

# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of 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 Notice of Rulemaking 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 08-1 refers to the first Bulletin issued in calendar year 2008; Bulletin 09-1 refers to the first Bulletin issued in calendar year 2009. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 09-1 refers to January 2009; Volume No. 09-2 refers to February 2009; and so forth. Example: The Bulletin published in January 2009 is cited as Volume 09-1. The December 2008 Bulletin is cited as Volume 08-12.*

## **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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking 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.*

***Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>*

## **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.*

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## 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 "-", (38-0501-0901). 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. 38-0501-0901"

"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).

"0901" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in calendar year 2009. A subsequent rulemaking on this same rule chapter in calendar year 2009 would be designated as "0902". The docket number in this scenario would be 38-0501-0902.

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 these rules." OR "...in accordance with Subsection 201.06.c. of these rules."*

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 2009**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
09-1	January 2009	<b>*November 14, 2008</b>	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	<b>**August 28, 2009</b>	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010**

<b>Vol. No.</b>	<b>Monthly Issue of Bulletin</b>	<b>Closing Date for Agency Filing</b>	<b>Publication Date</b>	<b>21-day Comment Period End Date</b>
10-1	January 2010	<b>*November 13, 2009</b>	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	April 30, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	<b>**August 27, 2010</b>	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

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

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



<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
<b>IDAPA 01</b>	<b>Accountancy</b> , Board of
<b>IDAPA 38</b>	<b>Administration</b> , Department of
<b>IDAPA 44</b>	<b>Administrative Rules Coordinator</b> , Office of the
<b>IDAPA 02</b>	<b>Agriculture</b> , Idaho Department of
<b>IDAPA 40</b>	<b>Arts</b> , Idaho Commission on the
<b>IDAPA 03</b>	<b>Athletic Commission</b>
<b>IDAPA 04</b>	<b>Attorney General</b> , Office of the
<b>IDAPA 53</b>	<b>Barley Commission</b> , Idaho
<b>IDAPA 51</b>	<b>Beef Council</b> , Idaho
<b>IDAPA 07</b>	<b>Building Safety</b> , Division of Electrical Board (07.01) Plumbing Board (07.02) Building Codes & Manufactured Homes (07.03) Building Code Advisory Board (07.03.01) Public Works Contractors License Board (07.05) Uniform School Building Safety (07.06) HVAC Board (07.07)
<b>IDAPA 43</b>	<b>Canola and Rapeseed Commission</b> , Idaho
<b>IDAPA 28</b>	<b>Commerce</b> , Idaho Department of
<b>IDAPA 06</b>	<b>Correction</b> , Board of
<b>IDAPA 19</b>	<b>Dentistry</b> , Board of
<b>IDAPA 08</b>	<b>Education</b> , Board of and Department of
<b>IDAPA 10</b>	<b>Engineers and Land Surveyors</b> , Board of Professional
<b>IDAPA 58</b>	<b>Environmental Quality</b> , Department of
<b>IDAPA 12</b>	<b>Finance</b> , Department of
<b>IDAPA 13</b>	<b>Fish and Game</b> , Department of
<b>IDAPA 14</b>	<b>Geologists</b> , Board of Registration of Professional
<b>IDAPA 15</b>	<b>Governor</b> , Office of the Idaho Commission on Aging (15.01) Idaho Commission for the Blind and Visually Impaired (15.02) Idaho Forest Products Commission (15.03) Division of Human Resources and Personnel Commission (15.04) Idaho Liquor Dispensary (15.10) Idaho Emergency Communications Commission (15.06) Emergency Response Commission (15.13)

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<b>IDAPA 41</b>	<b>Health Districts, Public</b>
<b>IDAPA 45</b>	<b>Human Rights Commission</b>
<b>IDAPA 17</b>	<b>Industrial Commission</b>
<b>IDAPA 18</b>	<b>Insurance, Department of</b>
<b>IDAPA 05</b>	<b>Juvenile Corrections, Department of</b>
<b>IDAPA 09</b>	<b>Labor, Idaho Department of</b>
<b>IDAPA 20</b>	<b>Lands, Department of</b>
<b>IDAPA 30</b>	<b>Libraries, Commission for</b>
<b>IDAPA 52</b>	<b>Lottery Commission, Idaho State</b>
<b>IDAPA 22</b>	<b>Medicine, Board of</b>
<b>IDAPA 23</b>	<b>Nursing, Board of</b>
<b>IDAPA 24</b>	<b>Occupational Licenses, Board of (24.20)</b> Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians (24.03) Contractors Board, Idaho State (24.21) Cosmetology, Board of (24.04) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho (24.22) Morticians, Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Occupational Therapy Licensure Board (24.06) Optometry, Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, Board of (24.11) Professional Counselors and Marriage & Family Therapists, Board of (24.15) Psychologist Examiners, Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of (24.19) Social Work Examiners, Board of (24.14) Speech and Hearing Services Licensure Board(24.23)
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<b>IDAPA 50</b>	<b>Pardons and Parole, Commission for</b>
<b>IDAPA 26</b>	<b>Parks and Recreation, Department of</b>
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<b>ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS</b>	
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<b>IDAPA 59</b>	<b>Public Employee Retirement System of Idaho (PERSI)</b>
<b>IDAPA 31</b>	<b>Public Utilities Commission</b>
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<b>IDAPA 33</b>	<b>Real Estate Commission, Idaho</b>
<b>IDAPA 34</b>	<b>Secretary of State, Office of the</b>
<b>IDAPA 57</b>	<b>Sexual Offender Classification Board</b>
<b>IDAPA 49</b>	<b>Shorthand Reporters, Board of Certified</b>
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<b>IDAPA 39</b>	<b>Transportation Department, Idaho</b>
<b>IDAPA 54</b>	<b>Treasurer, Office of the State</b>
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<b>IDAPA 46</b>	<b>Veterinary Medical Examiners, Board of</b>
<b>IDAPA 47</b>	<b>Vocational Rehabilitation, Division of</b>
<b>IDAPA 37</b>	<b>Water Resources, Department of</b>
<b>IDAPA 42</b>	<b>Wheat Commission</b>

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2009-15**

**CONTINUING A SYSTEM FOR ALLOCATING VOLUME CAP FOR RECOVERY ZONE BONDS IN THE STATE CONSISTENT WITH THE PROVISIONS OF THE U.S. INTERNAL REVENUE CODE OF 1986**

WHEREAS, Sections 1400U-1 through U-3 of the U.S. Internal Revenue Code of 1986 (the "Code") provide that until January 1, 2011 certain bonds can be issued for Projects in Recovery Zones, and subjects such recovery zone bonds to volume limitations or "volume cap" (the "Volume Cap"); and

WHEREAS, the Code, as amended, provides a formula for allocations of such Volume Cap, and in order to provide for the implementation and administration of the formula for allocation of the Volume Cap among the state and its issuing authorities, it is necessary and desirable to issue this Executive Order;

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the power vested in me by the Constitution and laws of the State of Idaho, do hereby order and proclaim:

Section 1: As used in this Executive Order:

- (1) ("Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each allotment dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.
- (2) ("Bonds" means the Recovery Zone Bonds for which an allocation of the Volume Cap is required by the Code.
- (3) ("Code" means the Internal Revenue Code of 1984, as amended by the American Recovery and Reinvestment Act of 2009, and any related regulations including without limitation the Notice, all as may be amended or supplemented.
- (4) ("Department" means the Department of Commerce of the State.
- (5) ("Director" means the director of the Department or such other official or officials of the Department as the director shall designate to carry out the duties of the director set forth in this Executive Order.
- (6) ("Form 8038" means Department of the Treasury tax form 8038 (OMB NO. 1545-0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.
- (7) ("Initial Allocation" means one of the initial allocations established under Section 4(1) hereof.
- (8) ("Issuing Authority" means:
  - (a) (any county, city or port district;
  - (b) (any public corporation created pursuant to Section 50-2703 of the Idaho Code, or other entity acting on behalf of one or more counties, cities, or both;
  - (c) (the Idaho Housing and Finance Association;
  - (d) (the State; or
  - (e) (any other entity authorized to issue Bonds in the State.
- (9) "Notice" means IRS Notice 2009-50, as amended, revised or supplemented.
- (10) "Program" means the program to be financed in whole or in part with the proceeds of the sale of Bonds.

- (11) "Project" means the facility to be financed in whole or in part with the proceeds of sale of Bonds.
- (12) "Recovery Zone" means an area of the State as determined in accordance with the Code and Notice.
- (13) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds as provided in the Code and Notice.
- (14) "Recovery Zone Economic Development Bonds" means bonds issued in accordance with the Code and the Notice for qualified economic development purposes for state or local government facilities as further provided in the Code and the Notice.
- (15) "Recovery Zone Facility Bonds" means bonds issued in accordance with Code and the Notice for Recovery Zone property as further provided in the Code and Notice.
- (16) "State" means the state of Idaho, any of its agencies, instrumentalities, institutions and divisions authorized to issue Bonds under State law.
- (17) "Subsequent State Allocation" means an allocation of Volume Cap by the Department acting for the State of all or a portion of Initial Allocations returned to the State by waiver under the Code and Notice.
- (18) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.
- (19) "Volume Cap" means the volume cap for Recovery Zone Bonds for the State as computed under Sections 1400U-1 through U-3 of the Code, the Notice and related regulations.

Section 2. The Volume Cap is allocated in accordance with the procedures set forth in this Executive Order. An Initial Allocation of the Volume Cap which has been waived or deemed waived and thereby returned to the State in accordance with the Code and/or Notice may be obtained by submitting an application to the Director in accordance with Section 3, as appropriate. The Director shall evidence a grant of an allocation of the Volume Cap by issuing a certificate of such allocation in accordance with Section 4, as appropriate. The Department may seek and obtain waivers of Initial Allocations from applicable counties or municipalities that choose not to make their own allocations under the Code and Notice and allow the Department to make Subsequent State Allocations hereunder. Such waivers may include conditions regarding the Subsequent State Allocations.

Section 3.

- (1) (In the event an Initial Allocation is waived or returned in accordance with the Code and/or Notice, any Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of such Bonds, submit an application to the Director which contains the following information and attachments:
  - (a) the name of the Issuing Authority or Ultimate Beneficiary;
  - (b) the mailing address of the Issuing Authority or Ultimate Beneficiary;
  - (c) the tax identification number of the Issuing Authority or Ultimate Beneficiary;
  - (d) the name, title and office telephone number of the official of the Issuing Authority or Ultimate Beneficiary to whom notices should be sent and from whom information can be obtained;
  - (e) the principal amount of Bonds proposed to be issued for which an application for an allocation of the Volume Cap is requested;
  - (f) the nature, the purpose and the specific location of the Project or the type of Program;
  - (g) the initial owner or user of the Project, if other than the Issuing Authority or Ultimate Beneficiary;
  - (h) a copy of a valid and fully executed resolution or similar official action of the Issuing Authority evidencing its intention to issue Bonds for the Project;
  - (i) with respect to Bonds, the anticipated date on which the Bonds are expected to be sold and the anticipated date on which the closing or final transaction with respect to the issuance and sale of the Bonds is expected to occur;

- (j) *the name, address, and telephone number of all parties to the transaction;*
  - (k) *that the Bonds are expected to be issued under the Code and Notice; and*
  - (l) *that the Project or Program is located in a Recovery Zone and that the Project will be accomplished in accordance with the Code and Notice;*
  - (m) *such information as the applicant may wish to submit in order to demonstrate the need for, and economic impact of, its Program or Project in the State, together with any information which demonstrates how its Program or Project will effectively utilize and efficiently distribute resources throughout the State;*
  - (n) *any other information or attachments reasonably required by the Director.*
- (2) *The Director shall:*
- (a) *establish the form of application for requests for allocations of the Volume Cap, which form shall contain the information required by Section 3(1); and*
  - (b) *make such forms available to the public upon request.*
- (3) *The Director shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Director does not process shall be returned by the Director on or before the fifteenth day after receipt thereof with a brief explanation as to why the application was not processed.*

Section 4.

- (1) *Allocations of Volume Cap shall initially be made to eligible counties and large municipalities in the amounts as set forth section 12 below which are the amounts determined by the Internal Revenue Service under the Notice (collectively, the "Initial Allocations") to be further allocated by said entities as provided in the Code and Notice. Such Initial Allocation shall be permanent unless such Initial Allocation is returned to the State because it is waived or deemed waived or otherwise as provided in the Code and Notice:*
- (a) *In accordance with the Code and Notice, the State's national allocation of Volume Cap Allocation Dollars is hereby allocated to Recovery Zones throughout the State, as Initial Allocations as provided in Exhibit A hereto;*
  - (b) *The above Initial Allocations shall be in effect until the same are waived or deemed waived or otherwise returned to the State Department of Commerce in accordance with the Code and Notice. Thereafter, Subsequent State Allocations shall be made based first on need, economic impact and efficient distribution of resources as determined by the Department and within that determination, and then in the chronological order in which they are received as provided in Section 3, subject to any conditions which may be set forth in a waiver by the applicable county or municipality of an Initial Allocation.*
- (2) *Except as otherwise provided in this Executive Order, on or before the fifteenth day after receipt by the Director of an application for an allocation of the Volume Cap under Section 3 above, the Director shall, if the application is in satisfactory order, the Director will make the requested allocation in the amount so requested, and certify to the Issuing Authority applying for the allocation that an allocation has been made, the amount of such allocation. Certificates of allocation evidencing the granting of an allocation by the Director in accordance with the preceding sentence, shall be issued by the Director, first based on a determination of need, economic impact and efficient use of resources as determined by the Department, and then in the chronological order in which completed applications are received subject to any conditions which may be set forth in the waiver of Initial Allocation executed by the applicable county or municipality.*
- (3) *Every allocation of the Volume Cap by application under Section 3 shall remain effective until, and including, the earlier of:*
- (a) *a date to be determined by the Director but not to exceed 180 days after the date on which such*

- allocation was made;
- (b) 12:00 o'clock midnight on December 31, 2010; or
  - (c) the date upon which the Director receives a written notification from any such Issuing Authority pursuant to Section 6(2). Any allocation for which Bonds are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.
- (4) No application submitted by an Issuing Authority or Ultimate Beneficiary to the Director pursuant to this section shall be processed if the amount of allocation of the Volume Cap requested in such application is in excess of the amount of Volume Cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in the first based on need, economic impact and efficient use of resources as determined by the Department and then in chronological order in which received, granting allocations pursuant to the provisions of this Executive Order.
- (5) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Director.
- (6) In the event that the Director is uncertain whether an application meets the requirements set forth in this Executive Order or the Code and/or Notice above, he may defer action on such application until he has received another application(s) and then determine which application best meets such criteria.

Section 5. No application submitted to the Director may be amended without the consent of the Director; provided, however, that no such consent shall be required for an Issuing Authority or Ultimate Beneficiary to submit a new application in order to replace a previously submitted application if such new application is submitted before an allocation is made on the basis of the original application; provided further, that the consent of the Director shall not be required for an Issuing Authority or Ultimate Beneficiary to withdraw a previously submitted application. For purposes of receiving an allocation of the Volume Cap, any application that has been amended shall be treated as though such application was submitted on the date that the amendment was made, rather than on the date of the original submission of such application.

Section 6.

- (1) After the effective date of this Executive Order, any Issuing Authority issuing Bonds under a Subsequent State Allocation without a certificate or allocation of the Director required to be applied for pursuant to Section 3, or any Issuing Authority issuing Bonds under a Subsequent State Allocation after the expiration of an allocation under Section 4, as appropriate, is not entitled to any Subsequent State Allocation of the Volume Cap for such Bonds, and any Issuing Authority issuing Bonds in excess of the Subsequent State Allocation set forth in the certificate of allocation is not entitled to any Subsequent State Allocation of the Volume Cap for such excess.
- (2) Each Issuing Authority shall:
- (a) advise the Director on or before the earlier of the fifteenth day after the issuance of any Bonds or or the fifteenth day after December 31, 2010, of the principal amount of Bonds issued under the Subsequent State Allocation set forth in each certificate of allocation issued by the Director evidencing the granting of an allocation for such Bonds by delivering to the Director a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds, or, if no such form was required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the Director with respect to such Bonds, or
  - (b) if all or a stated portion of such Bonds will not be issued, shall advise the Director in writing, on or before the earlier of:
    - (i) the fifteenth day after the earlier of

- (A) *the final decision not to issue all or a stated portion of such Bonds or*
- (B) *the expiration of the Subsequent State Allocation; or*
  - (ii) *December 31, 2010.*
- (3) *Each Issuing Authority and Ultimate Beneficiary shall cooperate with the Director in furnishing any information the Director reasonably requires. If an Issuing Authority or Ultimate Beneficiary obtains a Subsequent State Allocation of a portion of the Volume Cap for a particular Project or Program from the Director under Section 3, but does not issue its Bonds within the prescribed time limit, or issues a lesser amount of Bonds within the prescribed time limit, such Issuing Authority or Ultimate Beneficiary may again submit an application with respect to the proposed Bonds or portion of such Bonds not issued for such Project or Program as provided in Section 3, as appropriate. Such application shall be treated as a new application.*

Section 7. *In addition to the duties otherwise specifically set forth in this Executive Order, the Director shall:*

- (1) *maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries under Section 3 and all certificates of allocation issued;*
- (2) *maintain a record of all Bonds issued by Issuing Authorities;*
- (3) *maintain a record of all information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;*
- (4) *make available upon reasonable request a certified copy of all or any part of the records maintained by the Department under this Executive Order or a summary thereof including information regarding the Volume Cap allocated and any amounts available or at any time remaining available, for allocation under this Executive Order;*
- (5) *the Director shall serve as the State official designated under State law to make any allocation including without limitation Subsequent State Allocations or certifications required to be made under the Code; and*
- (6) *promulgate reasonable rules not inconsistent with this Executive Order deemed necessary or expedient to allocate the Volume Cap hereunder.*

Section 8. *If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.*

Section 9. *The State pledges and agrees with the owners of any Bonds to which an allocation of the Volume Cap has been granted under this Executive Order that the State will not retroactively alter the allocation of the Volume Cap to such Bonds.*

Section 10. *No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued hereunder.*

Section 11. *The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds providing a system for the implementation and administration of the formula provided under the Code for allocating the Volume Cap.*

Section 12. *Volume Cap Amounts:*



<b>Area</b>	<b>Residual</b>	<b>Recovery Zone Economic Development Bond</b>	<b>Recovery Zone Facility Bond</b>
<i>Ada County, ID</i>	<i>Residual</i>	19,381,000	29,071,000
<i>Adams County, ID</i>		933,000	1,400,000
<i>Bannock County, ID</i>		3,902,000	5,854,000
<i>Benewah County, ID</i>		455,000	682,000
<i>Blaine County, ID</i>		52,000	77,000
<i>Boise City city, ID</i>		24,902,000	37,352,000
<i>Boise County, ID</i>		797,000	1,196,000
<i>Bonner County, ID</i>		230,000	345,000
<i>Bonneville County, ID</i>		2,894,000	4,341,000
<i>Boundary County, ID</i>		145,000	218,000
<i>Butte County, ID</i>		131,000	197,000
<i>Camas County, ID</i>		5,000	7,000
<i>Canyon County, ID</i>		18,542,000	27,811,000
<i>Caribou County, ID</i>		145,000	218,000
<i>Cassia County, ID</i>		441,000	661,000
<i>Clark County, ID</i>		47,000	70,000
<i>Clearwater County, ID</i>		38,000	56,000
<i>Elmore County, ID</i>		1,210,000	1,815,000
<i>Franklin County, ID</i>		553,000	830,000
<i>Gem County, ID</i>		1,581,000	2,371,000
<i>Idaho County, ID</i>		891,000	1,337,000
<i>Jefferson County, ID</i>		638,000	957,000
<i>Kootenai County, ID</i>		4,695,000	7,043,000
<i>Lemhi County, ID</i>		1,130,000	1,696,000
<i>Lewis County, ID</i>		220,000	331,000
<i>Lincoln County, ID</i>		469,000	704,000
<i>Minidoka County, ID</i>		408,000	612,000
<i>Nez Perce County, ID</i>		1,656,000	2,484,000
<i>Oneida County, ID</i>		80,000	120,000
<i>Owyhee County, ID</i>		1,018,000	1,527,000
<i>Payette County, ID</i>		750,000	1,126,000

Power County, ID	352,000	528,000
Valley County, ID	910,000	1,365,000
Washington County, ID	399,000	598,000



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 30th day of July in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-fourth and of the Statehood of Idaho the one hundred twentieth.*

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*C.L. "BUTCH" OTTER*  
*GOVERNOR*

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*BEN YSURSA*  
*SECRETARY OF STATE*

# **IDAPA 01 - BOARD OF ACCOUNTANCY**

## **01.01.01 - IDAHO ACCOUNTANCY RULES**

### **DOCKET NO. 01-0101-0901**

#### **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 54-204(1) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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:

Modify Rule 502.02.c. to change the age a licensee can apply for a retired license from age 60 to age 55. Idaho Code was modified in 2008 to allow licensees to apply for a retired license at age 55, but the rule was not updated.

Rule 006 refers to Section 9-340B (1), Idaho Code. Because of changes to that section of Idaho Code, it should refer to Sections 9-340B and 9-340C. Rule 616 refers to Idaho Code Section 9-340B (1). It should refer to Section 9-340C, for the same reason.

Modify Rules 004.01 and 004.03 to remove the reference to the calendar year in these two sets of professional standards that are incorporated by reference. The year reference was put in a few years ago. However, it is apparent that the Board's regulatory authority is jeopardized by doing so. Our national model has language that says standards should be incorporated "as applicable under the circumstances and at the time of the services." The Board receives complaints against licensees for professional services provided at a particular point in time. This work must be done in accordance to the standards in place for those services at that point in time. But putting in a discrete calendar year, licensees are being held to standards that may not have been in place at the time services were provided. Conversely, clients may not be protected if we are not holding licensees to appropriate standards.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in public meetings and newsletters, without any objections from the public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Barbara R. Porter, Executive Director, at 208-334-2490.

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 October 28, 2009.

DATED this 20th Day of August, 2009.

Barbara R. Porter, Executive Director  
Idaho State Board of Accountancy  
3101 W. Main Street, Suite 210  
PO Box 83720  
Boise, Idaho 83720-0002  
Phone: 208-334-2490  
Fax: 208-334-2615  
E-mail: barbara.porter@isba.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 01-0101-0901**

**004. INCORPORATION BY REFERENCE (RULE 004).**

The following documents are hereby incorporated by reference into IDAPA 01.01.01 and can be obtained at the Board office. Licensees are required to comply with the following standards when applicable. (3-1-05)

**01. AICPA Standards.** ~~2008~~ The AICPA Professional Standards as applicable under the circumstances and at the time of the services, except as superceded by Section 54-206(8), Idaho Code. (~~5-8-09~~)(    )

**02. CPE Standards.** 2002 Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. (4-2-03)

**03. PCAOB Standards.** ~~2008~~ The Standards issued by the Public Company Accountability Oversight Board, as applicable under the circumstances and at the time of the services. (~~5-8-09~~)(    )

**04. NASBA Model Code of Conduct.** 2008 Model Code of Conduct issued by the National Association of State Boards of Accountancy. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. PUBLIC RECORDS (RULE 006).**

**01. Documents Exempt from Public Disclosure.** Pursuant to Sections ~~9-340B(1)~~ and 9-340C, Idaho Code, the Board office shall not disclose the filing of a complaint, the nature of a complaint, nor the details of an investigation, except to disclose such information to appropriate authorities in cases where the Board is cooperating with other states in investigation and enforcement concerning violations of the Idaho Accountancy Act and rules and comparable acts of other states. (~~5-8-09~~)(    )

**02. Documents Open for Public Inspection.** (4-2-03)

**a.** Final, formal enforcement actions such as fines, assessment of expenses, revocations or suspensions. (4-2-03)

**b.** Probations and conditions may be subject to public disclosure whenever the Board believes it is in the public interest. Following a hearing or the entry of a consent agreement, the Board may publish a summary of any order issued by it, in a newsletter or newspapers of general circulation. The Board may also advise anyone requesting such information of the contents of any order issued by it. (4-2-03)

**c.** All rules issued by this agency. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**502. EXCEPTIONS, EXTENSIONS, AND EXEMPTIONS (RULE 502).**

**01. Exceptions and Extensions.** The Board may make exceptions to the CPE requirements or grant extensions of time for completion of the CPE requirements, where reasons of health as certified by a medical doctor prevent compliance by the licensee, or other good cause exists. (4-2-03)

**a.** Licensees asking for exceptions or extensions under these conditions must apply annually on the

reporting form for the year in which the extension or exemption is sought, and within the time period set for CPE reporting, stating the reasons for asking for such exception or extension. Any licensee failing to file a timely application shall be subject to the late fee prescribed in Rule 703, in addition to any additional proceeding that may be instituted for violation of these rules. (4-2-03)

**b.** A penalty of no more than fifty percent (50%) of the hours a licensee is short in meeting the calendar year CPE requirement may be assessed for extensions. In such cases, the licensee shall be required to complete the CPE hours and any assessed penalty no later than May 31. The penalty for non-compliance with ethics CPE is to obtain the mandatory hours of ethics CPE plus fifty percent (50%) penalty hours in ethics CPE prior to May 31. The penalty for non-compliance with state-specific ethics for Idaho is to complete the course plus fifty percent (50%) penalty hours in ethics CPE prior to May 31. (5-8-09)

**02. Exemptions for Inactive or Retired.** Licensees who elect inactive or retired status shall be exempt from any CPE requirements provided that: (3-20-04)

**a.** The licensees do not perform or offer to perform for the public services involving: (4-2-03)

**i.** The use of accounting or auditing skills including the issuance of reports on financial statements, or of management advisory, financial advisory or consulting services; or (4-2-03)

**ii.** The preparation of tax returns, or the furnishing of advice on tax matters as a licensee. (4-2-03)

**b.** Licensees granted such exemption must place the word “inactive” adjacent to their CPA or LPA title on any business card, letterhead or any other document or device. The Board shall issue a wall certificate for public display that indicates the license is inactive; (4-2-03)

**c.** Those individuals who are inactive and have reached ~~sixty~~ fifty-five (6055) years of age may substitute the word “retired” for the word “inactive”; (~~4-2-03~~)(    )

**d.** Licensees granted the exemption as either “inactive” or “retired” shall annually pay the license renewal fee as prescribed in Rule 701; and (4-2-03)

**e.** Licensees granted the exemption must comply with a return to active status competency requirement as set out in Rule 510 before they may discontinue use of the word “inactive” or “retired” in association with their CPA or LPA title. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**616. CONFIDENTIALITY (RULE 616).**

The letter and any documentation submitted to the Board pursuant to Rule 606 is confidential as authorized by Section 9-340(~~B~~)(9)C, Idaho Code, unless an Order is issued by the Board pursuant to Section 54-219, Idaho Code. (~~4-2-03~~)(    )

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-0901

#### 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 22-112, 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 October 21, 2009.

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 changes will simplify fee payment for new participants who join midway through the year. Promotion opportunities will be updated to reflect current program options and annual renewal process will be clarified.

**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: NA

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted. Input was solicited from all Idaho Preferred® participants.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Section Manager at (208) 332-8533 or Leah Clark, Trade Specialist at (208) 332-8684.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 27th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0104-0901

**101. PARTICIPATION DURATION AND RENEWAL.**

**01. Duration.** Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (3-16-04)

**02. Renewing Participation.** Renewals shall be submitted on forms established by the Director and will be due ~~June 30~~ August 1. (~~3-16-04~~)(\_\_\_\_)

**03. Reporting on Use of Logo.** Participants renewing with the Department will report their use of the Idaho Preferred® logo from the concluding program year. The report will include, but may not be limited to, ~~data~~ information regarding ~~the number of times~~ how the Idaho Preferred® logo was used. (~~3-30-07~~)(\_\_\_\_)

**102. -- 109. (RESERVED).**

**110. PARTICIPATION FEES.**

**01. Annual Fee.** The Director shall annually establish participation fees for each participation category by April first for the following program year. Participation fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000). Fees for the first program year will be set by July 1, 2003. (3-16-04)

**02. Participation Categories:** (3-16-04)

**a.** Producer. (3-16-04)

**b.** Packer/Shipper/Processor. (3-16-04)

**c.** Supporting Organization. (3-16-04)

**d.** Retail/Foodservice. (3-16-04)

**e.** Broker/Distributor. (3-16-04)

**03. Pro-Rated Fees.** New participation agreements issued during the program year will be assessed ~~at~~ fee pro rated on a monthly basis for the duration of the program year one hundred percent (100%) of the annual fee if applying between July 1 and December 31 and fifty percent (50%) of the fee if applying between January 1 and June 30. (~~3-16-04~~)(\_\_\_\_)

**04. Participation in Multiple Categories.** Persons qualifying in multiple participation categories shall be assessed the greater of participation fees. (3-16-04)

**111. PARTICIPATION PRIVILEGES.**

Participants will benefit from privileges including: (3-16-04)

**01. Use of the Idaho Preferred® Logo.** Use of the Idaho Preferred® Logo on product labels, advertising, signage, or other promotional materials as allowed by the department. (3-30-07)

**02. Listing.** Listing In Idaho Preferred® Product Directories. (3-30-07)

**03. Promotion.** Promotion through advertising, retail and foodservice promotions, consumer and education events, and the Idaho Preferred® website. (~~3-30-07~~)(\_\_\_\_)

**04. Visibility.** Visibility from the department's promotion activities. (3-16-04)

**05. Other Privileges.** Other privileges as established by the Director. (3-16-04)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-0902

#### 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 22-112, 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 October 21, 2009.

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 changes will allow ISDA to charge Idaho Preferred® participants for promotional materials such as stickers, banners, signs, aprons, shopping bags, etc. The proposed fee language is similar to Section 301.02 allowing fees to be assessed for Idaho Preferred® activities.

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

Current rules allow for collection of fees for promotional activities, but not materials. This rule will allow ISDA to charge Idaho Preferred® participants for promotional materials. Fees collected will offset costs to produce promotional materials increasing the dedicated account by approximately \$3000 annually.

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

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted. Input was solicited from all Idaho Preferred® participants.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Section Manager at (208) 332-8533 or Leah Clark, Trade Specialist at (208) 332-8684.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 27th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0104-0902



**303. DISTRIBUTION OF PROMOTIONAL MATERIAL.**

**01. Authorized Use.** The Idaho Preferred® program shall have the authority to provide retail and food service outlets, farmers' markets, schools, media, fairs, and other such businesses, organizations, and venues the opportunity to promote Idaho food and agricultural products using the program logo and promotional materials. Open distribution of any and all point-of-sale materials, signage, advertising, identification placards, and other such promotional material, in accordance with this chapter and other applicable laws and precedent, is acceptable use and not considered an infringement on the ownership rights of any mark or seal of a ~~an~~ supporting organization as defined in this chapter. (3-30-07)( )

**02. Fees.** The Department may assess a fee for promotional materials such as, but not limited to, banners, stickers, signs, aprons, shopping bags, etc. ( )

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.01.05 - RULES GOVERNING CERTIFICATES OF FREE SALE**  
**DOCKET NO. 02-0105-0901 (NEW CHAPTER - FEE RULE)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-112, 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 October 21, 2009.

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:

Certificates of free sale are most commonly used by processed food companies exporting products internationally. The certificate states that the products are manufactured and distributed generally throughout the state of Idaho and the United States and are in accordance with health laws and sanitary regulations of said state. Idaho is one of only a few states in the country that does not charge a fee for the service. This rule provides for fees as well as application procedures and requirements.

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

This rule will provide for the Department to begin charging a fee for certificates of free sale not to exceed \$50 each. Idaho is one of the very few states that does not charge for this service. The new fee rule is expected to generate \$20,000 - \$30,000 to the dedicated fund.

**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: There will be no impact to the general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 2, 2009 Idaho Administrative Bulletin, Volume 09-9, page 16.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Laura Johnson at (208) 332-8533.

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 October 28, 2009.

DATED this 6th day of August, 2009.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0105-0901**

**IDAPA 02**  
**TITLE 01**  
**CHAPTER 05**

**02.01.05 - RULES GOVERNING CERTIFICATES OF FREE SALE**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.01.05, "Rules Governing Certificates of Free Sale." ( )

**02. Scope.** These rules govern the issuing of certificates of free sale and establish applicant procedures for obtaining Certificates of Free Sale. The official citation of this chapter is IDAPA 02.01.05, et seq. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

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

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- TELEPHONE AND FAX NUMBERS.**

**01. Office.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

**02. 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. ( )

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

**04. Telephone Number.** The telephone number for the Market Development Division at the central office is (208) 332-8530. ( )

**05. Fax Number.** The fax number for the Market Development Division at the central office is (208) 334-2879. ( )

**006. IDAHO PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

**01. Applicant.** Any person applying for certification under these rules. ( )

**02. Certificate of Free Sale.** A certificate issued by the Department for products grown or processed in Idaho to certify that the products are distributed generally throughout the state of Idaho and the United States and are in accordance with Idaho health laws and sanitary regulations. ( )

**03. Department.** The Idaho State Department of Agriculture. ( )

**04. Director.** The director of the Idaho State Department of Agriculture or the director's designee. ( )

**011. -- 099. (RESERVED).**

**100. APPLICATION FOR CERTIFICATION - PROCEDURES.**

**01. Application.** Application must be made in writing (which includes electronic mail) and must include, but will not be limited to, the following information: ( )

**a.** Company name; ( )

**b.** Physical address of packing or processing facility; and ( )

**c.** List of products to be certified. ( )

**02. Application Forms.** No application form(s) are necessary. ( )

**03. Multiple Certificates.** Multiple certificates may be requested at one time. ( )

**101. -- 109. (RESERVED).**

**110. APPLICANT REQUIREMENTS.**

**01. Applicant Health Inspection.** The Department may request a copy of an applicants' most recent state, federal or third-party health inspection, if applicable. Such inspection records will be kept on file for one (1) year. ( )

**02. Applicant Licenses or Registrations.** If the applicant is regulated by the Department, the applicant must meet all state laws and Department regulations. ( )

**111. -- 119. (RESERVED).**

**120. SPECIAL REQUESTS.**

**01. Customized Certificates.** The applicant may request customized text for the certificate of free sale in order to meet the import requirements of a specific country. The Department will make every effort to comply with the request. ( )

**02. Additional Charges.** There will be no additional charges for special requests. ( )

**121. -- 299. (RESERVED).**

**300. FEES AND CHARGES.**

**01. Certification Fees.** The Director will establish certification fees annually under this chapter. Fees will not exceed fifty dollars (\$50) each. Fees will be set by July 1 of each year. ( )

**02. Notary Charges.** Notary certification will be provided for each certificate at no additional charge. ( )

**03. Shipping and Delivery Charges.** There will be no fees for mailing costs unless the applicant requests express mailing. ( )

**04. Express Mailing.** The applicant will be responsible for express mailing charges. The applicant may provide an account number for the carrier, pre-paid air bill or be invoiced for the actual costs. ( )

**05. Payment.** The applicant will be sent and invoice for fees and charges and will be responsible for payment within thirty (30) days. The Department will not issue a certificate of free sale to any company with an outstanding account balance. ( )

**301. -- 999. (RESERVED).**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.13 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING RETAIL RAW MILK

#### DOCKET NO. 02-0413-0901 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-308, -314, -401, -708, and -803, 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 October 21, 2009.

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:

ISDA proposes to repeal the existing "Rules of the Department of Agriculture Governing Retail Raw Milk." Under a separate rulemaking docket, ISDA has promulgated a new rule, "Rules Governing Raw Milk." The purpose of the new rule is to modify the raw milk quality standards and sanitary requirements for raw milk for human consumption, to provide clarity for raw milk produced under a "cow share" program and provide a small herd exemption for facility construction requirements. The new rule will be more concise by eliminating approximately twenty-five (25) pages from the rules to be repealed. Due to the significant amount of changes made to the existing rule, ISDA determined that there would be less confusion if ISDA repealed the existing "Rules of the Department of Agriculture Governing Retail Raw Milk," and adopted the new "Rules Governing Raw Milk," rather than make amendments to the existing rules.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking, which resulted in the new "Rules Governing Raw Milk" was published in the August 5, 2009 Idaho Administrative Bulletin, Volume 09-8, page 22.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.idaho.gov.

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 October 28, 2009.

Signed this 26th Day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, ID 83712  
P.O. Box 790, Boise, ID 83701-0790  
Phone: (208) 332-8500 / Fax: (208) 332-4062

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IDAPA 02.04.13 IS BEING REPEALED IN ITS ENTIRETY

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.04.13 - RULES GOVERNING RAW MILK**

#### **DOCKET NO. 02-0413-0902 (CHAPTER REWRITE)**

#### **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 37-308, -314, -401, -708, and -803, 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 October 21, 2009.

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

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

This rule will replace the proposed repeal of IDAPA 02.04.13, "Rules of the Department of Agriculture Governing Retail Raw Milk," to modify the raw milk quality standards and sanitary requirements for raw milk for human consumption, to provide clarity for raw milk produced under a "cow share" program and provide a small herd exemption for facility construction requirements. This rule will also eliminate approximately twenty-five (25) pages of outdated rules.

This rule will incorporate by reference the sanitary milk production and milk processing provisions of the 2009 Pasteurized Milk Ordinance, and will also establish sanitary criteria, milk quality, and permitting protocols for "cow share" programs.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 5, 2009 Idaho Administrative Bulletin, Volume 09-8, page 22.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.idaho.gov.

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 October 28, 2009.

Signed this 26th day of August, 2009.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, ID 83712  
P.O. Box 790, Boise, ID 83701-0790  
Phone: (208) 332-8500  
Fax: (208) 332-4062

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 13**

**02.04.13 - RULES GOVERNING RAW MILK**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, 7, and 8, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is "Rules Governing Raw Milk." ( )

**02. Scope.** These rules will govern the production, processing and sale of Raw Milk for human consumption, but not intended for pasteurization. The official citation of this chapter is IDAPA 02.04.13.000 et seq. For example, this section's citation is IDAPA 02.04.13.001. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under this chapter. ( )

**004. INCORPORATION BY REFERENCE.**

The following document is incorporated by reference, and copies of the document may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712: The Grade A Pasteurized Milk Ordinance 2009 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration ("2009 Pasteurized Milk Ordinance"), except those provisions establishing raw milk standards for raw milk for pasteurization. ( )

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

**01. Physical Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ( )

**02. 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. ( )

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

**04. Telephone Number.** The telephone number of the Division of Animal Industries, Dairy Bureau at the central office is (208) 332-8550. ( )

**05. Fax Number.** The fax number of the Division of Animal Industries, Dairy Bureau at the central office is (208) 334-4062. ( )

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ( )



**007. DEFINITIONS.**

The following definitions shall apply in the interpretation and the enforcement of this chapter: ( )

**01. Adulterated.** The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product, or the production and sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department. ( )

**02. Cow Share.** The investment of monetary value into the ownership or care of cows, goats, or sheep in exchange for raw milk or raw milk products. ( )

**03. Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked, and from which a part or all of the raw milk or raw milk products are produced and are not intended for pasteurization, but are sold or offered for sale for human consumption without pasteurization. ( )

**04. Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. ( )

**05. Department.** The Idaho State Department of Agriculture. ( )

**06. Director.** The Director of the Idaho State Department of Agriculture or his designee. ( )

**07. Milk Plant.** Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption. ( )

**08. Official Laboratory.** A biological, chemical, or physical laboratory that is under the direct supervision of the State or the Department. ( )

**09. Person.** An individual, plant operator, partnership, corporation, company, firm, trustee, association or institution. ( )

**10. Raw Milk.** The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is sold or offered for sale for human consumption. ( )

**11. Raw Milk Products.** Raw milk products include any milk product processed from raw milk that has not been pasteurized. Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees (35°) Fahrenheit (F) in a licensed dairy processing plant is exempt from these rules. ( )

**12. Sanitization.** The application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and shall be acceptable to the Department. ( )

**13. Small Herd.** The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows or seven (7) lactating goats or sheep. ( )

**14. Sterilized.** The condition achieved by application of heat, chemical sterilant or other appropriate treatment that renders the piping, equipment and containers used for raw milk and raw milk products free of viable microorganisms. ( )

**008. -- 010. (RESERVED).**

**011. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.**

No person shall produce, provide, sell, offer, or expose for sale, or possess with intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. Any adulterated

or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department.

( )

**012. -- 019. (RESERVED).**

**020. PERMITS.**

**01. Requirements.** It shall be unlawful for any person who does not possess a permit from the Department to produce, process, sell or offer for sale raw milk or raw milk products for human consumption. Raw milk shall not be sold or offered for sale through restaurant type establishments or establishments where the consumer may not know that raw milk or raw milk products are from a raw milk source. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-approved facilities.

( )

**02. Obtaining a Permit.** Only a person who complies with these rules may receive and retain a permit. Permits shall not be transferable with respect to persons or locations.

( )

**03. Permit Suspension.** The Department may suspend a permit whenever it has reason to believe that a public health hazard exists; whenever the permit holder has violated any of the requirements of these rules; or whenever the permit holder has interfered with the Department in the performance of its duties.

( )

**a.** Prior to suspending a permit the Department will serve a written notice of intent to suspend permit on the permit holder. The notice will specify the alleged violation(s) and afford the permit holder a reasonable opportunity to correct such violation(s) in a manner agreed to by the parties. In the absence of such agreement, the corrective actions may be designated by the Department. The reasonable opportunity to correct will be given before the permit suspension order becomes effective. A permit suspension will remain in effect until the violation has been corrected to the satisfaction of the Department.

( )

**b.** In cases in which the raw milk or raw milk products create or appear to create an imminent hazard to the public health, or in case of a willful refusal to permit an authorized inspection, the Department may immediately suspend the permit without the prior notice procedure set forth in these rules. The Department will provide notice and opportunity for hearing after the suspension, in accordance with Title 67, Chapter 52, Idaho Code.

( )

**c.** Upon written request by any person whose permit has been suspended, or any person who has been served with a notice of intent to suspend, the Department will proceed to a hearing, and upon evidence presented at such hearing may affirm, modify, or rescind the suspension or intention to suspend.

( )

**d.** The Department may forego permit suspension, provided the raw milk or raw milk products in violation are not sold or offered for sale or distributed for human consumption.

( )

**04. Permit Revocation.** Upon repeated violations, the Department may revoke a permit following reasonable notice to the permit holder and an opportunity for a hearing. This Section is not intended to preclude the institution of court action.

( )

**05. Permit Reinstatement.** Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of his permit.

( )

**a.** When the permit has been suspended due to a violation of any of the bacterial, coliform, or cooling-temperature standards, the Department may issue a temporary permit after raw milk samples show that the conditions responsible for the violation have been corrected.

( )

**b.** When the permit has been suspended due to a violation of the somatic cell count standard, the Department may issue a temporary permit if resampling of the herd milk supply indicates that the milk supply is within the somatic cell count standard.

