Selected plan description and implementation arrangements;~~ ()

~~vi. Relevant engineering data supporting the final alternative; and~~ ()

~~vii. Level of environmental review specified by the Department as described in Section 042.~~ ()

~~b. Step 2. Design and specifications, which includes the preparation of the detailed plans and specifications necessary for the bidding and construction of the project.~~ The preliminary engineering report or facility plan must be reviewed and approved by the Department. (1-3-78)()

~~c. Step 3. Construction, which includes bidding and actual construction of the project.~~ The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (1-3-78)()

~~d. Step 4. A combination of Step 2 and Step 3.~~ At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The most cost effective environmentally sound alternative shall be selected and may be based in part on public comments received from intended users affected by the proposed project. (3-15-85)()

~~02. Combination Step Funding. Projects may be funded in any combination of the steps in Subsection 030.01 with the approval of the Department.~~ **Limitation on Funding Assistance.** The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (12-31-91)()

~~03. Cost Effective Requirement. Step 2, Step 3 or Step 4 grants will not be awarded until a final cost effective environmentally sound alternative has been selected by the Step 1 facility plan or preliminary engineering report as approved by the Department. The most cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by intended users within the jurisdiction of the qualifying agency and conducted in accordance with state law.~~ (5-3-03)

~~04. Supplemental Grants. In conjunction with loans provided to municipalities from the wastewater facility loan program, the Department may award supplemental grants in the following manners:~~ (5-3-03)

~~a. Planning and design projects may receive up to ninety percent (90%) funding of eligible costs; and~~ (10-6-88)

~~b. Construction projects may receive up to ninety percent (90%) funding of eligible costs that exceed the amount a loan recipient is able to pay as determined by the Department's published guidelines.~~ (10-6-88)

~~05. Funding for Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department.~~ (3-15-85)

~~06. **Nondomestic Capacity Limitation.** Grant funds, including supplemental grant funds, shall not be awarded for construction of treatment capacity for any single nondomestic source which is determined to be:~~

~~(10-6-88)~~

~~a. Contributing ten percent (10%) or more of the organic or hydraulic loading of the sewage treatment works; or~~

~~(1-1-82)~~

~~b. If the source requires installation of special treatment processes that add an increment of ten percent (10%) or more to the capital costs of the sewage treatment works; and~~

~~(1-1-82)~~

~~c. Any nondomestic source discharge exceeding the provisions in Subsections 030.06.a. and 030.06.b. shall be required to purchase the entire portion of their needed treatment capacity.~~

~~(5-3-03)~~

~~08. **Eligible and Ineligible Project Costs for Supplemental Grants.** Eligible and ineligible costs for supplemental grants are delineated in Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Wastewater Treatment Facility Loans."~~

~~(10-6-88)~~

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d.

(5-3-03)

032. -- 039. (RESERVED)

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form as prescribed by the Department.

(5-3-03)

02. Application Requirements. Applications shall contain the following documentation as applicable:

(5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and

(5-3-03)

b. Contracts for engineering services or other technical services, and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041.

(5-3-03)

c. ~~Step 1 Facility Planning~~ Preliminary Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the preliminary engineering report or facility plan, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks.

~~(10-6-88)~~(____)

d. ~~Step 2 Design or Step 4 Design and Construction:~~

~~(3-15-85)~~(____)

i. Preliminary engineering report or facility plan; and

(3-15-85)

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and

(3-15-85)

e. ~~Step 3 Construction:~~

~~(3-15-85)~~

i. ~~Documented evidence of all needed easements and land acquisition; and~~

~~(5-3-03)~~

ii. ~~Biddable plans and specifications of the approved wastewater treatment facility alternative; and~~

- ~~(3-15-85)~~
- iii. A plan of operation and project schedule; and* (3-15-85)
- iv. A user charge, sewer use ordinance and financial management system; and* (3-15-85)
- v. A staffing plan and budget.* (3-15-85)
- f.** ~~Step 4 Design and Construction. Application grantees must submit all documentation specified in Subsection 040.02.c. prior to advertising for bids on construction contracts.~~ (5-3-03)
- g.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)
- i.* Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)
- ii.* Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)
- iii.* Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)
- iv.* Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application. (5-3-03)
- h.** A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041. (5-3-03)
- i.** A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections ~~67-2801 et seq., 67-2320, 50-344, 59-1026,~~ and 42-3212, Idaho Code. ~~(5-3-03)()~~
- j.** A statement regarding how the non-grant portion of the project will be funded. (5-3-03)
- 03. Determination of Completeness of Application.** Applications will be reviewed to determine whether they contain all of the information required by Subsection 040.02. (5-3-03)
- 04. Phasing of Project.** ~~Project phasing will be allowed through agreement between the municipality and the Department or as may be required by availability of funds.~~ (1-1-82)
- 054. Notification of Incompleteness of Application.** Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)
- 065. Reapplication for Grant.** The action of disapproving, recalling or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when project deficiencies are resolved and project readiness is secured, provided the applicant remains on the approved priority list. (10-6-88)
- 041. DETERMINATION OF ELIGIBILITY OF COSTS.**
The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)
- 01. Eligible Costs.** Eligible costs are those determined by the Department to be: (5-3-03)

- a. Necessary for planning, ~~or~~ designing ~~and/or constructing~~ wastewater treatment facilities; (5-3-03)(____)
- b. Reasonable; and (5-3-03)
- c. Costs that are not ineligible as described in Subsection 041.065. (5-3-03)(____)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or preliminary engineering report for design ~~and construction~~ of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. (5-3-03)(____)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections ~~67-2801 et seq., 67-2320, 50-344~~ 59-1026, and 42-3212, Idaho Code. (5-3-03)(____)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses ~~of local government~~ such as salaries and expenses of a mayor, city council members or a city attorney; (5-3-03)(____)

~~b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)~~

~~eb. Contracts for Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)(____)~~

~~dc.~~ Planning directly related to the water pollution control projects; (5-3-03)

~~ed.~~ Sewer system evaluations; (5-3-03)

~~fe.~~ Financial and management capability analysis; (5-3-03)

~~gf.~~ Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

~~h.~~ Landscaping; (5-3-03)

~~i.~~ Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)

~~j.~~ Material acquired, consumed, or expended specifically for the project; (5-3-03)

~~k.~~ A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

~~l.~~ Preparation of an operation and maintenance manual; (5-3-03)

~~m.~~ Preparation of a plan of operation; (5-3-03)

~~n.~~ Start up services; (5-3-03)

- ~~o.~~ ~~Project identification signs;~~ (5-3-03)
- ~~p.~~ Public participation for alternative selection; (5-3-03)
- ~~q.~~ Development of user charge and financial management systems; (5-3-03)
- ~~r.~~ Development of sewer use ordinance or resolution; (5-3-03)(____)
- ~~s.~~ Staffing plans and budget development; (5-3-03)
- ~~t.~~ Certain direct and other costs as determined eligible by the Department; (5-3-03)
- ~~u.~~ Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
- ~~v.~~ Costs of complying with the ~~Federal Water Pollution Control Act (P.L. 92-500) as amended~~ Clean Water Act, 33 U.S.C Sections 1251 et seq., loan requirements applied to specific projects; and (5-3-03)(____)
- ~~w.~~ ~~Site acquisition costs, including sewer right of way, sewage treatment plant site, sanitation landfills and sludge disposal areas~~ services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and for land for purchase through future State Revolving Fund loan funding. (5-3-03)(____)
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a.** Basin or area wide planning not directly related to the project; (5-3-03)
- ~~b.~~ ~~Bonus payments not legally required for completion of construction before a contractual completion date;~~ (5-3-03)
- ~~c.~~ Personal injury compensation or damages arising out of the project; (5-3-03)
- ~~d.~~ Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- ~~e.~~ Costs outside the scope of the approved project; (5-3-03)
- ~~f.~~ Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, ~~or city attorney, or district personnel costs and acquiring project funding;~~ and (5-3-03)(____)
- ~~g.~~ ~~Construction of privately owned wastewater treatment facilities;~~ (5-3-03)
- ~~h.~~ ~~Cost of land in excess of that needed for the proposed project.~~ (5-3-03)
- ~~i.~~ Cost of refinancing existing indebtedness. (5-3-03)
- 06. Notification Regarding Eligible Costs.** Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)
- 07. Eligible Costs and the Grant Offer.** The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, ~~such as construction costs~~. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)(____)

042. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ **Environmental Documentation.** The applicant ~~will~~ shall complete an environmental ~~information document (EID) review~~ as part of and in conjunction with a ~~preliminary~~ engineering report or a facility plan. ~~The review will be done in accordance with~~ Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall ~~also~~ consult with the Department at an early stage in the preparation of the ~~preliminary~~ engineering report or facility plan to determine the required level of environmental review. ~~The environmental information document (EID) will include, as a minimum, the following~~ Based on review of existing information and assessment of environmental impacts, the applicant shall complete one of the following, per the Department's instruction: (5-3-03)(____)

a. ~~Description of purpose and need for proposed action~~ Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-3-03)(____)

b. ~~Description of the proposed alternative, including the proposed action~~ Prepare an Environmental Information Document (EID) in a format specified by the Department; or (5-3-03)(____)

c. ~~Description of the affected environment;~~ Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-3-03)(____)

~~d. Discussion of the environmental impacts of the proposed action;~~ (5-3-03)

~~e. The means to mitigate adverse environmental impacts;~~ (5-3-03)

~~f. Description of public participation process;~~ (5-3-03)

~~g. List of referenced documents;~~ (5-3-03)

~~h. List of agencies consulted; and~~ (5-3-03)

~~i. Mailing list of interested parties.~~ (5-3-03)

02. ~~Department Action.~~ Based on review of the environmental information document (EID), the Department shall take one (1) of the following actions **Categorical Exclusion.** If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (5-3-03)(____)

a. ~~Issue a Categorical Exclusion (CE) with supporting documentation~~ Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department shall publish a notice of CE in a local newspaper, following which the preliminary engineering report or facility plan can be approved; or (5-3-03)(____)

b. ~~Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or~~ Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID. (5-3-03)(____)

~~e. Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to the Department for approval.~~ (5-3-03)

03. **Environmental Information Document Requirements.** When an EID is required, the applicant

shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. ()

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or draft a "finding of no significant impact" (FONSI). ()

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the preliminary engineering report or facility plan. ()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: ()

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ()

c. Conduct a public hearing which may be in conjunction with a preliminary engineering report or facility plan hearing; and ()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The preliminary engineering report or facility plan can be completed once the final EIS has been approved by the Department. ()

037. Use of Environmental Reviews ~~Prepared~~ Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, in its discretion, issue its own determination by adopting the document and public notification process of the other agency. (5-3-03)()

048. Validity of Review. Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (5-3-03)

a. Reaffirm the earlier decision; or (5-3-03)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (5-3-03)

043. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered to successful applicants by representatives of the Department or by registered mail. (3-15-85)

02. Acceptance of Grant Offer. Applicants have ~~thirty~~ sixty (~~30~~) days in which to officially accept the grant offer on prescribed forms furnished by the State. The ~~thirty~~ sixty (~~30~~) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the ~~thirty~~ sixty (~~30~~) day period the grant funds may be offered to the next project of priority. (~~3-15-85~~)()

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-15-85)

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of the project. Some eligible costs may be estimated and the grant payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to: (3-15-85)

a. Terms consistent with this chapter and consistent with the Step covered by the grant offer; and (12-31-91)

b. Special clauses as determined necessary by the Department for the successful investigation, design, ~~construction~~ and management of the project; and (~~3-15-85~~)()

c. Terms consistent with applicable state and federal laws pertaining to preliminary engineering reports or facility plans, and design ~~and construction~~; and (~~3-15-85~~)()

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 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 steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (~~5-3-03~~)()

e. The project documents shall be ~~bid, contracted and constructed according to~~ in accordance with the current edition of Idaho Standards for Public Works Construction (ISPWC) unless the grantee otherwise has approved and adopted acceptable public works construction standards approved by the Department. (~~5-3-03~~)()

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Payments for State Grants. Requests for payment will be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (5-3-03)

02. Limitations on Advance Payments. Advanced payment will not be made on a project unless a written request from the grantee for a waiver is approved by the Board. (10-6-88)

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-15-85)

04. Increases for Bid Underestimates. Increases for bid underestimates may be considered for grant increase; however, errors of omission or engineering consultant errors will not be considered. (10-6-88)

05. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-15-85)

06. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grantee may be reviewed by the Department. ~~The review may be deferred until the review of the design/construction loan is performed.~~(5-3-03)(____)

07. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until ~~the project review has been completed or deferred, or after final inspection, if the grant provides funding for construction, final~~ approval of the engineering, ~~or~~ completion of the environmental review process ~~and final project review have been completed or deferred.~~ (5-3-03)(____)

061. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including its engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (5-3-03)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-15-85)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-6-85)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-15-85)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction;~~ or(3-15-85)(____)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-15-85)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-15-85)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-15-85)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the causes(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-15-85)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-15-85)

081. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration by the entity requesting the waiver that: (10-6-88)

01. Public Health Hazard. A significant public health hazard exists; or (10-6-88)

02. Groundwater Contamination. A significant groundwater contamination problem exists; or (10-6-88)

03. Point Source Pollution. A significant point source of pollution exists, causing a violation of the Idaho Department of Environmental Quality rules, ~~for IDAPA 58.01.02, "Water Quality Standards," and wastewater treatment requirements; or~~ (10-6-88)(____)

~~**04. Affordability Criteria.** The project will exceed affordability criteria, acceptable to the Department, in the event that the waiver is not granted. (10-6-88)~~

082. -- 9959. (RESERVED).