( )

c. Whenever the permit has been suspended due to a violation of a requirement other than bacteriological, coliform, somatic cell count or cooling-temperature standards, the application for reinstatement must show that the violation has been corrected. Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's establishment, and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated. ( )

**021. -- 029. (RESERVED).**

**030. LABELING.**

**01. Requirements.** all bottles, containers, and packages enclosing raw milk or raw milk products shall be conspicuously marked with the word "raw," the quantity of contents and the identity of the packaging facility. The word "goat" or "sheep," if applicable, shall precede the name of the raw milk or raw milk products. ( )

**02. Misleading Labels.** It is a violation of these rules to use any misleading marks, words, or endorsements upon the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. ( )

**031. -- 039. (RESERVED).**

**040. INSPECTION OF RAW MILK PRODUCERS.**

Each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho shall be inspected and approved by the Department prior to the issuance of a permit. ( )

**01. Inspection Frequency.** Following the issuance of a permit, the Department will inspect each raw milk producer and raw milk processor at least once every three (3) months. ( )

**02. Sanitation Requirements.** All raw milk dairy farms and milk plants that process raw milk or raw milk products for human consumption into final containers, for use other than for members or their immediate household or non-paying guests, shall meet the requirements of the 2009 Pasteurized Milk Ordinance, in addition to Section 060 of these rules. ( )

**03. Processing Location.** All raw milk and raw milk products must be produced and processed on the same premises. ( )

**04. Cow Share Programs.** Cow Share programs are allowed, provided that the raw milk and raw milk products are produced and processed in facilities with raw milk dairy farm and raw milk plant permits issued by the Department. ( )

**05. Applicability.** Persons or a person with more than three (3) lactating cows or seven (7) lactating goats or sheep may sell raw milk and raw milk products for human consumption, provided that the raw milk and raw milk products are produced and processed in facilities with raw milk dairy farm and raw milk plant permits issued by the Department. ( )

**041. -- 049. (RESERVED).**

**050. SMALL HERD EXEMPTION.**

The production of raw milk and raw milk products for human consumption by a person or by individuals participating in a Cow Share program is exempt from the sanitary construction and operation standards of the 2009 Pasteurized Milk Ordinance, provided the following conditions are met: ( )

**01. Testing Frequency.** The raw milk and raw milk products comply with the testing frequency set forth in the 2009 Pasteurized Milk Ordinance and quality standards set forth in Section 060 of these rules. ( )

**02. Applicability.** The number of animals in lactation does not exceed three (3) cows or seven (7) goats

or sheep. ( )

**03. Permit.** The person or the Cow Share owners obtain a small herd exemption permit from the Department. The permit will indicate the physical location of the facility; the mailing address of the owner or operator in charge of the herd's care and milk quality. ( )

**04. Test Results Made Available.** Milk quality test results shall be available from the permit holder to all individuals who purchase raw milk or raw milk products. ( )

**05. Restriction for Sale.** The raw milk or raw milk products may not be sold or offered for sale through restaurant-type establishments or other establishments where the consumer may not know that raw milk or raw milk products are from a raw milk source. ( )

**06. Labeling.** All raw milk and raw milk products must have approved labeling by the Department if sales take place at locations other than the point of production. ( )

**051. -- 059. (RESERVED).**

**060. STANDARDS FOR RAW MILK AND RAW MILK PRODUCTS.**

**01. Requirements.** All raw milk and raw milk products shall be produced and processed to conform with the standards listed in Table 1 below. Raw milk and raw milk products shall meet the sanitation requirements of the 2009 Pasteurized Milk Ordinance, unless the facility has a small herd exemption. ( )

**02. Chemical, Bacteriological, and Temperature Standards.**

RAW MILK	
Temperature	Cooled to forty degrees Fahrenheit (40F or 5C) or less within two (2) hour after milking provided that the blend temperature after the first and subsequent milking does not exceed forty-five degrees Fahrenheit (45F or 7C).
Bacterial Limits	Raw milk shall not exceed fifteen thousand (15,000) per ml.
Coliform Limits	Raw milk shall not exceed twenty-five (25) per ml.
Drugs	Milk must test negative by a test method approved by the Department.
Somatic Cell Counts	Raw milk shall not exceed five hundred thousand (500,000) per ml. Goat, or Sheep Raw Milk shall not exceed seven hundred and fifty thousand (750,000) per ml.
Tuberculosis Test	All Raw Milk shall be from animals which have been accredited as tuberculosis free or shall have passed an annual tuberculosis test.

( )

**061. -- 069. (RESERVED).**

**070. PENALTY.**

Any person who violates any of the provisions of these rules shall be subject to the penalties provided in Section 37-408, Idaho Code, or may have their permit to sell raw milk or raw milk products for human consumption revoked or suspended. ( )

**071. -- 999. (RESERVED).**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.14 - RULES GOVERNING DAIRY WASTE

DOCKET NO. 02-0414-0902

#### NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 37-405, Idaho Code.

**MEETING SCHEDULE:** The first public negotiated rulemaking process is tentatively scheduled to begin in October 2009. Please contact the Idaho State Department of Agriculture ("ISDA") at 208-332-8550 to be included on the distribution list for the meeting announcements.

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must attend the negotiated rulemaking meeting(s) and/or deliver written comments via U.S. Postal Mail, email, facsimile, or in person on or before October 30, 2009.

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

This negotiated rulemaking is in response to a Petition for Rulemaking filed by the Idaho Rural Council ("Petitioner") with ISDA on May 29, 2009. ISDA subsequently granted the petition, and expects that the Petitioner will propose specific additions to IDAPA 02.04.14, "Rules Governing Dairy Waste." ISDA anticipates that the Petitioner will propose changes which would allow ISDA to regulate pathogen drift from wastewater applications through pressurized irrigation systems on licensed dairy farms within the state of Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this negotiated rulemaking, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or [john.bilderback@agri.idaho.gov](mailto:john.bilderback@agri.idaho.gov).

Anyone may deliver written comments regarding this negotiated rulemaking to ISDA.

DATED this 19th day of August, 2009.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, ID 83712  
P.O. Box 790, Boise, ID 83701-0790  
Phone: (208) 332-8500  
Fax: (208) 332-4062

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**

**02.04.19- RULES GOVERNING DOMESTIC CERVIDAE**

**DOCKET NO. 02-0419-0901**

**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 25-3704, Idaho Code.

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

**TUESDAY - OCTOBER 27, 2009 -- 7:00 p.m.**

**Idaho State Department of Agriculture  
2270 Old Penitentiary Road, Boise, Id**

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

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

The purpose of the proposed rulemaking is to introduce herd management plans to enable the agency to conduct facility inspections and herd inventories more efficiently. Ambiguous, unclear, or redundant language in IDAPA 02.04.19 will be also be changed to improve interpretation of the rule.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2009 Idaho Administrative Bulletin, Volume 09-5, page 20.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Bill Barton or Dr. Debra Lawrence 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 October 28, 2009.

DATED this 27th day of August, 2009.

Brian Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road PO Box 7249  
Boise, ID 83707  
Phone 208-332-8500 / Fax 208-334-2170

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0419-0901**

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office ~~and the state Law Library.~~ (4-2-03)(\_\_\_\_)

- 01. **Bovine Tuberculosis Eradication**, Uniform Methods and Rules, Effective January 22, 1999. (4-2-03)
- 02. **Code of Federal Regulations, Title 9, Part 161, January 1, 2004.** (4-6-05)
- 03. **Code of Federal Regulations, Title 9, Part 55, January 1, 2004.** (4-6-05)
- 04. **Code of Federal Regulations, Title 9, Subchapter A, Part 1 and 2, January 1, 2004.** (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. IDAHO PUBLIC RECORDS ACT.**

These rules are public records and are available for inspection and copying at the ISDA central office ~~and the State Law Library.~~ (4-2-03)(\_\_\_\_)

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

01. **Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with Title 9, Part 161, CFR, January 1, 2004, to perform functions required by cooperative state-federal animal disease control and eradication programs. (4-6-05)

02. **Administrator.** Administrator of the Division of Animal Industries or his designee. (4-2-03)

03. **Approved Laboratory.** NVSL, an AAFLD accredited laboratory that is qualified to perform CWD diagnostic procedures, or a laboratory designated by the Administrator to perform CWD diagnostic procedures. (4-2-03)

04. **Approved Slaughter Establishment.** A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (4-2-03)

05. **Area Veterinarian in Charge.** The USDA/APHIS/VS veterinary official who is assigned to supervise and perform official animal health activities in Idaho. (4-2-03)

06. **Breed Associations and Registries.** Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (4-2-03)

07. **Certificate.** An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae, which contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results and any other information required by the state animal health official for importation or translocation. (4-2-03)

08. **Cervid Herd.** One (1) or more domestic cervidae or groups of domestic cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. (4-2-03)

09. **Cervidae.** Deer, elk, moose, caribou, reindeer, and related species and hybrids including all

members of the cervidae family and hybrids. (4-2-03)

**10. Chronic Wasting Disease.** A transmissible spongiform encephalopathy of cervids, which is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (4-2-03)

**11. Commingling.** Within the last five (5) years, the animals have had direct contact with each other, had less than thirty (30) feet of physical separation, or shared management equipment, pasture, or surface water sources, except for periods of less than forty-eight (48) hours at sales or auctions when a state or federal animal health official has determined such contact presents minimal risk of CWD transmission. (4-2-03)

**12. Custom Exempt Slaughter Establishment.** A slaughter establishment that is subject to facility inspection by USDA, but which does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (4-2-03)

**13. CWD-Adjacent Herd.** A herd of domestic cervidae occupying premises that border a premises occupied by a CWD positive herd, including herds separated by roads or streams. (4-6-05)

**14. CWD-Exposed Animal.** A domestic cervid animal that is not exhibiting any signs of CWD, but has had contact within the last five (5) years with domestic cervids from a CWD-positive herd or the animal is a member of a CWD-exposed herd. (~~4-2-03~~)(\_\_\_\_)

**15. CWD-Exposed Herd.** A herd of domestic cervidae in which no animals are exhibiting signs of CWD, but: (~~4-2-03~~)(\_\_\_\_)

**a.** An epidemiological investigation indicates that contact with CWD positive animals or contact with animals from a CWD positive herd has occurred in the previous five (5) years; or (4-2-03)

**b.** A herd of domestic cervidae occupying premises that were previously occupied by a CWD positive herd within the past five (5) years as determined by the designated epidemiologist; or (~~4-2-03~~)(\_\_\_\_)

**c.** Two (2) herds that are maintained on a single premises even if they are managed separately, have no commingling, and have separate herd records. (4-6-05)

**16. CWD-Positive Cervid.** A domestic cervid on which a diagnosis of CWD has been confirmed through positive test results on any official cervid CWD test by an approved laboratory. (4-2-03)

**17. CWD-Positive Herd.** A domestic cervidae herd in which any animal(s) has been diagnosed with CWD, based on positive laboratory results, from an approved laboratory. (4-2-03)

**18. CWD-Suspect Cervid.** A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (4-2-03)

**19. CWD-Suspect Herd.** A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (4-2-03)

**20. Department.** The Idaho State Department of Agriculture. (4-2-03)

**21. Death Certificate.** A form approved by the ~~an~~Administrator and provided by the Division for the reporting of domestic cervidae deaths and for reporting sample submission for CWD testing. (~~4-6-05~~)(\_\_\_\_)

**22. Designated Epidemiologist.** A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the Administrator to fulfill the epidemiology duties relative to the state domestic cervidae disease control program. (4-2-03)

**23. Director.** The Director of the Idaho State Department of Agriculture, or his designee. (4-2-03)



- 24. Disposal.** Final disposition of dead cervidae. (4-2-03)
- 25. Division.** Idaho State Department of Agriculture, Division of Animal Industries. (4-2-03)
- 26. Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (4-2-03)
- 27. Domestic Cervidae Ranch.** A premises where domestic cervidae are held or kept, including multiple premises under common ownership. (4-6-05)
- 28. Electronic Identification.** A form of unique, permanent individual animal identification such as radio frequency identification tag, radio frequency identification implant, or other forms approved by the Administrator. (4-6-05)
- 29. Escape.** Any domestic cervidae located outside the perimeter fence of a domestic cervidae ranch and not under the immediate control of the owner or operator of the domestic cervidae ranch. (4-2-03)
- 30. Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (4-6-05)
- 31. Herd of Origin.** A domestic cervid herd, on any domestic cervidae ranch or other premise, where the animals were born, or where they were kept for at least one (1) year prior to date of shipment. (~~4-2-03~~)(    )
- 32. Herd Status.** Classification of a cervidae herd with regard to CWD. (4-2-03)
- 33. Intrastate Movement Certificate.** A form approved by the Administrator, and available from the Division, to document the movement of domestic cervidae between premises within Idaho. (4-2-03)
- 34. Individual Herd Plan.** A written herd management agreement and testing plan developed by the herd owner and approved by the Administrator to identify and eradicate CWD from a positive, source, suspect, exposed, or adjacent herd. (4-2-03)
- 35. Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (4-2-03)
- 36. Natural Disaster.** Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe that results in substantial damage to property, hardship, suffering or possible loss of life. (    )
- 367. Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD. (4-2-03)
- 378. Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each domestic cervid. (~~4-2-03~~)(    )
- 389. Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (4-2-03)
- 3940. Owner.** The person that has legal title to, or has financial control of, any domestic cervidae or domestic cervidae ranch (4-2-03)
- 401. 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. (4-2-03)
- 412. Premises.** The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (4-2-03)

**423. Quarantine.** An order issued on authority of the Administrator, by a state or federal animal health official or accredited veterinarian, prohibiting movement of domestic cervids from any location without a written restricted movement permit. (4-2-03)(\_\_\_\_)

**434. Quarantine Facility.** A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (4-2-03)

**445. Reidentification.** The identification of a domestic cervid which had been officially identified, as provided by this chapter, but which has lost the official identification device, or the tattoo or official identification device has become illegible. (4-2-03)

**456. Restrain.** The immobilization of domestic cervidae in a chute, other device, or by other means for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (4-2-03)

**467. Restricted Movement Permit.** An official document that is issued by the Administrator, AVIC, or an accredited veterinarian for movement of animals from positive, suspect, or exposed herds. (4-2-03)

**478. Source Herd.** A herd from which at least one (1) domestic cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. (4-2-03)(\_\_\_\_)

**489. State Animal Health Official.** The Administrator or his designee. (4-2-03)

**4950. Status Date.** The date on which the Administrator approves in writing a herd status change with regard to CWD. (4-2-03)

**501. Trace Back Herd.** An exposed herd in which at least one (1) CWD positive animal resided within any of the previous sixty (60) months prior to diagnosis with CWD. (4-2-03)

**512. Trace Forward Herd.** A herd that has received exposed animals from a positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd or from the identified point of entry of CWD into the positive herd. (4-2-03)

**523. Traceback.** The process of identifying the movements and the herd of origin of CWD positive, or exposed animals, including herds that were sold for slaughter. (4-2-03)

**534. Wild Cervidae.** Any cervid animal not owned by a person. (4-2-03)

**545. Wild Ungulate.** Any four (4) legged, hooved herbivore, including cervids and other ruminants, not owned by a person. (4-6-05)

**556. Wild Ungulate Cooperative Herd Plan.** A plan, developed cooperatively by the owner of the domestic cervidae ranch, the ISDA, and the Idaho Department of Fish and Game to determine the disposition of any wild ungulates that are found to be located on a domestic cervidae ranch. (4-6-05)

**011. ABBREVIATIONS.**

**01. AAVLD.** American Association of Veterinary Laboratory Diagnosticians. (4-2-03)

**02. APHIS.** Animal and Plant Health Inspection Service. (4-2-03)

**03. AVIC.** Area Veterinarian in Charge. (4-2-03)

**04. AZA.** American Zoological Association. (4-2-03)

**05. CFR.** Code of Federal Regulations. (4-2-03)

**06. CWD.** Chronic Wasting Disease. (4-2-03)

<del>07.</del>	<del>CWDP. Chronic Wasting Disease Program.</del>	<del>(4-2-03)</del>
<del>087.</del>	<del>ISDA. Idaho State Department of Agriculture.</del>	<del>(4-2-03)</del>
<del>098.</del>	<del>NAEBA. North American Elk Breeders Association.</del>	<del>(4-2-03)</del>
<del>109.</del>	<del>NVSL. National Veterinary Services Laboratory.</del>	<del>(4-2-03)</del>
<del>110.</del>	<del>TB. Tuberculosis.</del>	<del>(4-2-03)</del>
<del>121.</del>	<del>UM&amp;R. Uniform Methods and Rules.</del>	<del>(4-2-03)</del>
<del>132.</del>	<del>USDA. United States Department of Agriculture.</del>	<del>(4-2-03)</del>
<del>143.</del>	<del>VS. Veterinary Services.</del>	<del>(4-2-03)</del>

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. IMPORTATION OF DOMESTIC CERVIDAE.**

All domestic cervidae imported into the state of Idaho shall comply with the requirements of IDAPA 02.04.21 "Rules Governing the Importation of Animals," ~~which apply to~~ applicable to domestic cervidae. ~~(4-2-03)~~(\_\_\_\_)

**015. -- 019. (RESERVED).**

**020. LOCATION OF DOMESTIC CERVIDAE.**

Any person who owns or has control of domestic cervidae in Idaho which are not located on a domestic cervidae ranch, which is in compliance with ~~the applicable provisions of~~ this chapter, or on an AZA accredited or USDA licensed facility in compliance with this chapter, is in violation of these rules. ~~(4-2-03)~~(\_\_\_\_)

**01. Department Action.** In addition to any other administrative or civil action, the Department may seize, require removal from the state, require removal to a domestic cervidae ranch that is in compliance with ~~the provisions of~~ this chapter, or require disposal of any domestic cervidae that are not located on a domestic cervidae ranch, an AZA accredited facility, or a USDA licensed facility which is in compliance with ~~the provisions of~~ this chapter. ~~(4-2-03)~~(\_\_\_\_)

**02. Reindeer.** Reindeer shall not be owned, possessed, propagated or held in Idaho north of the Salmon River in order to protect the wild caribou herd in northern Idaho. (4-2-03)

**03. Exceptions.** The Administrator may grant exceptions from the provisions of Section 020 on a case specific basis. (4-2-03)

~~**04. Natural Disasters.** Damage caused to domestic cervidae ranch facilities by natural disasters shall not constitute a violation of this chapter, provided that the owner or operator begins any necessary repairs immediately upon discovering the damage, acts expeditiously, as determined by the Administrator, to complete any necessary repairs and reports the extent and cause of any damage to the Division within twenty-four (24) hours of the discovery of the damage. (4-6-05)~~

**021. OFFICIAL IDENTIFICATION.**

All domestic cervidae shall be individually, permanently, and uniquely identified, with two (2) types of official identification approved by the Administrator. (4-2-03)

**01. Reporting of Identification.** The unique individual identification number, type of identification, and the name, address, and telephone number of the owner of each animal identified shall be reported to the

Administrator, in writing, by the owner or operator. (4-2-03)

**02. Identification Assigned.** Official identification, once assigned to an individual animal, shall not be changed or transferred to another animal. Animals that lose identification devices shall be reidentified in accordance with Section 0231. ~~(4-2-03)~~(\_\_\_\_)

**03. Progeny.** All progeny of domestic cervidae shall be officially identified by December thirty-first of the year of birth, upon sale or transfer of ownership, or upon leaving the domestic cervidae ranch, whichever is earlier. (4-2-03)

~~**04. Visible Identification.** At least one (1) of the official types of identification used shall be visible from one hundred and fifty (150) feet. (4-6-05)~~

**022. TYPES OF OFFICIAL IDENTIFICATION.**

All domestic cervidae shall be individually identified by two (2) of the following types of official identification. ~~At least one (1) of the types of official identification must be a bangle or lamb tag that is visible from one hundred fifty (150) feet~~ official visible identification, as set forth in Section 030. ~~(4-2-08)~~(\_\_\_\_)

**01. Official USDA Eartag.** (4-2-03)

**02. Tattoo.** Legible skin tattoo using an alphanumeric tattoo sequence that has been recorded with the Division of Animal Industries. The tattoo shall be applied to either the ear or escutcheon. (4-6-05)

**03. Electronic Identification.** A form of electronic identification, approved by the Administrator. (4-6-05)

**04. Official NAEBA Eartag.** (4-2-03)

**05. Official ISDA Cervidae Program Eartag.** A tamper resistant, unique number sequenced, individual identification tag approved by the Administrator. (4-2-03)

**06. Official HASCO Brass Lamb Tag.** This brass lamb tag shall be engraved with farm name and individual animal identification number. (4-2-03)

**07. Freeze Brands.** Legible, freeze brands which uniquely identify the individual domestic cervid. (4-6-05)

**08. Ranch Specific Unique Bangle or Lamb Tags.** The Administrator may grant written approval for the use of bangle or lamb tags that are: (4-2-08)

a. Ranch specific; and (4-2-08)

b. Tamper resistant; and (4-2-08)

c. Uniquely numbered; and (4-2-08)

d. Correlated with another type of official identification on the annual inventory report. (4-2-08)

**09. Other Identification.** Other forms of unique individual identification approved in writing and in advance by the Administrator. ~~(4-6-05)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. INSPECTIONS.**

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect domestic cervidae records, premises, facilities, and domestic cervidae to ensure compliance with ~~the provisions of~~ this chapter and other state or federal laws or rules applicable to domestic cervidae. State and federal animal health officials shall comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: (4-2-08)(\_\_\_\_)

**01. Entry.** Enter and inspect, at reasonable times, the premises of domestic cervidae ranches and inspect domestic cervidae. (4-2-08)

**02. Access to Records.** Review or copy, at reasonable times, any records that must be kept in accordance with these rules. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. WILD CERVIDAE.**

Wild cervidae shall not be confined, kept or held on a domestic cervidae ranch. (4-2-03)

**01. Duty of Ranch Owner.** It shall be the duty of owners of all domestic cervidae ranches to take precautions, and to conduct periodic inspections, to ensure that wild cervidae are not located within the perimeter fence of any domestic cervidae ranch. (4-2-03)

**02. Notification of Administrator.** All owners or operators of domestic cervidae ranches shall notify the Administrator within twenty-four (24) hours of gaining knowledge of the presence of wild cervidae inside the perimeter fence of the domestic cervidae ranch. The failure to provide notice as required by this Subsection is a violation of this chapter. (4-2-03)(\_\_\_\_)

~~**03. Failure to Notify the Administrator.** The failure of any owner or operator of a domestic cervidae ranch to notify the Administrator of the presence of wild cervidae within the perimeter fence of a domestic cervidae ranch is a violation of this chapter.~~ (4-2-03)

~~**043. Idaho Department of Fish and Game.** Upon receiving notification that wild cervidae are ~~on~~ within the perimeter fence of a domestic cervidae ranch, the Administrator shall notify the Idaho Department of Fish and Game.~~ (4-2-03)(\_\_\_\_)

~~**05. Wild Ungulate Cooperative Herd Plan.** The Idaho Department of Fish and Game shall cooperate with ISDA and the owners or operators of domestic cervidae ranches where any wild cervidae or wild ungulates are present within the external perimeter fence of the domestic cervidae ranch to develop and implement a site specific written herd plan to address the disposition of the wild cervidae or wild ungulates.~~ (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. DISPOSAL OF DOMESTIC CERVIDAE.**

All domestic cervidae carcasses and parts of carcasses not utilized for human consumption, ~~except parts of carcasses utilized~~ or for taxidermy purposes shall be disposed of in compliance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement And Disposal." (4-2-03)(\_\_\_\_)

**081. -- 089. (RESERVED).**

**090. FEES.**

A fee, not to exceed five dollars (\$5) per head on elk or three dollars (\$3) per head on fallow deer and reindeer, ~~is to~~ will be assessed on all domestic cervidae that have been present on a facility in the state ~~to cover the cost of administering the program covered in these rules~~ for any portion of the preceding twelve (12) months. This fee is due

January 1st of each year.

(4-2-08)( )

**091. -- 099. (RESERVED).**

**100. DOMESTIC CERVIDAE RANCHES.**

In order to prevent the introduction or dissemination of diseases, and to control or eradicate diseases, all domestic cervidae ranches and each separate premises shall comply with the disease control, facility, and record keeping requirements and all other provisions of this chapter. (4-2-03)( )

~~**01. Each Premises.** Each separate premises where domestic cervidae are kept or held shall comply with all of the provisions of this chapter. (4-6-05)~~

**021. Vehicle Access.** Domestic cervidae ranches shall have motorized vehicle access to the restraining system on each premises, during the portion of the year that cervidae are held or kept on the premises, adequate to facilitate disease prevention and control as determined by the Administrator. (4-6-05)

**032. Premises Registration.** Each premises where domestic cervidae are kept or held shall be registered with the Division and assigned a unique, individual number approved by the Administrator. (4-6-05)

**101. DOMESTIC CERVIDAE RANCH FACILITY REQUIREMENTS.**

All domestic cervidae ranches are required to have facilities including, but not limited to, perimeter fence, restraining system, gathering system, water system and, if required, a quarantine facility. (4-2-03)

**01. Maintenance.** All facilities, including the perimeter fence described in Section 102, shall be maintained at all times that domestic cervidae are present to prevent the escape of domestic cervidae or ingress of wild cervidae. (4-2-03)( )

**02. Natural Disasters.** Damage caused to domestic cervidae ranch facilities by natural disasters shall not constitute a violation of this chapter, provided that the owner or operator begins any necessary repairs immediately upon discovering the damage, acts expeditiously, as determined by the Administrator, to complete any necessary repairs and reports the extent and cause of any damage to the Division within twenty-four (24) hours of the discovery of the damage. ( )

**023. Inspections.** To ensure compliance with this chapter, state or federal animal health officials shall inspect all premises where domestic cervidae are, or will be, possessed, controlled, harvested, propagated, held, or kept. (4-2-03)

a. Each domestic cervidae ranch shall be inspected at least annually. (4-2-03)

b. All facilities relating to the handling, care, or raising of domestic cervidae shall be inspected. (4-2-03)( )

**102. PERIMETER FENCE REQUIREMENTS.**

A perimeter fence, completely enclosing the domestic cervidae ranch shall be constructed of high-tensile, non-slip woven wire or other fencing material approved by the Administrator. (4-2-03)

**01. Elk and Fallow Deer.** For elk and fallow deer, the fence shall be a minimum of eight (8) feet in height for its entire length at all times. (4-2-03)

**02. Reindeer.** For reindeer, the fence shall be at least six (6) feet in height for its entire length at all times. (4-2-03)

**03. Wire.** The top two (2) feet of each fence may be smooth, barbed or woven wire (at least twelve and one-half (12-1/2) gauge) with horizontal strands spaced not more than six (6) inches apart. (4-2-03)

a. Wire shall be placed on the animal side of the fence to prevent pushing the wire away from the posts. (4-2-03)

b. Wire shall be attached to all posts at the top, bottom, and not more than eighteen (18) inches apart between the top and bottom of the wire. (4-2-08)

04. Posts. Wooden posts used in the perimeter fence shall be at least butt-end treated with a commercially available preservative and have a minimum of four (4) inch top for line posts and a minimum of five (5) inch top for corner posts. Metal pipe posts must be a minimum of two and one-eighth (2-1/8) inches outside diameter with a three-sixteenths (3/16) inch wall thickness for line posts and two and seven-eighths (2-7/8) inches outside diameter with a seven thirty-seconds (7/32) inch wall thickness for corner posts. Posts shall be spaced no more than twenty-four (24) feet apart, with stays, supports or braces as needed, and be placed in the ground a minimum of three (3) feet. (4-2-08)

05. Gates. Each domestic cervidae ranch shall have gates that prohibit the escape of domestic cervidae or the ingress of wild cervidae. (4-2-03)

~~06. Fence Maintenance. Fences shall be maintained, at all times that domestic cervidae are present, to prevent domestic cervidae from escaping or native wild cervidae from entering the enclosure. (4-2-03)~~

07. Exceptions. The Administrator may grant exceptions to the specifications in Section 102 on a case specific basis. (4-2-03)

### 103. GATHERING AND RESTRAINING SYSTEM.

Each domestic cervidae ranch shall have a system for humanely and effectively gathering and restraining domestic cervidae for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. (4-2-03)

01. Gathering System. Each domestic cervidae ranch shall have a system that facilitates the gathering of domestic cervidae so as to be able to move the domestic cervidae through the restraining system in a safe and efficient manner at any time of the year that domestic cervidae are present. (4-2-03)( )

02. Restraining System. ~~A~~ Each domestic cervidae ranch shall have a restraining system approved by the Administrator, that is adequate to immobilize domestic cervidae for the purpose of efficient, effective, and safe handling for inspecting, treating, vaccinating, or testing. (4-2-03)( )

03. Exceptions. The Administrator may grant exceptions to the provisions of this section on a case specific basis. (4-2-03)

### 104. WATER SYSTEM.

Each domestic cervidae ranch shall have a water system adequate to supply the need of the domestic cervidae herd. (4-2-03)( )

### 105. QUARANTINE FACILITY.

If ~~animals~~ domestic cervidae are to be imported onto the domestic cervidae ranch, a quarantine facility, approved by the Administrator, shall be provided for holding ~~animals~~ domestic cervidae until any disease retesting is accomplished or other requirements are met. (4-2-03)( )

### 106. HERD MANAGEMENT PLAN.

01. Herd Management Plan. All domestic cervidae ranches shall develop and maintain a herd management plan that must be approved by the Administrator. The herd management plan shall describe the operation and set forth protocols to address: ( )

a. Ingress of wildlife and or egress of domestic cervidae. ( )

b. Unaccounted death loss. ( )

c. Management options to deal with severe weather events. ( )

**d.** Submission of samples for Chronic Wasting Disease (CWD), in accordance with these Rules. ( )

**02.** Revision of Herd Management Plan. Revision of the herd management plan shall be required as deemed necessary by the Administrator or if any of the following occur: ( )

**a.** Ingress of wildlife and or egress of domestic cervidae. ( )

**b.** Unaccounted death loss. ( )

**c.** Failure to properly submit samples for CWD testing. ( )

**03.** Violation of Herd Management Plan. A violation of the herd management plan shall be considered a violation of this chapter. ( )

~~1067.~~ -- 199. (RESERVED).

## 200. RECORDS AND REPORTING.

**01. Reports.** Owners of domestic cervidae ranches shall submit complete and accurate reports to the Administrator. Failure to submit complete and accurate reports within the designated time frames is a violation of this chapter. (4-2-03)

**02. Records.** All owners of domestic cervidae ranches shall, during normal business hours, present to state or federal animal health officials, for inspection, review, or copying, any cervidae records deemed necessary to ensure compliance with ~~the provisions of~~ this chapter. (~~4-2-03~~)( )

**03. Notification.** State or federal animal health officials shall attempt to notify the owners or operators of domestic cervidae ranches, and premises where records are kept prior to any inspections. (4-2-03)

**04. Emergencies.** In the event of an emergency, as determined by the Administrator, the notification requirements of Section 200 may be waived. (4-2-03)

## 201. ANNUAL INVENTORY REPORT.

**01. Inventory Report.** All owners of domestic cervidae ranches shall ~~annually~~ submit, ~~to the Administrator, no later than December 31st of each year,~~ a complete and accurate inventory of all ~~animals held no later than December 31st of each year~~ domestic cervidae that have been present on the facility during the calendar year on a form approved by the Administrator. The annual inventory report, which shall be submitted to the Administrator, shall contain the following minimum information: (~~4-2-03~~)( )

**a.** Name and address of the domestic cervidae ranch. (4-2-03)

**b.** Name and address of the owner of the domestic cervidae ranch. (4-2-03)

**c.** Date the inventory was completed. (4-2-03)

**02. Individual Domestic Cervidae.** For each individual domestic cervidae that was located on the domestic cervidae ranch during the year for which the report is being made, the following information shall be provided: (4-2-03)

**a.** All types of official and unofficial identification; (4-2-03)

**b.** Species; (4-2-03)

**c.** Sex; (4-2-03)



- d. Age or year born; (4-2-03)
- e. Disposition, including the date of sale, death, or purchase; and (4-2-03)
- f. Name and address of the prior and current owner of the domestic cervidae. (~~4-2-03~~)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. INVENTORY VERIFICATION.**

State or federal animal health officials shall verify all domestic cervidae ranch inventories of animals held and individual animal identification annually. (4-2-03)

**01. Visible Identification.** Individual animal identification verification may be accomplished by visually noting the unique official visible identification number or visually noting an unofficial visible identification number if the number is correlated with two (2) forms of official identification on the inventory submitted by the domestic cervidae producer owner. ~~The Administrator may, on a case-by-case basis, grant written permission for ranch-specific unique bangle tags to be used for official identification.~~ (4-2-08)(\_\_\_\_)

**02. Duty to Gather and Restrain.** It shall be the duty of the owner of each domestic cervidae ranch to gather and restrain any domestic cervidae, which state or federal animal health officials determine are not readily identifiable, for inventory verification purposes. The Administrator, or his designee, shall determine the suitability of the restraint system. (4-2-03)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**204. ESCAPE OF DOMESTIC CERVIDAE.**

It shall be the duty of each owner or operator of a domestic cervidae ranch to take all reasonable actions to prevent the escape of domestic cervidae from a domestic cervidae ranch. (4-6-05)

**01. Notification of Escape.** When any domestic cervidae escape from a domestic cervidae ranch, the owner or operator of the domestic cervidae ranch shall notify the Administrator by phone, facsimile, or other means approved by the Administrator within twenty-four (24) hours of the discovery of the escape. (4-6-05)

**02. Duty to Retrieve Escaped Cervidae.** It shall be the duty of each owner or operator of a domestic cervidae ranch to retrieve or otherwise bring under control all domestic cervidae that escape from a domestic cervidae ranch. (4-2-03)

**03. Fish and Game.** The Administrator shall notify the Idaho Department of Fish and Game of each escape. (4-2-03)

**04. Sheriff and State Brand Inspector.** When domestic cervidae escape from a domestic cervidae ranch and the owner or operator is unable to retrieve the animals within twenty-four (24) hours of discovery of the escape, the Administrator may notify the county sheriff or the state brand inspector of the escape pursuant to Title 25, Chapter 23, Idaho Code. (4-2-03)(\_\_\_\_)

**05. Capture.** In the event that the owner or operator of a domestic cervidae ranch is unable to retrieve escaped domestic cervidae in a timely manner, as determined by the Administrator, the Administrator may effectuate the capture of the escaped domestic cervidae to ensure the health of Idaho's livestock and wild cervidae populations. (4-2-03)

**06. Failure to Notify.** Failure of any owner or operator of a domestic cervidae ranch to notify the

Administrator within twenty-four (24) hours of the discovery of an escape of domestic cervidae is a violation of this chapter. (4-6-05)

**07. Taking of Escaped Domestic Cervidae.** A licensed hunter may legally take domestic cervidae which have escaped from a domestic cervidae ranch only under the following conditions: (4-6-05)

**a.** The domestic cervidae has escaped and has not been in the control of the owner or operator of the domestic cervidae ranch for more than seven (7) days; and (4-6-05)

**b.** The hunter is licensed and in compliance with all the provisions of the Idaho Department of Fish and Game rules and code. (4-6-05)

**205. NOTICE OF DEATH OF DOMESTIC CERVIDAE.**

The death of all domestic cervidae over one (1) year of age and all domestic cervidae that have been officially identified and inventoried must be reported by the owner or operator to the division: (4-2-08)

**01. Reports.** The initial report of a cervidae death may be made by telephone, facsimile, or electronic mail, ~~and then.~~ Such report must be followed by the submission of the death certificate. (4-2-08)(\_\_\_\_)

**02. Submission of Death Certificates.** CWD sample submission forms/death certificates shall be submitted to the ~~Division~~ by regular mail, facsimile, electronic mail, or by other means as approved by the Administrator. (4-6-05)(\_\_\_\_)

**03. Reporting Deaths at Domestic Cervidae Ranches.** The owner or operator of a domestic cervidae ranch shall notify the Division within five (5) business days of when the owner or operator knew or reasonably should have known of the death. (4-2-08)

**04. Reporting Deaths at Approved and Custom Exempt Slaughter Establishments.** The owners of cervidae that are slaughtered shall report the death within five (5) business days of the date that the cervidae was slaughtered. (4-2-08)

**206. CWD SAMPLE SUBMISSION FORM/DEATH CERTIFICATE.**

The owner or operator of a domestic cervidae ranch shall submit, ~~to the Administrator,~~ a complete and accurate copy of all CWD sample submission forms/death certificates to the Administrator at the same time that CWD samples are submitted to an approved laboratory. (4-2-03)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**208. INTRASTATE MOVEMENT CERTIFICATE.**~~

~~All owners of domestic cervidae ranches who move cervidae, from one premises to another, including movement from one (1) premises to another premises owned, operated, leased, or controlled by the owner, within the state of Idaho shall submit, to the Administrator, a complete and accurate intrastate movement certificate signed by the owner, within five (5) business days of the movement. The Administrator shall provide blank intrastate movement certificates to the owners of domestic cervidae ranches upon request. (4-6-05)~~

~~2098. -- 249. (RESERVED).~~

**250. INTRASTATE MOVEMENT OF DOMESTIC CERVIDAE.**

All live domestic cervidae moving from one premises to another premises within the state of Idaho, including movement from one premises to another premises owned, operated, leased, or controlled by the same person, shall be officially identified, except calves during the year of birth accompanying their dam, and accompanied by: (4-6-05)(\_\_\_\_)

**01. Officially Identified.** All live domestic cervidae undergoing intrastate movement must be

officially identified, except calves during the year of birth that are accompanying their dam. ( )

**012. ~~TB Test In Compliance With Section 450.~~** ~~An official negative test for tuberculosis of all cervidae over twelve (12) months of age, conducted within the last ninety (90) days, or written permission from the Administrator, except:~~ All live domestic cervidae undergoing intrastate movement must be in compliance with Section 450 of these Rules. (4-2-03)( )

~~a. Animals originating from an accredited, qualified or monitored herd, as described in "Bovine Tuberculosis Eradication, Uniform Methods and Rules," effective January 22, 1999, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or~~ (4-2-03)

~~b. Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot; or~~ (4-2-03)

~~c. Those domestic cervidae moving from one premises to another premises owned, operated, leased, or controlled by the same person.~~ (4-6-05)

**023. Accompanied by an Intrastate Movement Certificate.** All intrastate movements of live domestic cervidae, ~~including movement from one premises to another premises owned, operated, leased, or controlled by the same person,~~ shall be accompanied by a complete and accurate intrastate movement certificate, which has been signed by the owner or operator of the domestic cervidae ranch where the movement originates and includes a statement of the CWD and TB status of the cervidae. The certificate shall be submitted to the Administrator within five (5) days of the movement. (4-6-05)( )

~~03. Movement of Cervidae Between Accredited AZA or USDA Licensed Facilities. Movement of cervidae between accredited AZA and USDA licensed facilities is exempt from the requirements of this chapter. All other movement from AZA accredited or USDA licensed facilities shall comply fully with all of the provisions of this chapter.~~ (4-2-03)

251. -- 299. (RESERVED).

**300. DISEASE CONTROL.**

The Administrator may require domestic cervidae in the state to be tested for brucellosis (*Brucella abortus* or *Brucella suis*), tuberculosis (*Mycobacterium bovis*), ~~meningeal worm (*Parelaphostrongylus tenuis*), muscle worm (*Elaphostrongylus cervus*),~~ CWD<sub>2</sub> or for other diseases or parasites determined to pose a risk to other domestic cervidae, livestock, or wildlife. (4-2-03)( )

**301. DUTY TO RESTRAIN.**

It shall be the duty of the owner of each domestic cervidae ranch to gather and restrain domestic cervidae for testing or inventory verification when directed to do so in writing by the Administrator. The Administrator, or his designee, shall determine the suitability of the restraint system. (4-2-03)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**305. DECLARATION OF ANIMAL HEALTH EMERGENCY.**

The Director is authorized to declare an animal health emergency. (4-2-03)

**01. Condemnation of Animals.** In the event that the Director determines that an emergency exists, animals that are found to be infected, or affected with, or exposed to an animal health emergency disease may be condemned and destroyed. (4-2-03)

**02. Indemnity.** Any indemnity shall be paid in accordance with Sections 25-212 and 25-213, Idaho Code. (4-2-03)

**03. Notification to Administrator.** Every owner of cervidae, every breeder or dealer in cervidae, every veterinarian, and anyone bringing cervidae into this state who observes the appearance of, or signs of any disease or diseases, or who has knowledge of exposure of the cervidae to diseases that constitute an emergency shall give immediate notice to the Administrator by telephone, facsimile, or other means as approved by the Administrator. (4-6-05)

**04. Failure to Notify.** Any owner of cervidae who fails to report as herein provided shall forfeit all claims for indemnity for animals condemned and slaughtered or destroyed on account of the animal health emergency. The failure of any owner, breeder, dealer, veterinarian, or anyone bringing cervidae into the state of Idaho shall constitute a violation of this chapter. (~~4-2-03~~)(      )

**306. -- 399. (RESERVED).**

**400. BRUCELLOSIS.**

Owners of domestic cervidae ranches shall comply with those provisions of IDAPA 02.04.20, "Rules Governing Brucellosis," that apply to domestic cervidae. (~~4-2-03~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. COLLECTION OF SAMPLES FOR CWD TESTING.**

Only accredited veterinarians, state and federal animal health officials, and other persons, approved by the Administrator, shall collect brain or other tissue samples for CWD testing. Samples shall be collected immediately upon discovery of the death of a domestic cervid. (4-2-03)

**01. Brain Samples.** Only persons trained by state or federal animal health officials, and approved by the Administrator, may remove the brain stem containing the obex portion for submission as the sample for CWD testing. (4-6-05)

**02. Submission of Head.** Only persons trained by state or federal animal health officials, and approved by the Administrator, may submit a head with the official identification attached to the head as the sample for CWD testing. (4-6-05)

**03. Handling of Samples.** All CWD samples shall be handled in a manner that prevents degradation of the sample. (4-2-03)

**04. Sample Submission Time.** Fresh samples for CWD testing shall be submitted, to an approved laboratory, within seventy-two (72) hours of the date of collection. Formalin preserved samples shall be submitted, to an approved laboratory, within five (5) business days of the date of collection. (4-2-03)

**05. Non-Testable or Samples That Do not Contain Appropriate Tissues.** The Administrator may conduct an investigation to determine if a domestic cervidae ranch is complying with the provisions of Section 500 if: (4-2-03)

**a.** The owner or operator of a domestic cervidae ranch submits samples for CWD testing which are non-testable; or (4-2-03)

**b.** The owner or operator of a domestic cervidae ranch submits samples for CWD testing that do not contain appropriate tissues for CWD testing. (4-2-03)

**c.** The owner or operator of a domestic cervidae ranch submits samples for CWD testing which cannot be identified to the animal of origin. (4-6-05)

**06. Failure to Submit Samples for CWD Testing.** An owner or operator of a domestic cervidae ranch that fails to submit samples for CWD testing as required in this chapter is in violation of these rules, ~~except the Administrator may approve, in writing, a variance from sample submission requirements on a case specific basis.~~ (~~4-2-03~~)(      )

(BREAK IN CONTINUITY OF SECTIONS)

**503. CWD STATUS.**

CWD status shall be based on the number of years that a herd of domestic cervidae has been determined to be in compliance with the provisions of this chapter, during which there is no evidence of CWD in the herd. (4-2-03)

**01. Status Review.** The Administrator shall review the CWD status of each domestic cervidae herd located in Idaho ~~on~~ at least ~~an~~ annually ~~basis~~. (~~4-2-03~~)(\_\_\_\_)

~~**02. Status Date.** The status date is the date that the Administrator approves a change in the CWD status of a domestic cervidae herd in Idaho. (4-2-03)~~

**032. Cervidae of Lesser Status.** If a ~~herd of~~ domestic cervidae herd has contact with cervidae of a lesser status, the status of the herd with the higher status shall be lowered to the status of the cervidae with the lesser status. (~~4-2-03~~)(\_\_\_\_)

**043. Change of Ownership.** A herd's status may remain with the herd when a change of ownership, management or premises occurs, if there is no contact with cervidae of lesser status, and no previous history of CWD on the premises. (4-2-03)

~~**054. Contact with CWD Positive Animals.** Any herd of domestic cervidae that has contact with CWD positive or exposed animals may have its status reduced or removed. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

**990. PENALTY FOR VIOLATIONS.**

Any person violating any of the provisions of this Chapter shall be subject to the penalty provisions of Title 25, Chapters 2, 3, 4, 6, and [35] 37, Idaho Code, applicable to domestic cervidae. In addition, any person violating any of the provisions of this chapter may be subject to a compliance plan under the conditions set forth below in Subsection 990.02. (~~4-2-03~~)(\_\_\_\_)

**01. Monetary Penalties.** The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (4-2-03)

**02. Compliance Plan.** (\_\_\_\_)

**a. First Offense.** When the Director identifies a first violation of these rules or those portions of Title 25, Chapters 2, 3, 4, 6 and [35] 37, Idaho Code, by a person, the Department may offer that person the option of following a compliance plan and order, drafted by the Department, as an alternative to a monetary penalty. (\_\_\_\_)

**b. Second or More Offenses.** When the Director identifies a second violation (or more) of any one of these rules or those portions of Title 25, Chapters 2, 3, 4, 5, and 35 [37], Idaho Code, by a person within five (5) years of a previous violation of these rules or those provisions of Title 25, Chapters 2, 3, 4, 5, and 35[37], Idaho Code, the person will be required to follow a compliance plan and order, drafted by the Department. The compliance plan and order will be required in addition to any monetary penalty that may be assessed by the Department. (\_\_\_\_)

**c. Failure to Follow Compliance Plan.** The failure to follow the requirements of a compliance plan is a violation of these rules. (\_\_\_\_)

**023. Minor Violations.** Nothing in this Chapter shall be construed as requiring the Director to report minor violations when the Director believes that the public interest will be best served by suitable warnings or other administrative action. (4-2-03)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.31 - RULES GOVERNING THE STOCKPILING OF AGRICULTURAL WASTE

#### DOCKET NO. 02-0431-0901 (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 Section 22-110, 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 October 21, 2009.

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

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

This rule will establish specific setback distances for agricultural waste storage to minimize adverse quality of life issues. These rules are intended to apply to stockpiled agricultural waste from livestock on property other than agricultural waste storage governed by IDAPA 02.04.14, "Rules Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations."

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

No fee is associated with this proposed rule.

**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:

There is no impact involved with this proposed rule. ISDA estimates that the costs will be less than \$10,000 annually to implement and enforce this rule.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 5, 2009 Idaho Administrative Bulletin, Volume 09-8, page 23.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.idaho.gov.

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 October 28, 2009.

Signed this 26th day of August, 2009.

Brian J. Oakey  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
Boise, ID 83712  
P.O. Box 790  
Boise, ID 83701-0790  
Phone: (208) 332-8500  
Fax: (208) 332-4062

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0431-0901**

**IDAPA 02**  
**TITLE 04**  
**CHAPTER 31**

**02.04.31 - RULES GOVERNING THE STOCKPILING OF AGRICULTURAL WASTE**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 22-110, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is "Rules Governing the Stockpiling of Agricultural Waste." ( )

**02. Scope.** These Rules govern the Stockpiling of Agricultural Waste at Agricultural Operations to safeguard and protect animals, man, and the environment. The official citation of this chapter is IDAPA 02.04.31.000 et seq. For example, this section's citation is IDAPA 02.04.31.001. ( )

**002. WRITTEN INTERPRETATIONS.**

The Idaho State Department of Agriculture may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statement shall be available for review at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to administrative appeal as set forth in Title 67, Chapter 52, Idaho Code. ( )

**004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Office.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, ID 83712. ( )

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

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. ( )

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. ( )

**05. Fax Number.** The fax number of the central office is (208) 334-2170. ( )

**005. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. ( )

**006. -- 009. (RESERVED).**

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter: ( )

- 01. Agricultural Operation.** Facilities that generate or receive and stockpile agricultural waste and that are not regulated under IDAPA 02.04.14, "Rules Governing Dairy Waste," or IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." ( )
- 02. Agricultural Waste.** Agricultural waste means livestock waste. ( )
- 03. Department.** The Idaho State Department of Agriculture. ( )
- 04. Director.** The Director of the Idaho State Department of Agriculture or his designee. ( )
- 05. Duration.** The length of time agricultural waste is stockpiled. ( )
- 06. Dwelling.** The house, residence, abode, or other structure where a person lives. ( )
- 07. Livestock.** Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ( )
- 08. Livestock Waste.** Manure that may also contain bedding, spilled feed, feathers, water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof. ( )
- 09. Non-Compliance.** A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. ( )
- 10. Person.** Any individual, partnership, association, firm, joint stock company, trust, political subdivision, public or private corporation, or any other legal entity which is recognized by law as the subject of rights and duties. ( )
- 11. Public Highway.** All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. ( )
- 12. Responsible Party.** A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. ( )
- 13. Setbacks for a Stockpile Site.** The distance from a stockpile site to a location identified in Section 020 of this rule. ( )
- 14. Stockpile Staging Site.** A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ( )
- 15. Stockpile Site.** A physical location where agricultural waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural waste. ( )
- 16. Stockpiling.** The accumulation of agricultural waste on an agricultural operation. ( )
- 17. Surface Waters of the State.** All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. ( )
- 011. ABBREVIATIONS.**  
There are no abbreviations in this chapter. ( )
- 012. -- 019. (RESERVED).**
- 020. SETBACKS FOR STOCKPILE SITES.**  
Stockpile sites at agricultural operations must meet the following setback requirements. ( )



- 01. Setback Distances.** Stockpile sites shall maintain the following setbacks: ( )
- a.** Three hundred (300) feet from a non-responsible party's dwelling. ( )
  - b.** Five hundred (500) feet from a hospital, church, or school. ( )
  - c.** One hundred (100) feet from a domestic or irrigation well. ( )
  - d.** One hundred (100) feet from surface waters of the State. ( )
  - e.** Fifty (50) feet from a public highway. ( )
- 02. Responsible Party's Dwellings.** Stockpile sites shall not have setbacks from a responsible party's dwelling or dwellings owned by the responsible party. ( )

**03. Stockpile Staging Sites.** Stockpile staging sites shall not be subject to the setbacks set forth in these rules. ( )

**021. -- 039. (RESERVED).**

**040. RESPONSE TO COMPLAINTS.**

Complaints regarding a stockpile site or a stockpile staging site will be investigated by the Department to determine compliance with these rules. ( )

**041. -- 059. (RESERVED).**

**060. PENALTIES.**

Any person violating the provisions of these rules may be assessed a civil penalty by the Department of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be in conjunction with any other Department administrative action. If the Department identifies a non-compliance violation, the Director will identify appropriate corrective actions and establish a deadline to remedy the non-compliance violation. The Director may develop a formal compliance schedule with a person to correct non-compliance violation. Through the formal compliance schedule, the Director may allow all or part of the value of the assessed civil penalties to be applied toward the correction of a non-compliance violation. ( )

**061. -- 999. (RESERVED).**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.05.01 - RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT PROGRAM

DOCKET NO. 02-0501-0901

#### 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 22-2718, 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 October 21st, 2009.

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 rule changes will address needed security changes, complete an update of the RCRDP loan program, and remove the RCRDP grant program that is now being covered by the WQPA rules. New application requirements, loan servicing improvements, and updates pertaining to the loan amounts granted to RCRDP program borrowers are addressed.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David Saxey, AG Program Specialist at (208) 332-8650.

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 October 28th, 2009.

DATED this 28th day of August, 2009.

Sara Schmidt  
Administrator  
Idaho Soil Conservation Commission  
2270 Old Penitentiary Road  
PO Box 790  
Boise, ID 83701  
Phone: (208) 332-8650  
Fax: (208) 334-2386

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0501-0901

**000. LEGAL AUTHORITY.**

The Idaho Soil Conservation Commission, pursuant to the authority granted in Section 22-2729~~18~~<sup>18</sup>, Idaho Code, has been granted the authority to adopt the following rules for the administration of a Resource Conservation and Rangeland Development Program (RCRDP) in Idaho. (4-1-94)(    )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be known and cited as Rules of the Idaho Soil Conservation Commission, IDAPA 02.05.01, "Resource Conservation and Rangeland Development Program." (4-1-94)

**02. Scope.** The provisions of these rules set forth procedures and requirements for establishing, implementing, and administering a state loan ~~and grant program~~ for resource conservation and rangeland development. (4-1-94)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

For the purpose of these rules, unless the context indicates otherwise, the term: (9-9-86)

**01. Account.** The account established pursuant to Section 22-2730, Idaho Code, as amended, which contains the receipts allocated in Section 14-413(3)(a), Idaho Code, and all monies appropriated to it by the legislature or made available from federal, private, or other sources. (4-1-94)

**02. Applicant.** Any individual, partnership, association, trust, estate, private corporation, or any other private legal entity that is recognized by law as the subject of rights and duties who files an application with the appropriate ~~Soil Conservation local~~ District for a loan ~~or a grant~~ under the provisions of the act. (4-1-94)(    )

**03. Application.** The loan ~~or grant~~ request document submitted to a ~~Soil Conservation local~~ District. (4-1-94)(    )

~~**04. Board, SCD Board, or District Board.** The elected supervisors of a Soil Conservation District.~~ (9-9-86)

~~**054. Commission.** The Idaho Soil Conservation Commission as defined in Section 22-2718, Idaho Code.~~ (9-9-86)

~~**065. Contractee.** The applicant when the loan has been closed and recorded.~~ (9-9-86)

~~**076. Coordinated Resource Planning Process.** A process that considers all the resources and resource users within a geographical area and encourages active involvement and input from all interested parties.~~ (9-9-86)

~~**087. District.** A Soil Conservation District (SCD) as defined in Section 22-2717, Idaho Code.~~ (9-9-86)

~~**098. Eligible Land.** Private, state, county, or federal lands.~~ (9-9-86)

~~**109. Field Office.** The principal headquarters of the District; it is usually co-located with the local ~~Soil Conservation Service (SCS)~~ United States Department of Agriculture Natural Resource Conservation Service (NRCS) office.~~ (9-9-86)(    )

~~**110. Field Office Technical Guide.** The primary technical reference used by ~~Soil Conservation NRCS~~ and the Districts.~~ (4-1-94)(    )

~~**12. Practice or Eligible Practice for Grants.** A practice that is proven or shows potential, when~~

*properly installed and maintained, for improving rangeland and riparian areas.* (4-1-94)

**11. Other Funds.** Federal, state, or private funds to be dedicated to conservation practice implementation costs. ( )

**132. Practice or Eligible Practice for Loans.** A practice listed in the *local* field office technical guide that has been adopted by the local SCD. (4-1-94)( )

**143. Practice Life.** The number of years, with proper maintenance and operation, that a practice is expected to last, as shown in the field office technical guide *adopted by the local SCD.* (4-1-94)( )

**154. Program Year.** The state fiscal year. (9-9-86)

**165. Project.** One (1) or more practices to be installed with a RCRDP loan *or grant funds.* (4-1-94)( )

**176. Rangeland.** Land used primarily for the grazing of domestic livestock and wildlife. (9-9-86)

**18. Rangeland and Riparian Area Improvement Plan for Grants.** *A plan developed by the applicant and approved by the SCD board, designed to examine the adequacy, or adaptability of practices and systems for improving rangeland and riparian areas and to introduce potential practices and systems into areas where they are not now being accepted as a solution for improving rangeland and riparian areas.* (4-1-94)

**197. RCRDP.** The Idaho Resource Conservation and Rangeland Development Program. (9-9-86)

**2018. Resource Conservation Plan for Loans.** A plan for loans, developed by the applicant and approved by the SCD local District, that identifies the resource problems and needed conservation improvements, together with engineering and economic feasibility data and estimated costs. (4-1-94)( )

**219. Riparian Areas.** Riparian areas are sites directly influenced by free water. They have visible vegetation or physical characteristics that reflect free water influence. Lake shores and stream banks are typical riparian areas. Excluded are sites such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil. (4-1-94)

**20. Security.** Collateral provided by an approved applicant to secure requested RCRDP funds. This may include mortgage note, promissory note, security agreement, water rights, or other asset. ( )

**221. Special Practice.** A practice (not listed in the *local* field office technical guide) that includes a proven, modern technique that is necessary to solve a resource problem and meet program objectives as determined by the local SCD District. (9-9-86)( )

**011. PROGRAM POLICY.**

**01. Administration.** It is the policy of the Idaho Soil Conservation Commission to administer the Resource Conservation and Rangeland Development Program to provide the greatest benefits to all concerned from the agricultural lands and rangelands within the state. (4-1-94)

**02. Equal Opportunity.** Each applicant regardless of handicap, race, age, sex, creed, color or national origin, shall be given the opportunity to apply for a loan *or grant.* (4-1-94)( )

**03. Filing Applications.** An application may be filed at anytime during the program year. (4-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**056. RESPONSIBILITIES.**

- 01. District.** The ~~Soil Conservation~~ local District shall: (9-9-86)(\_\_\_\_)
- a.** Receive applications for program participation. (9-9-86)
  - b.** Within sixty (60) days of receipt, review and evaluate the application for loans ~~and grants~~ to determine if the project is consistent with the District's program goals and objectives. (4-1-94)(\_\_\_\_)
  - c.** Assign a priority of high, medium, or low to the applications. (4-1-94)
  - d.** Forward applications to the Commission with a recommendation for funding. (4-1-94)
  - e.** Prepare and forward to the Commission special practice requests. (9-9-86)
- 02. Commission.** The Idaho Soil Conservation Commission shall: (9-9-86)
- a.** Review and evaluate applications. (4-1-94)
  - b.** Approve loans, if: (9-9-86)
    - i.** The applicant has adequate assets for security to protect the state from risk and loss. (9-9-86)
    - ii.** There is reasonable assurance that the borrower can repay the loan. (9-9-86)
    - iii.** Money is available in the loan account. (9-9-86)
    - ~~**iv.** The loan shall not result in a condition whereby the applicant has a program loan liability in excess of fifty thousand dollars (\$50,000). (4-1-94)~~
  - c.** Disapprove loans for reasons including but not limited to: (4-1-94)
    - i.** The purpose of the loan is to pay for resource conservation plan practices that have been applied prior to Commission approval. (4-1-94)
    - ii.** If all the requirements in Rule Subsection 056.02.b. are not met. (4-1-94)
  - d.** Reconsider loan disapproval if the applicant, within fifteen (15) business days after notice of disapproval, requests the Soil Conservation Commission, in writing, to reconsider its determination in any matter affecting the loan or the amount of loan funds. Reconsideration of the determination shall take place within ninety (90) business days from the date the written request is received. The time, place, and date shall be determined by the Commission. The applicant shall be notified of the time, place, and date and shall have the right to appear. (4-1-94)(\_\_\_\_)
  - e.** Upon loan approval, execute a promissory note and other security documents with the applicant for loan repayment. (4-1-94)
  - f.** Not less than once per year, determine the loan interest rate not to exceed six percent (6%) annually. (9-9-86)
  - g.** Prepare an annual report showing RCRDP accomplishments and benefits resulting from use of loan and grant funds. (4-1-94)
  - h.** Administer and monitor loan proceeds to assure that the intent of the law is met. (9-9-86)
  - i.** Approve or disapprove special practice requests. (9-9-86)

- ~~j.~~ *Approve grants, if:* (4-1-94)
- ~~i.~~ *The applicant is eligible.* (4-1-94)
- ~~ii.~~ *The project demonstrates public benefit.* (4-1-94)
- ~~iii.~~ *Money is available in the account.* (4-1-94)
- ~~k.~~ *Disapprove grants for reasons including but not limited to:* (4-1-94)
- ~~i.~~ *The purpose of the grant is to pay for practices that have been applied prior to Commission approval.* (4-1-94)
- ~~ii.~~ *If all requirements in Subsection 056.02.j. are not met.* (4-1-94)
- ~~iii.~~ *The primary purpose is to finance research.* (4-1-94)
- ~~iv.~~ *The purpose is to purchase or aid in the purchase of equipment to apply practices.* (4-1-94)
- ~~l.~~ *Upon grant approval prepare a grant agreement specifying the conditions of the grant.* (4-1-94)

**057. APPLICATION FOR LOAN.**

**01. How to Apply.** Any applicant desiring a loan from the RCRDP account must apply through the local ~~Soil Conservation~~ District. (4-1-94)( )

**02. Two or More Applicants.** Two (2) or more applicants may install a practice(s) as a group providing the loan can be adequately collateralized and all parties agree to joint and several liability. (4-1-94)

**03. Application Form.** The application shall be on a form prescribed by the Commission and must include: (4-1-94)

- a.** Name of applicant, and the location, size, and type of agricultural enterprise. (9-9-86)
- b.** Applicant's status (full-time farmer/rancher, part-time farmer/rancher or owner of agricultural lands leased to another operator). (9-9-86)
- c.** Identification and extent of the resource problem (erosion, plant community deterioration, water loss, water quality, low production, etc.). (9-9-86)
- d.** Statement of applicant's objectives and expected benefits. (9-9-86)
- e.** Proposed practices, implementation schedule, and estimated costs. (9-9-86)
- f.** Estimate of total loan funds needed. (9-9-86)
- i.** Applicant shall be required to supply at least five percent (5%) of the total project costs through personal funds or in-kind services. ( )
- ii.** Total RCRDP loan funds combined with other funds cannot exceed ninety-five percent (95%) of total project costs. ( )
- g.** Applicant's statement of security offered. (4-1-94)
- h.** Applicant's statement of willingness to allow continued monitoring and evaluation of impacts resulting from applied land treatment and management practices. (9-9-86)

- i.** A copy of the applicant's resource conservation plan which becomes a part of the application for assistance. The resource conservation plan shall include: (4-1-94)
- i.** A map showing project location and extent of the resource problem. (4-1-94)
  - ii.** The eligible practices to be installed. (4-1-94)
  - iii.** Estimated costs of applying the practices. (4-1-94)
  - iv.** An implementation schedule. (4-1-94)
  - v.** A statement whereby the applicant agrees to properly maintain and operate installed practices. (4-1-94)
  - vi.** Needed clearances, easements and rights of way. (4-1-94)
  - vii.** Any other appropriate documentation needed to complete the implementation of the resource conservation plan as requested by the ~~SCD~~ local District or Commission. (~~4-1-94~~)(\_\_\_\_)

**04. Presenting the Application.** The completed application must be presented by the applicant (or representative) to the local ~~SCD~~ District Board at a scheduled meeting. (~~9-9-86~~)(\_\_\_\_)

**058. SPECIAL PRACTICE(S) APPROVAL FOR LOANS.**

**01. Special Practice Approval.** A special practice must be approved by the Commission before it becomes an eligible practice. (9-9-86)

**02. Special Practice Requests.** Special practice requests shall be prepared by the local ~~SCD~~ District for the Commission and shall include: (~~4-1-94~~)(\_\_\_\_)

- a.** A description of the proposed practice. (9-9-86)
- b.** A justification of need for the special practice. (9-9-86)
- c.** Standards and specifications for the proposed practice. (9-9-86)
- d.** A statement from the appropriate agency as to the technical adequacy of the special practice in solving the resource problem. (9-9-86)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. CREDIT GUIDELINES FOR LOANS.**

These credit guidelines are established to reduce the risk of the state. Even though these loans are made at a low interest rate for the purpose of encouraging conservation and resource development, they must be repaid. This rule sets forth the requirements for determining the eligibility of an operator for a loan. (4-1-94)

**01. Standards for Acceptable Loans.** There shall be adequate assets and collateral for security to protect the state from risk and loss. (9-9-86)

**02. Credit Information.** Documentation shall be sufficient and verified to support the loan offered. It must include financial and operating statements and other supporting documents as deemed necessary relative to the size, complexity, and financial responsibility of the individual or entity being financed. A credit report will be ordered from at least three (3) credit repositories for each applicant. (~~9-9-86~~)(\_\_\_\_)

- 03. Information Needed Prior to Loan Commitment.** Documents and forms required for all loans: (9-9-86)
- a. Loan application. (9-9-86)
  - b. Financial statements. (9-9-86)
  - i. A current balance sheet will be required from all parties who will be responsible for repayment of the loan and may be required from other relevant parties. (4-1-94)
  - ii. Applicant may be questioned about any major changes that may have occurred on the financial statements submitted. (9-9-86)
  - iii. Income and expense statements. The most recent three (3) year series of accountant prepared statements, if available, or federal tax returns are desired. (~~9-9-86~~)( )
  - c. Copy of drivers license or other photo identification. ( )
  - d. Documentation of water rights. ( )
  - e. Current tax assessments for all parcels referenced in the conservation plan. ( )
  - f. Copy of land lease agreement, if the applicant is not the owner of the parcel(s) referenced in the conservation plan. ( )
- 04. Field Inspections.** Field inspections may be used to: (4-1-94)
- a. Determine loan and security positions, provide repayment estimates and verify agricultural assets. (4-1-94)
  - b. Indicate the applicant's management ability. (4-1-94)
  - c. Secure a complete and accurate description of collateral for the security agreement. (4-1-94)
- 05. Other Information Needed Prior to Loan Commitment.** Real estate secured loans. (9-9-86)
- a. A legal description of the offered collateral. (4-1-94)
  - b. Real estate appraisal, if necessary, should consist of one (1) of the following: (9-9-86)
    - i. Copy of appraisal made by a professional appraiser deemed acceptable to the state. (9-9-86)
    - ii. Evaluation made by Commission or the local ~~SCD~~ District Board according to their knowledge of the estimated average value of the property in the area in which the project is to be implemented. (~~4-1-94~~)( )
  - c. Other Collateral. Any item having tangible value may be accepted as security for these loans. Condition of the collateral shall be updated periodically and additions to the security agreement may be required over time. (4-1-94)
  - d. If the state is not a primary lien holder, a request for notice of default shall be recorded and a letter written to primary lien holders notifying them of the security interests of the state. (9-9-86)
  - e. Must include a map designating location of subject property. (9-9-86)

**(BREAK IN CONTINUITY OF SECTIONS)**



**103. IMPLEMENTATION OF AGREED TO PRACTICES.**

Once the loan has been approved and the conditions of approval have been met, the contractee may install practices as identified and scheduled in the resource conservation plan. The contractee has the responsibility to obtain the appropriate technical assistance. Technical personnel shall assist the contractee in implementation activities to ensure that practices are properly designed, constructed, and managed. The contractee may install practices or subcontract work out to a subcontractor. Whatever method is used, the contractee shall be responsible to ensure that the quality of materials and workmanship in the installation of practices meets the approved standards and specifications for each practice. (4-1-94)

**01. Practice Completion.** Upon completion of the scheduled practice the contractee shall notify the ~~SCD~~ local District and the provider of technical assistance. And the provider of technical assistance shall inspect and document the amount and extent of the installed practice and certify its completion if it meets the quality standards and construction specifications of the practice and notify the ~~SCD~~ local District and contractee. If the practice does not meet practice standards and specifications the contractee and the ~~SCD~~ local District shall be notified by the provider of technical assistance, in writing, of the deficiencies and what needs to be done so the practice shall meet standards and specifications. (~~4-1-94~~)( )

**02. Submitting Vouchers and Bills.** ( )

**a.** When practices are certified complete by the provider of technical assistance, the contractee must submit to the Commission signed vouchers and bills along with the certification of completion report. (~~9-9-86~~)( )

**b.** Up to ninety-five percent (95%) of loan funds can be disbursed toward submitted bills during the loan installment period. The remaining loan funds will be disbursed upon receipt of written certification of project completion from the provider of technical assistance. ( )

**03. Warrant Requests.** The Commission staff shall prepare warrant request(s) made out to the contractee(s) and the vendor and mail it to the contractee. (4-1-94)

**04. Drawing Loan Funds.** The contractee shall implement the practices as scheduled and upon certification may draw on the loan funds throughout the ~~life~~ installment term of the loan contract. (~~9-9-86~~)( )

**104. -- 125. (RESERVED).**

**126. REPAYMENT OF LOAN.**

**01. Repayment of the Loan.** Repayment of the loan, together with interest, shall commence no later than two (2) full years from the date the note is signed. (4-1-94)

**02. Repayment Schedule.** The repayment schedule shall be identified in the loan documents with a fifteen (15) year maximum loan period. One (1) month before payment is due, the commission will mail the contractee a notice of payment due. (4-1-94)

**03. First Payment.** The first payment shall be due as required on the signed loan documents as prepared by the ISCC. Any additional interest incurred during the installment period of the loan will be added to the first payment notice. ( )

**127. FORECLOSURE.**

In the event of a contractee not adhering to the payment terms and conditions of the mortgage, promissory note, or security agreement, the Commission may seek foreclosure procedures according to the laws of the state of Idaho. ( )

**1278. -- 150. (RESERVED).**

**151. LOAN POLICIES.**

**01. Maximum Amount of Any One Loan.** The maximum amount of any one (1) loan shall be ~~fifty two hundred thousand dollars (\$5200,000) or an amount whereby the applicant does not have a program loan liability in excess of fifty thousand dollars (\$50,000).~~ (4-1-94)(\_\_\_\_)

**02. Total Maximum Program Obligation.** The total maximum program liability of any individual borrower is three hundred thousand dollars (\$300,000). (\_\_\_\_)

**023. Use of Loan Money in Conjunction with State or Federal Programs.** Requests for state or federal cost-share assistance and for loan approval are handled by different governmental agencies and approval for one does not guarantee approval for the other. (4-1-94)

**~~152. APPLICATION FOR GRANT.~~**

**~~01. How to Apply.~~** Any applicant desiring a grant from the account for the purpose of financing project costs for improving rangeland and riparian areas must apply through the local Soil Conservation District. (4-1-94)

**~~02. Application Form.~~** The application shall be on a form prescribed by the Commission and must include: (4-1-94)

**~~a. Name and address of the applicant.~~** (4-1-94)

**~~b. A description of the rangeland and riparian area problem that the project shall address.~~** (4-1-94)

**~~c. The practices to be installed.~~** (4-1-94)

**~~d. Statement of the applicants objectives and expected benefits.~~** (4-1-94)

**~~e. Statement on the kind and amount of match that will be provided.~~** (4-1-94)

**~~f. A statement whereby the applicant agrees to properly maintain the installed practice(s).~~** (4-1-94)

**~~g. Applicant's statement of willingness to allow continued monitoring and evaluation of the impacts resulting from applied practice(s).~~** (4-1-94)

**~~h. A copy of the rangeland and riparian area improvement plan which shall include:~~** (4-1-94)

**~~i. A map showing the project location.~~** (4-1-94)

**~~ii. The practice(s) to be installed.~~** (4-1-94)

**~~iii. Estimated costs for installing the practice(s).~~** (4-1-94)

**~~iv. An implementation schedule.~~** (4-1-94)

**~~03. Presenting the Application.~~** The completed application must be presented by the applicant (or representative) to the local SCD Board at a scheduled meeting. (4-1-94)

**~~153. GRANT AGREEMENT.~~**

**~~01. Grant Conditions.~~** If the grant is approved a grant agreement shall be prepared specifying conditions of the grant. (4-1-94)

**~~02. Fund Obligation.~~** Funds shall be obligated when the grant agreement is signed by the applicant. The applicant now becomes the grantee and may proceed with implementation of the rangeland and riparian area improvement plan. (4-1-94)

~~154. IMPLEMENTATION OF THE RANGELAND AND RIPARIAN AREA IMPROVEMENT PLAN WITH GRANT FUNDS.~~

~~01. **Grantee Responsibility.** The grantee has the responsibility to obtain the appropriate technical assistance to ensure that the practice(s) are properly designed, installed and managed. The grantee may install practice(s) or obtain the services of a contractor. Whatever method is used, the grantee shall be responsible to ensure that the quality of materials and workmanship in the installation of practice(s) meets approved standards and specifications for each practice. (4-1-94)~~

~~02. **Practice Completion.** After the installed practice(s) are certified complete by the provider of technical assistance, the grantee must submit a billing to the commission with the completion certification and signed vouchers and bills. (4-1-94)~~

~~a. The billing shall identify the matching share and the grant share of the cost of installing the practice(s). The commission shall then prepare warrant request(s) made out to the grantee and the vendor and mail it to the grantees. (4-1-94)~~

~~b. The warrant request(s) will be only for the grant share of installing the practice(s). (4-1-94)~~

~~03. **Drawing Grant Funds.** The grantee shall implement the practice(s) as scheduled and upon certification of completion may draw on the grant funds as specified in the grant agreement. (4-1-94)~~

~~155. GRANT POLICIES.~~

~~01. **Maximum Amount per Grant.** The maximum amount of any one grant shall be established by the Commission. (4-1-94)~~

~~02. **Geographic Location.** The Commission shall consider project geographic location when considering grant applications in order to distribute grants throughout the State. (4-1-94)~~

~~03. **Public Benefit.** The Commission shall select the project(s) that, in their best judgment, have the greatest public benefit and impact for improving rangeland and riparian areas. (4-1-94)~~

~~04. **Match Requirements.** Match equal to or in excess of the grant amount is required. The match may be provided by sources other than the applicant and may include: (4-1-94)~~

~~a. Dollars. (4-1-94)~~

~~b. Cost of materials. (4-1-94)~~

~~c. Cost of labor for installing the practice(s). (4-1-94)~~

~~d. Cost of equipment and machinery used for installing the practice(s). (4-1-94)~~

~~05. **Match Supporting Documentation.** Match for dollars and materials must be supported by signed vouchers, bills, and receipts. Match for the cost of labor and equipment and machinery must show hours and hourly rate. Hourly rates must be reasonable and consistent with local wage and custom rental rates. (4-1-94)~~

~~06. **Match not Approved.** Match shall not be approved for the cost of practice(s) operation and maintenance. (4-1-94)~~

~~07. **Maximum Amount per Fiscal Year.** The maximum amount of funds the Commission can approve for grants per fiscal year shall be established by the Commission. (4-1-94)~~

~~1562. -- 999. (RESERVED).~~

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.03 - RULES PERTAINING TO THE IDAHO NURSERY AND FLORISTS LAW

#### DOCKET NO. 02-0603-0901 (FEE RULE)

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

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2009.

**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 22-2314, 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 October 21, 2009.

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:

USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS-2006-0137), effective October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 administrative fee for each certificate issued by the state. The Department currently charges an hourly rate of \$20 for this service. The Department proposes to drop the hourly rate and initiate a fee of \$60 per certificate issued to cover the federal administrative fee and increased costs to the program. The fees under this rule have not been adjusted since 1986.

Section 02.06.03.050 of this rule will be revised to reference IDAPA 02.06.04, "Phytosanitary and Post-Entry Certification Rules," Section 500, "Fees and Charges," to synchronize the fees and services between the two rules and thus ensuring that all exporters will be subject to the same fee schedule. Technical changes will also be made to include proper formatting and sections required by the Office of the Administrative Rules Coordinator.

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

Compliance with changes to federal regulations.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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:

Based on 2008 figures this change would generate \$9,000 of which \$1,800 would be remitted to USDA APHIS and the remaining \$7,200 would remain with the program to cover the cost of the program.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because an informal meeting was held with the Idaho Nursery and Landscape Association Board of Directors at their annual meeting on July 28, 2009, in Stanley, Idaho. In addition, all of the major exporting nurseries were informed of the proposed fee changes in person.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper at (208) 332-8620.

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 October 28, 2009.

DATED this 20th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 02-0603-0901**

~~000.—009.~~ **(RESERVED).**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapter 23, Idaho Code. (10-1-09)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.03, “Rules Pertaining to the Idaho Nurseries and Florists Law.” (10-1-09)T

**02. Scope.** These rules establish a fee schedule for special services and to set forth conditions under which a shipping permit will be issued under the authority of Nurseries and Florists, Title 22, Chapter 23, Idaho Code. (10-1-09)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (10-1-09)T

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeal before the Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (10-1-09)T

**004. INCORPORATION BY REFERENCE.**

IDAPA 02.06.03 does not incorporate any material by reference. (10-1-09)T

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

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-09)T

**02. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (10-1-09)T

**03. Street Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (10-1-09)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records available for inspection and copying at the department. (10-1-09)T

**010. PURPOSE.**

*The purpose of these rules is to establish a fee schedule for special services and to set forth conditions under which a shipping permit will be issued under the authority of Nurseries and Florists, Title 22, Chapter 23, Idaho Code.* (4-13-86)

**047. -- 049. (RESERVED).**

**050. SPECIAL SERVICE.**

When nurseries or florists require additional inspections and special services, a special service fee will be charged. Refer to IDAPA 02.06.04, "Phytosanitary and Post-Entry Certification Rules," Section 500, "Fees and Charges," for a complete schedule of services and fees. (4-13-86)(10-1-09)T

**01- Description of Additional Inspections and Special Services.** *Additional inspections and special services are those services and functions performed by the Department in addition to services routinely performed as part of the nursery inspection activities, including but not limited to the following:* (4-13-86)

**a-** *Inspections for and issuance of phytosanitary certificates and other certificates required for entrance of nursery stock into other states and foreign countries;* (4-13-86)

**b-** *Services performed to determine compliance with import regulations of other states and foreign countries; and* (4-13-86)

**c-** *Supervising or monitoring application of pesticide, including fumigants, on nursery stock for phytosanitary purposes.* (4-13-86)

**02- Special Service Fee Schedule.** *A nursery grower, dealer, or individual who requires additional inspections and special services as outlined in Chapter 23, Title 22, Idaho Code, shall pay a fee in accordance with the following schedule:* (4-13-86)

**a-** *A minimum fee of twenty dollars (\$20) per service call and a charge of twenty dollars (\$20) per hour after the first hour will be made.* (4-13-86)

**b-** *If less than three (3) working days' notice is given for a special service call, a fee of forty dollars (\$40) will be assessed in addition to the minimum twenty dollar (\$20) fee and subsequent hourly charge.* (4-13-86)

**c-** *If the entire shipment is brought to a designated location at a time specified by an agent of the Department of Agriculture, the minimum charge for inspection will be ten dollars (\$10), and a charge of twenty dollars (\$20) per hour after the first hour will be made.* (4-13-86)

**d-** *The inspection charges shall include fees for issuance of any appropriate certificates.* (4-13-86)

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. -- 14999. (RESERVED).**

**150. EFFECTIVE DATE.**

*These rules shall be in effect on and after April 13, 1986.* (4-13-86)

**151. -- 999. (RESERVED).**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.04 - IDAHO DEPARTMENT OF AGRICULTURE, PHYTOSANITARY AND POST-ENTRY CERTIFICATION RULES

#### DOCKET NO. 02-0604-0901 (FEE RULE)

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

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2009.

**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 22-103(22), 22-107, 22-702, and 22-2006, 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 October 21, 2009.

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:

USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS-2006-0137), starting October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 federal administrative fee for each certificate issued by the state. The Department currently charges \$40 for each certificate it issues. The Department proposes to increase the fee to \$60 to cover the federal administrative fee and increased costs to the program. This fee has not been adjusted since 2004.

**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: Compliance with federal regulation changes.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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:

Based on 2008 figures, this change would generate an additional \$74,140 of which, \$44,484 would be remitted to USDA APHIS to cover the administrative fees and the remaining \$29,656 would remain with the program to cover the increased cost of the program.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because informal meetings were held with the Idaho Eastern Oregon Seed Association at their annual membership and board of directors meetings over the past two years. The most recent membership meeting was held June 23-24, 2009. The Idaho Nursery and Landscape Association Board of Directors were informed of the proposed change July 28, 2009 at their annual meeting in Stanley, Idaho. In addition, all of the major exporting nurseries were informed of the proposed fee changes in person.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper at (208) 332-8620.

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 October 28, 2009.

DATED this 20th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 02-0604-0901**

**500. FEES AND CHARGES.**

- 01. Phytosanitary Certificates.** (3-16-04)
- a.** Federal Phytosanitary Inspection Certificates or like documents: ~~forty~~ sixty dollars (\$~~40~~60) per certificate. (~~3-16-04~~)(10-1-09)T
- b.** State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. (3-16-04)
- 02. Phytosanitary Certification and Like Inspections and Official Treatment Observations.** (2-1-95)
- a.** Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) - twenty dollars (\$20) per sample. (3-16-04)
- b.** Submitted Samples: twenty dollars (\$20) per item submitted. (3-16-04)
- c.** Treatment Observations: for official verification of seed and plant treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into the state in violation of a state quarantine, fees are thirty dollars (\$30) per hour (including travel time), and any per diem incurred. Per diem will be at established state rates. (~~3-16-04~~)(10-1-09)T
- d.** Rush service fees will be one hundred dollars (\$100) per certification which will be in addition to the normal phytosanitary certification charges outlined in this Section 500. (2-1-95)
- e.** Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges outlined in this section. (2-1-95)
- 03. Area Inspections.** Area Inspection: fourteen cents (\$.14) per hundred-weight. (3-16-04)
- 04. Field or Lot Inspections.** (2-1-95)
- a.** Application for Field Inspection: five dollars (\$5) per application. (3-16-04)
- b.** Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of fifty dollars (\$50) per inspection will be charged when the total acreage submitted by any one (1) applicant is fifteen (15) acres or less. (3-16-04)



**05. Post-Entry Quarantine Inspections.** The inspection fee is two hundred dollars (\$200) for the required two (2) year quarantine and an additional one hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty-five dollars (\$25) of the two hundred dollar (\$200) inspection fee is non-refundable, and will be retained to cover administrative costs. (2-1-95)

**06. Plant Pathological Laboratory Services.** Fees available upon request. (2-1-95)

**07. Special Project Fee.** (10-1-09)T

**a.** Special projects not covered by the existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects include, but are not limited to, the following: (10-1-09)T

**i.** Research; (10-1-09)T

**ii.** Lot history verification; (10-1-09)T

**iii.** Data entry; (10-1-09)T

**iv.** Sales and purchases; (10-1-09)T

**v.** Transfer of lots into ISDA database; (10-1-09)T

**vi.** ISDA training of private company personnel; (10-1-09)T

**vii.** Special plant pest detection surveys; or (10-1-09)T

**viii.** Any other circumstance approved by the Director. (~~3-16-04~~)(10-1-09)T

**b.** This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. (10-1-09)T

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.08 - QUARANTINE RULES PERTAINING TO APPLES AND CHERRIES

DOCKET NO. 02-0608-0901

#### 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 22-2006 and 22-2013, 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 October 21, 2009.

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:

After a review of the scientific literature, it has been determined that peaches, apricots and nectarines have never been found to be a host of the apple maggot and were erroneously listed in the current rule. The Department proposes to revise IDAPA 02.06.08.101.01 strike the words "peach, nectarine, and apricot" and make the wording consistent with that of Oregon and Washington, who have similar rules.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, formal negotiated rulemaking was not conducted because this is a technical change to the rules based on new information concerning an error in the scientific literature upon which the original rule was based. The Idaho Apple Commission was notified of this proposed rules change on August 11, 2009 by E-mail.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper 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 October 28, 2009.

DATED this 20th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0608-0901

**101. REGULATED ARTICLES.**

**01. Apple Maggot.** All fresh fruit of apple (including crabapple), ~~apricot~~, cherry (except cherries that are commercial fruit), ~~crabapple~~, hawthorn (~~native and ornamental~~ haw), ~~nectarine, peach~~, pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, quince, and rose hips ~~and any other commodity subsequently found to be a host of the~~ are regulated under quarantine for Apple maggot. (5-3-03)( )

**02. Cherry Fruit Fly.** All domestic and wild cherries and cherry trees. (5-3-03)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.22 - NOXIOUS WEED RULES

#### DOCKET NO. 02-0622-0901

#### 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 22-2403(b) and (c), 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 October 21, 2009.

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:

Amendments to the noxious weed list will be part of an ongoing process to ensure that the rule is up to date, addressing current and future threats to agriculture and the environment in Idaho. This process could result in the removal of current species, addition of new species, and/or reclassification of currently listed species.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because informal negotiated rulemaking was conducted using a new process to broaden input from agricultural and non-agricultural interests throughout the state. Various commodity, weed, nursery, plant, seed, lake and water quality associations and groups gave input as to which species should be added or deleted from the current noxious weeds list. The results were tallied and recommendations were given to the Noxious Weed Advisory Committee who voted and made the final recommendations to the Director.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Matt Voile, Section Manager, at (208) 332-8667.

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 October 28, 2009.