~~**996. ADMINISTRATIVE APPEALS.**~~

~~Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (5-3-03)~~

~~**997. CONFIDENTIALITY.**~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." (3-15-02)~~

~~**998. INCLUSIVE GENDER.**~~

~~As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires. (3-15-85)~~

~~**999. SEVERABILITY.**~~

~~Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants," 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 the chapter. (1-3-78)~~

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community.

This proposed rule updates the federal regulations incorporated by reference to include those revised as of July 1, 2007. In addition, this proposed rule includes technical corrections and clarifies that, for the purpose of 40 CFR 261.41(a), Regional Administrator means U.S. Environmental Protection Agency Region 10 Regional Administrator.

Hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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

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.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208) 373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-0701

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2006~~7~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-30-07)~~(_____)

01. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (3-30-07)

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and (3-20-04)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. ~~(3-30-07)~~(_____)

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), except remanded waste codes "K064, K065, K066, K090 and K091" listed in 40 CFR Part 261 Appendix VII, *except "49 CFR 173.300" in 40 CFR 261.21(a)(3) as replaced with "49 CFR 173.115 or equivalent test methods in Chapter 7 of SW 846," except "49 CFR 173.151" in 40 CFR 261.21(a)(4) as replaced with "49 CFR 173.127"* and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.41(a), Regional Administrator shall be defined as U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification

required under this section should also be sent to the Director. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(3-30-07)(_____)~~

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the

CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

d. Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

e. Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

f. Records and Data Retention and Submittal. (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation by Reference. 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.21, 262.51, 262.53, 262.54(e), 262.54(g)(1), 262.60, and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States.

(~~3-30-07~~)(____)

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States.

(~~3-30-07~~)(____)

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71(a)(3) and 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~3-30-07~~)()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, "The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part," are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71(a)(3) and 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~3-30-07~~)()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~.

(~~3-30-07~~)()

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.(2)(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), "D009" is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) In 40 CFR 268.48(a), the entry for "2,4,6-Tribromophenol" is excluded.

(~~3-30-07~~)()

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively.

(~~3-30-07~~)()

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~, except that 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively.

(~~3-30-07~~)()

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation by Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. (~~3-30-07~~)()

02. Used Oil as a Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-30-07~~)()

017. (RESERVED).

018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.

40 CFR Part 267 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2006~~7~~. (~~3-30-07~~)()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code, 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 August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The U.S. Environmental Protection Agency promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule on January 4, 2006, and the Long Term 2 Enhanced Surface Water Treatment Rule on January 5, 2006. These are national primary drinking water regulations. As a state that has primacy for administering the Safe Drinking Water Act, Idaho must adopt these rules within two years of promulgation.

1. Stage 2 Disinfectants and Disinfection Byproducts Rule, 40 CFR Part 141, Subparts U and V: Requires public water systems that add a chemical disinfectant to their water to conduct distribution system evaluations aimed at identifying sites within the system that are subject to high levels of disinfection byproducts (DBP). These byproducts are formed when chemical disinfectants such as chlorine combine with naturally occurring organic matter in the water. Based upon the results of distribution system evaluation, systems are required to prepare and implement a revised DBP monitoring plan that will ensure more equitable protection of customers from these contaminants.
2. Long Term 2 Enhanced Surface Water Treatment Rule, 40 CFR Part 141, Subpart W: Requires systems that use surface water to monitor their source water in order to assess the occurrence of cryptosporidium, an important waterborne pathogen. Systems that find high levels of this organism in their source water will be required to provide additional treatment to ensure adequate removal and/or inactivation of cryptosporidium.

As a primacy agency, DEQ must adopt state rules that are no less stringent than the federal regulations. Under direction from the Idaho Legislature, DEQ must adopt state rules that are no more stringent than the federal regulations. To ensure that Idaho's rules will be neither more nor less stringent than the federal regulations, the proposed rule incorporates by reference the necessary federal regulations. 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 commenting on this proposed rule.

While not part of this rulemaking, DEQ is also seeking public comment on two guidance documents: "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule" and "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule." These documents provide assistance to public water system owners and operators in understanding and achieving compliance with the requirements of these rules and may be obtained at http://www.deq.idaho.gov/rules/drinking_water/58_0108_0701_proposed.cfm or by contacting Tom John at thomas.john@deq.idaho.gov or (208)373-0191.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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

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.

NEGOTIATED RULEMAKING: On April 4, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-4, pages 27 through 28, and a preliminary draft rule and issue paper describing the special primacy requirements were made available for public review. A meeting was held on April 24, 2007. No members of the public attended the meeting and no comments were received.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tom John, thomas.john@deq.idaho.gov, (208)373-0191.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007. Comments on the guidance documents may also be submitted to the undersigned.

Dated this 1st day of June, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0701

002. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIALS.

01. Incorporation by Reference. The following documents are incorporated by reference into these rules. (4-11-06)

a. 40 CFR Parts 141 and 143. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection of 40 CFR Parts 141 and 143 shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules. (4-11-06)

b. American Water Works Association (AWWA) Standards, effective July 2006, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337. (3-30-07)

02. Availability of Specific Referenced Material. Copies of specific documents referenced within these rules are available at the following locations: (4-11-06)

a. All federal regulations: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202)783-3238; U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206) 553-4270; or <http://www.gpoaccess.gov/index.html>. (4-11-06)

b. All documents incorporated by reference: Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (4-11-06)

- c.** Recommended Standards for Water Works: a report of the Water Supply Committee of the Great Lakes -- Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, published by Health Education Services, P.O. Box 7126, Albany, New York 12224, 2003, Telephone (518) 439-7286. (4-6-05)
- d.** Manual of Individual and Non-Public Water Supply Systems (EPA 570/9-91-004), published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.20402, Telephone (202) 782-3238. (5-3-03)
- e.** U.S. Department of Commerce, National Bureau of Standards Handbook, No. 69, "Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure" as amended in 1963, NCRP Publications, P.O. Box 20175, Washington, D.C. 20014. (12-10-92)
- f.** Rules of the Idaho Water Resources Board available at www.adm.idaho.gov/adminrules/rules/idapa37/37index.htm, or the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone (208) 287-4800. (3-30-07)
- g.** ANSI/NSF Standard 44-2002e -- 2004, Residential Cation Exchange Water Softeners, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- h.** ANSI/NSF Standard 53-2002e -- 2003, Drinking Water Treatment Units -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- i.** ANSI/NSF Standard 55-2002 -- 2002, Ultraviolet Microbiological Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- j.** ANSI/NSF Standard 58-2003 -- 2004, Reverse Osmosis Drinking Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- k.** ANSI/NSF Standard 60-2000a -- 2000, Drinking Water Treatment Chemicals -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- l.** ANSI/NSF Standard 61-2000a -- 2000, Drinking Water System Components -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. (4-6-05)
- m.** American Water Works Association (AWWA) Standards, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, (800) 926-7337, www.awwa.org. (3-30-07)
- n.** Cross Connection Control Manual, available from Pacific Northwest Section of the American Water Works Association, P.O. Box 19581, Portland, OR, 97280-0581, Telephone (503) 246-5845. (3-30-07)
- o.** Manual of Cross-Connection Control, Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, KAP-200 University Park MC-2531, Los Angeles, CA 90089-2531, (866)545-6340, www.usc.edu/dept/fccchr/. (3-30-07)
- p.** Manual on Slow Sand Filtration (1991), published by AWWA Research Foundation 6666 West Quincy Avenue, Denver, CO 80235, (800)926-7337, www.awwa.org. (3-30-07)
- q.** Slow Sand Filtration (1991), published by the American Society of Civil Engineers American Society of Civil Engineers,1801Alexander Bell Drive, Reston, VA 20191, (800)548-2723, www.asce.org. (3-30-07)

r. Slow Sand Filtration and Diatomaceous Earth Filtration for Small Water Systems, DOH Pub #331-204 (4/03), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm. (3-30-07)

s. Water System Design Manual, DOH Pub #331-123 (Rev. 8/01), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm. (3-30-07)

t. Submersible Motors: Application, Installation, Maintenance (Franklin Electric AIM manual), Franklin Electric, Bluffton, Indiana 46714, (800)348-2420, <http://www.franklin-electric.com/Manual/pdf/fullAIM.pdf>. (3-30-07)

u. Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources (March 1991 Edition), U.S. Environmental Protection Agency, <http://www.epa.gov/safewater/mdbp/implement.html>. (3-30-07)

v. Standard Methods for the Examination of Water and Wastewater, a joint publication of the American Public Health Association, the Water Environment Federation, and the American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235, 800-926-7337, www.standardmethods.org. (3-30-07)

w. F480-02 Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension ratios (SDR), SCH 40 and SCH 80, American Society for Testing and Materials (ASTM Standard F480-02). (3-30-07)

x. "Idaho Standards for Public Works Construction," 2005 Edition, and subsequent revisions, Local Highway Technical Assistance Council, 3330 Grace Street, Boise, ID 83605, (208)344-0565. (4-11-06)

y. Memorandum of Understanding between the Idaho Department of Environmental Quality and the Idaho Division of Building Safety Plumbing Bureau, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. (3-30-07)

z. Idaho General Safety and Health Standards (IGSHS), available from the Idaho Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642, (208)334-3950, http://dbs.idaho.gov/safety_code/000.html. (3-30-07)

aa. Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

bb. Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

03. Precedence. In the event of conflict or inconsistency between the language in these rules and that found in any document incorporated by reference, these rules shall prevail. (4-11-06)

003. DEFINITIONS.

The definitions set forth in 40 CFR 141.2, revised as of July 1, 2002~~6~~, are herein incorporated by reference except for the definition of the terms "action level," "disinfection," "noncommunity water system," and "person."