DATED this 25th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0622-0901

**100. NOXIOUS WEEDS - DESIGNATIONS.**

The weeds listed on the Statewide EDRR, Containment, and Control lists- are hereby officially designated and published as noxious. (3-30-07)

**01. Statewide EDRR Noxious Weed List.**

Common Name	Scientific Name
1. Brazilian Elodea	1. <i>Egeria densa</i>
<del>2.</del> Common/European Frogbit	<del>2.</del> <i>Hydrcharis morsus-ranae</i>
<del>3.</del> Fanwort	<del>3.</del> <i>Cobomba caroliniana</i>
4. Feathered Mosquito Fern	4. <i>Azolla pinnata</i>
<del>25.</del> Giant Hogweed	<del>25.</del> <i>Heracleum mantegazzianum</i>
6. Giant Salvinia	6. <i>Salvinia molesta</i>
<del>37.</del> Hydrilla	<del>37.</del> <i>Hydrilla verticillata</i>
<del>48.</del> Policeman's Helmet	<del>48.</del> <i>Impatiens glandulifera</i>
<del>59.</del> Squarrose Knapweed	<del>59.</del> <i>Centaurea triumfetti</i>
<del>610.</del> Syrian Beancaper	<del>610.</del> <i>Zygophyllum fabago</i>
<del>711.</del> Tall Hawkweed	<del>711.</del> <i>Hieracium piloselloides</i>
<del>8.</del> Water Hyacinth	<del>8.</del> <i>Eichhornia crassipes</i>
12. Variable-Leaf-Milfoil	12. <i>Myriophyllum heterophyllum</i>
13. Water Chestnut	13. <i>Trapa natans</i>
<del>914.</del> Yellow Devil Hawkweed	<del>914.</del> <i>Hieracium glomeratum</i>
15. Yellow Floating Heart	15. <i>Nymphoides pelata</i>

If any of the above listed plants (Subsection 100.01) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified. (3-30-07)( )

**02. Statewide Control Noxious Weed List**

Common Name	Scientific Name
1. Black Henbane	1. <i>Hyoscyamus niger</i>
2. Bohemian Knotweed	2. <i>Polygonum X bohemicum</i>
3. Buffalobur	3. <i>Solanum rostratum</i>
4. Common Crupina	4. <i>Crupina vulgaris</i>
5. Common Reed (Phragmites)	5. <i>Phragmites australis</i>
<del>56.</del> Dyer's Woad	<del>56.</del> <i>Isatis tinctoria</i>
<del>67.</del> Eurasian Watermilfoil	<del>67.</del> <i>Myriophyllum spicatum</i>
<del>78.</del> Giant Knotweed	<del>78.</del> <i>Polygonum sachalinense</i>

Common Name	Scientific Name
<del>89.</del> Japanese Knotweed	<del>89.</del> <i>Polygonum cuspidatum</i>
<del>910.</del> Johnsongrass	<del>910.</del> <i>Sorghum halepense</i>
<del>101.</del> Matgrass	<del>101.</del> <i>Nardus stricta</i>
<del>142.</del> Meadow Knapweed	<del>142.</del> <i>Centaurea debeauxii</i>
<del>123.</del> Mediterranean Sage	<del>123.</del> <i>Salvia aethiopsis</i>
<del>134.</del> Musk Thistle	<del>134.</del> <i>Carduus nutans</i>
<del>145.</del> Orange Hawkweed	<del>145.</del> <i>Hieracium aurantiacum</i>
<del>156.</del> Parrotfeather Milfoil	<del>156.</del> <i>Myriophyllum aquaticum</i>
<del>167.</del> Perennial Sowthistle	<del>167.</del> <i>Sonchus arvensis</i>
<del>178.</del> Russian Knapweed	<del>178.</del> <i>Acroptilon repens</i>
<del>189.</del> Scotch Broom	<del>189.</del> <i>Cytisus scoparius</i>
<del>19.</del> <i>Silverleaf Nightshade</i>	<del>19.</del> <i>Solanum elaeagnifolium</i>
<del>20.</del> <i>Skeletonleaf Bursage</i>	<del>20.</del> <i>Ambrosia tomentosa</i>
<del>240.</del> Small Bugloss	<del>240.</del> <i>Anchusa arvensis</i>
<del>22.</del> <i>Toothed Spurge (David's Spurge)</i>	<del>22.</del> <i>Euphorbia davidii</i>
<del>231.</del> Vipers Bugloss	<del>231.</del> <i>Echium vulgare</i>
<del>242.</del> Yellow Hawkweed	<del>242.</del> <i>Hieracium caespitosum</i>

Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

(3-30-07)( )

**03. Statewide Containment Noxious Weed List.**

Common Name	Scientific Name
<u>1.</u> Canada Thistle	<u>1.</u> <i>Cirsium arvense</i>
<u>2.</u> <u>Curlyleaf Pondweed</u>	<u>2.</u> <i>Potamogeton crispus</i>
<del>23.</del> Dalmatian Toadflax	<del>23.</del> <i>Linaria dalmatica ssp. dalmatica</i>
<del>34.</del> Diffuse Knapweed	<del>34.</del> <i>Centaurea diffusa</i>
<del>45.</del> Field Bindweed	<del>45.</del> <i>Convolvulus arvensis</i>
<u>6.</u> Flowering Rush	<u>6.</u> <i>Butomus umbellatus</i>
<del>57.</del> Hoary Alyssum	<del>57.</del> <i>Berteroa incana</i>
<del>68.</del> Houndstongue	<del>68.</del> <i>Cynoglossum officinale</i>
<del>79.</del> Jointed Goatgrass	<del>79.</del> <i>Aegilops cylindrica</i>
<del>810.</del> Leafy Spurge	<del>810.</del> <i>Euphorbia esula</i>
<del>911.</del> Milium	<del>911.</del> <i>Milium vernale</i>

Common Name	Scientific Name
<del>102.</del> Oxeye Daisy	<del>102.</del> <i>Leucanthemum vulgare</i>
<del>143.</del> Perennial Pepperweed	<del>143.</del> <i>Lepidium latifolium</i>
<del>124.</del> Plumeless Thistle	<del>124.</del> <i>Carduus acanthoides</i>
<del>135.</del> Poison Hemlock	<del>135.</del> <i>Conium maculatum</i>
<del>146.</del> Puncturevine	<del>146.</del> <i>Tribulus terrestris</i>
<del>157.</del> Purple Loosestrife	<del>157.</del> <i>Lythrum salicaria</i>
<del>168.</del> Rush Skeletonweed	<del>168.</del> <i>Chondrilla juncea</i>
<del>179.</del> Saltcedar	<del>179.</del> <i>Tamarix sp.</i>
<del>4820.</del> Scotch Thistle	<del>4820.</del> <i>Onopordum acanthium</i>
<del>4921.</del> Spotted Knapweed	<del>4921.</del> <i>Centaurea stoebe</i>
<del>202.</del> Tansy Ragwort	<del>202.</del> <i>Senecio jacobaea</i>
<del>243.</del> White Bryony	<del>243.</del> <i>Bryonia alba</i>
<del>224.</del> Whitetop (Hoary Cress)	<del>224.</del> <i>Cardaria draba</i>
<del>25.</del> Yellow Flag Iris	<del>25.</del> <i>Iris pseudocorus</i>
<del>236.</del> Yellow Starthistle	<del>236.</del> <i>Centaurea solstitialis</i>
<del>247.</del> Yellow Toadflax	<del>247.</del> <i>Linaria vulgaris</i>

Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. (3-30-07)( )

**04. Statewide Monitor List.**

Common Name	Scientific Name
<del>1.</del> Water Hyacinth	<del>1.</del> <i>Echhorinia crassipes</i>

( )

**a.** Plants listed on the statewide monitor list are not designated as noxious weeds. The Department will investigate plants listed on the statewide monitor list to determine if the plant should be designated as a noxious weed. Plants may be placed on the statewide monitor list for any of the following criteria: ( )

**i.** There is reason to believe this species is invasive or poses a potential threat to Idaho due to damage caused by the species in other states or biological conditions which may allow the escape and survival of this species in Idaho. ( )

**ii.** The species exists in an adjacent state or province. ( )

**iii.** The species is on an adjacent state or province's noxious weed list. ( )

**iv.** Additional information about the species is needed on distribution, abundance or biology. ( )

**v.** There is a need to verify the presence of escaped species in Idaho, verify identification and/or obtain voucher specimen. ( )

vi. The species is currently available in the state through the nursery, pet, or ornamental seed/plant industry but may be closely related to current noxious/invasive species or suspected of being able to spread outside of intended sites and become escaped species. ( )

b. Native species of the state or region will not be included on the monitor list. ( )

**045. Designation of Articles Capable of Disseminating Noxious Weeds.** The following articles are designated by the Director as capable of disseminating noxious weeds: (7-1-93)

- a. Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-30-07)
- b. Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-30-07)
- c. Grain and seed. (7-1-93)
- d. Hay, straw and other material of similar nature. (7-1-93)
- e. Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-30-07)
- f. Feed and seed screenings. (7-1-93)
- g. Fence posts, fencing and railroad ties. (7-1-93)
- h. Sod. (7-1-93)
- i. Manure, fertilizers and material of similar nature. (7-1-93)
- j. Soil, sand, mulch, and gravel. (3-30-07)
- k. Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-30-07)



## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.33 - ORGANIC FOOD PRODUCT RULES**

#### **DOCKET NO. 02-0633-0901 (FEE RULE)**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-1103, 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 October 21, 2009.

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 change the application and registration deadline from March 31st to July 1st and to discontinue the late fees of \$250 for certification and \$100 for registration. The existing March 31st deadline does not provide organic producers and handlers with sufficient time to make cropping decisions.

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

To change the application and registration deadline from March 31st to July 1st and to discontinue the late fees of \$250 for certification and \$100 for registration.

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

**NEGOTIATED RULEMAKING:** Informal negotiations were conducted with industry. The Organic Food Advisory Council met October 27, 2008 and recommended the changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

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 October 28, 2009.

DATED this 19th day of August, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0633-0901**

**300. REGISTRATION REQUIREMENTS, DEADLINES AND FEES.**

**01. Registration Requirements and Deadlines.** All applicants applying for registration with the Department, shall submit the application to the Department on forms prescribed by the Department. (3-19-07)

**a.** All organic producers/handlers in Idaho with five thousand dollars (\$5,000) or less annual gross organic sales shall register with the Department by ~~March 31~~ July 1st of each year. (~~3-19-07~~)(    )

**b.** All organic producers/handlers in Idaho certified by agents other than the Department shall register with the Department within thirty (30) days of initial certification and by ~~March 31st~~ July 1st of each year thereafter. (~~3-19-07~~)(    )

**c.** All agents certifying producers/handlers in Idaho shall register with the Department within thirty (30) days of issuing their first Idaho producer/handler certificate. (3-19-07)

**d.** Agents shall provide the Department, by January 2 of each year, a list of Idaho producers/handlers, addresses, and telephone numbers for each certificate issued during the prior calendar year. (3-19-07)

**02. Registration Fees, ~~Late Fees.~~** (~~3-19-07~~)(    )

**a.** The annual registration fee is fifty dollars (\$50). (3-19-07)

~~**b.** Applications for registration postmarked after the deadline listed in Subsection 300.01.a. will be assessed a late fee of one hundred dollars (\$100).~~ (~~3-19-07~~)

~~**eb.** A person who produces and handles their own organic food products shall pay only one (1) annual registration fee.~~ (3-19-07)

**301. CERTIFICATION REQUIREMENTS, DEADLINES AND FEES.**

**01. Certification Requirements and Deadlines.** All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed by the Department by ~~March 31st~~ July 1st of each year. (~~3-19-07~~)(    )

**a.** All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

**b.** Producers/handlers with annual gross organic income of five thousand dollars (\$5,000) or less may select certification in place of registration. (3-19-07)

**c.** All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

~~**d.** Applications for crop producer certification will not be accepted if postmarked after June 1st.~~ (~~3-19-07~~)

~~**ed.** Livestock producer and handler applications will be accepted throughout the year.~~ (3-19-07)

**02. Certification Fees, ~~Late Fees.~~** (~~3-19-07~~)(    )

**a.** Organic producers/handlers with annual gross organic income of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (3-19-07)

**b.** Organic producer/handler with annual gross organic income of more than fifteen thousand dollars

(\$15,000) –Two hundred dollars (\$200). (3-19-07)

**c.** A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)

~~**d.** Applications for producer/handler certification postmarked after March 31st will be assessed a late fee of two hundred fifty dollars (\$250). (3-19-07)~~

**03. Certification Inspection Fees.** (3-19-07)

**a.** The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)

**b.** Travel time from an inspector’s normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)

**c.** There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)

**d.** A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)

**e.** The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler. (3-19-07)

**f.** Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)

**g.** Upon approval by the Department, private inspectors may be utilized ~~for operations that submitted their application after March 31 or under special circumstances.~~ The applicant shall bear the total cost of the private inspection. ~~(3-19-07)( )~~

**IDAPA 03 - STATE ATHLETIC COMMISSION**  
**03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION**  
**DOCKET NO. 03-0101-0901 (FEE RULE)**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-416, 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 October 21, 2009.

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 rule updates the Athletic Commission's website address as it has changed. The rule clarifies that an application is required for a sanctioning permit and that all combatants must apply for a license. It adds a \$30 application and renewal fee for a ring official. The rule indicates that the Commission may, for good cause shown, lower the ring official age requirement from 21 to 18 years. It corrects terminology. The rule changes the reference from a boxer to a combatant to be consistent with the statute. Finally, it clarifies an exemption and corrects a reference in Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: This is not a new fee. The ring official fee was collected as a non-combatant fee.

**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:

The addition of a ring official application and renewal fees will have no impact on the Board's dedicated funds as this category was a part of the non-combatant fees.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the discussion was held in an open meeting of the commission.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 28, 2009.

DATED this 25th day of August, 2009.

Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233 Ph. (208) 334-3945, fax

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 03-0101-0901**

**006. ADDRESS OF THE IDAHO STATE ATHLETIC COMMISSION.**

The office of the State Athletic Commission is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is [atc@ibol.idaho.gov](mailto:atc@ibol.idaho.gov). The Board's official web site ~~is~~ can be found at [www.ibol.idaho.gov/atc.htm](http://www.ibol.idaho.gov/atc.htm). ~~(3-26-08)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. LICENSING.**

**01. Application for License.** An application for a license must be submitted to the Bureau on a form supplied by the Commission and be verified under oath by the applicant for each of the following: (3-26-08)

- a. ~~Professional~~ Combatant; ~~(5-8-09)~~( )
- b. Promoter; (3-3-94)
- c. Matchmaker; (3-3-94)
- d. Manager; (3-3-94)
- e. Second, including a trainer; ~~or~~ ~~(5-8-09)~~( )
- f. Ring Official; or ~~(5-8-09)~~( )
- g. Sanctioning permit for an event. ( )

**02. Complete Applications.** All applications must be made on a form provided by the Bureau and must be complete and include the required fee and any supporting documentation required before they will be considered by the commission. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**104. FEES (RULE 104).**

- 01. Application.** Application fee: (3-26-08)
- a. Combatant - thirty dollars (\$30). (3-26-08)
- b. Non-combatant - thirty dollars (\$30). (3-26-08)
- c. Matchmaker - one hundred dollars (\$100). (3-26-08)
- d. Promoter - five hundred dollars (\$500). (3-26-08)
- e. Sanction permit - twenty-five dollars (\$25). (3-26-08)
- f. Ring official - thirty dollars (\$30).** ( )
- 02. Renewal of License/Permit.** Annual renewal fee: (3-26-08)

- a. Combatant - thirty dollars (\$30). (3-26-08)
- b. Non-combatant - thirty dollars (\$30). (3-26-08)
- c. Matchmaker - fifty dollars (\$50). (3-26-08)
- d. Promoter - one hundred dollars (\$100). (3-26-08)
- e. Ring official - thirty dollars (\$30). ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. REQUIREMENTS FOR LICENSE AS RING OFFICIAL.**

- 01. Qualifications.** To qualify for a license as a ring official of contests, an applicant must: (5-8-09)
  - a. Be at least twenty-one (21) years of age. The Commission may, for good cause shown, lower the minimum age limit for a particular applicant to eighteen (18) years of age; (~~3-3-94~~)( )
  - b. Have no record of conviction of a felony or other crime involving moral turpitude unless approved by the commission; (3-26-08)
  - c. Have had at least one (1) year experience in either amateur or professional contest as a ring official; (5-8-09)
  - d. Submit verifications from three (3) persons of his proficiency as a ring official; and (5-8-09)
  - e. Provide proof that the applicant meets the other requirements of the commission law and rules. (3-26-08)
- 02. Equivalent Qualifications.** In lieu of the above qualifications, the Commission may accept satisfactory evidence of equivalent qualifications possessed by an applicant who: (5-8-09)
  - a. Is currently licensed in another state or country; or (3-3-94)
  - b. Formerly held an Idaho license which lapsed in good standing. (3-26-08)
- 03. Other Functions.** A person holding a current Idaho license or who formerly held an Idaho license which lapsed in good standing may be licensed by the Commission without examination or internship to perform an officiating function other than that for which he is or was licensed if the Commission determines that he is qualified to perform that function. (3-3-94)
- 04. Ring Officials Determination.** The Commission will determine when additional ring officials are needed and when licensing examinations for ring officials will be conducted. (3-3-94)
- 05. Validity of Licenses.** Each license issued by the commission is annually renewable in accordance with Section 67-2614, Idaho Code. The renewal of a license is not automatic. The applicant's past performance and abilities may be considered in evaluating an application for renewal. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**728. ANNOUNCEMENT OF WINNER OF BOUT.**

At the termination of each boxing bout the announcer shall announce the winner and the referee shall raise the winner's hand ~~of the winner~~. (3-3-94)(\_\_\_\_)

**729. CHANGE OF DECISION IN CONTEST.**

The Commission will not change a decision rendered at the end of any ~~boxing~~ contest unless: (5-8-09)(\_\_\_\_)

**01. Collusion.** The Commission determines that there was collusion affecting the result of the contest; (3-3-94)

**02. Error in Scoring.** The compilation of scorecards of the judges discloses an error which shows that the decision was given to the wrong ~~boxer~~ combatant; or (3-3-94)(\_\_\_\_)

**03. Error in Interpretation of Rules.** As a result of an error in interpreting a provision of this chapter, the referee has rendered an incorrect decision. (3-3-94)

**04. Failure of Drug Test.** The Commission determines that there was a violation of Section 900. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**731. MARTIAL ARTS AND MIXED MARTIAL ARTS (MMA).**

**01.** Regulation of Marital Arts and MMA. Except to the extent set forth under Rules 731-799, all requirements and the limitations relating to combatants and licenses (as set forth within Title 54, Chapter 4, Idaho Code, and in the remaining rules of the Commission) will apply to all martial arts and MMA contests and exhibitions. Notwithstanding the foregoing, at its sole discretion, the Commission may (by specific reference in the sanctioning permit) allow the use of other requirements and limitations during a particular martial arts contest or exhibition. (5-8-09)

**02. Practices, Belt Promotions, and Non-Contact Demonstrations.** Martial arts practices, belt promotion testing and demonstrations (as used herein the term demonstrations means ~~exhibitions~~ displays that do not involve combative contact between combatants or between participants) conducted by martial arts schools are not considered to be boxing. Such practices, testing, and demonstrations are exempt from the licensing requirements of Title 54, Chapter 4, Idaho Code, and persons do not need a license to participate in such practices, testing, and demonstrations. (5-8-09)(\_\_\_\_)

**03. Licensing Exemption.** Martial arts schools that meet the conditions set forth within Section 54-406(23)(b), Idaho Code, may apply to the Commission for exemption from licensing and sanctioning permit requirements relating to exhibitions and contests. (4-6-05)(\_\_\_\_)

**04. Use of Official Rules for Art.** Martial arts contests and exhibitions must be conducted pursuant to the official rules of the particular art. The sponsoring organization or promoter must file a copy of the official rules with the Commission before the Commission will issue a sanctioning permit for the contest or exhibition. (4-6-05)

**05. Boxing Gloves.** The requirement set forth in Section 54-414, Idaho Code, of wearing boxing gloves applies to kickboxing but will not apply to any other form of martial art unless the use of boxing gloves is required by the official rules of that particular art. Any gloves utilized must be in good condition as approved by the commission. For the main and semi main events gloves must be in new condition and of the same brand for combatants. (5-8-09)

# **IDAPA 03 - STATE ATHLETIC COMMISSION**

## **03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION**

### **DOCKET NO. 03-0101-0902**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2009.

**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 54-416, 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 October 21, 2009.

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 2009 Legislature passed House Bill 32 which made changes to the Athletic Commission Act. The proposed rules are being changed to be consistent with the new law and to further protect the combatants. The rules define the types of events. In order to protect the combatants and the public, the rules clarify the blood testing requirements, the criteria for approval of amateur sanctioning authorities, and the annual review of such approval. The rules provide other security in lieu of a bond to be consistent with the new law. The rules require a physical and eye exam within thirty-six (36) hours of an event. The rules clarify fair techniques and fouls in Mixed Martial Arts (MMA) events to protect the combatants. The rules limit MMA contests to three rounds for amateur events and five rounds for professional events.

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

This temporary rule is necessary to be in compliance with amendments to Title 54, Chapter 4, Idaho Code and to protect the health and safety of the combatants and the public.

**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: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of amendments to the governing law and for the protection of combatants and 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 October 28, 2009.

DATED this 17th day August, 2009.



Tana Cory  
Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Ste 220  
Boise, ID 83702  
(208) 334-3233 phone (208) 334-3945 fax

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 03-0101-0902**

**010. DEFINITIONS.**

- 01. Bureau.** The Bureau of Occupational Licenses, as prescribed in Section 67- 2602, Idaho Code. (3-26-08)
- 02. Champion.** A person who has been formally acknowledged supreme in a branch of athletics or game of skill and who is ready to contend with any qualified challenger. (3-3-94)
- 03. Combatant.** Any boxer, kickboxer, martial artist or wrestler who takes part as a competitor in an event under the jurisdiction of the commission. A “combatant” sometimes is referred to as a “contestant” in these rules. (~~3-26-08~~)(8-20-09)T
- 04. Commission.** The Idaho Athletic Commission created under Title 54, Chapter 4, Idaho Code, or designated agent. (3-26-08)
- 05. Commissioner.** The state athletic commissioner, as prescribed in Section 54-401, Idaho Code. (3-26-08)
- 06. Event.** ~~Any program of one (1) or more unarmed combat contests, match, or exhibitions of unarmed combat under the jurisdiction of the commission.~~ (~~3-26-08~~)(8-20-09)T
- a.** An “amateur event” is an event in which the only combatants are amateur combatants. (8-20-09)T
- b.** A “professional event” is an event in which the only combatants are professional combatants. (8-20-09)T
- c.** A “pro-am” is an event in which combatants include professional combatants and amateur combatants. Professional combatants may not compete against amateur combatants in “pro-am” events. (8-20-09)T
- 07. Main Event.** The headline or marquee contest or exhibition scheduled to occur at an event. (8-20-09)T
- ~~08.~~ **Mixed Martial Arts (MMA).** A full contact sport that allows a wide variety of unarmed combat techniques from a mixture of martial arts traditions to be used in competitions. (5-8-09)
- ~~09.~~ **Physician.** A physician licensed by the Idaho Board of Medicine. (5-8-09)
- ~~10.~~ **Ring Official.** Ring officials include referees, judges, timekeepers and gloves. (5-8-09)
- ~~11.~~ **Stub.** That part of the ticket retained by a person entering the arena in which an event is held after

the ticket has been collected.

(3-26-08)

**102. Ticket.** That document issued by the promoter allowing a person's entrance and attendance at an event and may include that part of the ticket retained by the promoter documenting a person's entrance to an event.  
(3-26-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. PHYSICAL EXAMINATION OF COMBATANT.**

**01. Examination by Physician.** Any combatant who has applied for a license or a renewal of his license must be examined by a physician. The physician will establish the combatant's physical and mental fitness for competition.  
(5-8-09)

**02. Additional Examination.** Any combatant licensed by the Commission who participates in a contest outside of the state of Idaho may be required to take this examination again before being allowed to compete in Idaho.  
(3-26-08)

**03. Drug Abuse.** The Commission will not issue a license to an athlete who has a recent history of drug abuse, without proof of participation in a recognized drug rehabilitation program and/or submission to urinalysis.  
(3-3-94)

**04. Blood Testing.** The Commission will not issue a license to an athlete, ~~who~~ or allow an athlete to compete in an event, if the athlete, within the six (6) months immediately preceding the application for licensure or the event at which the licensee wishes to compete, has tested positive for the HIV virus, Hepatitis B Surface Antigen and Hepatitis C Antibody, or illegal drugs or other substances. A current test report must accompany all license applications including renewals. Accordingly, when an athlete applies for a license, the athlete must submit with the application a blood test report from a blood test conducted within the six (6) months preceding the application date. The blood test must have tested the athlete for HIV virus, Hepatitis B Surface Antigen, Hepatitis C Antibody, and illegal drugs and substances. Additionally, each combatant who is to compete in an event shall, at the start of the event, provide the Commission with a blood test report from a blood test conducted within the six (6) months immediately preceding the event. Additional blood tests may be requested by the Commission at their in its discretion.  
(5-8-09)(8-20-09)T

**~~109. CRITERIA FOR APPROVAL OF SANCTIONING PERMITS.~~**

~~**01. Final Authority.** The Commission is the final authority on all sanctioning organizations for amateur events. Any organization representing itself as a sanctioning body must meet the following requirements:  
(5-8-09)~~

~~**a-** All events must be conducted in accordance with the sanctioning bodies' rules as approved by the Commission;  
(5-8-09)~~

~~**b-** All officials must meet the training and certification requirements set by the Commission;  
(5-8-09)~~

~~**e-** The sanctioning body must provide evidence of sufficient liability insurance for the officials;  
(5-8-09)~~

~~**d-** The sanctioning body must not let the event proceed unless proof of medical insurance for combatants is provided, an ambulance and EMT's are present and on site at all times, and a Commission approved physician or physicians, as determined by Commission regulations, is onsite and ringside;  
(5-8-09)~~

~~**e-** The sanctioning body cannot have any direct or indirect financial interest in the fighters or the~~

~~promotion;~~ (5-8-09)

~~f. The sanctioning body must agree that the combatants are not to receive any type of purse payment, or compensation except as approved by the Commission;~~ (5-8-09)

~~g. The sanctioning body must oversee the weigh-ins, the hand wrapping, and glove placement after inspecting the gloves as required by the sanctioning bodies' rules as approved by the Commission; and~~ (5-8-09)

~~h. The sanctioning body must inspect and approve the contest area prior to the start of the contests.~~ (5-8-09)

~~02. **Violations.** Any violation of these requirements may result in actions by the Commission to remove the organization as a recognized sanctioning body with respect to amateur events.~~ (5-8-09)

**109. AMATEUR ATHLETIC SANCTIONING AUTHORITIES.**

The Commission may approve an entity as an officially recognized amateur sanctioning authority that may sanction amateur events. The Commission is the final authority on whether an entity may be an amateur sanctioning authority. (8-20-09)T

**01. Application for Approval.** In order to be considered for approval as an officially recognized, amateur athletic sanctioning authority under Section 54-406(3)(b)(iii), Idaho Code, an entity must: (8-20-09)T

**a.** Meet the Criteria for Eligibility set forth in Subsection 109.02 of these rules; (8-20-09)T

**b.** Submit to the Bureau a completed application form, supplied by the Commission, on which the person signing the application verifies under oath that he is an officer or other person authorized to sign on behalf of the entity, that the information on the application and submitted with the application is true and correct, and that the entity meets the Criteria for Eligibility set forth in Subsection 109.02 of these rules; (8-20-09)T

**c.** Provide the Bureau with such documentation as the Bureau may request in the course of reviewing the application, and including, without limitation, a list of the entity's officers and persons claiming an ownership interest in the entity, any requested bylaws, constitution, medical forms, contracts, rules, policies, and procedures used by the entity; and (8-20-09)T

**d.** If requested, appear before the Commission to answer, to the Commission's satisfaction, any questions the Commission may have about the entity or the application, including, without limitation, any questions regarding whether the entity meets the Criteria for Eligibility set forth in Subsection 109.02 of these rules; (8-20-09)T

**02. Criteria for Eligibility.** An entity is eligible for approval as an amateur athletic sanctioning authority if it demonstrates, to the Commission's satisfaction, that it meets the Commission's eligibility criteria. An approved entity's failure to consistently meet this criteria may result in Commission action to suspend or revoke the entity's approved status. The criteria that must be met is: (8-20-09)T

**a.** The entity is incorporated or otherwise legally recognized under the law of its domicile; (8-20-09)T

**b.** The entity, if not incorporated or otherwise domiciled in Idaho, is authorized to transact business in Idaho; (8-20-09)T

**c.** The entity and its predecessor entity, if any, have never had an application for approval as an amateur sanctioning authority, organization, or similar body denied or disapproved, or an approval as an amateur sanctioning authority, organization, or similar body suspended, revoked, or restricted in any way, by any state, territory, country, or subdivision thereof. (8-20-09)T

**d.** No officer or person having an ownership interest in the entity has had a license, of the types issued by the Commission, suspended, revoked, or disciplined in any way by any state, territory, country, or subdivision

thereof. (8-20-09)T

e. All sanctioned events must be conducted in accordance with the sanctioning bodies' rules as approved by the Commission. The entity must adopt and consistently enforce rules that: (8-20-09)T

i. Ensure that contests and exhibitions do not unreasonably endanger the health of combatants or other participants: (8-20-09)T

ii. Provide for the medical safety and care of participants its events; (8-20-09)T

iii. Exclude the medically unfit from the contests and exhibitions; (8-20-09)T

iv. Require the presence of an ambulance and EMT's on site at all times, and the attendance of an Idaho-licensed medical doctor or osteopathic physician at ringside. (8-20-09)T

v. Require the event promoter to obtain health insurance sufficient to cover all event participants, other than the promoter, for injuries sustained while participating in the event. (8-20-09)T

vi. Require drug testing and blood testing consistent with the Commission's rules for events regulated by the Commission. The entity must submit the results of such testing to the Commission within forty-eight (48) hours after the event sanctioned by the entity ends. (8-20-09)T

vii. Restrict the types of blows that can be delivered; (8-20-09)T

viii. Exclude professional combatants from its contests and exhibitions, and require that combatants are not to receive any type of purse payment or compensation except as approved by the Commission; (8-20-09)T

ix. Limit the time and frequency of contests and exhibitions, including, without limitation, the times specified in Section 54-407, Idaho Code; (8-20-09)T

x. Require that the entity oversee weigh-ins, the hand wrapping, the glove placement after inspecting the gloves as required by the entity's rules as approved by the Commission; (8-20-09)T

xi. Require that the entity inspect and approve the contest area before the contest starts; (8-20-09)T

xii. Require prompt investigation and resolution of complaints for participants, interested persons, and the Commission; (8-20-09)T

xiii. Have a system of review to ensure the entity fairly applies its rules, policies, and procedures; (8-20-09)T

xiv. Require the identification of the entity on all advertisements, programs, or handbills issued, used, or distributed in Idaho; (8-20-09)T

xv. Require cooperation with the Commission, including without limitation, at least thirty (30) days advance notification to the Commission of sanctioned events to occur in Idaho, and admission of Commission representatives and agents without charge to any sanctioned event, and to any portion of the event. (8-20-09)T

xvi. Require that event participants, and the entity, report to the Commission any violations of the entity's rules arising out of a sanctioned event; (8-20-09)T

xvii. Require all participants, officials, and the entity to appear at reasonable times before the Commission and truthfully answer any lawful inquiry of the Commission; (8-20-09)T

xviii. Ensure that all ring officials, including, without limitation, all timekeepers, judges, referees, and gloves, and all promoters who ask an entity to sanction an event, are licensed by the Commission; (8-20-09)T

- xix. Set an appropriate fee schedule for ring officials. (8-20-09)T
- xx. Require the event promoter to obtain a bond or other form of financial security, payable to the entity, and otherwise consistent with Section 300 of these rules. (8-20-09)T
- xxi. Require the event promoter to obtain liability insurance for the event, which insurance must adequately cover the promoter, venue, entity, and the Commission. (8-20-09)T
- xxii. Otherwise require sufficient health and safety standards before, during and after contests and exhibitions to ensure the health, safety, and well-being of any participating amateur combatants. The entity's health and safety standards must be no less stringent than the Commission's health and safety standards for contests and exhibitions for which the Commission may issue a sanctioning permit under Title 54, Chapter 4, Idaho Code. Sections 731 through 799 of these rules establish the minimum safety requirements for MMA events in Idaho. The entity's health and safety standards for sanctioned MMA events must, at a minimum, comport with the Section 731 through 799 requirements. (8-20-09)T
- f. For each event to be sanctioned by the entity, the entity must ensure that true and correct copies of the following documents are presented to the Bureau at least thirty (30) days before the event: (8-20-09)T
- i. The event promoter's bond or other form of financial security as referenced in Subparagraph 109.02.e.xx. of these rules. (8-20-09)T
- ii. The health insurance certificate for health insurance obtained by the promoter as referenced in Subparagraph 109.02.e.v. The deductible amount, claims submission instructions, and insurer contact information must also be provided. (8-20-09)T
- iii. The liability insurance certificate for liability insurance obtained by the promoter as referenced in Subparagraph 109.02.e.xxii. of these rules. (8-20-09)T
- g. The entity does not sanction events where: (8-20-09)T
- i. Financial ties exist between the promoter and the entity, including, without limitation, when anyone serves as an officer, principal, or manager in both the entity and promotion company, or have an ownership interest in both the entity and the promotion company: (8-20-09)T
- ii. Any ring official, employee, or agent that works for both the promoter and the entity. (8-20-09)T
- iii. The entity or any of its officers, principals, managers, owners, or employees manages or trains any of the combatants. (8-20-09)T
- 03. Violations.** The Commission may suspend or revoke its approval of an amateur athletic sanctioning authority if the approved entity or its officers, owners, or agents engage in any conduct that violates or is inconsistent with any of the requirements of this Section or reflects serious discredit on the sport of boxing, or uses dishonest methods to affect the outcome of any contest. (8-20-09)T
- 04. Annual Review of Approval.** An entity's approval to be an amateur sanctioning authority automatically expires one (1) year after issuance. If the entity wishes to remain as an approved amateur sanctioning authority, the entity must submit a timely and complete review application on forms approved by the Commission. To be timely, a review application and any supporting documentation must be received by the at least thirty (30) days before the automatic expiration date. After receiving a timely review application, the Commission will evaluate the application using the process and criteria set forth in Subsections 109.01 and 109.02. If the Commission is satisfied that the applicant has satisfied all requirements, then the Commission will renew the applicant's approval for another year term. (8-20-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. SURETY BOND OR OTHER SECURITY.**

**01. Requirement.** Every promoter who applies for a ~~license to present a program or event under the jurisdiction of the commission~~ sanctioning permit shall furnish a surety bond or other form of financial security to the Commission in an amount deemed by the Commission to be adequate to ensure reimbursement to the purchasers of tickets for the program event. ~~(3-26-08)~~(8-20-09)T

**02. Various Locations.** The promoter may apply one (1) bond or other form of financial security to ~~more than one (1) multiple~~ locations if ~~no more than only~~ one (1) of the location covered ~~by the same bond~~ locations is scheduled for an program event on any given calendar date. ~~(3-3-94)~~(8-20-09)T

**03. Total Sum.** Each bond or other form of financial security must be conditioned for the payment to the Commission of a sum equivalent to the total sale of tickets: ~~(3-3-94)~~(8-20-09)T

**a.** If the main event is not held on the date advertised, unless the event is subsequently held on a date fixed by the Commission; and ~~(3-3-94)~~

**b.** If the main event is neither held on the original date advertised nor on a subsequent date fixed by the Commission. ~~(3-3-94)~~

**04. Sum Due.** The sum is due within fifteen (15) days after default, to ensure reimbursement to the purchasers of tickets for the event, if the reimbursement of ticket holders is ordered by the Commission. ~~(3-3-94)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**606. PHYSICAL AND EYE EXAMINATION OF COMBATANTS.**

A physician designated by the Commission must give each combatant a thorough physical and eye examination ~~at the time of his weigh in or~~ within thirty-six (36) hours, but not less than two (2) hours, before the contest or exhibition in which the combatant will participate. ~~(5-8-09)~~(8-20-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**733. FAIR TECHNIQUES AND FOULS IN MMA EVENTS.**

**01. Fair Techniques.** Fair MMA techniques include the use of striking and grappling techniques, either while standing or on the ground, subject to techniques designated by the rules as fouls. ~~(5-8-09)~~

**02. Fouls.** The following actions will constitute fouls during any ~~professional~~ MMA competition ~~event~~: ~~(5-8-09)~~(8-20-09)T

**a. ~~Head-Butting.~~** ~~Head-butting~~ or striking with the head in any manner. Any use of the head as a striking instrument whether head to head, head to body or otherwise is illegal. ~~(5-8-09)~~(8-20-09)T

**b. ~~Eye-gouging.~~** ~~Eye-gouging~~ by means of fingers, chin, or elbow ~~is illegal~~. Legal strikes or punches that contact the combatant's eye socket are not eye gouging and will be considered legal attacks. ~~(5-8-09)~~(8-20-09)T

**c. ~~Biting.~~** ~~Biting in any form is illegal~~. A combatant must recognize that a referee may not be able to physically observe some actions and must make the referee aware if they are being bitten during an exhibition of unarmed combat. ~~(5-8-09)~~(8-20-09)T

**d. Hair Pulling.** ~~Pulling the hair in any manner is an illegal action~~. A combatant may not grab hold of

an opponent's hair in order to control the opponent in any way. ~~(5-8-09)~~(8-20-09)T

**e.** Fishhooking- ~~Any attempt by a combatant to use his~~ meaning using the fingers in a manner that to attacks an opponent's mouth, nose, or ears, or stretching the skin to that area, will be considered "Fishhooking." Fishhooking generally is the placing of fingers into the mouth of an opponent and pulling the hands in opposite directions while holding onto the skin of the opponent. ~~(5-8-09)~~(8-20-09)T

**f.** Groin Attacks- ~~Any attack to the groin area,~~ including striking, grabbing, pinching or twisting, ~~is illegal~~ the groin area. ~~(5-8-09)~~(8-20-09)T

**g.** Smothering- an opponent by ~~C~~cupping a hand over an opponent's mouth and nose ~~is illegal.~~ ~~(5-8-09)~~(8-20-09)T

**h.** ~~Vertical Elbows.~~ Elbows thrown from a vertical angle ~~are illegal.~~ Elbows thrown from any other angle are legal, except that strikes with the elbow point from any angle are illegal during a contest or exhibition in which an amateur combatant participates. ~~(5-8-09)~~(8-20-09)T

**i.** Knee strikes ~~to the Head (standing or grounded fighter). No knee strikes~~ of any kind ~~are allowed to an amateur combatant's head during the contest. During the standing portion of the contest combatants are allowed to knee to the body and the legs. Further, When any combatant goes to the ground, only knees to the body are allowed.~~ ~~(5-8-09)~~(8-20-09)T

**j.** ~~Back of Head Strikes.~~ Strikes to the back of the head ~~are illegal.~~ The back of the head is considered from the crown of the head down the centerline of the skull into the spine, with a one (1) inch variance to each side, similar to a mohawk haircut. Strikes that are thrown to areas behind the ears but not within the mohawk limitation are legal strikes. ~~(5-8-09)~~(8-20-09)T

**k.** Hand Chokes. ~~Hand Chokes are illegal.~~ A combatant may not attack an opponent with a choke utilizing only his hand or hands in an attempt to submit an opponent. A common phrase for this type of choke is the "C clamp" choke wherein the thumb is placed on one side of an opponent's neck with the fingers on the opposite side. ~~(5-8-09)~~(8-20-09)T

**l.** ~~Fingers. A combatant may not place his~~ Placing one's fingers into an open laceration on an opponent in an attempt to enlarge the cut. A combatant may not place his fingers into an opponent's nose, ears, mouth, or any body cavity. ~~(5-8-09)~~(8-20-09)T

**m.** ~~Small Joint Manipulation.~~ Small Joint Manipulation ~~is illegal.~~ Fingers and toes are small joints. Wrists, ankles, knees, shoulders and elbows are all large joints. ~~(5-8-09)~~(8-20-09)T

**n.** Spine Attacks, ~~(strikes and locks). No striking attacks to the spine or~~ Illegal spine attacks include, without limitation, locks, such as the "Twister," ~~are allowed~~ and strikes to the spine. ~~(5-8-09)~~(8-20-09)T

**o.** ~~Throat Strikes.~~ Throat strikes of any kind including, without limitation, grabbing the trachea ~~are illegal.~~ ~~(5-8-09)~~(8-20-09)T

**i.** No directed throat strikes are allowed. A directed attack would include a combatant pulling an opponent's head in a way to open the neck area for a striking attack. Directed throat attacks are not punches that connect during an exchange from the standing position while combatants are engaged in combat. (5-8-09)

**ii.** A combatant may not gouge his fingers or thumb into an opponent's neck or trachea in an attempt to submit the opponent. (5-8-09)

**iii.** All arm chokes such as the "rear naked," "guillotine" and "bar arm" are legal. (5-8-09)

**p.** Skin Clawing. Any attack that targets the combatant's skin by clawing at the skin or attempting to pull or twist the skin to apply pain ~~is illegal.~~ ~~(5-8-09)~~(8-20-09)T

**q.** ~~*Head and Groin Kicking.*~~ Kicking the head or groin of a grounded opponent ~~is illegal.~~ A grounded opponent is any combatant who has more than just the soles of the feet on the ground. If the referee determines that a combatant would be a grounded combatant, but not solely because the ring ropes or cage fence has held the combatant up from the ground, the referee can instruct the combatants that the combatant held up solely by the cage or ropes is being treated as a grounded combatant. A combatant can be kicked to the body when he is on the ground with any type of legal kick, but may not be kicked in the head or groin. ~~(5-8-09)(8-20-09)T~~

**r.** ~~Stomping.~~ ~~*Stomping is illegal.*~~ meaning any type of striking action with the feet wherein the combatant lifts his leg, bending it at the knee, and initiates a striking action with the bottom of the foot or heel. This includes stomping the feet while both combatants are standing. Axe kicks are not stomps. ~~(5-8-09)(8-20-09)T~~

~~*Stomping is considered any type of striking action with the feet wherein the combatant lifts his leg, bending it at the knee, and initiates a striking action with the bottom of the foot or heel. This includes stomping the feet while both combatants are standing.*~~ ~~(5-8-09)~~

~~*Axe kicks are not stomps.*~~ ~~(5-8-09)~~

**s.** ~~*Pile-driving.*~~ Pile-driving an opponent into the mat ~~is illegal.~~ ~~(5-8-09)(8-20-09)T~~

**i.** A pile driver is considered to be any throw wherein a combatant controls an opponent's body by placing the opponent's feet straight up in the air and the head straight down and then forcibly driving the opponent's head into the canvas or flooring material. ~~(5-8-09)~~

**ii.** It should be noted that if a combatant is placed into a submission hold by his opponent and the combatant is capable of elevating his opponent, the combatant may bring his opponent down in any manner because he is not in control of his opponent's body. The combatant who is attempting the submission can either adjust his position or let go of the hold before being slammed to the canvas. It is crucial that referees are properly advised and trained on this and that the combatants fully understand this at the rules meeting. ~~(5-8-09)~~

**t.** ~~*Throwing Opponent.*~~ Purposely throwing an opponent out of the ring or caged area ~~is illegal.~~ A combatant will not intentionally or purposely throw an opponent out of the ring or cage. ~~(5-8-09)(8-20-09)T~~

**u.** ~~*Holding.*~~ Holding the shorts or gloves of an opponent ~~is not allowed.~~ A combatant may not control an opponent's movement by holding onto the opponent's shorts or gloves. A combatant may hold onto or grab an opponent's hand as long as the combatant is not controlling the opponent's hand by using only the material of the glove but is actually gripping the hand. It is legal for a combatant to hold onto his own gloves or shorts. ~~(5-8-09)(8-20-09)T~~

**v.** ~~*Unsportsmanlike Conduct.*~~ Engaging in any unsportsmanlike conduct is not allowed. Any type of behavior or conduct observed or heard by the referee that can be considered detrimental or disrespectful towards an opponent or the sport of MMA. This includes, but is not limited to, spitting at an opponent, using abusive language or abusive gestures, etc. ~~(5-8-09)(8-20-09)T~~

**w.** ~~*Holding the Ropes or Fence.*~~ Holding the ropes or the fence ~~is illegal.~~ ~~(5-8-09)(8-20-09)T~~

**i.** A combatant may put his hands on the fence and push off at any time. A combatant may place his feet onto the cage and have his toes go through the fencing material at any time. If a combatant's fingers go through the cage and he grabs hold of the fence and starts to control either his body position or his opponent's body position, it is an illegal action. A combatant may not grab the ropes or wrap his arms over the ring ropes at any time. ~~(5-8-09)~~

**ii.** If a combatant is caught holding the fence, cage or ring rope material the referee will issue a one-point (1) deduction from the offending combatant's scorecard. ~~(5-8-09)~~

**iii.** If a point deduction for holding the fence occurs, and the fouling combatant ends up in a superior position due to the foul, the combatants will be re-started, standing in a neutral position. ~~(5-8-09)~~



x. ~~Attacking During Break.~~ Attacking an opponent on or during the break ~~is illegal~~. A combatant ~~will~~ must not engage an opponent in any manner during a time-out or break of action in competition. ~~(5-8-09)~~(8-20-09)T

y. ~~A combatant will not engage~~ Engaging an opponent in any manner while the opponent is under the referee's care or handling ~~of the referee~~. ~~(5-8-09)~~(8-20-09)T

z. ~~Following Referee's Instructions. A combatant must follow~~ Failing to follow the referee's instructions ~~of the referee at all times~~. Any deviation or non-compliance may result in the combatant's disqualification. ~~(5-8-09)~~(8-20-09)T

aa. ~~Timidity.~~ Timidity, ~~is defined as~~ meaning any action by a combatant that is used to avoid contact with his opponent or to run away from the action of the fight. Timidity, includes, without limitation, intentionally avoiding contact with an opponent or consistently dropping the mouthpiece or faking an injury. The referee may also call timidity on a combatant for attempting to receive time by falsely claiming a foul or injury, for purposely dropping or spitting out his mouthpiece, or for committing any other action designed to stall the contest. ~~(5-8-09)~~(8-20-09)T

bb. ~~Interference by the Corner.~~ Interference by the corner, ~~is defined as~~ meaning any action or activity by a corner aimed at disrupting the contest or causing an unfair advantage to a combatant. Corners are not allowed to distract the referee or influence the actions of the referee in any manner. ~~(5-8-09)~~(8-20-09)T

**03. Time Considerations for Fouls.** (5-8-09)

a. A combatant who has been struck with a low blow is allowed up to five (5) minutes to recover from the foul and can continue on in the contest if allowed to by the ringside physician. (5-8-09)

i. If the combatant states that they can continue on before the five (5) minute time allotment has expired, then as soon as is practical the referee will restart the contest. (5-8-09)

ii. If the combatant goes over the five (5) minute time allotment, the contest cannot be restarted and must be stopped. The outcome is determined by the round and time in which the contest was stopped. (5-8-09)

b. If a combatant is fouled by a blow that the referee deems illegal, the referee must stop the action and call for time. The referee must take the injured combatant to the ringside physician and have the ringside physician examine the combatant to determine the combatant's ability to continue on in the contest. The ringside physician has up to five (5) minutes to make his determination. If the ringside physician determines that the combatant can continue on in the contest, then as soon as is practical the referee will restart the contest. Unlike the low blow foul, the combatant does not have the five (5) minute time allotment to use at his discretion. (5-8-09)

c. If the referee stops the contest and employs the use of the ringside physician, the ringside physician's examination must not exceed five (5) minutes. If five (5) minutes is exceeded, the contest cannot be restarted and must be stopped. (5-8-09)

d. If the ringside physician deems a combatant unfit to continue, the referee must immediately stop the contest. If the combatant is deemed unfit to continue by the ringside physician and part of the five (5) minute foul time is remaining, the combatant cannot use the remaining time. This will be enforced for all listed fouls, with the exception of a low blow foul. (5-8-09)

**04. Intentional Fouling.** (5-8-09)

a. ~~Intentional Fouling Causing Injury.~~ When a contest is interrupted due to an injury caused by an intentional foul, the referee, in consultation with the ringside physician, will determine whether the intentionally fouled combatant can continue or not. If it is determined that ~~a combatant has been accidentally fouled and~~ the intentionally fouled combatant's chance of winning has not been seriously jeopardized as a result of the foul, the referee may order the contest continued after a reasonable interval. A combatant who is fouled with a low blow has up to five (5) minutes to recover. ~~(5-8-09)~~(8-20-09)T

b. ~~Combatant Unable to Continue Contest. If the injured combatant is unable to continue, the~~

~~offending combatant will be disqualified and may be subject to discipline. Disposition of the penalty to be imposed upon the combatant will be determined by action of the Commission or the Commission's representative. If the referee, in consultation with the ringside physician, determines at any time during the contest that the intentionally fouled combatant's chance of winning has been seriously jeopardized or the combatant is unable to continue the contest as a result of the foul, or by any aggravation to an injury caused by the foul, the intentionally fouled combatant wins by "technical decision."~~ (5-8-09)(8-20-09)T

~~e. **Technical Decisions.** If the referee or the ringside physician, or both, determine that the contest may continue after an injury resulting from an intentional foul and the injury inflicted by the intentional foul later becomes aggravated by fair blows, a technical decision will be rendered. If the technical decision rule is applied and the contest goes to the scorecards:~~ (5-8-09)

~~i. If after the second or third round the fouled combatant is ahead on the scorecards, the fouled combatant wins by "Technical Decision."~~ (5-8-09)

~~ii. If after the second or third round the fouled combatant is even or behind on the scorecards, the result is a "Technical Draw."~~ (5-8-09)

**05. Accidental Fouling.** (5-8-09)

~~a. **Accidental Fouling Causing Injury.** When a contest is interrupted due to an injury caused by an accidental foul, the referee, in consultation with the ringside physician, will determine whether the combatant who has been fouled can continue or not. If it is determined that a combatant has been accidentally fouled and the combatant's chance of winning has not been seriously jeopardized as a result of a foul, the referee may order the contest continued after a reasonable interval. A combatant who is fouled with a low blow has up to five (5) minutes to recover.~~ (5-8-09)(8-20-09)T

~~b. **Combatant Unable to Continue Contest.** If the referee or the ringside physician, or both, determine that the contest may not continue because of an injury suffered as the result of an accidental foul or because of an injury inflicted by an accidental foul which later becomes aggravated by fair blows, and if less than two (2) rounds have been completed in the contest, then a "no contest" will be entered. If two (2) or more rounds have been completed in the contest, then the combatant who is ahead on the scorecards wins by "Technical Decision." will be rendered.~~ (5-8-09)(8-20-09)T

~~e. **Technical Decision.** If the Technical Decision rule is applied and the contest goes to the scorecards, then:~~ (5-8-09)

~~i. After the second or third round the combatant who is ahead on the scorecards wins by "Technical Decision"; or~~ (5-8-09)

~~ii. After the second or third round ends, it is a "No Decision."~~ (5-8-09)

**06. Fouls or Unsportsmanlike Conduct During the One Minute Rest Period in MMA Contest.** (5-8-09)

**a.** If a combatant fouls or acts in an unsportsmanlike manner during the one (1) minute rest period, the referee will deduct points from the offending combatant based on the severity of the offense. (5-8-09)

**b.** The Chief Second is responsible for all corner activities. Any illegal activity may cause the Chief Second to be immediately removed from the corner from the entire contest. (5-8-09)

**07. Concussive Head Impact Fouls in MMA Contest.** Before allowing a contest to continue, the referee should consult with the ringside physician in all cases involving concussive head fouls. The referee, in conjunction with the ringside physician, will determine the length of time needed to evaluate the affected combatant's suitability to continue. (5-8-09)

**a. *Intentional Fouls to the Head in MMA Contest.*** If the referee determines that a foul to the head was

intentional, he must follow the Intentional Foul rule. The referee must consider that allowing the contest to continue may subject the combatant to a severe injury. ~~(5-8-09)~~(8-20-09)T

i. If the affected combatant is not badly injured and his chance of winning has not been seriously jeopardized because of the foul, the contest may be allowed to continue. If the contest is allowed to continue, the offending combatant will be issued an official warning and have one (1) point deducted from his score in the round. (5-8-09)

ii. If the referee determines that the affected combatant cannot continue, the offending combatant will lose by "Disqualification." (5-8-09)

**b.** ~~Accidental Fouls to the Head in MMA Contest.~~ If the referee determines that a foul to the head was accidental, he will follow the Accidental Foul rule. The referee must consider that allowing the contest to continue may subject a combatant to a severe injury. ~~(5-8-09)~~(8-20-09)T

i. If the affected combatant is not badly injured and his chance of winning has not been seriously jeopardized because of the foul, the contest may be allowed to continue. (5-8-09)

ii. If the contest cannot continue the Technical Decision rule will be applied. (5-8-09)

**08. Low Blow in MMA Contest.** (5-8-09)

**a.** ~~Intentional.~~ If the referee determines that the low blow foul was intentional, he will follow the Intentional Foul rule. ~~(5-8-09)~~(8-20-09)T

i. If the offended combatant is not badly injured and their chance of winning has not been seriously jeopardized because of the foul, the Five (5) Minute rule may be applied. (5-8-09)

ii. If the referee determines that the athlete cannot continue, the offending combatant will lose by "Disqualification." (5-8-09)

**b.** ~~Accidental. In cases where~~ When a combatant is hit with an accidental low blow and claims injury, the referee, at his discretion, may apply the Five (5) Minute rule. If the injured combatant cannot resume fighting before the recovery period ends, the injured combatant will lose the contest by "No Contest." ~~(5-8-09)~~(8-20-09)T

**c.** The Five (5) Minute Rule is only applicable to low blow fouls. (5-8-09)

**09. Disqualification.** A combatant will lose by "Disqualification" when he: (5-8-09)

**a.** Intentionally fouls and causes harm to his opponent; (5-8-09)

**b.** Continually refuses to follow the rules; or (5-8-09)

**c.** Continually disobeys the referee. (5-8-09)

**10. Referee Action on Fouls in MMA Contest.** (5-8-09)

**a.** The referee must inform the Commission Representative as soon as possible of the following: (5-8-09)

i. The type of foul; (5-8-09)

ii. If the foul was accidental or intentional; (5-8-09)

iii. If points will be deducted from the offending combatant; (5-8-09)

iv. If the offending combatant will be disqualified; (5-8-09)

- v. If the Five (5) Minute rule will or will not be applied; (5-8-09)
- vi. If the contest will be delayed to evaluate a combatant; or (5-8-09)
- vii. If the contest will or will not continue. (5-8-09)

**b.** The referee must declare whether a blow is legal or a foul. If declared a foul, he must declare if it was Accidental or Intentional. Point deductions for fouls will be done at the time of the infraction. If an intentional foul causes injury and the injury is severe enough to immediately terminate the bout, the combatant causing the injury loses by "Disqualification." (5-8-09)

**c.** Point deductions for an intentional foul is mandatory. If an intentional foul causes an injury and the fouled combatant can continue, the referee at his discretion will deduct points from the offending combatant. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**737. MMA EVENT ROUNDS.**

**01. Length of Rounds.** ~~All rounds are five (5) minutes in length.~~ Rounds for contests or exhibitions in which amateur combatants participate shall be three (3) minutes long. Rounds for contests or exhibitions in which professional combatants participate shall be five (5) minutes long. (5-8-09)(8-20-09)T

**02. Number of Rounds.** Non-title contests consists of three (3) rounds. Title contests consist of five (5) rounds. (5-8-09)

## IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

### 05.01.01 - RULES FOR CONTRACT PROVIDERS

DOCKET NO. 05-0101-0901

#### 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 20-504(9), 20-504(11), and 20-531(4), Idaho Code, and Prison Rape Elimination Act of 2003 (Public Act 108-79).

**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 October 21, 2009.

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 changes are needed to clarify current practices, update current practices, update definitions and use accordingly throughout the chapter, and remove redundancies.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed rule changes are designed to assist the quality improvement process by clarifying requirements for contract providers to follow. Many changes were requested by the stakeholders and included their input.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy Bishop, Deputy Attorney General Idaho Department of Juvenile Corrections, 334-5100, extension 421.

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 October 28, 2009.

DATED this 28th day of August, 2009.

Nancy Bishop, Lead Deputy Attorney General  
Idaho Department of Juvenile Corrections  
954 West Jefferson  
PO Box 83720  
Boise, ID 83720-0285  
Phone: (208) 334-5100 ext. 421  
Fax: (208) 334-5120

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 05-0101-0901

**000. LEGAL AUTHORITY.**

**01. Section 20-504(9), Idaho Code.** Pursuant to Section 20-504(9), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. (4-6-05)

**02. Section 20-504(11), Idaho Code.** Pursuant to Section 20-504(11), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. (4-6-05)

~~**03. Section 20-545(1), Idaho Code.** Pursuant to Section 20-545(1), Idaho Code, the department shall have the power to adopt rules for the state juvenile corrections center as may be required by the Juvenile Corrections Act. (4-6-05)~~

**043. Interstate Compact on Juveniles.** By the provisions of Sections 16-1901, et seq., Idaho Code, the "Interstate Compact on Juveniles," the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. REGIONAL FACILITY CONTACT INFORMATION.**

**01. Region 1 Facility.** The Juvenile Corrections Center at Lewiston may be contacted at (208) 799-3332. ( )

**02. Region 2 Facility.** The Juvenile Corrections Center at Nampa may be contacted at (208) 465-8443. ( )

**03. Region 3 Facility.** The Juvenile Corrections Center at St. Anthony may be contacted at (208) 624-3462. ( )

**0078. -- 009. (RESERVED).**

**010. DEFINITIONS.**

As used in this chapter: (4-6-05)

**01. Adult.** A person eighteen (18) years of age or older. (4-6-05)

**02. Assessment.** The process of gathering information to determine risk and program needs for the purpose of guiding placement decisions and to develop the service plan. (4-6-05)

**03. Clinical Services Administrator.** Administrative person who has oversight of the department's clinical services division. Supervises the regional clinical supervisors and works with the regional superintendents in the maintenance and development of treatment programs. (4-6-05)

**04. Clinical Supervisor.** Person who supervises juvenile services coordinators and clinicians in assigned regions. This person is responsible for recommending releases from department custody and approving transfers in collaboration with the clinical services administrator, and regional superintendent. This responsibility also includes oversight of the regional observation and assessment process, and assists in the maintenance and development of treatment programs. (4-6-05)

**05. Commit.** Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections.

(4-6-05)

**06. Community Treatment Team.** A team including the juvenile services coordinator, contract provider case manager, juvenile probation officer, family, and others, as necessary, who work together to provide input into each juvenile offender's service implementation plan, implement their respective sections of that plan, and monitor and report progress on treatment goals. (4-2-08)

**07. Contraband.** Any item not issued or authorized by the contract provider. (4-6-05)

**08. Confidential Information.** Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. (4-6-05)

**09. Contract Provider.** A residential or nonresidential program under contract with the department to supervise juvenile offenders, provide accountability and competency development in the least restrictive setting, consistent with public safety. (4-2-08)

**10. Court.** Means district court or magistrate's division thereof. (4-6-05)

**11. Criminogenic Needs.** Assessed juvenile offender risk factors or attributes of juvenile offenders that are directly linked to criminal behavior and, when changed, influence the probability of recidivism. (4-2-08)

**12. Department.** The Idaho Department of Juvenile Corrections. (4-6-05)

**13. Detention.** Detention means the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities. (4-6-05)

**14. Director.** The director of the Idaho Department of Juvenile Corrections. (4-6-05)

**15. Education Plan.** A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Achievement Standards and recommended coursework for their grade level and based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. (4-2-08)

**16. Escape.** Attempting to leave or leaving a facility without permission, or attempting to leave or leaving the lawful custody of any officer or other person without permission. ( )

**167. Facility.** The physical plant associated with the operation of residential or nonresidential programs. (4-6-05)

**178. Facility Treatment Team.** The group of staff employed by the department or by the contract provider who have input into developing the juvenile offender's service implementation plan; who provide direct services to juvenile offenders; and who monitor and report on the progress on meeting the goals in that plan. The facility treatment team is responsible for working with the community treatment team to develop and implement the service implementation plan. (4-2-08)

**189. General Education Student.** A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). (~~4-2-08~~)( )

**1920. Health Assessment.** The purpose of a health assessment is to thoroughly review and determine a juvenile offender's comprehensive health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-2-08)

**201. Health Screening.** The purpose of a health screening is to quickly identify a juvenile offender's immediate health needs and to determine if there are any immediate needs related to a chronic health condition. (4-2-08)

**242. Health Services.** Health services are defined as including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-6-05)

**243. Incident Report.** A written document reporting any occurrence or event, or any other incident which threatens the safety and security of staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (4-2-08)

**244. Individual Community Pass.** An individual community pass includes any instance in which a juvenile offender leaves the contract provider's facility for a planned activity, without direct supervision by at least one (1) contract provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: (4-2-08)

- a. Day passes alone or with family or other, approved individuals; (4-2-08)
- b. Day or overnight home visits; (4-2-08)
- c. Recreational activities not otherwise approved as a part of a group activity; and (4-2-08)
- d. Funeral leave. (4-2-08)

**245. Individual Education Plan (IEP).** A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. (4-2-08)

**256. Interns.** A paraprofessional staff who is pursuing a degree and who, as a part of documented coursework with a college or university, may provide counseling or other services to juvenile offenders in the department's custody or their families, under direct supervision of qualified staff. (4-2-08)

**267. Judge.** A district judge or a magistrate. (4-6-05)

**278. Juvenile.** A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (4-6-05)

**289. Juvenile Offender.** A person under the age of eighteen (18), committed by the court to the custody, care and jurisdiction of the department for confinement in a secure facility following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult. (4-6-05)

**2930. Juvenile Records.** Information concerning the juvenile offender's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, detainer, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (4-2-08)

**301. Juvenile Services Coordinator.** An individual employed by the department who is responsible for the monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. This responsibility includes monitoring service plans and progress reports and sharing information with family, community, courts, and with other department employees. (4-2-08)

**342. Legal Custody.** The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (4-2-08)

**323. Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or



the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-6-05)

**334. Mechanical Restraints.** Any method of physical control of a juvenile offender which involves the use of devices to restrict physical activity. (4-2-08)

**345. Mental Health Assessment.** The purpose of a mental health assessment is to thoroughly review and determine a juvenile offender's comprehensive mental health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-2-08)

**356. Mental Health Screening.** The purpose of mental health screening is to quickly identify a juvenile offender's immediate mental health needs and to determine if there are any immediate needs related to a chronic mental health condition. (4-2-08)

**367. Nonresidential Programs.** Programs providing services to juveniles in the custody of the department and their families in which the juvenile offender continues to live with a parent or guardian and not in a residential care facility. (4-2-08)

**378. Observation and Assessment Program.** A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. (4-6-05)

**389. Physical Restraint.** Any method of physical control of a juvenile offender which involves staff touching or holding a juvenile offender to limit or control ~~his~~ the juvenile offender's actions. (~~4-2-08~~)(    )

**40. PREA. Prison Rape Elimination Act of 2003.** (    )

**3941. Quality Assurance.** Department employees responsible for overseeing contract providers' compliance with contract terms and these rules. (4-6-05)

**402. Region.** Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. (4-6-05)

**413. Regional Facility.** Department operated juvenile correctional centers located in each region of the state. (4-6-05)

**424. Reintegration Plan.** That part of the juvenile offender's service plan which specifically addresses the terms, conditions and services to be provided as the juvenile offender moves to a lower level of care or leaves the custody of the department. (4-2-08)

**435. Release from Department Custody.** Refers to the termination of the department's legal custody of a juvenile. (4-6-05)

**446. Restitution.** Financial payment or service work intended to reimburse victims for the cost of damage or harm caused by a juvenile offender. Restitution may be court ordered or may be imposed following a formal disciplinary process within a contract provider program. (4-2-08)

**457. Restricted Clinical Information.** Any record, document or other information legally protected from dissemination to the general public by statute or rule, such as psychological evaluations, therapy notes, therapy journals, sex histories, polygraph results, and psychological testing, or other legally confidential information. (4-6-05)

**468. Room Confinement.** Instances in which ~~a~~ juvenile offenders ~~is~~ are confined in the room in which ~~he~~ they usually sleeps, rather than being confined in an isolation room. (~~4-2-08~~)(    )

**479. Separation or Isolation.** Any instance when ~~a~~ juvenile offenders ~~is~~ are confined alone for over fifteen (15) minutes in a room other than the room in which ~~he~~ they usually sleeps. (~~4-2-08~~)(    )

**4850. Service Implementation Plan.** A written document produced and regularly updated by a regional facility or contract provider with input from the community treatment team within thirty (30) days of arrival at regional facility or contract provider. This plan describes interventions and objectives to address the service plan goals including the areas of community protection, accountability, and competency development. (4-2-08)

**4951. Service Plan.** A written document produced during the observation and assessment period following commitment to the department that defines the juvenile offender's criminogenic needs and risks, strengths, goals, and recommendations for family and reintegration services. The service plan addresses the relevant needs and services for each juvenile offender in areas such as mental health, medical, education, substance abuse, and social skills. (4-2-08)

**502. Sexual Misconduct.** Sexual misconduct includes all types of assault, violence, intimidation, and harassment of a sexual nature directed toward juvenile offenders by staff or by other juvenile offenders. (4-2-08)

**513. Staffing.** Regularly scheduled meetings of the community and facility treatment team members to review progress on treatment goals and objectives identified in each juvenile offender's service implementation plan. (4-2-08)

**524. Strip Search.** An examination of the juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of all the juvenile offender's clothing while such is not being worn. (4-2-08)

**535. Suicide Risk Assessment.** An evaluation performed by a mental health professional to determine the level of immediate risk of a juvenile offender attempting suicide, and to apply this information in developing a safety plan for the juvenile offender. (4-2-08)

**546. Suicide Risk Screening.** An evaluation that is used to quickly determine, based upon known history and current behavior, whether a juvenile offender presents any identifiable risk of immediate suicidal behavior, and to call in a mental health professional to complete a suicide risk assessment. (4-2-08)

**557. Transfer.** Any movement of a juvenile offender in the custody of the department from one (1) facility to another, including a regional facility, without a release from department custody. (4-2-08)

**568. Treatment.** Any program of planned services developed to meet risks and needs of juvenile offenders and their families, as identified in an assessment, and as related to activities designed to teach alternate behaviors and to support change in the beliefs that drive those behaviors. Treatment as referenced in this context also includes the maintenance of conditions that keep juvenile offenders, staff and the community safe. (4-2-08)

**579. Variation.** The means of complying with the intent and purpose of a child care licensing rule in a manner other than that specifically prescribed in the rule. (4-6-05)

**5860. Vocational Services.** Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. (4-6-05)

**5961. Volunteer.** A person from the community who freely chooses to do or provide both direct or indirect services to juvenile offenders or staff at a facility or juvenile correctional center. This person is not compelled to do so and is not compensated for the services. (4-2-08)

**602. Waiver.** The nonapplication of one (1) or more of these rules based upon a request by the provider and a written decision issued by the department. (4-6-05)

**613. Work Program.** A public service work project which employs juveniles at a reasonable wage for the purpose of reimbursing victims of juveniles' delinquent behavior. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**206. JUVENILE RECORDS.**

**01. Case Management Documents.** The contract provider shall maintain individual files on all juvenile offenders which shall include: (4-2-08)

- a. Observation and assessment report provided by the department; (4-6-05)
- b. A copy of the signed Referral Acceptance/Denial Form; (4-6-05)
- c. Additional assessments, which must be kept separate; (4-6-05)
- d. Service implementation plans as referred to in Subsection 271.01 of these rules; (4-6-05)
- e. Progress reports as referred to in Subsections 271.07 and 271.08 of these rules; (4-6-05)
- f. Progress Assessment/Reclassification documents; (4-2-08)
- g. Incident reports as referred to in Subsections 262.02 and 262.03 of these rules; (4-6-05)
- h. Court documents and dispositions; (4-6-05)
- i. Professional correspondence; (4-6-05)
- j. Clinical notes, which must be kept separate; (4-6-05)
- k. Medical records, which must be kept separate; (4-6-05)
- l. Educational records and school history, which must be kept separate; (4-6-05)
- m. Identifying information and physical descriptions; (4-6-05)
- n. Last known parent or guardian address and telephone number; (4-6-05)
- o. Date of admittance and projected release from department custody; (4-6-05)
- p. A copy of the written reintegration plan; and (4-6-05)
- q. Records of juvenile offenders' earnings and restitution payments. (4-2-08)

**02. Confidentiality.** (4-6-05)

**a.** Sections 20-525 and 9-340(2)(b), Idaho Code, and Idaho Court Administrative Rule 32 provide for confidentiality, under certain conditions, of records that contain information about juvenile offenders. (4-2-08)

**b.** All matters relating to confidentiality of juvenile offender files shall also comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Chapter 1, Sub-Chapter A, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." (4-2-08)

**c.** Restricted clinical information, as defined, and education and medical records must each be filed separately and stored in a secured area. These file folders must be stamped "confidential" on the cover or outside folder. (4-6-05)

**d.** For contract providers that serve sex offenders, individual treatment assignments, such as journals, detailed sexual histories, must be destroyed at the time the juvenile offender is transferred or released from the program. (4-2-08)

**03. Automated Records.** Automated records shall include a procedure to ensure confidentiality and be in compliance with any state or federal privacy laws pertaining to those records. The procedure shall also include provisions for backing up automated records. (4-6-05)

**04. Policies and Procedures.** The contract provider shall have written policies and procedures to address the confidentiality of juvenile offender records. In compliance with HIPAA's privacy regulations, written procedures shall designate a privacy officer who will: (4-2-08)

a. Supervise the maintenance of identifiable personal health care information; (4-6-05)

b. Serve as custodian of all confidential juvenile offender records; and (4-2-08)

c. Determine to whom records may be released. (4-6-05)

**05. Restrictions to Records Access.** (4-6-05)

a. Access to personal health information shall be limited to: (4-6-05)

i. Employees of the department and contract providers to the extent necessary to perform normal business functions, including health treatment, and other functions designed to maintain the good order, safety and security of the juvenile offenders or facility; (4-2-08)

ii. Individuals participating in a staffing for a juvenile offender, who have a direct need to know the information, and who are obligated to or promise to maintain the confidentiality of information disclosed. These individuals may include employees or representatives of law enforcement, the department, the contract provider, probation officer, medical or mental health professionals and other appropriate individuals; (4-2-08)

iii. Law enforcement members, emergency medical personnel, the Idaho Department of Health and Welfare and similar court or government officials, as necessary to perform their duties, and only if not otherwise prohibited by state or federal law or rule. (4-6-05)

b. Access to all other confidential juvenile offender records shall be limited to the following authorized persons: (4-2-08)

i. Staff authorized by the contract provider and members of the administrative staff of the contract provider's parent agency; (4-6-05)

ii. A parent or guardian of the juvenile offender, to the extent that disclosure is not privileged and is clinically appropriate; (4-2-08)

iii. Appropriate staff of the department; (4-6-05)

iv. Counsel for the juvenile offender with signed consent form; (4-2-08)

v. Judges, prosecutors, juvenile probation officers, and law enforcement officers, when essential for official business; (4-6-05)

vi. Individuals and agencies approved by the department to conduct research and evaluation or statistical studies; or (4-6-05)

vii. Schools, as appropriate. (4-6-05)

**06. Withholding of Information.** If the department or the contract provider believes that information contained in the record would be damaging to the juvenile offender's treatment or rehabilitation, that information may be withheld from the juvenile offender, ~~or his~~ parent, ~~or~~ guardian, or others, except under court order. (4-2-08)( )

**07. Retention of Juvenile Records.** Educational, medical, and drug and alcohol records must be permanently retained. Contract providers shall have a written policy on the retention and disposal of records. At the time of transfer or release from department custody, all case management records must be forwarded to the juvenile offender's juvenile services coordinator. (4-2-08)

**08. Requests for Information.** Requests for information of any kind about juvenile offenders in department custody, following their release or transfer from a contract provider's program must be directed to the juvenile correctional center in Nampa. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**212. PERSONAL FUNDS.**

**01. Funds Handled by a Contract Provider.** The contract provider will follow accepted accounting practices in managing personal funds of juvenile offenders and in accordance with Section 213 of these rules. (4-2-08)

**a.** A contract provider shall be required to deposit all personal funds collected for the juvenile offender in a public banking institution in an account specifically designated "Juvenile Personal Funds" and to maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the "Juvenile Personal Funds" account. If the funds are collected in an interest bearing account, the interest accrued must be credited to the juvenile offender for whom the funds are collected. In independent living programs, the required personal account may be opened by the juvenile offender and will be maintained by ~~him~~ the juvenile offender as a part of ~~his~~ competency development. (4-2-08)(    )

**b.** All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the contract provider, shall be documented, signed, and dated by the juvenile offender. This documentation shall be reconciled to the juvenile offender's ledger monthly. (4-2-08)

**c.** A contract provider may limit the amount of any withdrawal. (4-6-05)

**d.** A contract provider shall not require juvenile offenders, parents, or guardians to pay for services and supplies that are to be provided by the contract provider, such as clothing, toiletries, linen, laundry, drug screens, routine supplies, and lunch money, except where juvenile offenders are required to purchase these items as part of an independent living program. (4-2-08)

**02. Reporting Requirements.** A report shall be filed quarterly with the department's quality assurance staff as part of the report in Subsection 200.02 of these rules. The personal funds report shall show a list of all juvenile offender account balances, date of admission and, if appropriate, the date of transfer or release from department custody. The personal fund account is subject to review and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts shall be resolved within fourteen (14) calendar days of notification. (4-2-08)

**03. Transfer of Personal Funds.** When a juvenile offender is released from department custody or transferred to another program, the balance of the juvenile offender's account shall be given to or mailed to the juvenile offender within five (5) business days and documented on the Contract Provider Juvenile Check-Out Form supplied by the department. (4-2-08)

**04. Juvenile Offenders with Earned Income.** The contract provider is responsible for maintaining and accounting for any money earned by a juvenile offender. These funds are to be deposited in the personal funds account. Additionally, there shall be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution and a specific allocation for daily incidental expenses. (4-2-08)

**a.** The contract provider shall establish a written plan for a juvenile offender in non-independent

living programs for the juvenile offender to save at least ten percent (10%) of net earnings. The plan shall specify the purpose for which the funds saved will be used at program completion, such as paying deposits on utilities and housing or the purchasing of tools necessary for employment. (4-2-08)

b. The contract provider shall establish a written plan for a juvenile offender in independent living program, as part of the service implementation plan, for the juvenile offender's use of these funds. The plan shall specify how the funds will be used as part of the independent living program. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**222. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.**

**01. Clinician, Counselor, or Therapist.** An individual who conducts a comprehensive assessment of the psychological, behavioral, social, or familial deficits or dysfunctions presented by the juvenile offender, then establishes and implements a plan for therapeutic services. The plan must specify diagnosis and treatment of problems to be addressed, an estimate of the time needed, and a schedule of the frequency and intensity of the services to be provided. The individual may also provide individual, group, or family counseling. At a minimum, the individual must have a master's degree and be currently licensed by the state of Idaho as a Licensed Professional Counselor (LPC), Licensed Marriage and Family Counselor (LMFT), Licensed Master Social Worker (LMSW), or certified school psychologist. (4-2-08)

**02. Juvenile Services Coordinator or Social Worker.** An individual who is responsible for the assessment of treatment progress, and the provision and monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in social work, psychology, or counseling and must be licensed as a social worker in the state of Idaho. (4-2-08)

**03. Recreational Specialist.** An individual who develops and implements an individualized and goal-directed recreational plan for a juvenile offender in connection with ~~his~~ the overall service implementation plan. The individual providing this function must possess a bachelor's degree in recreational therapy, health and physical education, or a related field, or have a high school diploma and two (2) years related experience in providing recreational services to juvenile offenders. (4-2-08)(\_\_\_\_)

**04. Rehabilitation Specialist or Case Manager.** An individual, under direct supervision, who assists the juvenile offender in implementing ~~his~~ the service implementation plan, evaluates the juvenile offender, and maintains ~~his~~ the case record with respect to all nonclinical matters. The rehabilitation specialist or case manager also assists in presenting the case in staffing, communicates with appropriate individuals, including community interests, regarding the juvenile offender, and prepares written communications, under supervision, including discharge reports. The rehabilitation specialist or case manager may also serve as the social worker if properly licensed in the state of Idaho. Individuals providing this function must possess, at a minimum, a bachelor's degree from a fully accredited college or university in the social sciences or a related field. (4-2-08)(\_\_\_\_)

**05. Rehabilitation Technician or Direct Care Worker.** An individual who is responsible for providing individual or group rehabilitative therapeutic services, supervising juvenile offenders' day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juvenile offenders in basic living skills, and providing some community transportation. Such individual must have a high school diploma or its equivalent. (4-2-08)

**06. Special Education Teacher.** An individual who provides a modified curriculum for those students who are eligible for services under the IDEA. This individual must hold a valid standard exceptional child certificate with an endorsement as a generalist. (4-2-08)

**07. Teacher.** An individual who provides basic educational services as required by state and federal statutes. This individual must hold a valid teaching credential in the appropriate instructional field. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

224. GENERAL REQUIREMENTS FOR TRAINING.

**01. Training Plan.** Training for staff ~~and volunteers~~ shall be conducted in accordance with a written plan approved by management and coordinated by a designated staff member. The training plan shall include:

~~(4-6-05)~~( )

- a. Annual in-service training for all staff to include, but not be limited to: ~~(4-6-05)~~( )
  - i. Identifying and responding to suicide risk; ( )
  - ii. Prison Rape Elimination Act and applicable policies and procedures; ( )
  - iii. Prohibition of abuse and mandatory reporting of abuse; ( )
  - iv. De-escalation of juvenile behavior and appropriate physical restraint techniques; and ( )
  - v. Incident reporting. ( )
- b. Those areas of practice and operations requiring a current certification; ~~(4-6-05)~~( )
- c. Prior to being assigned sole responsibility for supervision of juvenile offenders, rehabilitation technicians or direct care staff shall have training in the following areas: (4-2-08)
  - i. Principles and practices of juvenile care and supervision; (4-6-05)
  - ii. Program goals and objectives; (4-6-05)
  - iii. Juvenile offender rights and grievance procedures; (4-2-08)
  - iv. Procedures and legal requirements concerning the reporting of abuse and critical incidents and compliance with the PREA; (4-2-08)
  - v. Handling of violent juvenile offenders (use of force or crisis intervention); (4-2-08)
  - vi. Security procedures (key control, searches, contraband); (4-6-05)
  - vii. Medical emergency procedures, first aid, and CPR; (4-6-05)
  - viii. Incident reporting; (4-6-05)
  - ix. How to recognize and respond to suicidal behavior; (4-6-05)
  - x. How to access emergency health and mental health care; (4-6-05)
  - xi. Proper storage and dispensing of medications, as well as general signs and symptoms of adverse reactions, including identification of the individual who will dispense medications in the facility; (4-6-05)
  - xii. Appropriate response to health-related emergencies; (4-6-05)
  - xiii. ~~Training to meet the requirements of federal educational regulations~~ Ethics; and ~~(4-6-05)~~( )
  - xiv. ~~Training on the a~~ Appropriate and safe transportation of all juvenile offenders. ~~(4-2-08)~~( )

- d. In-service training for all first-year staff shall include: (4-6-05)
  - i. Program policies and procedures; (4-6-05)
  - ii. Job responsibilities; (4-6-05)
  - iii. Juvenile offender supervision; (4-2-08)
  - iv. Safety and security emergency procedures (fire, disaster, etc.); (4-6-05)
  - v. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPPA); ~~(4-6-05)~~( )
  - vi. Juvenile offender rights and grievance procedures; (4-2-08)
  - vii. Communicable diseases, bloodborne pathogens, and universal precautions; (4-6-05)
  - viii. Behavioral observation, adolescent psychology and child growth and development; (4-6-05)
  - ix. Effective interventions with juvenile offenders including criminogenic risk and need factors; (4-2-08)
  - x. Juvenile Corrections Act, balanced and restorative justice, and department rules for contract providers; (4-6-05)
  - xi. Basic security procedures; (4-6-05)
  - xii. Signs and symptoms of chemical use or dependency; (4-6-05)
  - xiii. Drug-free workplace; ~~and~~ ~~(4-6-05)~~( )
  - xiv. Diversity training to include cultural awareness; and ~~(4-6-05)~~( )
  - xv. Juvenile offender pat-down searches and visual inspections for contraband. ( )

**02. Minimum Mandatory Staff Training Requirements.** Good professional practice in the area of juvenile offender treatment requires staff to be competently trained. Therefore, all staff is required to have: (4-2-08)

**a.** Eighty (80) hours of training for all staff during first year of employment. Up to twenty-five percent (25%) of the eighty (80) hours may be fulfilled by working with an experienced staff mentor, who must verify and document basic competencies for new staff; and (4-6-05)

**b.** Forty (40) hours of training per year following the first year of employment. (4-6-05)

**03. Trainer Qualifications.** (4-6-05)

**a.** Individuals who provide instruction in areas of life, health, and safety, including but not limited to, first aid, CPR, physical intervention techniques, shall have appropriate certification which must be documented in their personnel or training file. (4-6-05)

**b.** Individuals who provide instruction in treatment shall have appropriate training, education, and experience which must be documented in their personnel or training file. (4-6-05)

**04. Documentation of Training.** Staff training records shall be kept by a designated staff person. Separate training records shall be established for each staff member and volunteer and shall include: (4-6-05)



- a. Name; (4-6-05)
  - b. Job title; (4-6-05)
  - c. Employment beginning date; (4-6-05)
  - d. Annual training hours required; and (4-6-05)
  - e. A current chronological listing of all training completed. (4-6-05)
- 05. Training Records.** Training records may be kept separately within each individual personnel file or in a separate training file. Copies of curriculum materials must be maintained. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**226. VOLUNTEER PLAN.**

**01. Written Plan.** Programs that utilize volunteers regularly shall have a written plan that includes stipulations for their use and training. Training provided must include all of the information necessary for the volunteers to successfully perform their roles within the program. (4-6-05)

**02. Recruitment.** Recruiting of volunteers is conducted by the chief administrative officer or designee. Recruitment is encouraged from all cultural and socio-economic segments of the community. (4-6-05)

**03. Volunteer Requirements.** (4-6-05)

a. Volunteers must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position; (4-6-05)

b. Volunteers must complete an application for the position and be suited for the position to which they are assigned; (4-6-05)

c. Volunteers must agree in writing to abide by all program policies; (4-6-05)

d. Volunteers who perform professional services must be licensed or certified as required by state law or rule; (4-6-05)

e. Written job descriptions must be provided for each volunteer position; and (4-6-05)

f. Volunteers must agree to background and criminal record checks as prescribed by state law. (4-6-05)

**g. Minimum training for volunteers must include the following:** ( )

**i. Program goals and objectives;** ( )

**ii. The role of the volunteer and job duties;** ( )

**iii. Volunteer's role in reporting incidents of sexual misconduct under PREA;** ( )

**iv. Basic security procedures;** ( )

**v. Recognizing suicidal behaviors;** ( )

vi. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and ( )

vii. Ethics and mandatory reporting of juvenile abuse. ( )

**04. Supervision.** Volunteers will be supervised by a paid employee of the contract provider. This individual shall coordinate and direct the activities of the volunteer. Volunteer performance shall be evaluated periodically and evidence of this evaluation be made part of the personnel record of the volunteer. (4-6-05)

**05. Documentation.** Contract provider shall maintain individual personnel files for each volunteer working in the program. The files shall contain all documentation as described in Subsection 226.03 of these rules. (4-6-05)

**06. Termination.** There will be a procedure established for the termination of volunteers when substantial reasons for doing so exist. (4-6-05)

**227. INTERNS.**

Programs should consider involving interns to enhance and expand their services. However, interns recruited to supplement and enrich a program, may not be substituted for the activities and functions of facility staff. Interns shall not be assigned sole supervision of juvenile offenders. (4-2-08)

**01. Written Plan.** Programs that utilize interns regularly shall have a written plan that includes stipulations for their use and training. Training provided must include all of the information necessary for the interns to successfully perform their roles within the program. (4-6-05)

**02. Intern Requirements.** (4-6-05)

**a.** Interns must be documented to be enrolled in an accredited school or program for the profession, must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position; (4-6-05)

**b.** Interns must have a fully developed internship or practicum agreement which details their activities for the period, and relates these to learning objectives developed with the academic institution and program in which they are enrolled. The internship agreement must include the signatures of the intern, supervising contract provider staff, and a representative of the academic institution in which the intern is enrolled. (4-6-05)

**c.** Interns must agree in writing to abide by all policies and standards of conduct, and must agree to meet the ethical standards for the profession for which they are training; (4-6-05)

**d.** Interns who perform professional services must be licensed or certified as required by state law or rule, or must be documented to be supervised directly by staff meeting those credentials; (4-6-05)

**e.** Interns must agree to background and criminal record checks as prescribed by state law. (4-6-05)

**f.** Minimum training for interns must include the following: ( )

i. Program goals and objectives; ( )

ii. The role of the intern and duties related to the learning plan; ( )

iii. Intern's role in reporting incidents of sexual misconduct under PREA; ( )

iv. Basic security procedures; ( )

v. Recognizing suicidal behaviors; ( )

vi. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996

(HIPAA): and ( )

vii. Ethics and mandatory reporting of juvenile abuse. ( )

**03. Supervision.** An intern will be supervised by a paid employee of the contract provider who has the licenses and credentials required by state law and who has been accepted by the intern's school as an appropriate supervisor for the discipline of instruction. This individual shall coordinate and direct the activities of the intern. Intern performance shall be evaluated periodically and evidence of this evaluation made part of the work record of the intern. (4-6-05)

**04. Documentation.** Contract provider shall maintain individual personnel files for each intern working in the program. The files shall contain all documentation as described in Subsection 227.02 of these rules. (4-6-05)

**05. Termination.** There will be a procedure established for the termination of interns when substantial reasons for doing so exist. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**240. JUVENILE OFFENDER RIGHTS AND RESPONSIBILITIES.**

**01. Contract Provider Obligations.** The contract provider must observe, and not infringe upon, the rights of each juvenile offender in its facility or program. The contract provider shall also be responsible for understanding the rights and responsibilities of juveniles in custody, and knowing which rights have been forfeited as a result of being placed in custody. (4-2-08)

**02. Religious Services and Special Needs.** ~~Each~~ The juvenile offender and ~~his~~ family will be advised in writing of the obligation of the contract provider to allow access to appropriate religious services, and to make reasonable accommodations for any disabilities, language barriers, or other special needs. A signed copy of this notice shall be placed in the juvenile offender's file. (~~4-2-08~~)( )

**03. Juvenile Offender Program Responsibilities.** The contract provider shall inform each juvenile offender, upon admission to its program, of ~~his~~ each juvenile offender's responsibilities during the program. Additionally, each juvenile offender shall have an understanding of the following program expectations: (~~4-2-08~~)( )

- a. Requirements needed to complete program; (4-6-05)
- b. How to access medical services; (4-6-05)
- c. How to file a grievance; (4-2-08)
- d. How to report incidents of sexual misconduct between juvenile offenders or between staff and juvenile offenders; and (4-2-08)
- e. How to contact ~~his~~ the juvenile services coordinator and juvenile probation officer. (~~4-6-05~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**243. APPEAL OF FORMAL DISCIPLINARY PENALTIES.**

Each contract provider shall have a formal written process through which a juvenile offender can appeal a disciplinary action and receive a review of ~~his~~ the case. The contract provider shall explain to the juvenile offender

how to use the appeal process. The juvenile offender must be informed that ~~in any event he may include his the~~ juvenile services coordinator may be included in the disciplinary process at the juvenile's choice. (4-2-08)(\_\_\_\_)

**244. ROOM RESTRICTIONS.**

The contract provider shall have written policies and procedures regulating the use of the juvenile offender's room for "room restriction." The policy shall ensure that there are procedures for recording each incident involving the use of restriction. The reason for the room restriction shall be explained to the juvenile offender ~~and he~~ who shall have an opportunity to explain the behavior. Other less restrictive measures must have been applied prior to the room restrictions. A juvenile offender in room restriction shall have access to the bathroom. Staff shall check on a juvenile offender in room restriction a minimum of once every fifteen (15) minutes. Room restriction may only be used in an unlocked area. Room restriction shall not exceed a total of eight (8) hours within a twenty-four (24) hour period. Contract providers must ensure that a juvenile offender with a history of depression or suicidal ideation and those who have exhibited these behaviors while in care, are checked at least every five (5) minutes in order to ensure ~~his~~ safety. Even more frequent or constant observation must be maintained if any level of suicide risk is determined to be present at any time during room restriction. All items in the area that might be used to attempt self-harm should be restricted or removed. (4-2-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**251. VISITATION.**

The contract provider shall develop written rules governing visiting at the facility and shall provide a copy to each juvenile offender, ~~his~~ parent or guardian, and the juvenile services coordinator. Visitation policy must include specific restrictions on those under the influence of alcohol or drugs. In all cases, the contract provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the contract provider's criteria. The contract provider is responsible for developing and implementing policy concerning visitation which protects the safety of visitors, staff, and juvenile offenders. This may restrict visitation below an established age or provide for higher levels of supervision in circumstances where safety may be at risk. (4-2-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**261. PROGRAM POLICY REQUIREMENTS.**

**01. Written Policies.** Programs must have, at a minimum, the following written policies concerning program operations available at the program site. (4-6-05)

- a. Program elements and implementation. (4-6-05)
- b. Admission policy describing the target population and criteria for admission, and identifying sources of referrals to the program. (4-6-05)
- c. Criteria for assigning juvenile offenders to different units within the program, if applicable. (4-2-08)
- d. The provision of (or referral for) emergency and routine health and mental health services for the population. (4-6-05)
- e. The prevention and monitoring of suicidal behavior. The policy at a minimum shall require that:
  - i. A suicide risk screening be completed within no more than two (2) hours of a juvenile offender's admission into a facility. The screening is done to identify an immediate threat of suicide or self-harm and the need

for a suicide risk assessment. Further, the screening is a system of structured and documented observation, interview and review of behavioral, medical, and mental health information. (4-2-08)

ii. A suicide risk assessment, if appropriate, be completed by a mental health professional for the purpose of determining the level of immediate risk of a juvenile offender attempting suicide. A suicide risk assessment is a system of structured and documented observation, interview and review of behavioral and mental health information. It comprises a thorough review of recent behavioral and mental health information, interviews of staff and the juvenile offender concerning the behavior that seems to present the threat of self-harm or suicide and the development and dissemination of a safety plan to address the risk as it is determined to exist. A suicide risk assessment typically involves an assessment of the juvenile offender's determination to act on ~~his~~ intentions of self-harm, a determination of the depth of ~~his~~ planning for making the attempt, the availability of the items or situations necessary for him to act on that plan and the lethality of the plan as expressed. Reassessment of suicide risk is made at a time determined by the mental health professional completing the assessment and is ideally completed by that same mental health professional. (4-2-08)(\_\_\_\_)

f. Behavior management within the program, including use of points and levels, restraints, separation, detention and other types of special management. (4-6-05)

g. Supervision of juvenile offenders policy shall include managing juvenile offender movement within the program, including the timely transfer of behavioral information about juvenile offenders from staff at shift change. (4-2-08)

h. Juvenile offenders' access to the community policy shall include use of community schools or job sites, and individual or group activities away from the program site. For residential programs, this also includes individual community passes. (4-2-08)

i. Provision of educational and vocational services. (4-6-05)

j. Administrative coverage in emergency situations, after regular work hours (residential only). (4-6-05)

k. Documentation and reporting of critical incidents to program administrators, the department and others on the community treatment team. (4-6-05)

l. Treatment planning and progress reporting to the department, juvenile offender, family and others on the community treatment team. (4-2-08)

m. Reintegration policy shall describe criteria for successful completion of program, termination from program prior to completion, and the involvement of the department and community treatment team. (4-2-08)

n. Grievances. (4-6-05)

o. Visitation. (4-6-05)

p. Correspondence, including telephone and mail. (4-6-05)

q. Emergency procedures in the event of a natural disaster. (4-6-05)

r. Searches of staff and visitors. (4-6-05)

s. Contract providers shall have written policies and procedures prohibiting the sexual contact by any employee with a juvenile offender. (4-2-08)

t. Contract providers, in accordance with the PREA, shall have written policies and procedures that promote zero tolerance toward sexual misconduct with or among juvenile offenders in their care and zero tolerance toward the sexual assault of juvenile offenders by staff or by other juvenile offenders. (4-2-08)