~~(5-3-03)~~()

01. Action Level. The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, or undertake a public education program. (12-10-92)

02. Administrator. The Administrator of the United States Environmental Protection Agency.(4-5-00)

03. Annual Samples. Samples that are required once per calendar year. (12-10-92)

04. Annular Opening. As used in well construction, this term refers to the nominal inside diameter of the borehole minus the outside diameter of the casing divided by two (2). (3-30-07)

05. Aquifer. A geological formation of permeable saturated material, such as rock, sand, gravel, etc., capable of yielding an economic quantity of water to wells and springs. (5-3-03)

06. Available. Based on system size, complexity, and source water quality, a properly licensed operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner. (4-6-05)

07. Average Day Demand. The volume of water used by a system on an average day based on a one (1) year period. (3-30-07)

08. Backflow. The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. (12-10-92)

09. Bag Filters. Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside. ()

10. Bank Filtration. A water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s). ()

~~09~~**11. Board.** The Idaho Board of Environmental Quality. (5-3-03)

102. Capacity. The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: (4-5-00)

a. Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Training of operator(s) is required, as appropriate, for the system size and complexity. (4-6-05)

b. Financial capacity means the financial resources of the water system, including an appropriate budget, rate structure, cash reserves sufficient for future needs and emergency situations, and adequate fiscal controls. (4-5-00)

c. Managerial capacity means that the management structure of the water system embodies the aspects of water treatment operations, including, but not limited to; (4-5-00)

i. Short and long range planning; (4-5-00)

ii. Personnel management; (4-5-00)

iii. Fiduciary responsibility; (4-5-00)

iv. Emergency response; (4-5-00)

v. Customer responsiveness; (4-5-00)

vi. Source water protection; (4-5-00)

vii. Administrative functions such as billing and consumer awareness; and (4-5-00)

viii. Ability to meet the intent of the federal Safe Drinking Water Act. (4-5-00)

13. Cartridge Filters. Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside. ()

14. Combined Distribution System. The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water. ()

15. Community Water System. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (12-10-92)

126. Components of Finished Water Storage. (3-30-07)

a. Dead Storage. Storage that is either not available for use in the system or can provide only substandard flows and pressures. (3-30-07)

b. Effective Storage. Effective storage is all storage other than dead storage and is made up of the additive components described in paragraphs 003.12.c. through 003.12.f. (3-30-07)

c. Operational Storage. Operational storage supplies water when, under normal conditions, the sources are off. This component is the larger of; (3-30-07)

i. The volume required to prevent excess pump cycling and ensure that the following volume components are full and ready for use when needed; or (3-30-07)

ii. The volume needed to compensate for the sensitivity of the water level sensors. (3-30-07)

d. Equalization Storage. Storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak hour demand. (3-30-07)

e. Fire Suppression Storage. The water needed to support fire flow in those systems that provide it. (3-30-07)

f. Standby Storage. Standby storage provides a measure of reliability or safety factor should sources fail or when unusual conditions impose higher than anticipated demands. (3-30-07)

137. Composite Correction Program (CCP). A systematic approach to identifying opportunities for improving the performance of water treatment and implementing changes that will capitalize on these opportunities. The CCP consists of two (2) elements: (4-5-00)

a. Comprehensive Performance Evaluation (CPE). A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. (4-5-00)

b. Comprehensive Technical Assistance (CTA). The implementation phase that is carried out if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. (4-5-00)

- ~~148.~~ **Compositing of Samples.** The mixing of up to five (5) samples by the laboratory. (4-5-00)
- ~~159.~~ **Confining Layer.** A nearly impermeable subsurface stratum which is located adjacent to one (1) or more aquifers and does not yield a significant quantity of water to a well. (5-3-03)
- ~~1620.~~ **Confirmation Sample.** A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. (12-10-92)
- ~~1721.~~ **Connection.** Each structure, facility, or single family residence which is connected to a water system, and which is or could be used for domestic purposes, is considered a single connection. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. (10-1-93)
22. **Consecutive System.** A public water system that receives some or all of its finished water from one (1) or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. ()
- ~~1823.~~ **Consumer.** Any person served by a public water system. (12-10-92)
- ~~1924.~~ **Consumer Confidence Report (CCR).** An annual report that community water systems must deliver to their customers. The reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. (4-5-00)
- ~~205.~~ **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (12-10-92)
- ~~216.~~ **Cross Connection.** Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. (10-1-93)
- ~~227.~~ **Dead End Main.** A distribution main of any diameter and length that does not loop back into the distribution system. (3-30-07)
- ~~238.~~ **Department.** The Idaho Department of Environmental Quality. (12-10-92)
- ~~249.~~ **Director.** The Director of the Department of Environmental Quality or his designee. (12-10-92)
- ~~2530.~~ **Disinfection.** Introduction of chlorine or other agent or process approved by the Department, in sufficient concentration or dosage, and for the time required to kill or inactivate pathogenic and indicator organisms. (3-30-07)
- ~~2631.~~ **Disinfection Profile.** A summary of daily Giardia lamblia inactivation through the drinking water treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172 and 40 CFR 141.530-141.536. (5-3-03)
- ~~2732.~~ **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-16-04)
- ~~2833.~~ **Drinking Water.** Means "water for human consumption." (3-30-07)

~~2934.~~ **Drinking Water System.** All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. (12-10-92)

35. **Dual Sample Set.** A set of two (2) samples collected at the same time and same location, with one (1) sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an Initial Distribution System Evaluation (40 CFR Part 141, Subpart U) and for determining compliance with the TTHM and HAA5 MCLs under the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). ()

306. **DWIMS.** Idaho Department of Environmental Quality Drinking Water Information Management System. Replaced by SDWISS April 2001. (3-15-02)

347. **Enhanced Coagulation.** The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment. Conventional filtration treatment is defined in 40 CFR 141.2. (5-3-03)

328. **Enhanced Softening.** The improved removal of disinfection byproduct precursors by precipitative softening. (4-5-00)

339. **Exemption.** A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. (12-10-92)

340. **Facility Plan.** The facility plan for a public drinking water system describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for infrastructure and includes a plan for the future of the system/facility, including upgrades and additions. It is usually updated on a regular basis due to anticipated or unanticipated growth patterns, regulatory requirements, or other infrastructure needs. A facility plan is sometimes referred to as a master plan or facilities planning study. In general, a facility plan is an overall system-wide plan as opposed to a project specific plan. (3-30-07)

3541. **Facility Standards and Design Standards.** Facility standards and design standards are described in Sections 500 through 552 of these rules. Facility and design standards found in Sections 500 through 552 of these rules must be followed in the planning, design, construction, and review of public drinking water facilities. (3-30-07)

3642. **Fee Assessment.** A charge assessed on public drinking water systems based on a rate structure calculated by system size. (10-1-93)

3743. **Filter Profile.** A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed. (4-5-00)

3844. **Finished Water.** Water that *has completed all treatment processes and is ready for delivery to consumers* is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals). (~~3-30-07~~)()

3945. **Fire Flow Capacity.** The water system capacity, in addition to maximum day demand, that is available for fire fighting purposes within the water system or distribution system pressure zone. Adequacy of the water system fire flow capacity is determined by the local fire authority. (3-30-07)

46. **Flowing Stream.** As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a course of running water flowing in a definite channel. ()

~~407.~~ **GAC10.** Granular activated carbon filter beds with an empty bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with MCLs established in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V) shall be one hundred twenty (120) days. (~~4-5-00~~)()

~~48.~~ **GAC20.** Granular activated carbon filter beds with an empty-bed contact time of twenty (20) minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty (240) days. ()

~~449.~~ **Groundwater System.** A public water system which is supplied exclusively by a groundwater source or sources. (12-10-92)

~~4250.~~ **Groundwater Under the Direct Influence of Surface Water.** Any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation. (5-3-03)

~~4351.~~ **Haloacetic Acids (Five) (HAA5).** The sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) rounded to two (2) significant figures after addition. (4-5-00)

~~4452.~~ **Health Hazards.** Any condition which creates, or may create, a danger to the consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. See also the definition of Significant Deficiency, which refers to a health hazard identified during a sanitary survey. (5-3-03)

~~453.~~ **Inorganic.** Generally refers to compounds that do not contain carbon and hydrogen. (12-10-92)

~~4654.~~ **Laboratory Certification Reciprocity.** Acceptance of a laboratory certification made by another state. Laboratory reciprocity may be granted to laboratories outside of Idaho after application, proof of home state certification, and EPA performance evaluation results are submitted and reviewed. Reciprocity must be renewed after a time specified by the Idaho Laboratory Certification Officer to remain valid. (4-5-00)

~~55.~~ **Lake/Reservoir.** As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow. ()

~~4756.~~ **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. (4-6-05)

~~57.~~ **Locational Running Annual Average (LRAA).** The average of sample analytical results for samples taken at a particular monitoring location during the previous four (4) calendar quarters, as set forth in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). ()

~~458.~~ **Log.** Logarithm to the base ten (10). (12-10-92)

~~459.~~ **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. (4-11-06)

~~560.~~ **Material Modification.** For the purpose of plan and specification review requirements as specified in Subsection 504.03, those modifications of an existing public water system that are intended to increase system

capacity or alter the methods or processes employed. (3-30-07)

561. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (3-30-07)

562. Maximum Day Demand Rate. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest for the design year. (3-30-07)

563. 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)

564. 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)

65. Membrane Filtration. A pressure or vacuum driven separation process in which particulate matter larger than one (1) micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis. ()

5566. 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)

567. 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)

5768. 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)

5869. Non-Potable Mains. The pipelines that collect and convey non-potable discharges from or to multiple service connections. (4-11-06)

5970. 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. (4-11-06)

6071. 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)

6472. 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)

6273. 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)

6374. 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)

6475. Peak Hour Demand. The highest hourly flow, excluding fire flow, that a water system or distribution system pressure zone is likely to experience in the design year. (3-30-07)

6576. 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)

6677. 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)

678. Plant. A physical facility where drinking water or wastewater is treated or processed. (3-30-07)

79. Plant Intake. The works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant. ()

680. 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. (3-30-07)

6981. Point of Use (POU) Treatment System. A collection of POU treatment devices. (3-30-07)

7082. Potable Mains. Pipelines that deliver potable water to multiple service connections. (3-30-07)

7183. Potable Services. Pipelines that convey potable water from a connection to the potable water main to individual consumers. (3-30-07)

7284. Preliminary Engineering Report. The preliminary engineering report for a public drinking water system facility is a report that addresses specific portions of the system or facility for which modifications are being designed. Modifications may include, but are not limited to, significant changes to existing processes or facilities, system expansion, addition of treatment, or installation of other processes and facilities. This report addresses specific purpose and scope, design requirements, alternative solutions, costs, operation and maintenance requirements, and other requirements as described in Section 503. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan, such as a facility plan. However, the preliminary engineering report shall describe modifications to the facility plan that may be required as a result of the proposed project. (3-30-07)

85. Presedimentation. A preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant. ()

7386. 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)

7487. 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)

7588. Public Water System/Water System/System. Means "public drinking water system." (4-5-00)

7689. Pump House. An above-grade structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, well discharge line, or a treatment unit. Pump houses are often called well 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.
(3-30-07)

7790. 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 drinking water districts.
(4-11-06)

7891. Regulated Public Utility. For the purpose of these rules, any public water system that falls under the jurisdiction of the Idaho Public Utilities Commission and is subject to the rules thereof.
(3-30-07)

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

8093. 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)

8194. 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)

8295. 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 504.03.b. of these rules, the qualified Idaho licensed professional engineer is also the reviewing authority.
(3-30-07)

8396. Sampling Point. The location in a public water system from which a sample is drawn. (12-10-92)

8497. Sanitary Defects. Any faulty structural condition which may allow the water supply to become contaminated.
(12-10-92)

8598. 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)

8699. 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)

87100. 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. (3-30-07)

88101. 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)

89102. 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)

9103. 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)

9104. 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)

92105. 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)

93106. SUVA (Specific Ultraviolet Absorption). 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). (3-30-07)

94107. 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)

108. Total Trihalomethanes (TTHM). The sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two (2) significant figures. ()

95109. Transient Noncommunity Public 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. (3-30-07)

96110. 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)

97111. 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)

112. Two-Stage Lime Softening. A process in which chemical addition and hardness precipitation occur in each of two (2) distinct unit clarification processes in series prior to filtration. ()

~~99~~**113. Uncovered Finished Water Storage Facility.** ~~An uncovered~~ tank, reservoir, or other facility that is directly open to the atmosphere and used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection. (~~5-3-03~~)()

~~99~~**114. 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)

~~100~~**15. Variance.** A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the deferment does not cause an unreasonable risk to public health. (12-10-92)

~~101~~**6. 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)

~~102~~**17. Volatile Organic Chemicals (VOCs).** VOCs are lightweight organic compounds that vaporize or evaporate easily. (10-1-93)

~~103~~**18. Vulnerability Assessment.** A determination of the risk of future contamination of a public drinking water supply. (12-10-92)

~~104~~**19. Waiver.** (12-10-92)

a. For the purposes of these rules, except Sections 500 through 552, "waiver" means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. (3-30-07)

b. For purposes of Sections 500 through 552, "waiver" means a dismissal of any requirement of compliance. (3-30-07)

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

~~105~~**20. 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. (3-30-07)

~~106~~**21. 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)

~~107~~**22. 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)

~~108~~**23. Water Main Extension.** As used in Subsection 504.03, 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. (3-30-07)

~~109~~**24. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. (3-30-07)

125. Wholesale System. A public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. MAXIMUM CONTAMINANT LEVELS AND MAXIMUM RESIDUAL DISINFECTANT LEVELS.