**02. Documented Staff Training.** Documented staff training on these policies must also be available for review by the department. (4-6-05)

**262. PROGRAM OPERATIONAL REQUIREMENTS AND CASE MANAGEMENT.**

**01. General Requirements.** (4-6-05)

**a.** Programs should provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs should specifically address those factors in juvenile offenders' lives that contribute to delinquency and that can be realistically changed. (4-2-08)

**b.** Programs must be open to the community by encouraging appropriate telephone and mail contact between juvenile offenders and their families, by encouraging visitation, and by involving volunteers in support of the program. (4-2-08)

**c.** Contract providers must structure and document services offered in the program so that continuity in case planning is obvious. Health, mental health, substance abuse, social skills, educational, vocational, independent living, and other special needs identified in the assessment must be clearly addressed in the service implementation plan. Services provided to address those needs must be documented regularly. Progress on goals associated with those needs must be recorded in progress notes in a case file at least monthly and in a written progress report at least every two (2) months. Service needs remaining at the time of release from department custody or transfer must be accounted for in the reintegration plan for each juvenile offender. (4-2-08)

**d.** Without authorization from the Idaho Department of Health and Welfare and the department, a residential care contract provider shall not admit more juveniles into care than the number specified on the provider's license. Contract providers wishing to increase capacity are responsible for contacting the Idaho Department of Health and Welfare. A copy of the written confirmation to the contract provider from the Idaho Department of Health and Welfare for verbal approval to exceed the licensed capacity shall be forwarded to the department's clinical supervisor in the region and to the department's quality assurance staff. (4-6-05)

**e.** Programs may not, under any circumstances, involve juvenile offenders in plethysmographic assessments. The use of polygraphs for juvenile offenders adjudicated for or documented to have demonstrated sexually abusive behavior, shall only be undertaken by court order or with the specific written authorization of the department's regional clinical supervisor, and then only with the full, informed consent of the juvenile offender, and if ~~he~~ the juvenile offender is a minor, ~~his~~ parent or guardian. Contract providers shall not make treatment decisions solely on the results of a polygraph. Polygraphers used in this process must be able to provide documentation of specific training in the use of polygraphy with sexually abusive juvenile offenders. (~~4-2-08~~)(\_\_\_\_)

**02. Incidents Requiring Immediate Notice.** All notifications under this Section shall be made to the regional facility in the region where the contract provider is located. Out-of-state contract providers shall notify the Region 2 facility. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. If any of the following events occur, the contract provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator, juvenile probation officer, and the department's regional ~~state~~ facility by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile. Transmission may be electronic or by facsimile. (~~4-2-08~~)(\_\_\_\_)

**a.** Health and mental health emergencies including, but not limited to, every instance of emergency room access or refusal of medications or treatment recommended by a physician; (~~4-6-05~~)(\_\_\_\_)

**b.** Major incidents such as death of a juvenile offender, suicide, attempted suicide or threat of suicide, attempted escape, sexual misconduct among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA, criminal activity resulting in arrest, detention, or filing a report with local law enforcement, or any relevant report made to the Idaho Department of Health and Welfare; (~~4-2-08~~)(\_\_\_\_)

- c. Any incident of restraint which involves the use of medications, chemicals, or mechanical devices of any kind; (4-6-05)
- d. Any use of separation or isolation for more than two (2) hours; (4-6-05)
- e. Incidents of alleged or suspected abuse or neglect of juvenile offenders; and (4-2-08)
- f. Incidents involving the disclosure of criminal behavior by juvenile offenders. (4-2-08)
- g. The following incidents or activities jeopardize the safe operation of the facility and require the completion of a detailed incident report: ( )
  - i. Instances of physical assault or fighting; ( )
  - ii. Major misconduct by one (1) or more juvenile offenders or staff; ( )
  - iii. Discovery of contraband that represents an immediate threat to safety and security, such as weapons or drugs; and ( )
  - iv. Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters. ( )

**03. Escapes Also Require Immediate Notice.** In all instances of escape, the contract provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional ~~state~~ facility, juvenile offender's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile offender. Transmission may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately. (~~4-2-08~~)( )

- a. Clothing and other personal belongings shall be secured immediately and maintained in a secure place until returned to the department. (4-6-05)
- b. The contract provider shall not transfer a juvenile offender at the time of an escape. The juvenile offender shall continue to be assigned to the program, although not physically present for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program choose to transfer the juvenile offender after ~~his~~ returning, then the procedures outlined in Subsections 276.04 and 276.08, of these rules, shall apply. If the juvenile offender is apprehended, the contract provider ~~should~~ shall contact the juvenile services coordinator to plan for transfer of the juvenile offender to a regional facility for an updated assessment and for a placement decision. (~~4-2-08~~)( )

**04. Incidents Not Requiring Immediate Notice to Parents. ( )**

- a. Any use of separation or isolation for more than two (2) hours; ( )
- b. Incidents involving the disclosure of criminal behavior by juvenile offenders. ( )
- c. The following incidents or activities jeopardize the safe operation of the facility and require the completion of a detailed incident report: ( )
  - i. Instances of physical assault or fighting; ( )
  - ii. Instances of lost keys, equipment, vehicles, or tools; ( )
  - iii. Major misconduct by one (1) or more juvenile offenders or staff; ( )

- iv. Discovery of contraband such as weapons or drugs; and ( )
- v. Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters. ( )
- 045. Incidents ~~Not~~ Requiring ~~Immediate~~ Notice Within Ten Days.** (4-6-05)( )
- a. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. A copy of the completed incident report must be submitted to the juvenile services coordinator no later than ten (10) business days after the incident. (4-6-05)
- ~~b. A detailed incident report is required for each incident or activity which jeopardizes the safe operation of the facility. This would include but not be limited to:~~ (4-2-08)
- ~~i. Instances of physical assault or fighting;~~ (4-2-08)
- ~~ii. Instances of lost keys or tools;~~ (4-2-08)
- ~~iii. Major misconduct by one (1) or more juvenile offenders or staff;~~ (4-2-08)
- ~~iv. Discovery of contraband such as weapons or drugs; and~~ (4-2-08)
- ~~v. Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters.~~ (4-2-08)
- eb.** A detailed incident report is also required for each incident of ~~staff or~~ juvenile offender misconduct that is not reportable under Subsection 262.02 and results in any type of: (4-2-08)( )
- i. Any minor ~~in~~jury; (4-6-05)( )
- ii. Any ~~physical~~ restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind; (4-6-05)( )
- ~~iii. Suspension;~~ (4-6-05)
- ~~iv. Termination of work;~~ (4-6-05)
- ~~viii. Refusal of ~~P~~program participation; or~~ (4-6-05)( )
- ~~vi. Separation, isolation, or room confinement for less than two (2) hours;~~ (4-6-05)( )
- ~~vii. Detention; or~~ (4-6-05)
- ~~viii. Arrest of a juvenile offender.~~ (4-2-08)
- c.** A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 262.02 and results in any type of: ( )
- i. Suspension from work; ( )
- ii. Termination of work; ( )
- iii. Revocation or suspension of professional license; or ( )
- iv. Revocation or suspension of driver's license of any staff transporting juveniles. ( )



**056. Incident Report Content.** Contract providers may elect to use the department's standard incident report form or may use another form as long as all of the following information is included: (4-6-05)

- a. Juvenile offender's assigned unit; (4-2-08)
- b. Date, location, and time of the incident; (4-2-08)
- c. Witnesses and other staff and juvenile offenders involved; (4-2-08)
- d. Persons notified with date and time of notice; (4-6-05)
- e. Type of incident by category, such as assault on staff, assault on juvenile offender, injury or illness, property damage, contraband, suicide attempt or threat, escape or attempted escape, or other misconduct; (4-2-08)
- f. Action taken by category, such as physical restraint, separation, isolation, or room confinement with times in and out, suicide precautions, or escape precautions initiated; (4-6-05)
- g. Brief narrative description of the incident; (4-6-05)
- h. Signature of staff and reviewing supervisor, which may be affixed electronically; ~~(4-2-08)~~(\_\_\_\_) (4-6-05)
- i. Documentation of injury and medical attention provided; and (4-2-08)
- j. If the incident involves sexual misconduct, the incident report must include a description of action taken to:
  - i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; (4-2-08)
  - ii. Address any immediate trauma, either physical or emotional; (4-2-08)
  - iii. Address long-term medical or mental health needs related to the alleged abuse; (4-2-08)
  - iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; (4-2-08)
  - v. Conduct an internal investigation of the incident and as necessary request that an external investigation be completed; and (4-2-08)
  - vi. Prevent repetition of the abusive situation. (4-2-08)

**067. Monitoring the Location of Juvenile Offenders.** The contract provider must have and strictly follow a comprehensive policy covering the supervision of juvenile offenders, including a plan for monitoring all movement of those juvenile offenders both in the facility and, as appropriate, within the community. Staff at the facility must be aware of the location of every juvenile offender assigned to that program at all times. (4-2-08)

**078. Nonresidential Absences.** Nonresidential programs shall make reasonable efforts to ensure that the juvenile offenders attend their program daily or as otherwise specified in the service implementation plan. The nonresidential program shall inform the juvenile services coordinator of daily attendance and all attendance problems. This information must be documented in at least monthly progress notes and must be reported in written progress reports every two (2) months. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**265. SEARCHES OF PERSONAL ITEMS.**

Routine searches of suitcases or personal items being introduced into the facility will be conducted by facility staff prior to ~~the~~ juvenile offenders taking possession of ~~his~~ their property, or when the juvenile offender is returning to the facility from an individual community pass. Search of a juvenile offender's belongings may be done at any time and shall be minimally intrusive. All searches shall be documented in the facility log and, if contraband is found, a written incident report must be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-2-08)( )

**266. ~~JUVENILE OFFENDER~~ PAT DOWN SEARCHES AND VISUAL INSPECTIONS FOR CONTRABAND.**

**01. Necessity.** Pat down searches and visual inspections of juvenile offenders may be conducted whenever the contract provider believes it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff, juvenile offenders, and visitors. A pat down search or visual inspections may be used when a juvenile offender is returning from a visit, or outside appointment, or activity. (4-2-08)( )

**02. Pat Down Searches.** Pat down searches shall be conducted in the manner required by the ~~child care licensing~~ rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Pat down searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Pat down searches will be conducted using the quadrant search method that consists of dividing the juvenile's body in four (4) quadrants and conducting a pat down search outside the juvenile's clothing on each quadrant. The staff member must have had appropriate training in conducting pat down searches. (4-6-05)( )

**03. Visual Inspections.** Body cavity searches of juveniles will not be performed by staff under any circumstances. Looking into a juvenile's mouth does not constitute a body cavity search. Visual inspections beyond those performed during an initial search using the quadrant method may only be performed by staff with appropriate training. Visual inspection must be based upon a reasonable belief that the juvenile is concealing contraband. ( )

**034. Documentation.** All pat down searches and visual inspections shall be documented in the facility log. A written report shall be completed when contraband is found and shall be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-6-05)( )

**267. JUVENILE OFFENDER STRIP SEARCHES PROHIBITED.**

Strip searches of juveniles by staff will not be performed under any circumstances. ( )

~~**01. Reasonable Suspicion.** Strip searches may be performed by facility staff, only after a pat down search, whenever there is reasonable suspicion to believe that weapons or contraband may be found through additional searches. Strip searches shall be authorized by the facility director or designee and conducted strictly in the manner required by the child care licensing rules of the Idaho Department of Health and Welfare. (4-6-05)~~

~~**02. Documentation.** All strip searches shall be documented in the facility log. A written report shall be completed when contraband is found and shall be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-6-05)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**269. USE OF FORCE OR PHYSICAL RESTRAINTS.**

Contract providers, licensed by the Idaho Department of Health and Welfare, must ensure that all terms of the child care licensing rules of the Idaho Department of Health and Welfare are strictly followed. Additionally, licensed and non-licensed contract providers must ensure that: (4-2-08)

**01. Minimal Use.** Only the minimum level of force necessary to control a juvenile offender's destructive behavior shall be used. (4-2-08)

**02. Physical Force.** Physical force, at any level, may only be used to prevent injury to the juvenile

offender or to others and to prevent serious damage to property or escape. Physical force shall never be used as punishment. (4-2-08)

**03. Reporting Requirement.** All instances of use of force must be documented in an incident report and submitted according to the terms of Subsection 262.02 and 262.04 of these rules. Incidents of inappropriate use of force must be reported to the Idaho Department of Health and Welfare, or law enforcement as required by law. (4-2-08)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**271. ONGOING TREATMENT AND CASE MANAGEMENT.**

~~The juvenile~~ offenders must always be aware of the status of ~~his~~ their progress within the program and what remains to be done to complete the program. Contract providers must assure that the basic norms and expectations of the program are clearly presented to the juvenile offender and that they are understood. Any points, levels or phases that are a fundamental part of a program must be clearly understood by the juvenile offender in the program. Each juvenile offender's progress, or lack of progress, through these levels must be clearly documented and must be related to documented behavior. Recommendations for release from department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. (4-2-08)(\_\_\_\_)

**01. Service Implementation Plan.** Within thirty (30) calendar days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the service plan from the observation and assessment report. The service implementation plan should, at a minimum, address the following areas as indicated by need: (4-2-08)

- a. Health; (4-6-05)
- b. Mental health; (4-6-05)
- c. Substance abuse; (4-6-05)
- d. Social skills; (4-6-05)
- e. Education; (4-6-05)
- f. Vocations; (4-6-05)
- g. Independent living; (4-6-05)
- h. Other special needs; (4-2-08)
- i. Progress notes from the initial period of placement in the program; and (4-2-08)
- j. Reintegration plan. (4-2-08)

**02. Family Involvement.** Each juvenile offender and, to the fullest extent possible, the family should be involved in developing the service implementation plan, and in adjusting that plan throughout the course of commitment. (4-2-08)

**03. Department Assessments.** Assessments provided by the department shall not be repeated by the contract provider at the time of admission into the program without specific justification provided to the regional clinical supervisor. (4-6-05)

**04. Service Implementation Plan Adjustments.** The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. (4-6-05)

**05. Progress Notes.** Monthly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan. (4-2-08)

**06. Education Plan.** A copy of the juvenile offender's education plan shall be a component of the service implementation plan. This education plan shall include the juvenile offender's course of study (GED, secondary, post-secondary, etc.), long-term educational goals and short-term objectives, and shall comply with all state and federal laws. If the juvenile offender has been identified as eligible to receive services under Section 504 of the federal Rehabilitation Act of 1973 (Section 504) or the federal IDEA, a copy of the IEP, and supporting documentation shall be sent to the department's education manager at the juvenile correctional center in Nampa within ten (10) days from development. The education plan shall be updated and submitted yearly. Written educational progress (report cards) shall be submitted to the department's education manager at the juvenile correctional center in Nampa at the end of each school's grading period, e.g. quarter, semester, trimester, etc. (4-2-08)

**a.** Contract providers may choose to utilize the department's software program provided by the department for managing special education students' paperwork. (4-2-08)

**b.** If this option is selected, an e-mail to the education records manager at the juvenile correctional center in Nampa will be required stating that the required documents have been completed in the software program. It will not be necessary to mail hard copies of the documents. (4-2-08)

**07. Progress Report.** The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 271.01, of these rules, should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. A written progress report must be submitted to the juvenile services coordinator at least every two (2) months. (4-6-05)

**08. Report Distribution.** Copies of the progress report shall be distributed by the contract provider to the juvenile offender and the juvenile services coordinator. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for some well documented reason. (4-2-08)

**272. INDIVIDUAL COMMUNITY PASSES.**

Prior to granting any individual community pass to a juvenile offender, the contract provider shall contact the juvenile probation officer and the juvenile services coordinator to ensure that neither the court nor the department has placed restrictions on the juvenile offender's pass privileges. All requests for passes must be approved by the juvenile services coordinator. Any pass involving an overnight stay away from the facility, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an individual community pass, the contract provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and ~~at the time he~~ returns. (4-2-08)(\_\_\_\_)

**01. Potential Risk to Public Safety.** All passes for juvenile offenders assigned to residential facilities should be considered as an integral part of the service implementation plan. However, in all cases, the potential risk to public safety and adequacy of home supervision shall be considered prior to allowing a juvenile offender to return home. It is also important that passes not interfere with the ongoing treatment and supervision needed by juvenile offenders. Contract providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those

guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision, the pass must contain at least the following information: (4-2-08)

- a. The juvenile offender's name and date of birth; (4-2-08)
- b. The name, address and telephone number of the individual assuming responsibility; (4-6-05)
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; (4-6-05)
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; (4-2-08)
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; (4-6-05)
- f. A complete listing of the activities required during the pass; (4-6-05)
- g. Specific stipulations prohibiting: (4-6-05)
  - i. The use of alcohol, tobacco, and drugs; (4-6-05)
  - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; (4-6-05)
  - iii. Participation in sexual relations of any kind; (4-6-05)
  - iv. Possession of any kind of firearm or weapon; (4-6-05)
  - v. Any violation of the terms of probation; and (4-6-05)
- h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. (4-6-05)

**02. Eligibility.** A juvenile offender must be in placement a minimum of thirty (30) calendar days ~~before~~ ~~he is to be~~ eligible for any pass. Any exceptions due to extenuating circumstances must be approved by the juvenile services coordinator. (4-2-08)(\_\_\_\_)

**03. Frequency.** Frequency of passes shall be consistent with the terms of the juvenile offender's service implementation plan and contract provider's contract with the department. (4-2-08)

**04. Documentation.** Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and ~~his~~ return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. (4-2-08)(\_\_\_\_)

**273. GROUP ACTIVITIES OFF FACILITY GROUNDS.**

An activity plan and itinerary covering activities to be engaged in, when and where the group is going, how they will travel, how long they will stay, and why the activity is being planned must be submitted to the juvenile services coordinator at least five (5) business days prior to the activity. The activity plan must identify the specific risk elements associated with the activity and provide a safety plan for each of those risk elements. Routine, low risk activities within the local community adjacent to the facility do not require prior notice, and are to be conducted at the discretion of and under the responsibility of the contract provider. (4-6-05)

**01. Recreational Activities.** A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk, such as overnight trips, must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves rafting, horseback

riding, boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the clinical services administrator. (4-2-08)(\_\_\_\_)

**02. Staff Requirements.** (4-6-05)

**a.** A basic first aid kit and current Red Cross First Aid Manual will be taken with the group. At least one (1) person certified in first aid and CPR shall accompany the group. (4-6-05)

**b.** Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in basic rescue and water safety, water safety instruction, or Red Cross life saving. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. (4-2-08)

**c.** A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, mental deficiencies, or inclusion of groups of juvenile offenders under age twelve (12), are some reasons to consider additional staff. (4-2-08)

**d.** All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. (4-6-05)

**03. Consent Forms.** Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 273.01 of these rules. Each juvenile offender must have prior written consent from a parent or guardian, if available, and the clinical services administrator. Consent shall include: (4-2-08)

**a.** Permission for the juvenile offender's participation; (4-2-08)

**b.** Acknowledgement of planned activities; and (4-6-05)

**c.** Permission for the contract provider to seek or administer necessary medical attention in an emergency. (4-6-05)

**04. Consumption.** There will be no consumption of alcoholic beverages or illicit drugs by staff or juvenile offenders or volunteers while engaged in any agency-sponsored trip or activity. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**278. GUIDELINES FOR SPECIFIC SERVICES.**

**01. Counseling Services.** (4-6-05)

**a.** All counseling services provided to juvenile offenders, whether individual, group or family, must be performed by a clinician, counselor, or therapist as defined in these rules. (4-2-08)

**b.** Counseling should be planned and goal directed. (4-6-05)

**c.** Notes must be written for each service provided. The notes must be dated, clearly labeled either individual, group or family counseling, and each entry must be signed by the clinician, counselor, or therapist performing the service. (4-6-05)

**d.** The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. (4-6-05)

**e.** Counseling should be reality oriented and directed toward helping juvenile offenders understand

and solve specific problems; discontinue inappropriate, damaging, destructive or dangerous behaviors; and fulfill individual needs. (4-2-08)

**f.** The minimum standard for the frequency of counseling services shall be specified in the comprehensive program description attached to the contract with the department. (4-6-05)

**g.** There should be a mechanism developed to monitor and record incremental progress toward the desired outcome of counseling services. (4-6-05)

**h.** Programs should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. (4-6-05)

**i.** Programs must provide crisis intervention counseling if warranted by the assessment and circumstances. (4-6-05)

**j.** The contract provider must furnish adequate space for conducting private interviews and counseling sessions at the facility. (4-6-05)

**k.** Family counseling services must be available as a part of the juvenile offender's service implementation plan, to the extent that this is supported by the assessment. If the assessment indicates a need for these services, family counseling should specifically address issues that, directly or indirectly, resulted in the juvenile offender's removal from ~~his~~ the home and the issue of ~~his~~ eventual reintegration back into the family unit. A statement of goals to be achieved or worked toward by the juvenile offender and ~~his~~ the family should be part of the service implementation plan. (4-2-08)(\_\_\_\_)

**02. Substance Abuse Treatment Services.** As a minimum standard, programs must provide substance abuse education for all juvenile offenders, and substance abuse treatment services as determined by assessment and indicated in the service implementation plan. Substance abuse treatment services must have direct oversight by a certified alcohol and drug counselor, or master's level clinician with three (3) years experience in the substance abuse field. Substance abuse treatment services must be fully described in the detailed program description and must have a written curriculum containing a description of each session offered. Juvenile offenders receiving substance abuse treatment services shall have an orientation to a twelve-step program at the appropriate point in ~~his~~ treatment, or an introduction to a community intervention program if a twelve-step program is not appropriate for him. Relapse prevention plans must be a component of the substance abuse treatment services provided in programs offering more than substance abuse education. Relapse prevention plans must be specifically based on the individual needs of the juvenile offender. Notes documenting the service provided must be dated, clearly labeled "substance abuse treatment services," and each entry must be signed by the counselor performing the service. (4-2-08)(\_\_\_\_)

**03. Suicide Prevention and Risk Management.** In addition to the policy required in Paragraph 261.01.e., of this rule, contract providers must be able to demonstrate that they: (4-6-05)

**a.** Train staff regularly to identify, document and appropriately respond to behavior that may indicate a risk of suicide; (4-6-05)

**b.** Utilize medical or other staff trained by a mental health professional to review history, and interview and observe juvenile offenders new to the program in order to complete suicide risk screening within two (2) hours of admission; (4-2-08)

**c.** Utilize a mental health professional to complete a suicide risk assessment on a juvenile offender who has been identified by staff as presenting a risk of suicide; (4-2-08)

**d.** Utilize mental health professionals to help develop a safety plan for each juvenile offender identified as presenting a risk for suicide, and to determine when that risk is reduced enough to reduce or terminate suicide precautions; and (4-2-08)

**e.** Prohibit the use of separation and isolation of juvenile offenders identified as presenting a suicide

risk, unless constant one-on-one (1 on 1) staff supervision is provided and that all juvenile offenders in separation or isolation are closely monitored to reduce the risk of suicidal behaviors. (4-2-08)

**04. Social Skills Training Including Relapse Prevention Skills.** Programs must assess each juvenile offender's social skills and document specific services provided to improve functioning in this area. Additionally, every juvenile offender must have developed a written relapse prevention plan prior to successfully completing the program. (4-2-08)

**05. Health Services.** Programs must be able to demonstrate compliance with the required policy concerning access to routine and emergency health and mental health care and, in addition, should provide a basic health curriculum for all juvenile offenders. Contract providers must provide and document a health and suicide risk screening of each juvenile offender within two (2) hours of admission into the program. (4-2-08)

**06. Vocational and Prevocational Services.** Programs must be able to demonstrate that each juvenile offender's vocational interests and needs have been assessed and an appropriate level of services has been provided. These services may range from a specific vocational skills curriculum, offered on site or in the community, to a prevocational skills component, which at a minimum, involves juvenile offenders in assessing their vocational interests and strengths. (4-2-08)

**07. Basic Life Skills and Independent Living.** Programs must be able to demonstrate that juvenile offenders are taught basic life skills and that age-appropriate juvenile offenders are involved in independent living skills consistent with their age and needs. This program should include, at a minimum, instruction in: (4-2-08)

- a. Hygiene and grooming skills; (4-6-05)
- b. Laundry and maintenance of clothing; (4-6-05)
- c. Appropriate social skills; (4-6-05)
- d. Housekeeping; (4-6-05)
- e. Use of recreation and leisure time; (4-6-05)
- f. Use of community resources; (4-6-05)
- g. Money management; (4-6-05)
- h. Use of public transportation, where available; (4-6-05)
- i. Budgeting and shopping; (4-6-05)
- j. Cooking; (4-6-05)
- k. Punctuality, attendance and other employment-related matters; and (4-6-05)
- l. Vocational planning and job finding skills. (4-6-05)

**08. Recreational Services.** Programs should have a written plan for providing recreational services based on individual needs, interests, and functional levels of the population served. (4-6-05)

a. The recreational program should include indoor and outdoor activities. Activities should minimize television and make use of a full array of table games and other activities that encourage both solitary entertainment and small group interaction. An appropriately furnished area should be designated inside the facility for leisure activities. (4-6-05)

b. Programs should have staff educated and experienced in recreational programs to ensure good planning, organizing, supervision, use of facility, and community activities. Recreational activities considered part of



the service implementation plan must be funded by the contract provider. The use of community recreational resources should be maximized, as long as community safety is assured. The contract provider must arrange for the transportation and provide the supervision required for any usage of community recreational resources. No juvenile offender shall be required to pay to participate in recreational activities made available through the program. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**280. RELIGIOUS SERVICES.**

Programs must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. (4-2-08)

**01. Voluntary Practice.** All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security, emotional, or physical well-being of the juvenile offenders in the facility. (4-2-08)

**02. Attendance.** Juvenile offenders may be permitted to attend religious services of their choice in the community as long as community safety is ensured. (4-2-08)

**03. Transportation.** Programs must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. (4-2-08)

**04. Risk to Community.** If the juvenile offender cannot attend religious services in the community because staff has ~~reason to believe he would attempt to~~ determined that the juvenile is an escape risk, or otherwise presents a risk to the safety of the community, the contract provider must make ~~every~~ reasonable efforts to ensure that ~~he~~ the juvenile offender has the opportunity to participate in religious services of ~~his~~ the juvenile's choice at the facility. (4-2-08)(\_\_\_\_)

**05. Visits.** Juvenile offenders shall be permitted to receive visits from representatives of their respective faiths. (4-2-08)

**06. Minor Juvenile Offenders.** When the juvenile offender is a minor, the contract provider shall make reasonable effort to comply with the wishes of the legally responsible person with regard to religious observances. A program's staff schedule shall not encourage or discourage participation in general or specific religious services or activities. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**324. COMMUNICABLE DISEASES.**

**01. Policies.** (4-6-05)

**a.** The contract provider shall establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of communicable diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a qualified health professional for juvenile offenders diagnosed with a communicable disease. (4-2-08)

**b.** The contract provider shall comply with the child care licensing rules of the Idaho Department of Health and Welfare regarding universal precautions. (4-6-05)

**02. HIV Testing.** In accordance with law, a juvenile offender over age fourteen (14) may request ~~that~~ ~~he~~ to be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test.

(4-2-08)( )

**03. Examinations.** Examinations shall be performed on any juvenile offender by medical professionals for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated.

(4-2-08)

**04. Confidentiality.** Confidentiality shall be maintained.

(4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**326. REFUSAL OF TREATMENT.**

This is an incident requiring immediate notification under Subsection 262.02 of these rules.

( )

**01. Refusal of Recommended Treatment by Physician.** If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A contract provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record.

(4-2-08)

**02. Where Refusal Poses Significant Risk.** If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the contract provider shall issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. If danger to the juvenile offender is not imminent, the contract provider shall contact the clinical services administrator and notify the department's regional R.N. of the juvenile offender's refusal.

(4-2-08)

## **IDAPA 06 - BOARD OF CORRECTION**

### **06.01.01 - RULES OF THE BOARD OF CORRECTION**

**DOCKET NO. 06-0101-0901**

#### **NOTICE OF PROCLAMATION OF RULEMAKING**

**EFFECTIVE DATE:** The effective date of this rule is November 6, 2009.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 20-212(1), Idaho Code, public hearing(s) concerning this rulemaking will not be scheduled.

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

The proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. Board of Correction rule changes are summarized by sections as follows:

Section 010, Definitions - Amendment is necessary to Subsections 10, 26, and 27 to make the definitions consistent with the definitions currently being used in IDOC standard operating procedures (SOPs).

Section 116, Custody of Evidence - Amendment is necessary to make the entire section comprehensively reflect operational procedures currently being used in IDOC Office of Professional Standards, Division of Prisons, and Division of Community Corrections SOPs.

Section 145, Subpoenas - This new section is necessary to allow the IDOC to fully implement Sections 20-209G and 20-228A, Idaho Code. Section 20-209G, Idaho Code went into effect July 1, 2009.

**FEE SUMMARY:** There is no increase in fees imposed with this rulemaking.

**FISCAL IMPACT:** There is no fiscal impact on general funds for this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Coordinator, at (208) 658-2133.

DATED this 25th day of August, 2009.

Lorenzo Washington  
Policy Coordinator  
Idaho Department of Correction  
1299 N Orchard St. Suite 110  
Boise, ID 83706  
Ph: (208)658-2133; Fax: (208)327-7404

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 06-0101-0901**

**010. DEFINITIONS.**

- 01. Archival Research.** Research requiring access to stored historical data, files, documentation, video or audio tapes, electronically sorted data, or written material. (11-5-99)
- 02. Attorney of Record.** An attorney appointed by a court or retained by an inmate in a legal action. (11-5-99)
- 03. Board.** The State Board of Correction. (11-5-99)
- 04. Case Management File.** An approved collection of legal documents, reports, submissions, statements, and support materials used in making decisions about an inmate (offender), parolee, or probationer regarding classification, treatment, programming, management, and parole, or clemency. (10-31-08)
- 05. Chief.** The exempt employee in authority over a division of the Department. Chief is commonly referred to as the division chief. (10-5-07)
- 06. Commission of Pardons and Parole.** The decision-making body that has the authority to grant, revoke, reinstate, or refuse parole. The Commission of Pardons and Parole is commonly referred to as the Parole Commission. (10-5-07)
- 07. Contact Visiting.** Visiting where no physical partition, such as a window or wall, separates the visitor and the inmate. Physical touch may be allowed. (10-5-07)
- 08. Contraband.** Any thing, of any kind, that is prohibited by Board, Department, or facility rules, policies, directives, or standard operating procedures. Contraband also includes any thing, of any kind, that a facility head has not approved: (10-5-07)
- a.** For possession by an inmate; or (10-5-07)
- b.** To bring into a facility or onto Department property. (10-5-07)
- 09. Contractor.** A person who has entered into a contract with the Board or Department, or a contract with the State of Idaho administered by the Board or Department to provide any service. (11-5-99)
- 10. Controlled Substance.** A drug or substance restricted by law in respect of use and possession. ( )
- 101. Department.** The State Department of Correction. (11-5-99)
- 112. Department Property.** Real property owned, leased, operated, or managed by the Board or Department. (10-5-07)
- 123. Directive.** A sequence of steps within a particular division to implement a procedure. (11-5-99)
- 134. Director.** The director of the Department of Correction. (11-5-99)
- 145. Division.** An operating unit of the Department. Department divisions are the divisions of Prisons, Community Corrections, Education and Treatment, and Management Services. (10-5-07)
- 156. Execution.** The carrying out of a sentence of death. (11-5-99)

- 167. Facility.** A building or residence, including the property and land where the building or residence is located, owned, leased, operated, or managed by the Board or Department. (10-5-07)
- 178. Facility Head.** The person primarily responsible for overseeing, managing or operating a Department facility. (10-5-07)
- 189. Field Memoranda.** Detailed guidelines to implement directives within a facility or a service unit of a division. (11-5-99)
- 190. Health Authority.** The Department employee who is primarily responsible for overseeing or managing the Department's medical and mental health services. The health authority is commonly referred to as the health services director. (10-31-08)
- 201. Immediate Family -- Offender.** The immediate family of an inmate is: (10-5-07)
- a. The mother or father of the inmate, including step parent; (11-5-99)
  - b. The brother or sister of the whole or half (1/2) blood or by adoption, or the stepbrother or stepsister of the inmate; (11-5-99)
  - c. The wife or husband of the inmate, as proved by marriage license or other operation of law; (11-5-99)
  - d. The natural child, adopted child or stepchild of the inmate; (11-5-99)
  - e. The grandparents of blood relation to the inmate; or (11-5-99)
  - f. The grandchildren of blood relation to the inmate. (11-5-99)
- 212. Inmate.** An individual in the physical custody of the Board. (11-5-99)
- 223. Minor.** An individual less than eighteen (18) years old. (10-5-07)
- 234. Noncontact Visiting.** Visiting with an inmate where there are physical barriers between the visitor and the inmate and the inmate and visitor are not allowed to touch. Verbal communication is generally accomplished through telephones, speakers, or openings in the physical barrier designed to allow sound to pass. (10-5-07)
- 245. Non-Department Literature.** Notices, placards, banners, advertisements, and other writings not generated by the Department for Department distribution. (10-31-08)
- 256. Offender.** A person under the legal care, custody, supervision, or authority of the Board, including a person within or without the state of Idaho pursuant to agreement with another state or contractor. (~~10-5-07~~)( )
- 27. Office of Professional Standards.** The designated unit under the Director's office with primary responsibility for conducting investigations of employee misconduct allegations and providing assessment and general investigative services for the Department. ( )
- 268. Parolee.** An offender who: (10-5-07)
- a. Is released from a facility by the paroling authority prior to the completion of his sentence; (10-5-07)
  - b. Agrees to comply with certain conditions established by the paroling authority; and (10-5-07)
  - c. Remains under the control of a probation and parole officer (PPO) for the established period of supervision. (10-31-08)

- 279.** **Penological Interests.** The security, programmatic, and rehabilitative interests of the Board and the Department. (11-5-99)
- 2830.** **Person.** An individual, corporation, governmental entity or organization, however organized or constituted. (11-5-99)
- 2931.** **Photo Identification.** A state issued driver's license, a state issued identification card displaying a photograph, a military issued identification card displaying a photograph, or a current valid passport. (10-5-07)
- 302.** **Post Order.** A detailed set of guidelines and procedures for each post or area of employee assignment which governs and explains the duties of the employee assigned to the post or area of responsibility. (11-5-99)
- 343.** **Probationer.** An offender who the courts allow to continue to live and work in the community, instead of being sent to prison, while being supervised by a probation and parole officer (PPO) for an established period of time. (10-31-08)
- 324.** **Procedure.** A sequence of steps or actions to be followed to implement and support a rule or policy. (11-5-99)
- 335.** **Public.** A person, of the general public, that does not include offenders, contractors, vendors, volunteers, interns, or the employees of the Board, Department, or the Commission of Pardons and Parole. (10-5-07)
- 346.** **Public Information Officer.** An employee of the Department designated by the director to be the primary contact person from whom the public and media may request information. (11-5-99)
- 357.** **Regular Volunteer.** Any approved person, not employed by the Idaho Department of Correction (IDOC), who is at least eighteen (18) years of age and, of his own free will, provides good or services, for no monetary or material gain, to a facility and/or any of its sections. This person must: (10-5-07)
- a. Completed an application; (10-5-07)
  - b. Receive volunteer and facility orientation training; and (10-5-07)
  - c. Be approved by a facility head or designee. (10-5-07)
- 368.** **Student Intern Volunteer.** An approved college or university student who, as part of an academic program, offers his time or services to help enhance the mission, activities, and programs of the Department, which also helps further his professional development. Some student interns may receive compensation from the Department. (See also Regular Volunteer.) (10-5-07)
- 379.** **Tobacco Products.** Cigarettes, whether packaged or hand rolled, cigars, snuff, chew, or any other variation of a product containing tobacco. (11-5-99)
- 3840.** **Vendor.** A person who supplies goods or services to the Board or any operation or facility under the authority of the Board. (11-5-99)
- 3941.** **Visiting Staff.** Employees of the Department or the Commission of Pardons and Parole conducting business in the Department central office building on a regular or irregular basis. (10-5-07)
- 402.** **Visitor.** A member of the public, as defined herein, who is approved to visit a Department facility. (10-5-07)
- 443.** **Volunteer.** An approved person who volunteers or donates time or services to the Board or a Department operation or facility. (10-5-07)
- 424.** **Work Site.** Any place where inmates may be found when assigned to a work project. (11-5-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**116. CUSTODY OF EVIDENCE.**

All evidence confiscated from Department employees, offenders, contractors, or witnesses, that is or may be utilized in administrative investigations and inquiries, probation or parole revocation hearings, or criminal proceedings, shall be maintained in a safe and secure manner until completion of the investigation, inquiry, or proceeding. ( )

**01. Evidence Retained.** Items of evidence retained by the Department's Office of Professional Standards investigators, probation and parole officers, and correctional officers for use in any investigation, inquiry, hearing, or proceeding concerning a Department employee, offender, contractor, client, or residents shall be maintained in a safe and secure manner until completion of the investigation, inquiry, or proceedings, (to include the appeal). A member of the public claiming an interest in an item of evidence may file a written request for its return with the Department for its return or law enforcement agency having jurisdiction. (H-5-99)( )

**02. ~~Drugs Disposed of~~ Evidence Disposal.** Items of evidence in the form of narcotics or other usable drugs shall be given to a law enforcement agency for disposal. Upon a finding of unfounded, exonerated, not sustained, or not guilty and when all appeals have been exhausted, the Department may return evidence to the original possessor or release it to a third party who has a credible claim of ownership or is legally entitled to possess pieces of the evidence. (H-5-99)( )

**a.** Unless a request to continue to possess or preserve the evidence is received from the court, Idaho Office of the Attorney General, Idaho Personnel Commission, or Commission of Pardons and Parole, any unclaimed evidence (with the exception of contraband or illegal items) may be disposed of by the Department as follows:( )

**i.** Division of Community Corrections' probation and parole officers and Division of Prisons' correctional officers may dispose of evidence sixty (60) days after adjudication (to include the appeal process); and ( )

**ii.** The Office of Professional Standards shall maintain evidence for one (1) year after adjudication (to include the appeal process) and thereafter periodically consult with the deputy attorneys general who represent the Department to determine if the evidence may be disposed. ( )

**b.** When firearms or controlled substances were seized as evidence, the claimant shall file for its return with the law enforcement agency having jurisdiction. ( )

**c.** Third-party claimants must provide photo identification. If the third party is between the ages of sixteen (16) and eighteen (18) years, a student ID card issued by his school (if not expired) shall suffice. ( )

**d.** A credible claim of ownership shall include documentation such as a receipt, a bill of sale or transfer, or other written evidence of ownership. ( )

**03. Contraband Not Returned.** Items of evidence which are now contraband or were contraband at the time they came into the possession of the Department shall not be given to any claimant but may be disposed of according to the Department's standard operating procedures and applicable state and/or federal laws. (10-31-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**136. -- ~~301~~144. (RESERVED).**

**145. SUBPOENAS.**

The Department shall conduct thorough and appropriate investigations and absconder apprehensions, in part, by requesting, reviewing, processing, and issuing subpoenas consistent with Sections 20-209G and 20-228A, Idaho

Code. ( )

**01. Subpoena Authority.** The Director has the authority to require, by way of an administrative subpoena, the production of all documents that are necessary in the performance of the functions assigned by law. For the purpose of this section only, documents shall be defined as any writings, charts, records, recordings, electronic records or data, photographs, tangible things, drawings, or diagrams of any type or kind. ( )

**a.** Office of Professional Standards' investigators, conducting an authorized inquiry or investigation, may request an administrative subpoena be issued for documents. ( )

**b.** Probation and parole officers, assisting in the apprehension of parolees who have absconded and for whom there are arrest warrants, may request an administrative subpoena be issued for documents. ( )

**02. Service of Subpoenas.** Normally, the investigator will personally serve the administrative subpoena at the principal place of business or residence of the person being served. A duplicate original (i.e., a second copy with original signatures) shall be left with the business or person being served. ( )

**03. Timelines for the Production of Documents.** The business or person on whom the service was successfully executed, should be allowed reasonable time (usually ten (10) to thirty (30) calendar days) to produce the documents listed in the administrative subpoena. Factors to be considered when determining what is reasonable includes: ( )

**a.** The type and volume of documents requested; and ( )

**b.** The possibility of documents being removed or destroyed. ( )

**04. Compliance and Noncompliance with the Served Subpoena.** Upon compliance with the terms of the subpoena, the recipient investigator shall provide written notice to the Office of Professional Standards' administrative assistant (or designee). The administrative assistant (or designee) will file the written notification in the investigative file and record receipt of the documents subpoenaed. ( )

**a.** If the business or person subpoenaed to produce the documents does not comply with the subpoena, the investigator will promptly advise the deputy attorneys general who represent the Department, via memorandum, describing the relevant circumstances. The deputy attorneys general will advise the investigator and the Director as to whether to compel production of the documents via court action and, if so, develop a strategy and procedures to compel compliance. ( )

**05. Reimbursement.** Generally, subpoenaed businesses or persons are entitled to reimbursement of reasonable costs associated with searching for, assembling, and copying subpoenaed documents pursuant to Idaho Rules of Civil Procedure, Rule 35. ( )

**a.** Financial institutions, as defined in 12 U.S.C. Section 35, Right to Financial Privacy Act, may seek reimbursement for the costs of providing a customer's financial records. ( )

**b.** Pursuant to 18 U.S.C. Section 2706, telecommunication carriers are authorized to charge a reasonable fee to cover the costs of searching for and providing information responsive to a subpoena. Some agency subpoenas are an exception to this rule but only to the extent that they seek records or other information maintained by a common carrier that relate to telephone toll records and telephone listings. ( )

**i.** Telephone toll records generally include records of outgoing long-distance calls made from a landline and records of all incoming and outgoing calls made to and from a cellular phone. ( )

**ii.** With respect to landlines specifically, the cost of searching for records of incoming local calls is reimbursable, and the cost of searching for records of incoming long-distance calls may also be reimbursable. ( )

**c.** Upon receipt of an invoice for documents provided by any business or person, the Office of Professional Standards' chief investigator (or designee) will consult with the deputy attorneys general to determine if



reimbursement is required. ( )

- i. When reimbursement is approved, invoices will be paid by the respective Department division. ( )

**146. -- 301.** **(RESERVED).**

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

### **07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE**

**DOCKET NO. 07-0106-0901**

#### **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 54-1006(5), 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 October 21, 2009.