- 01. Inorganic Contaminants.** (10-1-93)
- a.** 40 CFR 141.11, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- b.** 40 CFR 141.62, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)
- c.** The maximum contaminant level for cyanide is two-tenths milligram per liter (0.2 mg/l). (12-10-92)
- 02. Organic Contaminants.** (~~10-1-93~~)
- ~~**a.** 40 CFR 141.12, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)~~
- ~~**b.** 40 CFR 141.61 is herein incorporated by reference, except that the best available technology (BAT) treatment listed in 40 CFR 141.61(b) shall be changed to reflect that packed tower aeration will not be listed for toxaphene but will be listed for toluene. (~~10-1-93~~)()~~
- 03. Turbidity.** 40 CFR 141.13 is herein incorporated by reference. (10-1-93)
- 04. Radionuclides.** 40 CFR 141.66, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 05. Microbiological Contaminants.** 40 CFR 141.63, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 06. Maximum Contaminant Levels for Disinfection Byproducts.** 40 CFR 141.64, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()
- 07. Maximum Residual Disinfectant Levels.** 40 CFR 141.65, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)
- 08. Effective Dates.** 40 CFR Part 141, revised as of July 1, 2004, is herein incorporated by reference. Effective date information provided in 40 CFR 141.6 and 40 CFR 141.60 is applicable. (4-6-05)

051. -- 099. (RESERVED).

100. MONITORING AND ANALYTICAL REQUIREMENTS.

- 01. Microbiological Contaminant Sampling and Analytical Requirements.** (10-1-93)

- a. 40 CFR 141.21, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- b. The Department may reduce the total coliform monitoring frequency for community water systems serving twenty-five (25) to one thousand (1000) persons, as specified in 40 CFR 141.21(a)(2) and Subsection 100.01. The Department may allow community water systems serving twenty-five (25) to one thousand (1000) persons to reduce the total coliform monitoring frequency to once per quarter when; (12-10-92)
- i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)
- ii. There has been no history of total coliform contamination in it's current configuration; and (10-1-93)
- iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)
- iv. A sanitary survey has been conducted within the past five (5) years which indicates to the Department that there are no deficiencies which could affect microbial quality; and (12-10-92)
- v. The system uses only a groundwater source that is protected. (12-10-92)
- c. The Department may reduce the total coliform monitoring frequency for noncommunity water systems serving less than one thousand (1000) persons as specified in 40 CFR 141.21(a)(3)(i) and Subsection 100.01. The Department may allow noncommunity water systems serving less than one thousand (1000) persons to reduce the total coliform monitoring frequency to once per year when; (12-10-92)
- i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)
- ii. No coliforms have been detected in the last three (3) years of monitoring; and (12-10-92)
- iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)
- iv. A sanitary survey has been conducted within the past five (5) years which indicates to the Department that there are no deficiencies which could affect microbial quality; and (12-10-92)
- v. The system uses only a groundwater source that is protected. (12-10-92)
- d. The Department may reduce the total coliform monitoring frequency for noncommunity water systems serving more than one thousand (1000) persons during any month the system serves one thousand (1000) persons or fewer as specified in 40 CFR 141.21(a)(3)(ii) and Subsection 100.01. The Department will allow noncommunity water systems serving more than one thousand (1000) persons to reduce the total coliform monitoring frequency for any month the system serves one thousand (1000) persons or fewer, down to a minimum of one (1) sample per year, provided; (10-1-93)
- i. The system submits a written request to the Department in advance of the requirement; and (12-10-92)
- ii. No coliforms have been detected in the last three (3) years of monitoring; and (12-10-92)
- iii. The system has been in compliance with the total coliform monitoring requirements for the last three (3) years; and (12-10-92)
- iv. A sanitary survey has been conducted within the past five (5) years which indicates that there are no deficiencies which could effect microbial quality; and (12-10-92)

- v. The system uses only a groundwater source that is protected. (12-10-92)
- e. A system must collect repeat samples within twenty-four (24) hours of notification of positive results as specified in 40 CFR 141.21(b) and Subsection 100.01. The Department may allow a system to delay collection of repeat samples if the system; (12-10-92)
- i. Identifies the cause of the contamination; (12-10-92)
- ii. Is making progress towards correcting the problem; (12-10-92)
- iii. Submits a written request to delay collecting repeat samples and a written statement admitting an acute MCL violation; (12-10-92)
- iv. Follows public notification requirements specified under 40 CFR ~~Part 141.32, Subpart Q~~, revised as of July 1, 2004~~6~~, for acute MCL violations including notice for consumers to boil their water; ~~(3-15-02)~~(____)
- v. Continues to collect the regularly scheduled number of routine samples; (12-10-92)
- vi. Collects all repeat samples immediately following correction of the problem; and (12-10-92)
- vii. Collects five (5) routine samples during the month following the end of the violation as required under 40 CFR 141.21 (b)(5), unless waived as allowed under that paragraph. (12-10-92)
- 02. Turbidity Sampling and Analytical Requirements.** 40 CFR 141.22, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 03. Inorganic Chemical Sampling and Analytical Requirements.** 40 CFR 141.23, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)
- 04. Organic Chemicals Other Than Total Trihalometranes, Sampling and Analytical Requirements.** 40 CFR 141.24, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)
- 05. Analytical Methods for Radioactivity.** 40 CFR 141.25, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 06. Monitoring Frequency and Compliance Requirements for Radioactivity in Community Water Systems.** 40CFR 141.26, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)
- 07. Waivers and Vulnerability Assessments.** (10-1-93)
- a. Waivers from sampling requirements in Subsections 100.03, 100.04, 200.01, 551.01.h. and 551.01.i. may be available to all systems for all contaminants except nitrate, nitrite, arsenic and trihalomethanes, and are based upon a vulnerability assessment, use assessment and/or the analytical results of previous sampling. (10-1-93)
- b. There are two (2) general types of monitoring waivers: (12-10-92)
- i. Waivers based exclusively upon previous analytical data (12-10-92)
- ii. Waivers based on a use or vulnerability assessment. (12-10-92)
- c. Waivers are to be made by the Department on a contaminant specific basis and must be in writing. (12-10-92)
- d. Vulnerability assessments may be conducted by the Department, the water system, or a third party organization. The Department shall approve or disapprove all vulnerability assessments in writing. (12-10-92)

e. Water systems which do not receive waivers shall sample at the required initial and repeat monitoring frequencies. (12-10-92)

f. If a system elects to request a waiver from monitoring, it shall do so in writing at least sixty (60) days prior to the required monitoring deadline date. (10-1-93)

08. Initial Monitoring Schedule. In addition to the requirements specified in 40 CFR 141.23, revised as of July 1, 2004, 40 CFR 141.24, revised as of July 1, 2004, and 40 CFR 141.40, revised as of July 1, 2001, initial monitoring must be completed according to the following schedule unless otherwise specified by the Department: (4-6-05)

a. Public water systems serving more than one hundred (100) people must conduct initial monitoring before January 1, 1995 except that: (10-1-93)

i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving any public water system. (10-1-93)

ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

b. Public water systems serving one hundred (100) or less people must conduct initial monitoring before January 1, 1996 except that: (10-1-93)

i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving a public water system. (10-1-93)

ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. (10-1-93)

09. Alternate Analytical Techniques. 40 CFR 141.27 is herein incorporated by reference. (10-1-93)

10. Approved Laboratories. All analyses conducted pursuant to this chapter, except those listed below, shall be performed in laboratories certified or granted reciprocity by the Department. The following analyses shall be conducted by the public water system in accordance with the procedures approved in Idaho Department of Health and Welfare Rules, IDAPA 16.02.13, Subsection 008.02, "Rules Governing Certification of Idaho Water Quality Laboratories." (10-1-93)

a. pH; (12-10-92)

b. Turbidity (Nephelometric method only); (12-10-92)

c. Daily analysis for fluoride; (12-10-92)

d. Temperature; and (12-10-92)

e. Disinfectant residuals, except ozone, which shall be analyzed using the Indigo Method or an acceptable automated method pursuant to Subsection 300.05.c. (12-10-92)

11. Consecutive Water System. 40 CFR 141.29 is herein incorporated by reference. (10-1-93)

~~12. Total Trihalomethane Sampling, Analytical and Other Requirements. 40 CFR 141.30, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)~~

101. -- 149. (RESERVED).

150. REPORTING, PUBLIC NOTIFICATION, RECORDKEEPING.

01. Reporting Requirements. 40 CFR 141.31, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

02. Public Notification. 40 CFR Part 141, Subpart Q, revised as of July 1, 2003~~6~~, is herein incorporated by reference. (~~3-20-04~~)()

03. Record Maintenance. 40 CFR 141.33, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

04. Unregulated Contaminant Reporting and Public Notification. 40 CFR 141.35, revised as of July 1, 2003, is herein incorporated by reference. (3-20-04)

05. Reporting and Record Keeping for the Interim Enhanced Surface Water Treatment Rule. 40 CFR 141.175, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

06. Reporting and Record Keeping Requirements for the Disinfectants and Disinfectant Byproducts Rule. 40 CFR 141.134, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

151. CONSUMER CONFIDENCE REPORTS.
40 CFR Part 141, Subpart O, revised as of July 1, 2003~~6~~, is herein incorporated by reference. (~~3-20-04~~)()

(BREAK IN CONTINUITY OF SECTIONS)

250. MAXIMUM CONTAMINANT LEVEL GOALS AND MAXIMUM RESIDUAL DISINFECTION LEVEL GOALS.

01. Organic Contaminants. 40 CFR 141.50 is herein incorporated by reference. (10-1-93)

02. Inorganic Contaminants. 40 CFR 141.51, revised as of July 1, 2004, is herein incorporated by reference. (4-6-05)

03. Microbiological Contaminants. 40 CFR 141.52, revised as of July 1, 1999, is herein incorporated by reference. (4-5-00)

04. Maximum Contaminant Level Goals for Disinfection Byproducts. 40 CFR 141.53, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (~~5-3-03~~)()

05. Maximum Residual Disinfectant Level Goals for Disinfectants. 40 CFR 141.54, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

06. Radionuclides. 40 CFR 141.55, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

311. ENHANCED FILTRATION AND DISINFECTION FOR CRYPTOSPORIDIUM -- LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE.