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:

A new exception to the National Electrical Code (NEC) related to wiring in unfinished basements and crawl spaces is expected to be included in the next edition of the code. The exception allows the installation of certain cables in crawl spaces to be run at angles with floor joists without the need for drilling holes or a running board. Participants within the industry have voiced complaints that the existing code provision is unnecessarily restrictive, and have urged the Board to proactively adopt this new provision prior to its eventual inclusion in the next edition of the code (NEC). The proposed rule would provide an amendment to Article 334.15(C) of the NEC prior to the promulgation of the next code edition by allowing the installation of certain cables in crawl spaces that are not more than four and a half (4½) feet in height to be run at angles with floor joists without the need for drilling holes or a running board.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys, Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St., Meridian, ID 83642  
Phone: (208) 332-8986 / Fax: (208) 855-2164

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0106-0901**

**011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE, 2008 EDITION.**

**01. Documents.** Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2008 Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2008, with the exception of the following: (4-2-08)

**a.** Where the height of a crawl space does not exceed one point four (1.4) meters or four point five (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two point one (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. ( )

**ab.** Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (5-3-03)

**bc.** Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (5-3-03)

**ed.** Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (4-6-05)

**de.** Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. (4-2-08)

i. Definition. Arc-Fault Circuit-Interrupter is a device intended to provide protection from the effects of arc faults by recognizing characteristics unique to arcing and by functioning to de-energize the circuit when an arc fault is detected. (4-2-08)

ii. Dwelling Unit Bedrooms. All one hundred twenty (120)-volt, single phase, fifteen (15)-ampere and twenty (20)-ampere branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination type installed to provide protection of the branch circuit. (4-2-08)

**ef.** Compliance with Article 680.26 Bonding. (4-2-08)

i. Performance. The bonding required by this section shall be installed to eliminate voltage gradients in the pool area as prescribed. FPN: This section does not require that the eight (8) AWG or larger solid copper bonding conductor be extended or attached to any remote panelboard, service equipment, or any electrode. (4-2-08)

ii. Bonded Parts. The parts specified in 680.26(B)(1) through (B)(5) shall be bonded together. (4-2-08)

(1) Metallic Structural Components. All metallic parts of the pool structure, including the reinforcing metal of the pool shell, coping stones, and deck, shall be bonded. The usual steel tie wires shall be considered suitable for bonding the reinforcing steel together, and welding or special clamping shall not be required. These tie wires shall be made tight. If reinforcing steel is effectively insulated by an encapsulating nonconductive compound at the time of manufacture and installation, it shall not be required to be bonded. Where reinforcing steel is encapsulated with a

nonconductive compound, provisions shall be made for an alternate means to eliminate voltage gradients that would otherwise be provided by unencapsulated, bonded reinforcing steel. (4-2-08)

(2) Underwater Lighting. All forming shells and mounting brackets of no-niche luminaries (fixtures) shall be bonded unless a listed low-voltage lighting system with nonmetallic forming shells not requiring bonding is used. (4-2-08)

(3) Metal Fittings. All metal fittings within or attached to the pool structure shall be bonded. Isolated parts that are not over one hundred (100) mm (four (4) inches) in any dimension and do not penetrate into the pool structure more than twenty-five (25) mm (one (1) inch) shall not require bonding. (4-2-08)

(4) Electrical Equipment. Metal parts of electrical equipment associated with the pool water circulating system, including pump motors and metal parts of equipment associated with pool covers, including electric motors, shall be bonded. Metal parts of listed equipment incorporating an approved system of double insulation and providing a means for grounding internal nonaccessible, non-current-carrying metal parts shall not be bonded. Where a double-insulated water-pump motor is installed under the provisions of this rule, a solid eight (8) AWG copper conductor that is of sufficient length to make a bonding connection to a replacement motor shall be extended from the bonding grid to an accessible point in the motor vicinity. Where there is no connection between the swimming pool bonding grid and the equipment grounding system for the premises, this bonding conductor shall be connected to the equipment grounding conductor of the motor circuit. (4-2-08)

(5) Metal Wiring Methods and Equipment. Metal-sheathed cables and raceways, metal piping, and all fixed metal parts except those separated from the pool by a permanent barrier shall be bonded that are within the following distances of the pool: (4-2-08)

(a) Within one and five tenths (1.5) meters (five (5) feet) horizontally of the inside walls of the pool. (4-2-08)

(b) Within three and seven tenths (3.7) meters (twelve (12) feet) measured vertically above the maximum water level of the pool, or any observation stands, towers, or platforms, or any diving structures. (4-2-08)

iii. Common Bonding Grid. The parts specified in 680.26B shall be connected to a common bonding grid with a solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. Connection shall be made by exothermic welding or by pressure connectors or clamps that are labeled as being suitable for the purpose and are of stainless steel, brass, copper, or copper alloy. The common bonding grid shall be permitted to be any of the following: (4-2-08)

(1) The structural reinforcing steel of a concrete pool where the reinforcing rods are bonded together by the usual steel tie wires or the equivalent. (4-2-08)

(2) The wall of a bolted or welded metal pool. (4-2-08)

(3) A solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. (4-2-08)

(4) Rigid metal conduit or intermediate metal conduit of brass or other identified corrosion-resistant metal conduit. (4-2-08)

iv. Connections. Where structural reinforcing steel or the walls of bolted or welded metal pool structures are used as a common bonding grid for nonelectrical parts, the connections shall be made in accordance with 250.8. (4-2-08)

v. Pool Water Heaters. For pool water heaters rated at more than fifty (50) amperes that have specific instructions regarding bonding and grounding, only those parts designated to be bonded shall be bonded, and only those parts designated to be grounded shall be grounded. (4-2-08)

**02. Availability.** This document is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642. (4-2-08)

**IDAPA 07 - DIVISION OF BUILDING SAFETY**

**07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING**

**DOCKET NO. 07-0205-0901**

**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 October 21, 2009.

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 current rule relating to the plumbing journeyman exam does not provide specific requirements that will fulfill the practical portion of the exam. The rule only states the exam grade is based on "practical work on a job in progress." This current standard makes it difficult to determine what type of work satisfies the exam requirement. It also makes it difficult to apply a uniform standard of grading across all examiners to determine if the examiner possesses the minimum skill and competencies necessary for entry level plumbers. The proposed rule will outline the specific skills that shall be tested as part of the journeyman plumbing practical exam.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 18th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0205-0901**

**012. JOURNEYMAN.**

**01. Qualifications for Journeyman Plumber.** An applicant for a journeyman plumber's license must have at least four (4) years experience as an apprentice making plumbing installations under the constant on-the-job supervision of a qualified journeyman plumber, as provided by Section 54-2611, Idaho Code. Pipe fitting will not be accepted as qualifications for a journeyman plumber's license. The first step in obtaining a journeyman certificate of competency is to submit an application for examination and license. The application must be accompanied by proof the applicant has completed the minimum of four (4) years experience in the trade as provided in Section 011 of these rules. Exhibition of a current license or photostatic copy of it from another jurisdiction may be accepted as proof of experience. The examination fee shall be as prescribed by Section 54-2614, Idaho Code, and must accompany the application. (8-25-88)

**02. Examination.** The journeyman examination grade is based on answers to written questions and practical work performed on a job in progress after successful completion of the written work. Time allowed for the written examination is four (4) hours. A passing grade is required on the written examination. The practical ~~work~~ portion of the exam shall consist of work performed in both a public and private scope, and must pass with no violations. The criteria for each application are as follows: (8-25-88)( )

**a. Public Application:** Rough-in six (6) different fixtures consisting of a water closet, urinal, lavatory with carriers, floor sink, floor drain with trap primer, water heater, multi-level installation, and silver soldering. Pipe the DWV system using copper pipe and fittings. ( )

**b. Private Application:** Rough-in five (5) different fixtures consisting of a water closet, tub or shower, lavatory, kitchen sink/garbage disposal/dishwasher combination, and a clothes washer standpipe. Piping DWV system using ABS or PVC pipe and fittings. Pipe the water distribution system using plastic pipe and brass fittings. ( )

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING**  
**DOCKET NO. 07-0205-0902**  
**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 54-2605(1) and 54-2617, 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 October 21, 2009.

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:

In 2009, Section 54-2606, Idaho Code, was amended to provide the Idaho Plumbing Board with the authority to establish continuing education requirements for journeyman and contractor plumbers. Currently, no rules provide for specific requirements regarding continuing education. Advancements in technology and changing job responsibilities may require a plumber to update their knowledge and skills consistent with any new developments in the plumbing profession. Continuing education helps to assure the plumbing community and the public that an individual is qualified by knowledge and skills to work in the trade. This rule change would establish the specific continuing education requirements that journeyman and contractor plumbers must fulfill within specified timeframes in order to renew their certificate of competency in accordance with Section 54-2617, Idaho Code. It also requires the approval of courses of instruction and instructors by the Division of Building Safety.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 18th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0205-0902**

**016. CERTIFICATES OF COMPETENCY -- ISSUANCE, RENEWAL, EXPIRATION, REVIVAL -- FEES.**

**01. Issuance.** Certificates of competency shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the individual to whom the certificate is issued and allows for renewals every three (3) years. (4-6-05)

**a.** Certificates of competency shall be issued for a period of no less than one (1) year and no more than three (3) years. For example: a qualified applicant who applies for a certificate of competency in August of year one (1) but whose birthday will not occur until March of year two (2) shall be issued a certificate of competency renewable on the anniversary of the applicant's birthdate. (4-6-05)

**b.** The fee for issuance of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

**02. Renewal.** Certificates of competency shall be renewed in such a manner as will achieve a staggered system of certificate renewal using the birthdate of the individual to whom the certificate is issued as the expiration date. (4-6-05)

**a.** Certificates of competency shall be renewed for a period of no less than one (1) year and no more than three (3) years. (4-6-05)

**b.** The fee for renewal of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

**c.** Continuing Education. The Idaho Plumbing Board will establish criteria for approval of instruction and instructors and courses and instructors will be approved by the Plumbing Bureau. Proof of completion of the following continuing education requirements must be submitted to the Plumbing Bureau prior to, or with the application for, licensure renewal by any licensee in order to renew a journeyman or contractors plumbing license. ( )

**i.** Journeyman must complete eight (8) hours of continuing education for every three-year license cycle, or complete an exam administered by the Division. Of the required eight (8) hours, four (4) hours must be plumbing code update related and the other four (4) hours may be industry related training. ( )

**ii.** Contractors must complete sixteen (16) hours of continuing education for every three-year license cycle. Hours accrued obtaining journeyman education may be applied toward this requirement whenever applicable. ( )

**03. Expiration - Revival.** (4-6-05)

**a.** Certificates that are not timely renewed will expire. (4-6-05)

**b.** A certificate that has expired may be revived within twelve (12) months of its expiration by submitting a completed application and paying the same fee as for an initial certificate and meeting all other certification requirements. (4-6-05)

**c.** Revived certificates shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the applicant to achieve a staggered system of renewal. (4-6-05)



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

### **07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING**

**DOCKET NO. 07-0205-0903**

#### **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 54-2605(1) and 54-2614A, 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 October 21, 2009.

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:

In the 2009 legislative session, amendment was made to Section 54-2614A, Idaho Code, whereby the validity of a plumbing apprentice registration was extended from one (1) year to five (5) years and a plumbing specialty apprentice registration was extended from one (1) year to three (3) years. The current rule requires amendment in order to come into alignment with these statutory changes. Additionally, this rule will clarify that verification by the Division of employment and participation in an instructional program is not required to maintain an apprentice registration; but rather, proof of completion of the required number of employment and instructional hours will be necessary to be eligible to sit for the journeyman examination. The proposed rule will require each apprentice and specialty apprentice to register for a period of five (5) and three (3) years respectively, and eliminate the requirement that an apprentice be employed and enrolled in an instructional program in order for the registration to be valid. Instead, the rule will provide that evidence of completion of the required number of employment and instructional hours must be provided to the Division in order for an apprentice to be eligible to sit for the journeyman exam.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0205-0903

**011. APPRENTICE REGISTRATION.**

The minimum age for any apprentice shall be sixteen (16) years. All apprentices shall be registered with the Division- and shall pay ~~the~~ registration fee ~~shall be~~ as prescribed by Section 54-2614, Idaho Code. No examination is required. ~~In order to maintain registration properly, a~~ An individual must be working at the trade under the constant on-the-job supervision of a journeyman and in the employ of a contractor. ~~The~~ Any apprentice who desires to sit for the journeyman exam must also be enrolled and active in complete an Idaho Plumbing Board-approved related ~~training class~~ course of instruction for four (4) years, and work for a total of four (4) years, defined as a minimum of eight thousand (8,000) hours work experience prior to the date of the exam. Unless prior approval has been granted by the Plumbing Bureau, the apprentice must complete the required course work sequentially: year one (1) must be completed prior to beginning year two (2); year two (2) must be completed prior to beginning year three (3); and year three (3) must be completed prior to beginning year four (4). A minimum of one hundred forty-four (144) hours of classroom or other Idaho Plumbing Board-approved instruction time per school year is required. A grade average of seventy percent (70%) must be maintained in these courses. Upon completion of apprenticeship training, the apprentice must obtain a certificate of completion, or a letter signed by the chairman of his apprenticeship committee, and attach the certificate or letter to his application for a journeyman license. In order to maintain registration, the apprentice shall renew his registration ~~annually in the month of his initial registration. The renewal fee shall be as prescribed by~~ accordance with Sections 54-2614 and 54-2614A, Idaho Code. (4-6-05)( )

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

### **07.03.01 - RULES OF BUILDING SAFETY**

**DOCKET NO. 07-0301-0901**

#### **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 39-4109, 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 October 21, 2009.

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:

Section 39-4109, Idaho Code, provides the Building Code Board with the authority to adopt specified building codes via administrative rule. Amendments to Section 39-4109 during the 2009 legislative session provide the Board with the authority to amend the adopted codes pursuant to a negotiated rulemaking process. The rules currently adopt the 2006 editions of the building codes and need to be updated to reflect the most recent 2009 editions of the codes. Additionally, the Board's renewed amending authority is allowing it to make amendments to the building codes that since 2002 it has been unable to make. The rule would adopt the 2009 editions of the International Building Code, International Residential Code, the International Energy Conservation Code, and the International Existing Building Code, with specified amendments thereto as adopted by the Board through the negotiated rulemaking process.

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

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-0901**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

Under the provisions of Section 39-4109, Idaho Code, the following codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or <http://www.iccsafe.org>. ~~(5-8-09)~~( )

**01. International Building Code.** 2006~~9~~ Edition. ~~(5-8-09)~~( )

**02. International Residential Code.** 2006~~9~~ Edition. ~~(5-8-09)~~( )

**a.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. ( )

**b.** IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance, and replace with the following:

<b>Minimum Fire Separation Distance</b>	
<u>Walls (fire-resistance rated):</u>	<u>≤ Three (3) Feet</u>
<u>Walls (not fire-resistance rated):</u>	<u>≥ Three (3) Feet</u>
<u>Projections (fire-resistance rated):</u>	<u>≤ Three (3) Feet</u>
<u>Projections (not fire-resistance rated):</u>	<u>≥ Three (3) Feet</u>

( )

**c.** Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: Exception: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. ( )

**d.** Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where a two-hour fire-resistance rated wall is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. ( )

**e.** Delete IRC section R313.2. ( )

**f.** Delete IRC section R322.1.10. ( )

**g.** Delete IRC section R322.2.2 paragraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm<sup>2</sup>) for each square foot (0.093 m<sup>2</sup>) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of

the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. ( )

**03. International Existing Building Code.** 2006~~2~~ Edition. (~~5-8-09~~)( )

**04. International Energy Conservation Code.** 2009 Edition. ( )

**05. References to Other Codes.** Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. ( )

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

### **07.03.01 - RULES OF BUILDING SAFETY**

**DOCKET NO. 07-0301-0902**

#### **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 39-4109, 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 October 21, 2009.

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:

Section 39-4109, Idaho Code, provides the Building Code Board with the authority to adopt specified building codes via administrative rule. The rules currently adopt the 2006 editions of the building codes and need to be updated to reflect the most recent 2009 editions of the codes. Additionally, the American Recovery and Reinvestment Act (federal stimulus legislation) includes funding for states to build energy efficient buildings. To receive that funding, Idaho has provided assurances to the federal government that it will adopt the 2009 International Energy Conservation Code. The rule would adopt the 2009 edition of the International Energy Conservation Code with any amendments thereto as adopted by the Board through the negotiated rulemaking process.

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

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-0902**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

Under the provisions of Section 39-4109, Idaho Code, the ~~following~~ codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or <http://www.iccsafe.org>. ~~(5-8-09)~~( )

- 01. International Building Code.** 2006 Edition. (5-8-09)
- 02. International Residential Code.** 2006 Edition. (5-8-09)
- 03. International Existing Building Code.** 2006~~9~~ Edition. ~~(5-8-09)~~( )
- 04. International Energy Conservation Code.** 2009 Edition. ( )

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

### **07.03.01 - RULES OF BUILDING SAFETY**

**DOCKET NO. 07-0301-0903**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-356 and 67-2601A, 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 October 21, 2009.

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:

A new section of the Idaho Code codified at Section 33-356 was passed by the legislature in 2009, which provides financial incentives for school districts to use integrated design and fundamental commissioning building practices in the construction of school building facilities. Pursuant to that statute, the administrator of the Division of Building Safety is required to promulgate rules which provide guidance and technical information for school districts, as well as rules governing an annual optimization review to ensure optimal energy performance of building systems. The rule would provide notice of the availability of guidance, educational, and technical support to school districts to implement the processes of integrated design and fundamental commissioning, as well as the availability of a list of all third party commissioning agents in the state; provide for a process of performing and certifying the annual optimization review to ensure energy efficiency; and provide for certifications regarding qualification of schools for the building replacement value calculation.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164



**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-0903**

**038. INTEGRATED DESIGN AND FUNDAMENTAL COMMISSIONING.**

**01. Definitions.** The following definitions are intended to supplement, and should be read in conjunction with the definitions contained in Section 33-356, Idaho Code. ( )

**a. Fundamental Commissioning.** A quality-focused process for enhancing the delivery of a project. It makes use of a qualified third party employed directly by the building owner. ( )

**b. Integrated Design.** Integrated design refers to a collaborative design effort in which each of the individual architectural or engineering professionals focuses on the whole building approach, with an emphasis on optimizing the building's performance, environmental sustainability, and cost-savings, to include climate, use, loads and systems resulting in a more comfortable and productive environment, and a building that is more energy-efficient than would be realized using current best practices. ( )

**02. Technical and Educational Information.** Technical and educational information related to integrated design and fundamental commissioning in the form of the American Institute of Architects Integrated Project Delivery Guide; Portland Energy Conservation, Inc. (PECI) Commissioning Guides; ASHRAE Guideline 0-2005-The Commissioning Process; and the Northwest Energy Efficiency Alliance Integrated Design Special Focus on Energy Performance Guide is available at the Division office locations including 1090 E. Watertower St., Meridian, Idaho 83642, and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. A building commissioned under the prescriptive approaches defined by any of the above-named national organizations is deemed to have completed the Fundamental Commissioning process. ( )

**03. Commissioning Agents.** The Division has compiled and made available for public examination a list of all known third party building commissioning agents in Idaho and its contiguous states. The Division has ensured that all such commissioning agents appearing on this list have been certified by the Building Commissioning Association (BCA) or other similar certifying entity. ( )

**04. Annual Optimization Review.** ( )

**a.** A public school building which qualifies for the school building replacement value calculation pursuant to Section 33-356(5)(a), Idaho Code, shall undergo an annual optimization review each year following the first year of operations that the involved school district seeks to qualify such building for the building replacement value calculation. ( )

**b.** The systems within a building required to undergo annual optimization review, as well as any relevant measuring criteria for such systems, shall be formulated by the third party commissioning agent that performs the initial fundamental commissioning. The school district shall be provided with a written report from the commissioning agent identifying the systems which will be subject to the annual optimization review along with any other requirements. ( )

**c.** The report required above in Paragraph 038.03.b. of these rules shall include, but is not limited to, at least the following: ( )

**i.** Verification that the heating, ventilation, and air conditioning (HVAC) controls, dampers, valves, sensors and other equipment used to control the system are functioning as they were at the commissioning of the building. ( )

**ii.** Verification that the lighting controls are functioning as they were at the commissioning of the building. ( )

**iii.** The requirement that any changes made to any of the controls contained on the agent's list after the

initial commissioning be re-set back to the commissioned settings unless it can be demonstrated that the new settings result in greater energy efficiency. ( )

**d.** The annual optimization review shall be performed by persons qualified to make the required determinations and adjustments. ( )

**e.** The school district shall submit to the Division written verification indicating that the systems identified by the commissioning agent, including those identified in this Section are functioning as they were at the initial commissioning. Such written verification shall also identify the persons performing the optimization and their qualifications. ( )

**05. Commissioning Anniversary Date.** The date upon which the commissioning agent provides the school district with the required written report described in Paragraph 038.03.b. of these rules shall be the commissioning anniversary date for purposes of this Section. If a school district seeks to qualify a building for the building replacement value calculation, the annual optimization review shall be performed within thirty (30) days of the annual commissioning anniversary date following the first year the building is in operation. The written verification required by Paragraph 038.03.e. of these rules shall be received by the Division not later than sixty (60) days after the annual commissioning anniversary date. ( )

**06. Fundamental Building Commissioning Requirements.** ( )

**a.** School districts seeking to qualify a building for the building replacement value calculation shall engage a building commissioning agent. ( )

**b.** The commissioning agent must document the owner's requirements for each commissioned system in the facility. All HVAC and controls systems, duct work and piping, renewable and alternative technologies, lighting controls and day lighting, waste heat recovery, and any other advanced technologies incorporated in the building must be commissioned. Building envelope systems must also be verified. The owner's requirements for these systems may include efficiency targets and other performance criteria such as temperature and lighting levels that will define the performance criteria for the functional performance testing that occurs prior to acceptance. ( )

**c.** The commissioning agent shall include commissioning requirements in the project construction documents. This includes the scope of commissioning for the project, the systems to be commissioned, and the various requirements related to schedule, submittal reviews, testing, training, O & M manuals, and warranty reviews. ( )

**d.** The commissioning agent shall develop and utilize a commissioning plan. This plan must include an overview of the commissioning process for the project, a list of commissioned systems, primary commissioning participants and their roles, a communication and management plan, an outline of the scope of commissioning tasks, a list of work products, a schedule, and a description of any commissioning testing activities. ( )

**e.** The commissioning agent must submit a report to the owner once the commissioning plan has been executed. ( )

**0389. -- 999. (RESERVED).**

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

### **07.03.03 - RULES FOR MODULAR BUILDINGS**

**DOCKET NO. 07-0303-0901**

### **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 39-4302, 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 October 21, 2009.

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:

Section 39-4304A, Idaho Code, was approved by the legislature in 2009 and added to the modular building statutory scheme. Section 39-4304A provides authority for the administrator to appoint qualified modular building inspectors to assist in the enforcement of Title 39, Chapter 43, Idaho Code. One of the enumerated requirements for each inspector is that they be certified as an inspector by an organization designated in administrative rule by the Modular Building Advisory Board. Currently, no such administrative rule exists which designates approved certifying organizations. The proposed rule would identify the organizations designated by the Board from which inspectors may obtain certification as a qualified inspector. Those organizations would include the National Certification Program Construction Code Inspector program (NCPCCI), the National Inspection Testing Certification program (NITC), the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC).

**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:

The use of multi-hat inspectors in the factory setting will result in significant savings to the Division. Once fully implemented, predicated on FY2008 volume, DBS projects a net savings of forty thousand dollars (\$40,000) or approximately ten percent (10%) of personnel costs involved in the inspection effort.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys, Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0303-0901**

**032. MODULAR BUILDINGS.**

**01. Enforcement and Administration.** The Administrator shall administer and enforce all the provisions of these rules. Any officer, agent, or employee of the Division is authorized to enter any premises during any normal or operational hours where Modular Buildings are manufactured for the purpose of examining any records pertaining to quality control and inspection and may inspect any such units, equipment, or installations to insure compliance with the provisions of these rules and codes enumerated in Title 39, Chapters 41 and 43, Idaho Code. When it becomes necessary, he may require that a portion or portions of such Modular Building units be removed in order that an inspection may be made to determine compliance. Every manufacturer of Modular Buildings shall obtain prior approval and an Insignia for each Modular Building unit to be installed in the state of Idaho. (3-26-08)

**02. Inspections.** (3-26-08)

**a. Inspections at Manufacturing Plants.** The Division shall conduct inspections at the manufacturing plant to determine compliance with the provisions of these rules and with codes adopted by Title 39, Chapter 41, Idaho Code, and Title 54, Chapters 10, 26, and 50, Idaho Code. (3-26-08)

**b. In-Plant Inspections.** Due to the repetitive nature of the manufacturing process, the required inspections outlined in the International Building Code or International Residential Code may not be required if, in the opinion of the Division, compliance can be obtained by periodic inspections. The Division shall conduct periodic unannounced inspections at any manufacturing site to review any or all aspects of a manufacturer's production and inspectional control procedures. Each unit, however, shall be inspected at least once during the course of production for compliance with the adopted standards. No unit manufactured to be installed in the state of Idaho will be shipped from the point of manufacture without inspection and attached Insignia. (3-26-08)

**c. Field Inspections.** All existing Modular Buildings to be installed in the state of Idaho not bearing the Division's Insignia shall not be used or occupied until required Idaho Insignia has been issued by the Division and properly affixed in accordance with these rules. Applicants for Insignia shall obtain permits, plan approvals, and inspections as required by these rules. (3-26-08)

**d. Qualifications of Inspectors.** All inspectors performing inspections of modular buildings must be properly certified for the type of inspection being conducted. The Modular Board recognizes certifications granted through the National Certification Program Construction Code Inspector program (NCPCCI), the National Inspection Testing Certification program (NITC), the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC). Certifications shall be current and of the proper classification for the structure or subsystem being inspected. ( )

**03. Installation Inspection.** In order to complete the installation of the Modular Building, approval and inspection of said installation by the enforcement agency having jurisdiction over the site location shall be required. (3-26-08)

**04. Field Technical Service.** Any person may request field Technical Service and requests for such service shall be submitted to the Division in writing. (3-26-08)

**05. Local Enforcement Agencies.** (3-26-08)

**a. Rights of Local Enforcement Agency.** A local enforcement agency shall have the right to require a complete set of plans and specifications approved by the Division for each Modular Building to be installed within its jurisdiction, to require that all permits be obtained before delivery of any unit to a Building Site. After leaving the manufacturing facility, future alterations or conversions of Division approved Modular Buildings shall be field inspected by the local unit of government having jurisdiction. (3-26-08)

**b.** Limitations of Rights of Local Enforcement Agency. A local enforcement agency shall not have the right to: open for inspection any Modular Building or component bearing an Insignia to determine compliance with any codes or ordinances; require by ordinance or otherwise that Modular Buildings meet any requirements not equally applicable to on-site construction; or to charge permit or plan review fees for any portion of the structure prefabricated or assembled at a place other than the Building Site. (3-26-08)

**06. Insignia.** (3-26-08)

**a.** Required Insignia. Each Modular Building section shall bear a Division Insignia prior to leaving the manufacturing facility. Assigned Insignia are not transferable and are void when not affixed as assigned. All such voided Insignia shall be returned to, or may be confiscated by, the Division. Insignia remain the property of the Division and may be confiscated in the event of violation of conditions of approval. Assigned Insignia affixed in the field shall be under the direction of the Division's authorized agent. (3-26-08)

**b.** Insignia Location. Insignias shall be placed on the front, left-hand side of the building. (3-26-08)

**c.** Serial Number. Each Modular Building shall bear a legible identifying serial number, which shall include the state of manufacture. Each section of a multiple Modular Building shall have the same identifying serial number followed by a numerical sequence identifier or a letter suffix, or both. Characters for serial numbers shall be three-eighths (3/8) inch minimum height. Numbers shall not be stamped into a hitch assembly or draw bar. (3-26-08)

**d.** Data on Insignia. The date of manufacture, showing month, week, and year will be shown on the Insignia. Such data will be provided by the manufacturer on the application for Insignia. (3-26-08)

**07. Reciprocal Agreements.** The provisions for Insignia of compliance as specified in a written and signed reciprocal agreement between the Division and any other state shall take precedence over the provisions of these rules. Where there is evidence that the in-plant inspection controls in out-of-state plants within states having reciprocal agreements with the state of Idaho are not being maintained for units to be placed in Idaho, the Division reserves the right to make out-of-state inspections, and fees for such inspection as set forth in these rules shall be paid by the manufacturer. (3-26-08)

## IDAPA 07 - DIVISION OF BUILDING SAFETY

### 07.03.11 - RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

DOCKET NO. 07-0311-0901

#### 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 44-2104 and 44-2107, 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 October 21, 2009.

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:

Section 44-2107, Idaho Code, provides the Administrator authority to impose civil penalties on those who violate provisions of Title 21, Chapter 44, Idaho Code, or IDAPA 07.03.11, Rules Governing Manufactured/Mobile Home Industry Licensing; however, the current rules do not contain any provisions regarding such civil penalties. Additionally, the term manufactured home "dealer" has been replaced with the term "retailer" in Title 21, Chapter 44, Idaho Code, to reflect a more accurate designation within the industry. The proposed rules will maintain consistent application of that term. The proposed rule will provide for civil penalties to address individuals who are in violation of Idaho's manufactured housing industry licensing laws and rules. The proposed rules will also more accurately identify those who sell manufactured homes as "retailers" instead of "dealers."

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

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys, Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986 / Fax: (208) 855-2164

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0311-0901

**000. LEGAL AUTHORITY.**

~~In accordance with Section 44-2102, Idaho Code, the administrator of the Idaho Division of Building Safety is and the Idaho Manufactured Housing Board are~~ authorized to promulgate rules necessary to implement the provisions of Title 44, Chapters 21 and 22, Idaho Code, including the establishment of a mandatory statewide manufactured home setup code, as well as to define and prohibit deceptive practices, and to establish administrative penalties.

~~(3-24-05)(\_\_\_\_\_)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. -- 009. (RESERVED).**

**0104. DEFINITIONS.**

For the purposes of these rules, the following terms will be used, as defined below: (5-25-94)

- 01. Administrator.** The administrator of the Division of Building Safety of the state of Idaho. (3-24-05)
- 02. Board.** The Manufactured ~~Home Advisory~~ Housing Board. The composition and duties of the Board are set forth at Section 44-2104, Idaho Code. ~~(5-25-94)(\_\_\_\_\_)~~
- 03. Bond.** The performance bond required by Section 44-2103, Idaho Code. (5-25-94)
- 04. Branch Office.** An enclosed structure accessible and open to the public, at which the business of the manufactured/mobile home ~~dealer~~ retailer is conducted simultaneously with and physically separated from his principal place of business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the ~~dealer~~ retailer. ~~(3-24-05)(\_\_\_\_\_)~~
- 05. Business.** Occupation, profession, or trade. (5-25-94)
- 06. Deceptive Practice.** Intentionally publishing or circulating any advertising concerning mobile or manufactured homes which:
  - a.** Is misleading or inaccurate in any material ~~particular~~ respect; ~~(5-25-94)(\_\_\_\_\_)~~
  - b.** Misrepresents any of the products or services sold or provided by a manufacturer, manufactured/mobile home ~~dealer~~ retailer, salesman, or service ~~or~~ installation company. ~~(3-24-05)(\_\_\_\_\_)~~
- 07. Division.** The Division of Building Safety for the state of Idaho. (5-25-94)
- 08. Installer.** A person who owns a business which installs ~~a~~ manufactured/mobile homes at the sites where ~~it is they are~~ to be used for occupancy occupied by the consumer. The term does not include the purchaser of a manufactured/mobile home or a manufactured/mobile home ~~dealer~~ retailer who does not install manufactured/mobile homes. A ~~dealer~~ retailer who does install manufactured/mobile homes is an installer. The term also does not include concrete contractors or their employees. ~~(3-24-05)(\_\_\_\_\_)~~
- 09. Installation.** The term includes "setup" and is the complete operation of fixing in place a manufactured/mobile home for occupancy. (5-25-94)
- 10. Manufactured Home.** A structure constructed according to HUD manufactured home construction and safety standards, transportable in one (1) or more sections, which:
  - a.** In the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length; or (5-25-94)

- b. When erected on site, is three hundred twenty (320) or more square feet in size; and (5-25-94)
- c. Is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and (5-25-94)
- d. Includes the plumbing, heating, air conditioning, and electrical systems contained therein; (5-25-94)
- e. Except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401. (5-25-94)
- 11. Manufactured Home ~~Dealer~~ Retailer.** Except as otherwise provided in these rules: ~~(3-24-05)~~(\_\_\_\_)
- a. Any person engaged in the business of selling or exchanging new and used units; or (5-25-94)
- b. Any person or who buys, sells, lists, or exchanges three (3) or more new and used units in any one (1) calendar year. (5-25-94)
- 12. Manufactured/Mobile Home Salesman.** Except as otherwise provided in these rules: Any person employed by a manufactured/mobile home dealer for a salary, commission, or compensation of any kind to sell, list, purchase, or exchange or to negotiate for the sale, listing, purchase, or exchange of units. (3-24-05)
- 13. Manufactured/Mobile Home Service Company.** Any person who owns or is the responsible managing employee of a business that has grossed more than two thousand five hundred dollars (\$2,500) in any one (1) year from the service of manufactured or mobile homes. The term does not include a manufactured/mobile home ~~dealer~~ retailer or owner. The term also does not include licensed electrical or plumbing contractors, carpet and vinyl installers, painting or concrete contractors, tape and texture installers, cabinet installers, public utilities, or the employees of any of the occupations listed in this sentence. Finally, the term does not include manufactured/mobile home installers. ~~(5-25-94)~~(\_\_\_\_)
- 14. Manufacturer.** A manufacturing facility which has been certified by the U.S. Department of Housing and Urban Development (HUD) to construct prefabricated manufactured homes in accordance with the Manufactured Housing Construction Safety Standards Act of 1974. (5-25-94)
- 15. Mobile Home.** A structure similar to a manufactured home, but built to a mobile home code prior to June 15, 1976, the date of enactment of the Federal Manufactured Housing and Safety Standards Act (HUD Code). (5-25-94)
- 16. Person.** A natural person, corporation, partnership, trust, society, club, association, or other organization. (5-25-94)
- 17. Principal Place of Business.** An enclosed structure accessible and open to the public at which each of the following requirements are met: (5-25-94)
- a. The business of the manufactured/mobile home ~~dealer~~ retailer is lawfully conducted here; ~~(3-24-05)~~(\_\_\_\_)
- b. The office or offices of the ~~dealer~~ retailer is or are located here; ~~(3-24-05)~~(\_\_\_\_)
- c. The public may contact the ~~dealer~~ retailer or salesman here; ~~(3-24-05)~~(\_\_\_\_)
- ~~d. The books and other records of the business of the dealer shall be kept and maintained; and~~ ~~(3-24-05)~~



**ed.** The greatest portion of the ~~dealer's~~ retailer's business is conducted here. The books and other records of a ~~dealer~~ retailer must be kept and maintained at the ~~dealer's~~ retailer's principal place of business and be open to inspection during normal business hours by any authorized agent of the Division. Moreover, there shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the ~~dealer~~ retailer. (3-24-05)(\_\_\_\_)

**18. Responsible Managing Employee (RME).** The person designated by the employer to supervise other employees, either personally or through others. (5-25-94)

**19. Service.** Service includes, but is not limited to, the installation or repair of awnings, roofing, skirting, siding, remodeling, material alterations, attached carports or decks, on or in manufactured/mobile homes. (5-25-94)

**20. Unit.** A mobile or manufactured home. (5-25-94)

**21. Used Manufactured Home or Mobile Home.** A manufactured home or mobile home, respectively, which has been: (5-25-94)

**a.** Sold, rented, or leased and occupied prior to or after the sale, rental, or lease; or (5-25-94)

**b.** Registered with or been the subject of a certificate of title issued by the Idaho Department of Transportation or the appropriate authority of any state, the District of Columbia, or foreign state or country. (5-25-94)

~~005.~~—**011. (RESERVED).**

**012. LICENSE REQUIRED.**

It shall be unlawful to engage in business as a manufacturer, manufactured/mobile home ~~dealer~~ retailer, resale broker, manufactured/mobile home salesman, responsible managing employee, or manufactured/mobile home service company ~~or~~ installer without being duly licensed by the Division pursuant to Title 44, Chapter 21, Idaho Code, and these rules. No issued licenses are transferable. (3-24-05)(\_\_\_\_)

**01. Minimum Age Requirement.** No license will be issued to a person under eighteen (18) years of age at the time of license application. (5-25-94)

**02. Designated License Holder.** Any applicant for a license under these rules who is not a natural person must designate a natural person to be license holder and represent the corporation, partnership, trust, society, club, association, or other organization for all licensing purposes under these rules including, but not limited to, testing and education. (3-24-05)

**a.** The authorization to act as designated license holder must be in writing, signed by the applicant and the person designated, and filed with the Division along with the application. (5-25-94)

**b.** Any person designated under Subsection 012.02 of these rules shall represent one (1) applicant only, and shall immediately notify the Division in writing if his working relationship with the applicant has been terminated. The license will be issued in the name of the designated license holder with the name of the organization he represents also noted on the license. The license holder shall be considered by the Division to be the licensee, even if the license holder is the designated representative of an organization. (5-25-94)

**c.** The applicant and the person designated under Subsection 012.02 of these rules agree by acceptance of the designation that the designated person shall act as agent of the applicant for all purposes under Title 44, Chapters 21 and 22, Idaho Code, and all rules promulgated thereunder. (5-25-94)

**03. Proof of License.** Proof of the existence of any license issued pursuant to these rules shall be carried upon the person of the responsible managing employee or supervisor of any installation or any person who is personally involved with the service of any manufactured/mobile home at all times during the performance of the

service or installation work. Such proof shall be furnished upon demand of any person. Moreover, any license issued to a manufactured/mobile home ~~dealer~~ retailer, resale broker, responsible managing employee, or salesman must be posted in a conspicuous place on the business premises of the employer for whom the holder of the license is licensed. The license of a manufacturing facility or branch office shall also be posted in a conspicuous place at the location licensed. (3-24-05)(\_\_\_\_)

**04. Real Estate Brokers.** Licensed real estate brokers or real estate salesmen representing licensed real estate brokers shall not be required to obtain a license under these rules in order to sell or lease a used unit that is currently carried on the tax rolls as personal property and that otherwise falls within the exemption contained in Section 44-2102(2), Idaho Code. (3-24-05)

**05. License for Manufacturers.** In order to engage in business in the state of Idaho or to be entitled to any other license or permit required by these rules each manufacturer must be licensed by the Division. (3-24-05)

**06. License for Branch Office of Manufactured/Mobile Home ~~Dealer~~ Retailer or Resale Broker.** (3-24-05)(\_\_\_\_)

**a.** The Division shall require as a condition of licensing and bonding any information it deems necessary for each location where a manufactured/mobile home ~~dealer~~ retailer or resale broker maintains a branch office. The mere listing of manufactured/mobile homes for sale does not constitute a branch office, but the use of a mobile home park or a state sales office by a licensee for the sale or offering for sale of manufactured/mobile homes does constitute the maintenance of a branch office. A branch office manager may not manage more than one (1) branch office. (3-24-05)(\_\_\_\_)

**b.** To open a branch office, a ~~dealer~~ retailer or resale broker must: obtain a license from the Division to operate the branch office; and provide for direct supervision of the branch office, either by himself or by employing a branch office manager. (3-24-05)(\_\_\_\_)

**c.** If the branch office is closed, the ~~dealer~~ retailer or resale broker shall immediately deliver the license to the Division. (3-24-05)(\_\_\_\_)

**07. License to Engage in Business as Manufactured/Mobile Home ~~Dealer~~ Retailer, Resale Broker, Manufacturer, Service Company, or Installer; Application; Bond; Issuance, Expiration, and Renewal.** (3-24-05)(\_\_\_\_)

**a.** Applications for a manufacturer's, ~~dealer's~~ retailers, resale brokers, service company or installer's license must be filed upon forms supplied by the Division, and the applicant shall furnish: (3-24-05)(\_\_\_\_)

**i.** Any proof the Division may deem necessary that the applicant is a manufacturer, ~~dealer~~ retailer, resale broker, service company or installer; (3-24-05)(\_\_\_\_)

**ii.** Any proof the Division may require that the applicant has a principal place of business; (5-25-94)

**iii.** Any proof the Division may require of the applicant's good character and reputation and of his fitness to engage in the activities for which the license is sought; (5-25-94)

**iv.** In the case of a ~~dealer~~ retailer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise dealer for the make concerned; (5-25-94)(\_\_\_\_)

**v.** A reasonable fee and proof of bond fixed by rule; and (5-25-94)

**vi.** In the case of a ~~dealer~~ retailer, resale broker, service company, or installer, proof of passing the examination required by these rules. (3-24-05)(\_\_\_\_)

**b.** Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

c. Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

d. If any installer or service company's working relationship with his employer is terminated, the employer shall immediately deliver the license of the terminated installer or service company to the Division. (5-25-94)

**08. License for Manufactured/Mobile Home Salesman. (5-25-94)**

a. A person shall not act as a salesman in this state for a person who sells or leases any manufactured/mobile home subject to the provisions of Title 44, Chapters 21 or 22, Idaho Code, without having first received a license from the Division. Before issuing such a license, the Division shall require: (1) an application, signed by the applicant and verified by his employer, stating that he desires to act as a salesman and providing his residential address and the name and address of his employer; (2) a statement as to whether any previous application of the applicant has been denied or license revoked; (3) payment of the license fee established by rule; and (4) any other relevant information the Division deems necessary. (5-25-94)

b. Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

c. Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

d. A person licensed pursuant to Subsection 012.08 of these rules shall not engage in sales activity other than for the account of, or for and on behalf of, a single employer who is a licensed ~~dealer~~ retailer or resale broker. (~~3-24-05~~)(\_\_\_\_)

e. If a salesman ceases to be employed by a licensed ~~dealer~~ retailer or resale broker, his license to act as a salesman is automatically suspended and his right to act in that capacity immediately ceases. He shall not engage in such activity until reemployed by a licensed ~~dealer~~ retailer or resale broker. If the salesman's working relationship with his employer is terminated, the employer shall immediately deliver his license to the Division. (~~3-24-05~~)(\_\_\_\_)

**09. License for Responsible Managing Employee. (5-25-94)**

a. A person shall not act as a responsible managing employee for an installer or service company without first having been issued a license by the Division. Before issuing such a license the Division shall require: (~~5-25-94~~)(\_\_\_\_)

i. An application, signed by the applicant and verified by his employer, stating that he desires to act as a responsible managing employee and providing his residential address and the name and address of his employer; (5-25-94)

ii. A statement as to whether any previous application of the applicant has been denied or license revoked; (5-25-94)

iii. Payment of the license fee established by rule; and (5-25-94)

iv. Any other relevant information the Division deems necessary. (5-25-94)

b. Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

c. Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

d. A person licensed pursuant to Subsection 012.09 of these rules shall not engage in such activity

other than for the account of, or for and on behalf of, a single employer who is a licensed service company or installer. (5-25-94)

e. If a responsible managing employee ceases to be employed by an installer or service company, his license to act as a responsible managing employee is automatically suspended and his right to act in that capacity immediately ceases. He shall not engage in such activity until reemployed by a licensed installer or service company. (~~5-25-94~~)( )

f. If the responsible managing employee's working relationship with his employer is terminated, the employer shall immediately deliver his license to the Division. (5-25-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. EXAMINATION OF APPLICANT FOR LICENSE.**

**01. Required Examinations.** Effective January 1, 1995, the Division shall require a written examination of each applicant for a license, other than a license being renewed, as a manufactured/mobile home ~~dealer~~ retailer, resale broker, service company or installer. The examination shall include, but may not be limited to, the following subjects: Title 44, Chapters 21 and 22, Idaho Code; these rules and IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations"; and the Manufactured Housing Construction Safety Standards Act of 1974. To avoid the requirement of an examination and be considered a renewal, any licensee must renew his license within ~~sixty (60) days~~ six (6) months of its expiration date. (~~3-24-05~~)( )

**02. Approval of Examination and Grade.** Examinations for all classifications under these rules shall be approved by the Division and the Board. No license shall be issued unless the applicant receives a final grade of seventy percent (70%) or higher. (5-25-94)

**03. Retesting.** If an applicant for a license fails the written examination offered by the Division twice, he must wait at least thirty (30) days before retesting. (5-25-94)