40 CFR Part 141, subpart W, revised as of July 1, 2006, is herein incorporated by reference. ()

01. Cryptosporidium Treatment Credit for Approved Watershed Control Program. The Department shall award 0.5 (zero point five) logs cryptosporidium removal credit to systems that have a Department approved Watershed Control Program. Requirements for a watershed control program are set forth in 40 CFR 141, Subpart W. Guidance on how to develop a watershed control program and obtain Department approval is provided in "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002. ()

02. Assessment of Significant Changes in the Watershed. As part of the sanitary survey process set forth in Section 302, the Department, or an agent approved by the Department, shall assess significant changes in the watershed of a surface water system that have occurred since the system conducted source water monitoring. If changes in the watershed have the potential to significantly increase contamination of the source water with cryptosporidium, the Department shall consult with the water system owner on follow-up actions that may be required under 40 CFR 141, Subpart W, including, but not limited to, source water monitoring and/or additional treatment requirements. "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002, provides a description of factors that will be considered by the Department when making an assessment of changes in the watershed. These factors include, but are not limited to the following: ()

a. New NPDES permits or changes in existing NPDES permits that involve increased loading of contaminants. ()

b. Changes in land use patterns. ()

c. Changes in agricultural cropping, chemical application, or irrigation practices. ()

d. Changes in other non-point discharge source activities (such as grazing, manure application, commercial or residential development). ()

e. Stream or riverbed modifications. ()

f. NPDES permit violations at wastewater treatment plants and confined animal feedlot operations. ()

g. Dramatic natural events such as floods, forest fires, earthquakes, and landslides that may transport or expose contaminants. ()

h. Prolonged drought conditions that may warrant special preparatory measures to minimize impacts from waste accumulations that are washed into source waters when precipitation returns. ()

i. Status of the water system's emergency response plan. ()

j. Accidental or illegal waste discharges and spills. ()

3142. -- 319. (RESERVED).

320. DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS, AND DISINFECTION BYPRODUCT PRECURSORS.

This Section incorporates 40 CFR Part 141, Subpart L, of the National Primary Drinking Water Regulations, known as the Disinfectants and Disinfection Byproducts Rule. (4-5-00)

01. General Requirements. 40 CFR 141.130, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (5-3-03)(____)

02. Analytical Requirements. 40 CFR 141.131, revised as of July 1, 2002~~6~~, is herein incorporated by reference. DPD colorimetric test kits may be used to measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide. (5-3-03)(____)

03. Monitoring Requirements. 40 CFR 141.132, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (5-3-03)(____)

04. Compliance Requirements. 40 CFR 141.133, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (5-3-03)(____)

05. Treatment Techniques for Control of Disinfection Byproduct (DBP) Precursors. 40 CFR 141.135, revised as of July 1, 2002~~6~~, is herein incorporated by reference. (5-3-03)(____)

321. INITIAL DISTRIBUTION SYSTEM EVALUATIONS.

40 CFR Part 141, Subpart U, revised as of July 1, 2006, is herein incorporated by reference. “Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule,” as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR 141, Subpart U. (____)

322. STAGE 2 DISINFECTION BYPRODUCTS REQUIREMENTS.

40 CFR Part 141, Subpart V, revised as of July 1, 2006, is herein incorporated by reference. “Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule,” as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR Part 141, Subpart V. (____)

~~323~~. -- 349. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Section 39-4405, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ has initiated this rulemaking in response to a Petition for Rulemaking filed by US Ecology Idaho, Inc. In its petition, US Ecology Idaho requested that the Board of Environmental Quality direct DEQ to initiate rulemaking to further limit the types of radioactive materials that are eligible for unrestricted disposal in Idaho by adding a new category of radioactive materials that must be disposed of at a permitted hazardous waste disposal facility. This proposed rule includes the addition of a new category to the definition of Radioactive Material, Subsection 010.10. In addition, the website address for the U.S. Government Printing Office has been added to Subsection 004.03 for availability of federal regulations incorporated by reference. The following groups may be interested in commenting on this proposed rule: Private industry; environmental groups; hazardous and nonhazardous waste disposal facilities; members of the public; and generators of radioactive materials specifically exempted, on a case-by-case basis, from U.S. Nuclear Regulatory Commission regulations contained in 10 CFR 30.11, 10 CFR 40.14, and 10 CFR 70.17.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does regulate an activity regulated by the federal government but is consistent with the legislative directive at Section 39-4405, Idaho Code, and 2001 Idaho Sess. Laws Chapter 297 (H.B. 192).

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 63, and a preliminary draft rule was made available for public review. One meeting was held on May 22, 2007. Several members of the public attended the meeting and submitted written comments which resulted in revisions to the preliminary draft rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 29, 2007.

DATED this 29th day of June, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0110-0701

004. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-15-02)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-15-02)

- a.** 10 CFR 30.14 through 30.16, revised as of July 1, 2001. (3-15-02)
- b.** 10 CFR 30.18 through 30.21, revised as of July 1, 2001. (3-15-02)
- c.** 10 CFR 32.11, revised as of July 1, 2001. (3-15-02)
- d.** 10 CFR 32.18, revised as of July 1, 2001. (3-15-02)
- e.** 10 CFR 40.13, revised as of July 1, 2001. (3-15-02)

03. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a.** Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (3-15-02)
- b.** Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)
- c.** U.S. Government Printing Office, ~~Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174~~ <http://www.gpoaccess.gov/index.html>. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Accelerator-Produced Radioactive Material. Any material made radioactive by exposing it to the radiation from a particle accelerator. (3-15-02)

02. Board. The Idaho Board of Environmental Quality. (3-15-02)

03. Byproduct Material. Byproduct Material means: (3-15-02)

a. Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)

b. The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)

04. Department. The Idaho Department of Environmental Quality. (3-15-02)

05. Exempt Quantities and Concentrations of Byproduct Materials. Radioactive materials defined as byproduct by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.16, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18) in which the quantity and concentration of radionuclides are considered exempt from regulation. (3-15-02)

06. Naturally Occurring Radioactive Material (NORM). Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)

07. Operator. Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

08. Owner. Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

09. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (3-15-02)

10. Radioactive Material. Radioactive Material includes: (3-15-02)

a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)

b. Accelerator Produced Radioactive Material; (3-15-02)

c. Exempt Quantities and Concentrations of Byproduct Materials; ~~and~~ (~~3-15-02~~)(____)

d. Unimportant Quantities of Source Material; ~~and~~ (~~3-15-02~~)(____)

e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been declared exempt from regulation under the Atomic Energy Act of 1954, as amended, for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17. (____)

11. Reasonably Maximally Exposed Individual. That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)

12. Source Material. Source material means: (3-15-02)

a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)

b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)

- i. Uranium; (3-15-02)
- ii. Thorium; or (3-15-02)
- iii. Any combination thereof. (3-15-02)
- c. Source material does not include special nuclear material. (3-15-02)
- 13. Special Nuclear Material.** Special Nuclear Material means: (3-15-02)
 - a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)
 - b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)
- 14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 15. Unimportant Quantities of Source Material.** Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise the conditions and qualifications for disadvantaged loans set out in IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program. An analysis of the drinking water loans made to date illustrates that the qualification for a disadvantaged loan may be too restrictive (the program has been in place for 9 years and only 2 disadvantaged loans have been entered into: Salmon and Castleford). The combination of how communities prove their median household income and the disadvantaged loan qualifications combine to provide difficult challenges for some communities. This rulemaking will include the following proposed revisions:

1. Remove one of the conditions for a disadvantaged loan (median household income does not exceed 80% of the statewide nonmetropolitan median household income) and change the second condition (reducing the percentage required for user fees from 2% to 1½%). The remaining disadvantaged loan qualification condition would then be that user fees would exceed 1½% of median household income.
2. Allow drinking water systems to make use of approved third party income surveys to verify the community's median household income. Currently communities must use census data, but most communities are not reported at the census level (out of 756 community water systems only 143 are cities).

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Citizens in economically disadvantaged communities, and cities, counties, districts and associations that own and operate public drinking water systems may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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

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.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 65, and a preliminary draft rule was made available for public review. One meeting was held on May 17,

2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0120-0701

004. POLICY.

It is the policy of the Idaho State Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Loan Program. The Drinking Water Loan Program provides assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho State Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public water system with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of these rules and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). ~~(5-3-03)~~()

005. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. ~~(5-3-03)~~()

02. Availability of Referenced Material. The “Drinking Water Loan Account Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

006. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ()

0067. SYSTEM ELIGIBILITY.

01. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

02. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project loans: (3-23-98)

a. Systems that do not have the technical, managerial, and financial capability to ensure compliance with the requirements of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

b. Systems in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

c. Systems under disapproval designation as outlined in the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08); (3-23-98)

d. Systems under current drinking water enforcement action by the Department; or (3-23-98)

e. Systems delinquent in payment of the annual state drinking water fee assessment. (3-23-98)

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans as described in Subsections 006.02.a. through 006.02.d. may receive assistance if: (5-3-03)

a. The use of the assistance will ensure compliance; (3-23-98)

b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); (3-23-98)

c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and (3-23-98)

d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) ~~or variance~~, the Department conducts a review to determine whether this section applies to the system. (~~3-23-98~~)()

~~0078.~~ -- **009. (RESERVED).**

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-23-98)

01. Applicant. Any qualifying entity making application for Drinking Water loan funds. (5-3-03)

02. Board. The Idaho State Board of Environmental Quality. (3-23-98)

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 information document~~ nor an environmental impact statement is required. (~~5-3-03~~)()

04. Community Water System. A public drinking water system that: (5-3-03)

a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-23-98)

b. Regularly serves at least twenty-five (25) year-round residents. (3-23-98)

05. Construction. The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public drinking water system facilities, including preliminary planning to determine the economic and

engineering feasibility of public drinking water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of public water system facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)

- 06. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (5-3-03)
- 07. Department.** The Idaho Department of Environmental Quality. (3-23-98)
- 08. Director.** The Director of the Idaho Department of Environmental Quality or ~~his/her~~ the Director's designee. (3-23-98)()
- 09. Disadvantaged Community.** The service area of a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-23-98)
- 10. Disadvantaged Loans.** Loans made to a disadvantaged community. (3-23-98)
- 11. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (5-3-03)
- 12. Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)()
- 13. Environmental Impact Statement (EIS).** A document prepared by the ~~grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook~~ applicant when the Department determines that the proposed drinking water 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. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing an EIS. (5-3-03)()
- 14. Eligible Costs.** Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)
- 15. Eligible Systems.** Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)
- 16. ~~Engineering Report.~~ A report which compares public water system facility alternatives and identifies the most cost effective, environmentally sound alternative.** **Facility Plan.** A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. (3-23-98)()
- 17. Financial Management System.** Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)
- 18. Finding Of No Significant Impact (FQNSI).** 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)~~(____)

19. **Handbook.** "Drinking Water Loan Account Handbook of Procedures." ~~(5-3-03)~~(____)
20. **Ineligible Costs.** Costs which are described in Subsection 041.05. (5-3-03)
21. **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (5-3-03)
22. **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (5-3-03)
- ~~23. **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. (5-3-03)~~
243. **Noncommunity Water System.** A public water system that is not a community water system. (3-23-98)
254. **Nonprofit Noncommunity Water System.** A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools. (3-23-98)
265. **Nontransient Noncommunity Water System.** A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (3-23-98)
276. **O & M Manual.** Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (3-23-98)
287. **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-23-98)
298. **Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up, and operation of the public water system facility. (5-3-03)
29. **Preliminary Engineering Report.** An engineering report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or distribution alternatives for the public drinking water system to identify the most cost effective and environmentally sound alternative. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. A preliminary engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a preliminary engineering report may be found in the Handbook. (____)
30. **Priority List.** A list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (5-3-03)
31. **Public Drinking Water Systems.** 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."
(5-3-03)(_____)

~~**a.** *In General.* A system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes:~~
(5-3-03)

~~**i.** *Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems; and*~~
(5-3-03)

~~**ii.** *Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system."*~~
(5-3-03)

~~**b.** *Connections.* For purposes of paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:~~
(5-3-03)

~~**i.** *The water is used exclusively for purposes other than residential uses (consisting of drinking, cooking, and bathing, or other similar uses);*~~
(3-23-98)

~~**ii.** *The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or*~~
(5-3-03)

~~**iii.** *The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.*~~
(5-3-03)

~~**e.** *Irrigation Districts.* An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection.~~
(5-3-03)

32. Qualifying Entity. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public water system or irrigation system and which establishes and maintains a dedicated loan repayment source. (3-23-98)(_____)

33. Rehabilitation. The repair or replacement of segments of drinking water facilities. (5-3-03)

34. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (5-3-03)

35. State. The State of Idaho. (3-23-98)

36. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (3-23-98)

37. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-23-98)

38. Technical Capability. The ability of the public drinking water system to comply with existing and

expected drinking water rules. (5-3-03)

39. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts shall not be reinstated. (3-23-98)

40. Unreasonable Risks to Health (URTH). Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)

41. 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, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system ~~facility.~~ (3-23-98)(____)

42. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources (and in all ways protects the water system from injection of contaminants), and which provides for fees for service from users or classes of users. (3-23-98)

43. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (5-3-03)

011. FINANCIAL TECHNICAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for the construction of projects unless the applicant has demonstrated and certified that it has the legal, technical, institutional, managerial, and financial capabilities to ensure construction, operation and maintenance (including equipment replacement of the proposed public water system facility), and to repay principal and interest which would be due on a loan from the state revolving loan fund. (3-23-98)

01. Information Needed. Before an application shall be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (3-23-98)

02. Incorporated Nonprofit Applicants. (3-23-98)

a. In addition to all other information required to be submitted by these rules and regulations, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-23-98)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 03, Title 30, Idaho Code; (3-23-98)

ii. The corporation is authorized to incur indebtedness to construct, improve, or repair public water systems facilities; (3-23-98)

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; (3-23-98)

iv. The corporation exists either perpetually or for a period long enough to repay a public water system facility loan; and (3-23-98)

v. The corporation is capable of raising revenues by fixing and collecting user charges. (3-23-98)

b. The Department may impose conditions on the making of a public water system facility loan to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and regulations and the provisions of Chapter 76, Title 39, Idaho Code. (3-23-98)

03. Cost Allocation. An applicant proposing to construct public water system facilities designed to serve two (2) or more qualifying entities must show how the costs shall be allocated among the participating entities. Such applicants must provide an executed inter-~~municipal~~ organizational service agreement which, at a minimum, incorporates the following information: ~~(3-23-98)~~(____)

- a. The basis upon which the costs are allocated; (3-23-98)
- b. The formula by which the costs are allocated; and (3-23-98)
- c. The manner in which the cost allocation system shall be implemented. (3-23-98)

04. Waivers. The requirement in Subsection 011.03 may be waived by the Department if the applicant can demonstrate: (3-23-98)

- a. Such an agreement is already in place; (3-23-98)
- b. There is documentation of a service relationship in the absence of a formal agreement; or (3-23-98)
- c. The entity providing public drinking water exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying drinking water fails to participate. (3-23-98)

012. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited-Loan~~ funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health criteria, water quality criteria, and condition of the existing system. ~~(5-3-03)~~(____)

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the Drinking Water Loan Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (3-23-98)

a. **Public Health Emergency.** ~~Shall be Certified by the ~~Department~~ Idaho State Board of Environmental Quality or by a District Board of Health.~~ Such emergencies shall be related to a waterborne outbreak, contamination levels at or above Unreasonable Risks to Health (URTH), or a failed water source. (100 points) ~~(5-3-03)~~(____)

b. **Public Health Hazard.** Identified and ~~verified~~ documented by the Department ~~or by a District Health Department.~~ Points shall be given based on the presence and severity of waterborne illnesses. (19 points) ~~(3-23-98)~~(____)

c. **Water Quality Violations.** Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (3-23-98)

d. **General Conditions of Existing Facilities.** Points shall be given based on deficiencies with facilities for pumping, treating, and delivering drinking water. (61 points) (3-23-98)

e. **Overall Urgency.** Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (3-23-98)

f. **Consent or Administrative Orders.** Points shall be given if the system is operating under an order.

(30 points) (3-23-98)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring. (16 points) (3-23-98)

h. Affordability. Points shall be given when proposed system user charges exceed state affordability guidelines. (10 points) (3-23-98)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-23-98)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for, or scope of any project, a reevaluation of that priority rating shall be conducted. (3-23-98)

05. Priority Target Date. A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Department and a target date for submission of a completed loan application shall be established. (3-23-98)

06. Project Bypass. A project that does not or shall not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project or projects that are ready to proceed. A project that is bypassed shall be notified in writing of the reasons for being bypassed. (3-23-98)

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-23-98)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have ~~a median household income that does not exceed eighty percent (80%) of the statewide non-metropolitan median household income from the most recent census data, and~~ an annual cost of drinking water service for residential customers which exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income. (~~3-23-98~~)()

a. The annual cost includes all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) being financed with state revolving funds. If the applicant's service area is not within the boundaries of a municipality, ~~or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area.~~ (~~3-23-98~~)()

b. For disadvantaged applicants for which the annual cost exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income, those applicants must agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (~~5-3-03~~)()

02. Adjustment of Loan Terms. Loan terms may be adjusted in the following sequence: (5-3-03)

a. First, the length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual cost equals ~~two percent~~ one and one-half percent (21½%) of median household income. (~~3-23-98~~)()

b. If at a thirty (30) year repayment, the annual cost still exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income, the loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual charge equal to ~~two percent~~ one and one-half percent (21½%) of median household income. (~~3-23-98~~)()

c. The interest rate may be reduced to as low as zero percent (0%). If even at zero percent (0%) interest and a thirty (30) year repayment, the annual charge per residential user still exceeds ~~two percent~~ one and one-half percent (2½%) of median household income, the principal which causes the user charge to exceed ~~two percent~~ one and one-half percent (2½%) may be reduced except the principal reduction cannot exceed an amount greater than fifty percent (50%) of the total ~~project cost~~ loan. (5-3-03)(____)

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

Loan funds awarded under this program may be used to prepare a ~~preliminary~~ preliminary engineering report or a facility plan which identifies the most cost effective, environmentally sound drinking water system alternative to achieve or maintain compliance with ~~the Idaho Rules for Public Drinking Water Systems~~, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (5-3-03)(____)

01. Project Step Funding. Projects may be funded in steps: (3-23-98)

a. Step 1. ~~Preliminary~~ Preliminary engineering report or facility plan prepared by an Idaho licensed professional engineer ~~licensed in the state of Idaho~~ who carries professional liability insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department; (5-3-03)(____)

b. Step 2. Design, which includes the preparation by an Idaho licensed professional engineer ~~licensed in the state of Idaho~~ of the detailed engineering plans and specifications necessary for the bidding and construction of the project; (3-23-98)(____)

c. Step 3. Construction, which includes bidding and actual construction of the project; or (3-23-98)

d. Step 4. A combination of Step 2 and Step 3. (3-23-98)

02. Combination Step Funding. Projects may be funded in any combination of the steps with approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans shall be amortized and a repayment schedule prepared by the Department. (3-23-98)

03. Cost Effective Requirements for Awarding a Loan. Step 2, Step 3, or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 preliminary engineering report ~~as~~ or facility plan and approved by the Department. ~~The cost effective alternative may be selected based on the comments received from at least one (1) public hearing attended by affected users~~ If the preliminary engineering report or facility plan has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," at least one (1) public hearing must be held so that the affected users can submit comments before accepting the cost effective and environmentally sound selected alternative. The public hearing will be held within the jurisdiction of the qualifying entity and conducted in accordance with state law. (3-23-98)(____)

04. Funding for Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth except that distribution and transmission lines which may be planned for a forty (40) year useful life. (5-3-03)

031. LIMITATION OF PRE-LOAN ENGINEERING REVIEWS.

Department of ~~Environmental Quality~~ staff may review engineering or facility planning documents for any drinking water system. However, in order for the costs of preparation of pre-loan engineering documents to be loan eligible, the consulting engineer must submit a certificate of professional liability indemnification in accordance with Subsection 050.05.d. (3-23-98)(____)

032. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (3-23-98)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; and (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; and (5-3-03)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-344~~ 59-1026, and 42-3212, Idaho Code. (~~5-3-03~~)(____)

f. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (3-23-98)

g. Step 1: Preliminary Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the Preliminary engineering report or facility plan, a schedule for completion of the work tasks, and an estimate of man hours and costs to complete the work tasks. (~~3-23-98~~)(____)

h. Step 2: Design. (~~3-23-98~~)(____)

i. Preliminary ~~E~~ngineering report or Facility plan including a final environmental document and decision in accordance with Section 042; (~~5-3-03~~)(____)

ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)

- iii. Inter-~~municipal~~ organizational service agreements between all qualifying entities within the scope of the project, if applicable; and ~~(3-23-98)~~(____)
- i. Step 3₂ Construction. ~~(3-23-98)~~(____)
- i. Documented evidence of all necessary easements and land acquisition. (5-3-03)
- ii. Biddable plans and specifications of the approved public water system facility alternative; (3-23-98)
- iii. A plan of operation and project schedule; (3-23-98)
- iv. A user charge system, water use system protection ordinance, and financial management system; and (3-23-98)
- v. A staffing plan and budget. (3-23-98)
- j. Step 4₂ Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. ~~(3-23-98)~~(____)

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation shall be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Loan. The action of disapproving, recalling, or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (3-23-98)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

- 01. Eligible Costs.** Eligible costs are those determined by the Department to be: (5-3-03)
 - a. Necessary for planning, designing and/or constructing drinking water systems; (5-3-03)
 - b. Reasonable; and (5-3-03)
 - c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or preliminary engineering report for design and construction of drinking water systems, and any other relevant information in the application that describes the scope of the project to be funded. (5-3-03)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-347~~ 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~(____)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable, and not ineligible costs include: (5-3-03)

- a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except

ordinary operating expenses ~~of local government~~ such as salaries and expenses of a mayor, city council members, board; or ~~a~~ city, district, or board attorney; (5-3-03)(____)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)

d. Engineering directly related to the public water system facilities; (5-3-03)

e. Financial and management capability analysis if it ensures compliance; (5-3-03)

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

g. Landscaping; (5-3-03)

h. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)

i. Material acquired, consumed, or expended specifically for the project; (5-3-03)

j. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

k. Preparation of an operation and maintenance manual; (5-3-03)

l. Preparation of a plan of operation; (5-3-03)

m. Start-up services; (5-3-03)

n. Project identification signs; (5-3-03)

o. Public participation for alternative selection; (5-3-03)

p. Development of user charge and financial management systems; (5-3-03)

q. Development of water system protection and backflow prevention ordinance or rule; (5-3-03)

r. Initial staffing plans and budget development; (5-3-03)

s. Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)

t. Site acquisition costs, including right of way and the site for public water system; and (5-3-03)

u. Certain direct and other costs as determined eligible by the Department. (5-3-03)

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)

- c. Personal injury compensation or damages arising out of the project; (5-3-03)
- d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- e. Costs outside the scope of the approved project; (5-3-03)
- f. Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; ~~(5-3-03)~~(____)
- g. Cost of land in excess of that needed for the proposed project; (5-3-03)
- h. Cost of condemnations; or (5-3-03)
- i. Engineering costs incurred without professional liability insurance. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. ~~The applicant shall complete an environmental review as part of and in conjunction with a preliminary engineering report or facility plan. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall consult with the Department at an early stage in the preparation of the engineering report loan process to determine the required level of environmental review. Based on review of existing information, the Department shall assess potential and assessment of environmental impacts, and shall instruct the applicant to either shall complete one (1) of the following per the Department's instruction:~~ (3-23-98)(____)

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-23-98)
- b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (3-23-98)
- or
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-23-98)

02. Categorical Exclusions. ~~At the request of an applicant, the Department shall determine from existing information whether an action is consistent with categories eligible for exclusion where upon~~ If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (____)

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of *Categorical Exclusion* CE from substantive environmental review. Once the *Categorical Exclusion* CE is granted for the *proposed project and* selected alternative, the Department will publish a notice of *Categorical Exclusion has been published* CE in a local newspaper to inform the public of this action, following which the preliminary engineering report or facility plan can be approved and the loan award can proceed. (3-23-98)(____)

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the applicant to prepare an EID. (3-23-98) (____)

03. Environmental Review Process Information Document Requirements. ~~When issuance of a Categorical Exclusion is not appropriate, the applicant shall prepare an Environmental Information Document (EID).~~ When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: (3-23-98)(____)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (3-23-98)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (3-23-98)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FONSI). (3-23-98)(____)

04. Final Finding of No Significant Impact. The ~~final~~ Department shall publish the draft FONSI ~~shall be published~~ in a newspaper of general circulation in the geographical area of the proposed project ~~in accordance with state policies on public participation~~ and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment and after any public concerns about project impacts are ~~resolved~~ addressed, the FONSI shall become final ~~and the engineering report can be approved and the loan can be awarded.~~ The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the preliminary engineering report or facility plan. (3-23-98)(____)

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: (3-23-98)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (3-23-98)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-23-98)

c. Conduct a public hearing which may be in conjunction with a preliminary engineering report or facility plan hearing; and (3-23-98)(____)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-23-98)

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has Department approval. (5-3-03)

~~**07. Mitigation Measures.** Prior to approval of a facilities plan, the Department must ensure that effective mitigation measures identified in the FNSI and EID shall be implemented by the applicant. (3-23-98)~~

087. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (3-23-98)

098. ~~Federal Environmental Review~~ Use of Environmental Reviews Conducted by Other Agencies.

If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, in its discretion, issue its own determination by adopting the document and public participation process of the ~~federal~~ other agency. (3-23-98)(____)

109. Validity of Review. Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public views and shall: (3-23-98)

- a. Reaffirm the earlier decision; or (3-23-98)
- b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-23-98)

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers shall be delivered to successful applicants by representatives of the Department or by registered mail. (3-23-98)

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 on the priority list. (3-23-98)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or ~~his/her~~ the Director's designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity 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 shall 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. (3-23-98)(____)

04. Estimate of Reasonable Cost. All loan contracts shall 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: (3-23-98)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction, and management of the project; (3-23-98)

c. Terms consistent with applicable state and federal laws pertaining to preliminary engineering reports or facility plans, design, and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (3-23-98)(____)

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 negligent acts of the engineer and errors of omission of a professional nature. The total aggregate of the professional liability of the engineer insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the engineer, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases which are state funded; (5-3-03)(____)

e. The project shall be bid, contracted, and constructed according to the current edition of Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; (5-3-03)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-3-03)

g. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The borrower may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-23-98)

h. Repayment default shall 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)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted ~~government~~ accounting principles ~~issued by the Government Accounting Standards Board (GASB).~~ (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVERS.

Waiver from the requirements of these rules may be granted by the Department Director or ~~his/her~~ the Director's designee, on a case-by-case basis, upon full demonstration by the loan applicant/recipient requesting the waiver that the following conditions exist. (3-23-98)(____)

01. Health Hazard. A significant public health hazard exists; (3-23-98)

02. Affordability Criteria Exceeded. The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (3-23-98)

03. Availability of Federal Funds. The waiver shall not affect the availability of federal funds for the project where such funding is required by the entity requesting the waiver. (3-23-98)

~~996. CONFIDENTIALITY.~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ (3-15-02)

~~997.~~ -- 999. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR
PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities" (Grant Rules), for consistency with the environmental review section (042) of IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program" (Loan Rules). The two sets of rules have different requirements for environmental information document preparation and there is no need for the difference. The current structure of the Grant Rules requires that the grant applicant prepare an environmental information document of a uniform scope, regardless of the need for mitigation. Compliance with the Grant Rules adds a burden to both the applicant and DEQ when a project qualifies for a categorical exclusion. An efficiency would be achieved by adopting the process used for drinking water loans, in which categorical exclusions are specifically allowed with a lower level of effort. Section 042 of the Loan Rules will be used as a model for the environmental review process for grants.

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of references to construction and other obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Cities, counties, districts and associations that own and operate public drinking water systems may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

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

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 66, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

DATED this 29th day of June, 2007.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0122-0701

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare an preliminary engineering report in conformance with Chapter 5 of the "Drinking Water Facilities Loan Handbook of Procedures" to evaluate feasible treatment, storage and distribution alternatives for public drinking water systems or facility plan. (~~5-3-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (~~3-30-01~~)()

02. Availability of Referenced Material. The "Drinking Water Loan Account Handbook of Procedures" (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho State Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Grant Program. The Drinking Water Grant Program provides assistance to

eligible public drinking water systems for the planning of facilities to help ensure safe and adequate supplies of drinking water. It is also the intent of the Idaho State Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq. ~~(3-30-01)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

- 01. Applicant.** Any qualifying entity making application for drinking water planning grant funds. (3-30-01)
- 02. Board.** The Idaho State Board of Environmental Quality. (5-3-03)
- 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 information document~~ nor an environmental impact statement is required. ~~(3-30-01)(_____)~~
- 04. Community Water System.** A public drinking water system that: (3-30-01)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-30-01)
- ~~**05. Construction.** *The erection, building, acquisition, alteration, reconstruction, improvement or extension of a public drinking water system, including preliminary planning to determine the economic and engineering feasibility of a public drinking water system, 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 a public drinking water system, the inspection and supervision of the construction and start-up of the associated facilities.* (5-3-03)~~
- 065. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 076. Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 087. Director.** The Director of the Idaho Department of Environmental Quality or ~~his~~ the Director's designee. ~~(3-30-01)(_____)~~
- 098. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (3-30-01)
- ~~**10. 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 drinking water 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.* (3-30-01)~~
- H09. Eligible Costs.** Costs which are necessary for planning public drinking water systems. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (5-3-03)

~~12. **Engineering Report.** Report prepared in conformance with Chapter 5 of the Handbook to evaluate feasible treatment, storage, and distribution alternatives for public drinking water systems. (3-30-01)~~

130. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water ~~construction~~ project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. ~~(3-30-01)~~(____)

11. Environmental Impact Statement (EIS). A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. 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. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (____)

12. Facility Plan. A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. (____)

143. Financial Capability. The ability to raise and manage funds to provide the necessary resources for proper operation. (3-30-01)

154. Finding Of No Significant Impact (FONSI). 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~~ information document or a summary of it and shall note any other environmental documents related to it. ~~(3-30-01)~~(____)

165. Handbook. "Drinking Water Loan Account Handbook of Procedures." (3-30-01)

176. Ineligible Costs. Costs which are described in Subsection 032.06. (5-3-03)

187. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

198. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~20. **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)~~

219. Noncommunity Water System. A public water system that is not a community water system. (5-3-03)

220. Nonprofit Noncommunity Water System. A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

231. Nontransient Noncommunity Water System (NTNCWS). A public drinking 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. (3-30-01)(____)

242. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

23. Preliminary Engineering Report. An engineering report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, and/or distribution alternatives for the public drinking water system to identify the most cost effective and environmentally sound alternative. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. A preliminary engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a preliminary engineering report may be found in the Handbook. (____)

254. Priority List. A list of proposed projects rated ~~according to the priority rating system~~ by severity of a risk to public health, the necessity to ensure compliance with, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., ~~and population affected~~, the need on a household basis ~~and~~ for protection of Idaho's public drinking water supplies, ~~and as otherwise described in Section 020.~~ (3-30-01)(____)

265. 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."~~ (3-30-01)(____)

~~**a. In General.** A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes:~~ (3-30-01)

~~**i.** Any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system; and~~ (3-30-01)

~~**ii.** Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system."~~ (3-30-01)

~~**b. Connections.** For purposes of paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:~~ (5-3-03)

~~**i.** The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);~~ (3-30-01)

~~**ii.** The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or~~ (3-30-01)

~~**iii.** The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water~~

~~regulations.~~ (3-30-01)

~~e. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection.~~ (5-3-03)

~~276. Qualifying Entity. Community water systems and nonprofit noncommunity water systems. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system or irrigation system.~~ (3-30-01)()

~~287. Rehabilitation. The repair or replacement of segments of drinking water facilities.~~ (3-30-01)

~~298. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand.~~ (3-30-01)

~~3029. State. The state of Idaho.~~ (3-30-01)

~~340. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated.~~ (3-30-01)

~~321. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules.~~ (3-30-01)

~~332. Termination. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated.~~ (3-30-01)

~~33. 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 public drinking water system.~~ ()

~~34. Unreasonable Risk to Health (URTH). Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency.~~ (5-3-03)

~~35. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants.~~ (3-30-01)

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

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria and condition of the existing system. (5-3-03)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance ~~under the Drinking Water Grant Program~~ in accordance with these rules. (5-3-03)()

02. Priority Rating. Priority criteria shall contain the following points: (3-30-01)

a. Public Health Emergency. ~~Shall be~~ certified by the ~~Department~~ Idaho State Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above Unreasonable Risk to Health (URTH), or a failed water source - one hundred (100) points. (3-30-01)()

b. Public Health Hazard. Identified and ~~verified~~ documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses - nineteen (19) points. (~~3-30-01~~)(____)

c. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents - seventy-one (71) points. (3-30-01)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, storing, and delivering drinking water - sixty-one (61) points. (3-30-01)

e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply - ten (10) points. (3-30-01)

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order - thirty (30) points. (3-30-01)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - sixteen (16) points. (3-30-01)

h. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority List. A list shall be developed annually from projects rated according to the priority rating system. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-30-01)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-30-01)

05. Priority Target Date. A qualifying entity whose project is on the ~~adopted~~ approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (~~3-30-01~~)(____)

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. A qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare ~~a~~ preliminary engineering report or facility plan which identifies the most cost effective, environmentally sound drinking water system alternative to achieve or maintain compliance with ~~the Idaho Rules for Public Drinking Water Systems~~, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C.; Sections 300f et seq., and which is approvable by the Department. (~~3-30-01~~)(____)

01. Preliminary Engineering Report or Facility Plan. (~~3-30-01~~)(____)

a. *Step 1.* The preliminary engineering report ~~will be prepared in accordance with Chapter 5 of the Handbook and~~ or facility plan shall be certified by an registered Idaho licensed professional engineer-licensed in the state of Idaho. The preliminary engineering report ~~will~~ or facility plan shall include, as a minimum, the following: (~~5-3-03~~)(____)

- i. Description of existing conditions for the proposed project area; (3-30-01)
- ii. Description of future conditions for the proposed project area; (3-30-01)
- iii. Development and initial screening of alternatives; (3-30-01)
- iv. Final screening of principal alternatives and plan adoption; (3-30-01)
- v. Selected plan description and implementation arrangements; (3-30-01)
- vi. Relevant engineering data supporting the final alternative; and (3-30-01)
- vii. ~~Environmental information document (EID)~~ Level of environmental review specified by the Department as described in Section 040. (~~3-30-01~~)()
- b. The preliminary engineering report or facility plan must be reviewed and approved by the Department. (~~3-30-01~~)()
- c. The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. (~~3-30-01~~)()
- d. ~~The most cost effective environmentally sound alternative may be selected based in part on public comments received from a~~ At least one (1) public hearing attended by intended users shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The most cost effective environmentally sound alternative shall be selected and may be based in part on public comments received from intended users affected by the proposed project. (~~3-30-01~~)()

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)

032. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 0323; and (~~5-3-03~~)()

c. A plan of study describing the work tasks to be performed in the preliminary engineering report or facility plan; and (~~5-3-03~~)()

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

- i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)
- ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)
- iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)
- iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)
- e. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 0323; and ~~(5-3-03)~~(____)
- f. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections ~~67-2801 et seq., 67-2320, 50-344~~ 59-1026, and 42-3212, Idaho Code; and ~~(5-3-03)~~(____)
- g. A statement regarding how the non-grant portion of the project will be funded; and (5-3-03)
- h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 032.02. (5-3-03)

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. (5-3-03)

033. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning drinking water treatment facilities; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 032.06. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for the preliminary engineering report or facility plan. ~~(5-3-03)~~(____)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set

forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code.

~~(5-3-03)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses ~~of local government~~ such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; ~~(5-3-03)~~()

b. Professional and consulting services utilizing a lump-sum contract, specifying costs of individual tasks. (5-3-03)

c. Engineering costs pursuant to a lump-sum contract, specifying costs of individual tasks, directly related to the planning of public drinking water treatment, storage and distribution facilities including but not limited to the preparation of ~~a~~ preliminary engineering report or facility plan and environmental review report; ~~(5-3-03)~~()

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and for land for purchase through future State Revolving Fund loan funding. (5-3-03)

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

d. Costs outside the scope of the approved project; (5-3-03)

e. Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, ~~or city attorney, district or association personnel costs, and acquiring project funding;~~ ~~(5-3-03)~~()

f. Preparation of a grant application; (5-3-03)

g. All costs related to assessment, defense and settlement of disputes; (5-3-03)

h. Costs of supplying required permits or waivers; (5-3-03)

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; (5-3-03)

j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and (5-3-03)

k. Land acquisition costs and associated costs other than those listed as eligible in Subsection 032.05.g. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, ~~such as construction costs~~. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. (5-3-03)(____)

034. -- 039. (RESERVED).

040. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant ~~will~~ shall complete an environmental ~~information document (EID)~~ review as part of and in conjunction with ~~a~~ preliminary engineering report ~~or a facility plan~~. ~~The review will be done in accordance with Chapter 5 of the Handbook. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook.~~ The applicant shall ~~also~~ consult with the Department at an early stage in the preparation of the preliminary engineering report ~~or facility plan~~ to determine the required level of environmental review. ~~The environmental information document (EID) will include, as a minimum, the following~~ Based on review of existing information and assessment of environmental impacts, the applicant shall complete one (1) of the following, per the Department's instruction: (3-30-01)(____)

a. ~~Description of purpose and need for proposed action~~ Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-30-01)(____)

b. ~~Description of the proposed alternative, including the proposed action~~ Prepare an Environmental Information Document (EID) in a format specified by the Department; or (3-30-01)(____)

c. ~~Description of the affected environment;~~ Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-30-01)(____)

~~d. Discussion of the environmental impacts of the proposed action;~~ (3-30-01)

~~e. The means to mitigate adverse environmental impacts;~~ (3-30-01)

~~f. Description of public participation process;~~ (3-30-01)

~~g. List of referenced documents;~~ (3-30-01)

~~h. List of agencies consulted; and~~ (3-30-01)

~~i. Mailing list of interested parties.~~ (3-30-01)

02. ~~Department Action~~ Categorical Exclusions. ~~Based on review of the environmental information document (EID), the Department shall~~ If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (3-30-01)(____)

a. ~~Issue a Categorical Exclusion (CE) with supporting documentation;~~ Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the preliminary engineering report or facility plan can be approved; or (3-30-01)(____)

b. ~~Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and~~

~~allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID.~~ (3-30-01)()

~~e. Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to the Department for approval.~~ (3-30-01)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. ()

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FONSI). ()

04. Final Finding Of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the preliminary engineering report or facility plan. ()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: ()

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document: ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment: ()

c. Conduct a public hearing which may be in conjunction with a preliminary engineering report or facility plan hearing; and ()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 040.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The preliminary engineering report or facility plan can be completed once the final EIS has been approved by the Department. ()

~~037. Use of Environmental Reviews Prepared Conducted by Other Agencies.~~ If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, in its discretion, issue its own determination by adopting the document and public notification process of the other agency. (3-30-01)()

048. Validity of Review. Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (3-30-01)

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-30-01)

041. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-30-01)

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with this chapter; and (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state and federal laws pertaining to preliminary engineering reports or facility plans; and ~~(5-3-03)~~()

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 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 steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. ~~(5-3-03)~~()

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 033. (3-3-03)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department shall pay for those costs that are determined to be eligible. (3-30-01)

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grantee may be reviewed by the Department. ~~The review may be deferred until the review of the design/construction loan is performed.~~ (3-30-01)(____)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process, ~~and the project review has been completed or deferred.~~ (3-30-01)(____)

061. -- 069. (RESERVED).

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-30-01)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation and project schedule, terms of engineering subagreements, or contracts for construction;~~ or (3-30-01)(____)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-30-01)

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

*The written comment deadline is August 22, 2007, unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.
** Indicates that a public hearing has been scheduled.*

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, Idaho 83701-0790

**02-0421-0701, Rules Governing the Importation of Animals. (Temp & Prop) Updates rules on Trichomoniasis, Domestic Cervidae, and Rabies; adds sections for the importation of fish; makes minor corrections. Comment by: 8/23/07.

**02-0429-0701, Rules Governing Trichomoniasis. (Temp & Prop) Adds Polymerase Chain Reaction as an official test for Trichomoniasis; requires V branding of infected bulls; approves retesting of bulls with inconclusive Trichomoniasis test results; makes minor corrections. Comment by: 8/23/07.

02-0601-0701, Rules Governing the Pure Seed Law. Defines the term "Condition."

IDAPA 07 - DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Meridian, ID 83642

07-0206-0701, Rules Concerning Uniform Plumbing Code. Specifies when and under what circumstances sidewall venting and air admittance valves may be used in plumbing systems.

IDAPA 08 - STATE BOARD OF EDUCATION PO Box 83720, Boise, ID 83720-0037

08-0113-0701, Rules Governing the Idaho Opportunity Scholarship Program. (Temp & Prop) New chapter establishes application and selection processes for the Idaho Opportunity Scholarship.

**08-0202-0701, Rules Governing Uniformity. (Temp & Prop) Defines "educationally related" credits as being tied to content area, pedagogical best practices, school leadership and/or district need as designated by an administrator.

**08-0202-0702, Rules Governing Uniformity. (Temp & Prop) Allows out-of-state certificate holders to waive Idaho Praxis II requirements if they can supply evidence of passing another state's approved content, pedagogy and/or performance area assessment(s).

**08-0202-0703, Rules Governing Uniformity. (Temp & Prop) The State Department of Education/Certification Department will evaluate transcripts and experience to determine allowable credits toward certification requirements. Professional Standards Commission may grant an extension to the current three (year) period designated to attain a certificate through the state-approved alternate route. The extension will be granted only under extenuating circumstances in order to protect Highly Qualified status.

**08-0202-0704, Rules Governing Uniformity. (Temp & Prop) This change will provide certification to meet the

special needs of virtual schools, distance education and public school/postsecondary partnerships. Postsecondary faculty wishing to teach in K-12 classrooms could qualify for proposed Postsecondary Specialist in order to meet Highly Qualified status without having to earn a standard teaching certificate.

****08-0202-0705**, Rules Governing Uniformity. (Temp & Prop) The Idaho Technology Competency Assessment (ITCA) is no longer a relevant measurement of necessary technology requirements in Idaho classrooms. Idaho teacher preparation program evaluations include an assessment of the integration of relevant technology that covers the intention of the original ITCA. The ITCA should be removed as a requirement for teacher certification, however, out-of-state applicants and other applicants for interim certification may be reviewed by the hiring district for deficiencies in technology skills, on a case by case basis.

****08-0202-0706**, Rules Governing Uniformity. (Temp & Prop) The new version changes the incorrectly cited AAS degree to an AS degree as originally intended. It also allows for paraprofessionals with a minimum of 32 credits of formal education to be considered for the program instead of being limited to an Associates Degree.

08-0203-0702, Rules Governing Thoroughness. The State Board of Education, in conjunction with the Superintendent of Public Instruction will be consolidating all statewide assessments into the office of the State Board. Subsection 113.03 is being amended to reflect the Board's role in identifying and recognizing schools for rewards.

The State Board of Education will determine adequate yearly progress in compliance with No Child Left Behind. Subsection 112.03 is being amended to reflect the Board's role in determining adequate yearly progress (AYP) for schools and districts in the state. Language is being clarified that AYP must be determined early enough to assure at least thirty days for appeal and final determinations available to schools and districts in time to notify parents before school starts in the fall.

08-0203-0703, Rules Governing Thoroughness. (Temp & Prop) As the State Board of Education moves toward a new delivery model for deaf/hard of hearing and blind/visually impaired students, new standards need to be developed. The new standards will provide guidance for the development of the education programs for students who are deaf or hard of hearing and /or those who are blind or visually impaired.

“Program Standards for Infants, Toddlers, Children, and Youth who are Blind or Visually Impaired including those with Additional Disabilities and Deafblindness” and “Program Standards for Infants, Toddlers, Children, and Youth who are Deaf or Hard of Hearing” are incorporated by reference into this rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036

16-0227-0701, Idaho Radiation Control Rules. Deletes obsolete rules and citations, adds required sections and updates definition section.

16-0301-0701, Eligibility for Health Care Assistance for Families and Children. Changes deem a baby eligible for Medicaid coverage for his first year of life when the baby was born to a mother covered by emergency Medicaid; and SSDI recipients and foster care children receiving child welfare services under Title IV-B of the Social Security Act are now exempt from identification verification because either the Department or the Social Security Administration verifies citizenship and identity before they issue benefits.

****16-0305-0702**, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD). (Temp & Prop) Complies with SB 1170 by eliminating requirement that the qualified long-term care policy must be exhausted before the individual can be eligible for an asset disregard when eligibility for Medicaid is determined.

16-0310-0703, Medicaid Enhanced Plan Benefits. (Temp & Prop) Simplifying the process used to determine a Medicaid participant's eligibility for nursing facility care to increase efficiencies without sacrificing accuracy.

16-0323-0701, Rules Governing Uniform Assessments for State-Funded Clients. (Temp & Prop) Removes the term “nursing facilities” from the definition of “Supported Living Services Provider” since the Uniform Assessment Instrument (UAI) will no longer be used for nursing facility residents and removes the reference to the use of the UAI for nursing facility resident reassessments since the MDS will be able to be used directly as a result of the changes in the “Medicaid's Enhanced Plan Benefits” chapter.

IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0044

18-0106-0601, Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children. New chapter clarifies requirements for providing coverage to newborn and newly adopted children and defines what constitutes a congenital anomaly and the extent to which they must be covered under insurance policies, and sets forth period for premium payment to secure coverage.

IDAPA 21 - DIVISION OF VETERANS SERVICES
320 Collins Rd, Boise, ID 83702

21-0101-0701, Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure. Adds to and clarifies definitions; clarifies the basis for discharge from a veterans home; and revises the look back period for disposal of assets to match federal program requirements.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
1109 Main St., Ste. 220, Boise, ID 83702

24-2101-0701, Rules of the Idaho State Contractors Board. Change allows the Board to consider felony convictions when determining eligibility for registration.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255

****58-0101-0701**, Rules for the Control of Air Pollution in Idaho. Updates and removes certain federal regulations that are incorporated by reference. Comment by: 9/26/07

58-0104-0701, Rules for Administration of Wastewater Treatment Facility Grants. Changes the environmental review process for grants and removes references to construction and other obsolete language, revises definitions and rule text for consistency with other DEQ rules. Comment by: 8/29/07

58-0105-0701, Rules and Standards for Hazardous Waste. Updates incorporation by reference section to comply with current federal regulations. Comment by: 8/29/07.

58-0108-0701, Idaho Rules for Public Drinking Water Systems. Incorporates by reference 2 new federal regulations and updates definitions sections in order to retain primacy in administering the Safe Drinking Water Act. Comment by: 8/29/07.

58-0110-0701, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under The Atomic Energy Act of 1954, As Amended. Adds a new category of radioactive materials that must be disposed of at a permitted hazardous waste disposal facility. Comment by: 8/29/07.

58-0120-0701, Rules for Administration of Drinking Water Loan Program. Revises the conditions and qualifications for disadvantaged loans to assist small communities in qualifying for loans. Comment by: 8/29/07.

58-0122-0701, Rules for Administration of Planning Grants for Public Drinking Water Facilities. Revises the requirements for environmental information document preparation when applying for grants to conform with requirements already established in other department rules. Comment by: 8/29/07.

Please refer to the Idaho Administrative Bulletin, **August 1, 2007, Volume 07-8** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

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CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

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**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
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