**016. DISCIPLINARY ACTION AGAINST LICENSEES.**

The Division may deny, suspend, refuse to renew, or revoke any license issued under Title 44, Chapter 21, Idaho Code, or these rules or reissue the license subject to reasonable conditions upon any of the following grounds: (3-24-05)

**01. Violation of Rules and Statutes.** For any willful or repeated violation of these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," or Title 44, Chapters 21 or 22, Idaho Code. (~~3-24-05~~)( )

**02. Failure to Have Principal Place of Business.** With regards only to a manufactured/mobile home ~~dealer~~ retailer or resale broker, failure of the applicant or licensee to have a principal place of business. (~~3-24-05~~)( )

**03. Revocation of License.** The revocation of the license of the employer of ~~an installer~~, a responsible managing employee; or salesman; ~~or service company~~ is grounds for the revocation of the license of the installer, responsible managing employee; or salesman; ~~or service company employee~~. (~~5-25-94~~)( )

**04. False Information.** Material misstatement in the application or otherwise furnishing false information to the Division. (5-25-94)

**05. Proof of Employment.** Failure of a salesman or applicant for licensing as a salesman to establish by proof satisfactory to the Division that he is employed by a licensed ~~dealer~~ retailer or resale broker. (~~3-24-05~~)( )

- 06. Disclosing Contents of Examination.** Obtaining or disclosing the contents of an examination given by the Division. (5-25-94)
- 07. Deceptive Practice.** The intentional publication, circulation, or display of any advertising which constitutes a deceptive practice as that term is defined in Subsection 0104.06 of these rules. (3-24-05)
- 08. Failure to Provide Business Name.** Failure to include in any advertising the name of the licensed ~~dealer~~ retailer, resale broker, service company, or installer, or the name under which he is doing business. ~~(5-25-94)~~(\_\_\_\_)
- 09. Encouraging Falsification.** Intentionally inducing an applicant or licensee to falsify his credit application. (5-25-94)
- 10. Poor Workmanship.** Performing workmanship which is grossly incompetent or repeatedly below the standards adopted by Title 44, Chapters 21 and 22, these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," the Federal Manufactured Housing and Safety Standards Act of 1974, or the latest Idaho adopted editions of the International Building Code, the National Electrical Code, the Uniform Plumbing Code, and the International Mechanical Code, then in effect. ~~(3-24-05)~~(\_\_\_\_)
- 11. Installation Supervisor Required.** Failure to have a licensed responsible managing employee personally supervise any installation or service of a manufactured/mobile home. ~~(5-25-94)~~(\_\_\_\_)
- 12. Failure of Organizations to License its Employees.** Failure of an organization to have its employees maintain any license as required by these rules. (3-24-05)
- 13. Failure to Honor Warranties.** Failure to honor any warranty or other guarantee given by ~~an~~ applicant or a licensee for construction, workmanship, or material as a condition of securing a contract, or of selling, leasing, reconstructing, improving, repairing, or installing any manufactured/mobile home, or accessory structure. ~~(5-25-94)~~(\_\_\_\_)
- 14. Revocation or Denial of License.** Revocation or denial of a license issued pursuant to these rules or an equivalent license by any other state or ~~country~~ U.S. territory. ~~(3-24-05)~~(\_\_\_\_)
- 15. Failure to Maintain Any Required License.** Failure of the licensee to maintain any other license required by any city or county of this state. (5-25-94)
- 16. Failure to Respond to Notice.** Failure to respond to a notice served by the Division as provided by law within the time specified in the notice. (5-25-94)
- 17. Failure to Permit Access to Documentary Materials.** Failure or refusing to permit access by the Division to relevant documentary materials after being requested to do so by the Division. (5-25-94)
- 18. Conviction of Misdemeanor.** Conviction of a misdemeanor for violation of any of the provisions of Title 44, Chapters 21 or 22, Idaho Code. (5-25-94)
- 19. Conviction of Felony.** Conviction or withheld judgment for a felony ~~or a crime of moral turpitude~~ in this state, any U.S. territory, or ~~any other state or~~ country. ~~(5-25-94)~~(\_\_\_\_)
- 20. Dealing with Stolen Manufactured or Mobile Homes.** To knowingly purchase, sell, or otherwise acquire or dispose of a stolen manufactured or mobile home. (5-25-94)
- 21. Violation of Permit or Inspection Requirements.** To knowingly violate any permit or inspection requirements of any city or county of this state. (5-25-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**019. FEES.**

**01. Fees for Issuance and Renewal of License.** The following fees for the issuance and renewal of a license will be charged, and no application for licensing pursuant to these rules will be accepted by the Division unless it is accompanied by the appropriate fee: (5-25-94)

**a.** Manufactured/mobile home ~~dealer's~~ retailer or resale broker's license: four hundred forty dollars (\$440). ~~Dealers~~ Retailers who are also installers will not have to pay an installer's license fee in order to hold both licenses. (~~3-24-05~~)(\_\_\_\_)

**b.** Manufacturer license: four hundred forty dollars (\$440); (3-24-05)

**c.** Manufactured/mobile home service company ~~or~~ installer license: two hundred twenty dollars (\$220); (~~3-24-05~~)(\_\_\_\_)

**d.** Manufactured/mobile home salesman's license: forty-five dollars (\$45). (3-24-05)

**e.** ~~Branch office~~ Responsible managing employee license: forty-five dollars (\$45). (~~3-24-05~~)(\_\_\_\_)

**02. Performance Bonding Requirements.** No application for licensing pursuant to these rules shall be accepted unless it is accompanied by evidence of the following performance bond: (3-24-05)

**a.** Manufacturer: twenty thousand dollar (\$20,000) bond; (5-25-94)

**b.** Manufactured/mobile home ~~dealer~~ retailer: twenty thousand dollar (\$20,000) bond; (~~5-25-94~~)(\_\_\_\_)

**c.** Manufactured/mobile home resale broker: thirty thousand dollar (\$30,000) bond; (\_\_\_\_)

**d.** ~~Dealers~~ Retailers Manufactured/mobile home service company ~~or~~ installer: five thousand dollar (\$5,000) bond. Retailers who are also installers will not be required to post an installer's bond in order to hold both licenses. (~~5-25-94~~)(\_\_\_\_)

**e.** ~~Branch office~~ Responsible managing employee. No bond. (~~5-25-94~~)(\_\_\_\_)

**03. Money or Securities Deposit in Lieu of Performance Bond.** A money or securities deposit shall be accepted by the Division in lieu of the performance bonding requirement as set forth at Title 44, Chapter 21, Idaho Code, and Subsection 019.02 of these rules, under the following circumstances: (~~7-1-96~~)(\_\_\_\_)

**a.** Any such money or securities deposit shall be in a principal sum equal to the face amount of the performance bond required for the applicable licensing category; (~~7-1-96~~)(\_\_\_\_)

**b.** Any such money deposit shall be deposited in a time certificate of deposit which provides on its face that the principal amount of such certificate of deposit shall be payable to the Division upon presentment and surrender of the instrument; (7-1-96)

**c.** Any such time certificate of deposit shall have a maturity date of one (1) year from the effective date of licensure and shall have an automatic renewal provision for subsequent years; (7-1-96)

**d.** Any such time certificate of deposit shall be provided to the Division at the time of application for licensure and shall be retained by the Division during the effective period of licensure unless otherwise expended by the Division to insure completion of the licensee's performance; (7-1-96)

**e.** Any such time certificate of deposit shall be returned to an unsuccessful applicant for licensure; (7-1-96)

f. The principal amount of any such time certificate of deposit, to the extent not otherwise expended to insure completion of the licensee's performance, shall be returned to the depositor by the Division on or before ninety (90) days subsequent to the occurrence of any of the following events: voluntary surrender or return of a license; expiration of a license; lapse of a license; or revocation or suspension of a license; and (7-1-96)

g. Any interest income earned by reason of the principal amount of the time certificate of deposit shall be the property of the licensee. (7-1-96)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. CIVIL PENALTIES.**

The following acts shall subject the violator to penalties based on the following schedule: ( )

**01. Industry Licensing.** Except as provided for by Section 44-2106, Idaho Code, any person who engages in the business of a manufacturer, retailer, resale broker, salesman, installer, service company, or responsible managing employee (RME) as defined in Section 44-2101A, Idaho Code, without being duly licensed by the Division shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**02. Deceptive Practice.** In accordance with Section 44-2106(2), Idaho Code, any retailer, resale broker, installer, salesman, service company, or RME who intentionally publishes or circulates any advertising that is misleading or inaccurate in any material respect or that misrepresents any of the products or service sold or provided by a manufacturer, retailer, resale broker, installer, service company, or RME, shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**03. Dealing with Stolen Manufactured or Mobile Homes.** In accordance with Section 44-2106(2), Idaho Code, any person who knowingly purchases, sells, or otherwise acquires or disposes of a stolen manufactured or mobile home shall be subject to a civil penalty of not more than one thousand dollars (\$1,000). ( )

**04. Failure to Maintain a Principal Place of Business.** In accordance with Section 44-2106(2), Idaho Code, any person who is a retailer or resale broker duly licensed by the Division and who fails to maintain a principal place of business within Idaho, shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ( )

**05. Violation of Rules and Statutes.** Any person who knowingly violates any of the provisions of these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," or the provisions of Title 44, Chapters 21 or 22, Idaho Code, shall be subject to a civil penalty of five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for each offense thereafter. ( )

**06. Gross Violation.** In case of continued, repeated, or gross violations of these rules or IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," a license revocation may be initiated for licensed individuals under Title 44, Chapter 21, Idaho Code. Non-licensed individuals shall be subject to prosecution by the appropriate jurisdiction under Idaho law. ( )

**07. Judicial Review.** Any party aggrieved by the final action of the Administrator shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. ( )

**0223. -- 029. (RESERVED).**

**030. MANUFACTURED HOME BUYER'S INFORMATION AND DISCLOSURE FORM.**

The Manufactured Home Buyer's Information and Disclosure Form shall be presented by manufactured home ~~dealers~~ retailers to each purchaser of a new manufactured home, and shall be executed by the ~~dealer~~ retailer and purchaser at the time the initial purchase order is signed for the sale of a new manufactured home. The form is available at the Division office. (3-30-01)( )

## IDAPA 07 - DIVISION OF BUILDING SAFETY

### 07.03.11 - RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

DOCKET NO. 07-0311-0902

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2009.

**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 44-2104 and 44-2107, 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 October 21, 2009.

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:

Currently, manufactured home retailers (dealers) and installers must provide proof of completion of industry-related education as a pre-condition to initial licensure. Current licensees must then provide proof of having completed continuing education in order to renew their licenses. These requirements have proven to be unnecessarily burdensome given the shortage of education providers and the impact of the current economy on the industry. Given that there have been no significant changes requiring training in the past year, and that there is no feasible means of providing access to training for all industry participants this year; the Manufactured Housing Board, the Division of Building Safety, and the manufactured housing industry would take this opportunity to formulate new, more workable education requirements and means for delivering same prior to promulgating new rule provisions. The proposed rule would eliminate the requirement that original and renewal applications for manufactured home retailers (dealers) and installers show proof that the applicant has completed a specified number of hours of initial and continuing education.

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

The rule changes confer a benefit on individuals licensed as manufactured housing retailers and/or installers.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

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

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 October 28, 2009.

DATED this 28th day of August, 2009.



Steve Keys, Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 07-0311-0902**

**014. ~~PROOF OF CONTINUING EDUCATION REQUIRED (RESERVED).~~**

~~Effective January 1, 1995, and except as otherwise provided in Section 015 of these rules, the Division: (5-25-94)~~

~~**01. Satisfactory Proof for Application Submission.** Shall not allow an applicant for a license as a manufactured/mobile home dealer, or service company or installer to submit an application for the license until he submits proof satisfactory to the Division that he has completed the following number of hours of initial education: (3-24-05)~~

~~**a.** Installers and dealers (who are also installers): eight (8) hours. (5-25-94)~~

~~**b.** Dealers (who are not installers) and service company employees: four (4) hours. (3-24-05)~~

~~**c.** The course of initial education will include information relating to the provisions of these rules, Title 44, Chapters 21 and 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974. (3-24-05)~~

~~**02. Satisfactory Proof for License Renewal.** Shall not renew any license issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or these rules until the licensee has submitted proof satisfactory to the Division that he has, during the one (1) year immediately preceding the renewal of the license, completed at least the following number of hours of continuing education: (3-24-05)~~

~~**a.** Installers, dealers who are also installers, and responsible managing employees: four (4) hours. (5-25-94)~~

~~**b.** Dealers who are not installers and service company employees: two (2) hours. (3-24-05)~~

~~**03. Continuing Education Course.** The course of continuing education shall include information relating to the following: (5-25-94)~~

~~**a.** Manufactured housing or mobile home parks which will enable a person to give better service to the members of the general public and tenants of manufactured/mobile home parks; (5-25-94)~~

~~**b.** The construction, including components and accessories, rebuilding, servicing, installation, or sale of manufactured/mobile homes; (5-25-94)~~

~~**c.** Legislative issues concerning manufactured/mobile home housing and manufactured/mobile home parks, including pending and recently enacted state or federal legislation; and (5-25-94)~~

~~**d.** These rules, Title 44, Chapters 21 or 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974. (3-24-05)~~

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

### **07.04.02 - SAFETY RULES FOR ELEVATORS, ESCALATORS, AND MOVING WALKS**

**DOCKET NO. 07-0402-0901**

#### **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 39-8605, 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 October 21, 2009.

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:

Current rule adopts the American National Standards Institute (ANSI) and American Society of Mechanical Engineers (ASME) codes relating to design, installation, operation, maintenance, and inspection standards for elevators, escalators, lifts, and all such moving conveyances in the state of Idaho. Newer editions of these adopted codes have been promulgated by ANSI/ASME and need to be incorporated into administrative rule to stay current with safety standards within the industry. The proposed rule would continue to adopt the ANSI/ASME codes that are already identified in the current rule; however, it would adopt the most recent editions of such codes with amendments.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys, Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0402-0901**

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

**01. Documents.** The following codes, amendments, and updates are hereby adopted and incorporated by reference into these rules for all conveyances subject to this chapter. (4-2-08)

**a.** ANSI/ASME A17.1 2004~~7~~, Safety Code for Elevators and Escalators with 2005~~8~~ Addenda ~~and 2005 Supplement~~ with the following exceptions: (~~4-2-08~~)( )

**i.** Compliance with section 2.8.3.2 shall require that the means for disconnecting the main power as required by this section to be within sight of controller. ( )

**ii.** Compliance with section 8.11.2.3.3, Category 5 Periodic Testing of oil buffers shall be conducted at slow speed in accordance with Item 5.9.2.1(a) in ANSI/ASME A17.2 2007. ( )

**b.** ANSI/ASME A17.2 2004~~7~~ Guide for Inspection of Elevators, Escalators, and Moving Walks. (~~4-2-08~~)( )

**c.** ANSI/ASME A17.3 2005~~8~~ Safety Code for Existing Elevators and Escalators. (~~4-2-08~~)( )

**d.** ANSI/ASME A17.4 1999 Guide for Emergency Personnel. (4-2-08)

**e.** ANSI/ASME A17.5 2004 Elevator and Escalator Electrical Equipment. (5-8-09)

**f.** ICC/ANSI A117.1 2003 Accessible and Usable Buildings and Facilities. (4-2-08)

**g.** ANSI/ASME A18.1 2005~~8~~ Safety Standards for Platform Lifts and Chairlifts. (~~4-2-08~~)( )

**h.** ASME QE-1 2004~~7~~ Standard for the Qualification of Elevator Inspectors. (~~4-2-08~~)( )

**02. Copies.** Copies of the codes, amendments, and updates listed in Subsection 004.01 of these rules are available for review at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-2-08)

**IDAPA 07 - DIVISION OF BUILDING SAFETY**  
**07.05.01 - RULES OF THE PUBLIC CONTRACTORS LICENSE BOARD**  
**DOCKET NO. 07-0501-0901**  
**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 54-1907, 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 October 21, 2009.

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:

Public Works Contractor License statutes require that all contractors who work on public works projects possess a public works contractors license issued by the Division of Building Safety. Exemptions exist to this general licensure requirement and are contained in Section 54-1903, Idaho Code; and allow unlicensed contractors to perform work on public works projects in certain situations. One of the exemptions is subject to some misinterpretation and is being applied incorrectly by local governments who sponsor public works projects and the contractors who work on them. Defining a key term contained within that statutory exemption would clarify the meaning and intent of it. The proposed rule would provide a definition for the term "estimated cost" as that term is used in Section 54-1903(i), Idaho Code.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0501-0901**

**010. DEFINITIONS.**

As used in these rules. (7-1-93)

**01. Administrator.** Refers to the administrator of the Division of Building Safety. (3-20-04)

**02. Applicant.** Shall mean any person who has filed an application with the administrator. (3-20-04)

**03. Board.** Refers to the Public Works Contractors License Board which is created within the Idaho Division of Building Safety as set forth in Title 54, Chapter 19, Idaho Code. (3-20-04)

**04. Compiled.** Refers to a type of financial statement in which the information presented is based solely upon representations by an organization's management. (3-20-04)

**05. Estimated Cost.** For the purposes of the application of Section 54-1903(i), Idaho Code, the term "estimated cost" shall refer to the total aggregate amount of the value of all the separate or individual jobs, parts, components, or undertakings involved in the construction of a single project when combined and considered as a whole, regardless of the types of trades, sub-contracts, work, or other individual aspects involved, and without regard to the number of trades or crafts that are involved. ( )

**056. Financial Statement.** A balance sheet and income statement prepared in accordance with generally accepted accounting principles. (3-20-04)

**067. Incidental Work.** Shall mean work, the nature of which does not require any additional trade licenses and which may be carried out in conjunction with an activity for which the licensee is licensed, but is not intended to produce an amount of income over ten percent (10%) of the total bid amount. (3-20-04)

**078. Independent Audit Report.** A report prepared by an independent certified public accountant presenting such auditor's opinion on the fairness of the organization's financial statements and prepared in accordance with generally accepted auditing standards. (3-20-04)

**089. Licensee.** Includes any individual proprietor, partnership, limited liability partnership, limited liability company, corporation, joint venture, or other business organization holding a current, unrevoked public works contractor license. (3-20-04)

**0910. Petitioner.** Shall mean: (7-1-93)

**a.** Any licensee who has filed with the Board a written request for the change or addition to the types of construction for which he is licensed; (7-1-93)

**b.** Any applicant or licensee requesting a rehearing in any proceeding or appealing from the final decision or order of the administrator or the Board; (3-20-04)

**c.** Any interested person requesting the promulgation, amendment or repeal of a rule, or; (7-1-93)

**d.** Any interested person requesting a declaratory ruling on the applicability of the License Act or of any rule or order of the Board. (7-1-93)

**101. Reviewed.** Refers to a financial statement that is accompanied by the opinion of a certified public accountant stating that, based upon representations by the organization's management, the reviewer has a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in accordance with generally accepted accounting principles. (3-20-04)

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

### **07.06.01 - RULES GOVERNING UNIFORM SCHOOL BUILDING SAFETY**

**DOCKET NO. 07-0601-0901**

#### **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 39-8006 and 39-8007, 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 October 21, 2009.

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 Uniform School Building Safety Code required by Section 39-8006, Idaho Code, includes model codes adopted by the various state boards and agencies with the statutory authority to adopt such construction and safety standards within a particular industry. Upon review and approval, these governing authorities typically adopt updated editions of these model codes as they are published every few years by nationally recognized organizations. By eliminating a specifically identified edition of the model codes from this rule it would eliminate the need to amend this rule each time (potentially on an annual basis) a new edition is adopted by one or more of the different governing authorities. The applicable statutes are listed in the text of the rule so that the currently adopted edition may be easily ascertained. The proposed rule would eliminate any reference to the specific edition of the various codes that are adopted. The rule also updates the statutory authority in which the codes are required to be adopted.

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

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0601-0901**

**004. INCORPORATION BY REFERENCE.**

**01. Uniform Codes.** The following uniform codes are hereby incorporated by reference into these rules as, and insofar as, ~~they~~ the most recent editions have been adopted by the appropriate governing authority for the state of Idaho pursuant to Sections 39-4109, 41-253, 39-8614, 54-1001, 54-2601, 54-5001, and 72-508, Idaho Code: ~~(3-15-02)( )~~

- a. ~~2000~~ International Building Code; ~~(4-6-05)( )~~
- b. ~~2000~~ International Mechanical Code; ~~(4-6-05)( )~~
- c. ~~2000~~ International Fuel Gas Code; ~~(4-6-05)( )~~
- d. ~~2002~~ Safety Code for Elevators and Escalators (ASME/ANSI A17.1); ~~(4-6-05)( )~~
- e. ~~2000~~ International Energy Conservation Code; ~~(4-6-05)( )~~
- f. ~~1998~~ Accessible and Usable Buildings and Facilities (ICC/ANSI A117.1); ~~(4-6-05)( )~~
- ~~g.~~ ~~1997~~ ~~Uniform Code for Building Conservation (UCBC)~~; ~~(3-15-02)~~
- ~~hg.~~ ~~2000~~ International Fire Code (IFC); ~~(4-6-05)( )~~
- ~~ih.~~ ~~2002~~ National Electrical Code (NEC); ~~(4-6-05)( )~~
- ~~ji.~~ ~~2003~~ Uniform Plumbing Code (UPC); ~~(4-6-05)( )~~
- ~~kj.~~ ~~1995~~ Pacific NW AWWA Manual for Backflow Prevention and Cross Connection Control; and ~~(3-15-02)( )~~
- ~~lk.~~ ~~2003~~ Idaho General Safety and Health Standards. ~~(4-6-05)( )~~

**02. Idaho Uniform School Building Safety Code.** The codes set forth in ~~Paragraphs~~ Subsection 004.01-~~a. through 004.01-l.~~, of this rule, together with the definitions contained therein and the written interpretations thereof, insofar as they are applicable to school facilities, shall constitute the Idaho Uniform School Building Safety Code. A copy of each of the identified codes is available for review at the main office of the Division of Building Safety. ~~(4-6-05)( )~~

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

### **07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS**

**DOCKET NO. 07-0701-0901**

#### **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 54-5005(2), 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 October 21, 2009.

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 current HVAC rules regarding civil penalties indicate that, among other acts, failure to post a permit or pay the applicable permit fee may subject a violator to civil penalties; however, there is no provision which specifically provides for a civil penalty for failure to request an inspection. Adding such a rule would provide some leverage to help ensure that HVAC installations are properly inspected after they are installed. The proposed rule would provide authority for the Division of Building Safety to impose a civil penalty against any person who fails to request an inspection of an HVAC installation.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys  
Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0701-0901**



**070. CIVIL PENALTIES.**

The following acts shall subject the violator to penalties based on the following schedule. (3-30-07)

**01. Heating, Ventilation, and Air Conditioning Contractor or Specialty Contractor.** Except as provided by Section 54-5001, Idaho Code, any person who acts, or purports to act, as an HVAC contractor or specialty contractor as defined by Section 54-5003(3) and 54-5003(6), Idaho Code, without a valid Idaho state HVAC contractor or specialty contractor certification shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-07)

**02. Employees.** Any person, who knowingly employs a person who does not hold a valid Idaho state HVAC certification or apprentice registration, as required by Section 54-5008, Idaho Code, to perform HVAC installations, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-07)

**03. Certification or Registration.** Except as provided by Section 54-5001, Idaho Code, any person performing HVAC work as an HVAC journeyman as defined by Section 54-5003(4), Idaho Code, specialty journeyman as defined by Section 54-5003(7), Idaho Code, apprentice as defined by Section 54-5003(2), Idaho Code, or a specialty apprentice as defined by Section 54-5003(5), Idaho Code, without a valid certification or registration shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-07)

**04. Supervision.** Any HVAC apprentice or specialty apprentice working without the required journeyman supervision or any HVAC contractor or industrial account employing apprentices without providing the required HVAC journeyman supervision shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-07)

**05. Performance Outside Scope of License.** Any HVAC specialty contractor or specialty journeyman performing HVAC installations, alterations, or maintenance outside the scope of the specialty certification shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-07)

**06. Fees and Permits.** Any person failing to pay applicable fees or properly post an HVAC permit for, or to request an inspection of, any installation, alteration, improvement, or extension of any piping, venting, ductwork, appliances and appurtenances in connection with any heating, ventilation, or air conditioning system or subsystems of such shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ~~(3-30-07)~~(\_\_\_\_)

**07. Corrections.** Any person who fails to make corrections in the time allotted in the notice on any HVAC installation as set forth in Section 54-5019, Idaho Code, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-30-07)

**08. Gross Violation.** In the case of continued, repeated, or gross violation of Title 54, Chapter 50, Idaho Code, or IDAPA 07.07.01, "Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety," a certification revocation shall be initiated for certificated individuals under this chapter and non-certificated individuals shall be subject to prosecution by the appropriate jurisdiction under Idaho law. (3-30-07)

**09. Judicial Review.** Any party aggrieved by the final action of the board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-30-07)

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

### **07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS**

**DOCKET NO. 07-0701-0902**

#### **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 54-5005(2), 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 October 21, 2009.

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:

Concerns in the industry have been raised about the placement of the secondary regulator gas pipe that is stubbed out of buildings. The pipe vents out of the side of the building and it is subject to being placed in a location that may be covered or damaged by heavy snowfall. This may prevent proper venting and pose a potential health and/or safety hazard to the occupants. Currently, the International Fuel Gas Code provides no guidance or requirements regarding the proper placement of such pipes. The proposed rule would amend the Fuel Gas Code and provide guidance regarding the proper placement of such gas pipes. The proposed rule would require piping, regulators, meters, and other equipment to be installed in a manner that protects it from any physical damage, including heavy snowfall. It also provides specific requirements regarding the location and minimum spacing of certain gas piping stubbed out for meter or regulator connection.

The HVAC industry has expressed concern about whether the state's HVAC and mechanical installation regulatory and enforcement program extends to solid fuel burning and hearth-related installations. Because of the potential ambiguity about the breadth of the regulatory scheme there is concern that some solid fuel and hearth related installations are installed without inspection, and without assurances that the individuals performing the work possess the requisite skill and experience. To eliminate these concerns, the HVAC Board has determined to make it clearer that the scope of the HVAC regulatory program does extend to solid fuel burning and hearth-related installations by adopting the applicable codes that address such installation standards. The proposed rule would continue to adopt the International Fuel Gas Code and the International Mechanical Code as the minimum standards for HVAC and mechanical installations in the state. Currently, these codes are only used as the minimum standard in commercial buildings. The proposed rule would make such codes applicable to installations performed in residential buildings as well. Using such codes would capture solid fuel burning and hearth-related HVAC and mechanical installations and eliminate the need to use the International Residential Code.

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (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 October 28, 2009.

DATED this 28th day of August, 2009.

Steve Keys, Deputy Administrator - Operations  
Division of Building Safety  
1090 E. Watertower St.  
Meridian, ID 83642  
Phone: (208) 332-8986  
Fax: (208) 855-2164

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0701-0902**

**004. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL MECHANICAL CODE, 2003 EDITION.**

**01. The International Mechanical Code**, 2003 Edition, including appendix "A," (herein IMC) is adopted and incorporated by reference with the following amendments: (4-11-06)

**a.** Where differences occur between the IMC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

**d.** Section 101.2. Delete the Exception. The International Mechanical Code shall apply to detached one- and two-family dwellings and multiple single family dwellings (townhouses). ( )

**e.** Section 109. Delete. ( )

**f.** Section 312. Sizing requirements shall be as established by the authority having jurisdiction. (4-11-06)

**02. The International Mechanical Code.** The 2003 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-11-06)

**005. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL FUEL GAS CODE, 2003 EDITION.**

**01. The International Fuel Gas Code**, 2003 Edition, including appendixes "A, B, C, and D," (herein IFGC) is adopted and incorporated by reference with the following amendments: (4-11-06)

**a.** Where differences occur between the IFGC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

c. All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

d. Section 101.2. Delete the Exception. The International Fuel Gas Code shall apply to detached one- and two-family dwellings and multiple single family dwellings (townhouses). ( )

e. Section 109. Delete. ( )

f. 405.1. Installation in Areas of Heavy Snowfall. In areas where heavy snowfall is anticipated, piping, regulators, meters, and other equipment installed in the piping system shall be protected from physical damage, including falling, moving, or migrating snow and ice. If an added structure is used for protection, it must provide access for service and comply with local building codes. ( )

g. 405.2. Point of Termination. Gas piping stubbed out for a meter or regulator connection shall be a minimum of three (3) feet horizontally from any building opening, and not less than five (5) feet horizontally from any source of ignition, opening to direct-vent (sealed combustion system) appliance, or mechanical ventilation air intakes. ( )

h. Section 406.4. Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)

ei. Section 406.4.1. Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)

fi. Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (4-11-06)

gk. Section 505.1.1. Addition. An interlock between the cooking appliance and the exhaust hood system shall not be required for appliances that are of the manually operated type and are factory equipped with standing pilot burner ignition systems. (4-11-06)

**02. The International Fuel Gas Code.** The 2003 Edition, is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-11-06)

**006. ADOPTION AND INCORPORATION BY REFERENCE OF PARTS V (MECHANICAL) AND PARTS VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE AND TWO FAMILY DWELLINGS, 2003 EDITION (RESERVED).**

**01. Parts V (Mechanical) and Parts VI (Fuel Gas) of the International Residential Code for One and Two Family Dwellings, 2003 Edition, including appendixes "A, B, C, and D," (herein IRC) are adopted and incorporated by reference with the following amendments.** (4-11-06)

~~a. Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply.~~ (4-11-06)

~~b. All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board.~~ (4-11-06)

~~c. All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board.~~ (4-11-06)

- ~~d.~~ Section M1401.3. Sizing requirements shall be as established by the authority having jurisdiction. (4-11-06)
- ~~e.~~ Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)
- ~~f.~~ Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)
- ~~g.~~ Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (4-11-06)
- ~~02.~~ **The International Residential Code for One and Two Family Dwellings, 2003 Edition, is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814.** (4-11-06)

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

### **08.01.04 - RULES GOVERNING RESIDENCY CLASSIFICATION**

**DOCKET NO. 08-0104-0901**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is June 18, 2009.

**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 33-105, 33-107, 33-2402, 33-2403, and 33-3717B, 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 October 21, 2009.

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 changes bring the rule into alignment with changes made to Section 33-3171B, Idaho Code, during the 2009 legislative session, and clarify language allowing students to retain resident status when they leave the state for educational purposes.

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

To be in compliance with amendments to governing law and confers a benefit to Idaho residents.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rulemaking is non controversial in nature. Informal meetings were conducted with registrars from Idaho's public postsecondary institutions around the state to notify them of the changes and gather feedback.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at (208) 332-1582.

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 October 28, 2009.

DATED this 28th day of August, 2009.

Tracie Bent  
Chief Planning, Policy and HR Officer  
State Board of Education  
650 West State Street  
PO Box 83720, Boise, ID 83720-0037  
(208) 332-1582 phone  
(208) 334-2632 FAX

**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 08-0104-0901**

**005. DEFINITIONS.**

**01. Resident Student.** For any public institution of higher education in Idaho, ~~Resident student is~~ defined in Section 33-3717B, Idaho Code, and specifically includes: ~~(5-8-09)~~(6-18-09)T

**a.** Any student who has one (1) or more parent or parents or court appointed guardians who are domiciled in the state of Idaho for at least twelve (12) months prior to the opening day of the term for which the student matriculates, and the parent or parents or guardians provide at least fifty percent (50%) of the student's support. (5-8-09)

**b.** Any student who receives less than fifty percent (50%) of his support from a parent, parents, or legal guardians and who has continuously resided and maintained a bona fide domicile in the state for twelve (12) months immediately preceding the opening day of the term during which the student proposes to attend primarily for purposes other than educational. (5-8-09)

**c.** Unless disqualified as a nonresident student as defined in Subsection 005.02, any student who is a graduate of an accredited secondary school in the state of Idaho and who matriculates during the term immediately following such graduation. (1-1-94)

**d.** The spouse of a person who is classified or is eligible for classification as a resident of the state for purposes of attending a college or university, provided that the institution shall require the filing of proof of marriage by the applicant. (1-1-94)

**e.** A member of the armed forces of the United States stationed in the state on military orders. (1-1-94)

**f.** An officer or an enlisted member of the Idaho national guard. (5-8-09)

**g.** A student whose parent or guardian is a member of the armed forces and stationed in the state on military orders and who receives fifty percent (50%) or more of his support from a parent or guardian, provided that the student, while in continuous attendance, shall not lose residency status when the student's parent or guardian is transferred on military orders. (1-1-94)

**h.** A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state within one (1) year of the date of separation. (1-1-94)

**i.** Any person who has been domiciled in the state, has qualified and would otherwise be qualified under Section 33-3717B, Idaho Code, and who is away from the state for a period of less than thirty (30) months and has not established legal residence elsewhere, provided a twelve-month (12) period of continuous residence has been established immediately prior to departure. However, time spent away from the state while enrolled in a postsecondary education program shall not be included in the thirty (30) months. Such time spent away from the state while enrolled shall include normal academic year breaks, such as summer breaks or breaks between semesters or quarters, that occur prior to the receipt of the postsecondary degree. ~~(5-8-09)~~(6-18-09)T

**j.** A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of fees or tuition at institutions of higher education: members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (5-8-09)

**i.** Coeur d'Alene tribe; (5-8-09)

- ii. Shoshone-Paiute tribes; (5-8-09)
  - iii. Nez Perce tribe; (5-8-09)
  - iv. Shoshone-Bannock tribes; (5-8-09)
  - v. Kootenai tribe. (5-8-09)
- 02. Nonresident Student.** Nonresident student is defined in Section 33-3717B, Idaho Code, and includes: (5-8-09)
- a. A student who does not qualify as a resident student as defined in Subsection 005.01. (1-1-94)
  - b. A student attending an institution in this state with financial assistance provided by another state or governmental entity thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided. (1-1-94)
  - c. A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or who does not hold “refugee-parolee” or “conditional entrant” status with the United States Immigration and Naturalization Service, or is not otherwise permanently residing in the United States under color of law, and who does not also comply with and meet all applicable sections of Section 33-3717B, Idaho Code, and this chapter. (5-8-09)
- 03. Continuously Resided.** The term “continuously resided” as used in this chapter means physical presence in the state for twelve (12) consecutive months. Absence from the state for normal vacations, family travel, work assignments, short-term military training, and similar occasions totaling not more than thirty (30) days during the twelve (12) month qualifying period, in and of itself, will not be regarded as negating the continuous residence of the individual. (1-1-94)
- 04. Continuous Attendance.** For purposes of Subsection 005.01.g., “continuous attendance” means attendance at a college or university for continuing and succeeding semesters or terms excluding summer semesters or terms. (5-8-09)
- 05. Accredited Secondary School.** “Accredited secondary school” means an Idaho secondary school accredited by the State Board of Education. (1-1-94)
- 06. Term Immediately Following Graduation.** For purposes of Subsection 005.01.c., “the term immediately following graduation” does not include the summer semester or term of a college or university. (1-1-94)
- 07. Armed Forces.** “Armed forces” means the United States Army, Navy, Air Force, Marine Corps, and United States Coast Guard. It does not include the National Guard or other reserve force. (3-30-01)
- 08. Domicile.** “Domicile” means an individual’s true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter. (1-1-94)
- 09. Support.** “Support” means financial support given to the student during the twelve (12) months preceding the opening date of the term for which resident status is requested, but shall not include educational scholarships or grants provided to the student to attend a postsecondary educational institution. Any student who receives less than fifty percent (50%) support may demonstrate this by showing that he is not claimed as a dependent by a parent or guardian for income tax purposes or that a parent or guardian provides less than fifty percent (50%) of the cost of attending an institution according to the financial aid office of that institution or that other similar evidence exists of parental support such as dental bills, medical bills, etc. (5-8-09)



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

### **08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS**

#### **DOCKET NO. 08-0111-0901 (FEE RULE)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2009.

**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 33-105, 33-2402, and 33-2403, 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 October 21, 2009.

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:

Title 33, Chapter 1 and 24, Idaho Code, were amended to clarify that postsecondary institutions need to register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate. Criteria for evaluating these institutions and schools are set forth in this rule. Criteria are essential for determining the legitimacy of the institution for degree granting purposes and the legitimacy of proprietary schools.

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

The current fee of one hundred dollars (\$100) per course or course of study has been changed to the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the Institution during the previous registration year, but not less than one hundred dollars (\$100) not to exceed five thousand dollars (\$5,000). Fees assessed are to be dedicated for use by the Board in connection with its responsibilities under Section 33-2401, Idaho Code.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the nature of the changes are specific to bringing the rule in compliance with the new statute. Additionally, informal meetings were conducted by the Boards Proprietary/Postsecondary Schools Program Coordinator with those parties that will be impacted by this rule to inform them of the changes and gather feedback.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent at 332-1582.

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 October 28, 2009.

DATED this 28th day of August, 2009.

Tracie Bent  
Chief Planning, Policy & HR Officer  
State Board of Education  
PO Box 83720, Boise, ID 83720-0037  
(208) 332-1582 phone / (208) 334-2632 fax

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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 08-0111-0901

**010. DEFINITIONS.**

**01. Accredited.** Defined in Section 33-2401(1), Idaho Code, and means that a post-secondary educational institution has been recognized or approved as meeting the standards established by an accrediting organization recognized by the Board. (4-9-09)

**02. Agent.** Defined in Section 33-2401(2), Idaho Code, and means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school. (4-9-09)

**03. Agent's ~~Permit~~ Certificate of Identification.** Defined in Section 33-2401(3), Idaho Code, and means a nontransferable written document issued to an agent by ~~the Board or its designee~~ the proprietary school that the agent represents. (~~4-9-09~~)(8-20-09)T

**04. Course.** Defined in Section 33-2401(5), Idaho Code, and means instruction imparted in a series of lessons or class meetings to meet an educational objective. (4-9-09)

**05. Course or Courses of Study.** Defined in Section 33-2401(6), Idaho Code, and means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise. A course of study is sometimes also referred to in this rule as a program. (4-9-09)

**06. Degree.** Defined in Section 33-2401(7), Idaho Code, and means any written or any academic, vocational, professional-technical or honorary title or designation, mark, appellation, series of letters, numbers, or words such as, but not limited to, that contains, in any language, the word "associate," "bachelor's," "baccalaureate," "master's," "doctorate," or "fellow," which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, professional-technical, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition, and an associate of arts or associate of science degree awarded by a community college or other public or private post-secondary educational institution or other entity which may be used for any purpose whatsoever any abbreviation thereof, and that indicates or represents, or is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training. (~~4-9-09~~)(8-20-09)T

**07. Nonprofit.** Means an entity that is recognized under the Internal Revenue Code and applicable regulations as being tax exempt, or an entity such as a nonprofit or not-for-profit organization that possesses the following characteristics that distinguish it from a business enterprise: (a) contribution of significant amounts of resources from resource providers who do not expect commensurate or proportionate pecuniary return, (b) operating purposes other than to provide goods or services at a profit, and (c) absence of ownership interests like those of business enterprises. (4-9-09)

**08. Post-Secondary Educational Institution.** Sometimes referred to in this rule simply as an institution, is defined in Section 33-2401(8), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to

operate, from a location within, the state of Idaho, and which provides a course or courses of study that lead to a degree, or which provides, offers or sells degrees. (4-9-09)

**09. Proprietary School.** Sometimes referred to in this rule simply as a school, is defined in Section 33-2401(9), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees. (4-9-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.**

**01. Delegation.** Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board. The Board delegates authority to its executive director, or his designee, and the Office of the State Board of Education to administer the registration of proprietary schools, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (8-20-09)T

**012. Registration Requirement.** (4-9-09)

**a.** Unless exempted by statute or this rule, as provided herein, a post-secondary educational institution which maintains a presence within the state of Idaho, or that operates or purports to operate from a location within the state of Idaho, shall register and hold a valid certificate of registration issued by the Board. An institution shall not conduct, provide, offer, or sell a course or courses of study, or degree unless registered. An institution shall not solicit students on behalf of such institution, or advertise in this state, unless registered. *The Board shall maintain a register of approved postsecondary educational institutions pursuant to Section 33-107(6)(a), Idaho Code.* (4-9-09)(8-20-09)T

**b.** ~~Initial~~ Registration shall be for the period beginning on *July 1 of any year and* the date a certificate of registration is issued and continue through June 30 of the next succeeding year. ~~For an institution that has not previously registered with the Board, registration shall be for the period beginning on the date of issue of an initial certificate of registration and continue through June 30 of the next succeeding year.~~ A registered post-secondary educational institution must renew its certificate of registration annually, and renewal of registration is not automatic. (4-9-09)(8-20-09)T

**c.** Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

**023. Idaho Presence.** An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho. (4-9-09)

**034. Institutions Exempt from Registration.** (4-9-09)

**a.** Idaho public post-secondary educational institutions. Section 33-2402(1), Idaho Code, provides that a public institution supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register. (4-9-09)

**b.** Certain Idaho private, not for profit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is already established and operational as of the effective date of this rule and located within the state of Idaho, and that is accredited by an accreditation organization recognized by the Board, as set forth in Section 100 of this rule, shall not be required to register. A private, nonprofit, institution is located within the state of Idaho only if it has been lawfully organized in the state of Idaho and its principal place of business

is located within the state of Idaho. (4-9-09)

**045. Institutions that Must Register.** (4-9-09)

**a.** Out-of-state public post-secondary educational institutions. A public institution that is supported primarily by taxation from another state, or from a local source not within the state of Idaho, must register as provided herein. (4-9-09)

**b.** Out-of-state private, nonprofit, post-secondary educational institutions. An out-of-state private, nonprofit, post-secondary educational institution must register as provided herein. (4-9-09)

**c.** Certain Idaho private, nonprofit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is located within the state of Idaho, but that is not exempt under Subsection 200.03.b. of this rule, must register as provided herein. (4-9-09)

**d.** For-profit post-secondary educational institutions. A post-secondary educational institution that operates for profit, or which is an operating subsidiary of a publicly or privately held corporation that operates for profit, must register as provided herein. (4-9-09)

**056. Exception Alternative to Registration Requirement for Certain Post-Secondary Institutions.**  
(~~4-9-09~~)(8-20-09)T

**a.** A post-secondary educational institution that demonstrates to the satisfaction of the Board that its primary mission and objectives are to offer courses or courses of study that do not lead to the awarding of degrees, may instead register as a proprietary school, in accordance with Section 300 of this rule. (4-9-09)

**b.** A request to register as a proprietary school must be submitted in writing to the Board by the first business day of December preceding a registration year. A decision on such request will be issued by the Board within thirty (30) days after it is received. A request to register as a proprietary school must be made on an annual basis. (4-9-09)

**067. Application.** A post-secondary educational institution that is required to register under this rule must submit to the Board office an application for registration (either an application for initial registration or renewal of registration, as applicable), on ~~a~~ the form approved provided by the Board office. The application must include a list of each course, course of study, and degree the applicant institution intends to conduct, provide, offer, or sell in Idaho during the registration year. (~~4-9-09~~)(8-20-09)T

**078. Registration Fees.** The Board shall assess an annual registration fee for initial registration or renewal of registration of a post-secondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the institution during the previous registration year, but not less than one hundred dollars (\$100) for each course that the institution intends to conduct, provide, offer or sell during the registration year, as set forth in the registration application, not to exceed ~~two~~ five thousand dollars (\$25,000). The institution must provide financial documentation to substantiate the amount of revenue reported. Registration fees are not refundable. (~~4-9-09~~)(8-20-09)T

**089. Deadline for Registration.** An initial application for registration may be submitted to the Board at anytime. An institution should expect the Board's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes a registration year. (4-9-09)

**0910. Information Required.** Such application must include the information requested on the application form, as well as the following information: (4-9-09)

**a.** If an institution that is required to register under this rule is accredited by an accreditation organization recognized by the Board in Section 100 of this rule, such institution must submit documentation demonstrating that it has received accreditation status, and that it will maintain its accreditation from such agency

during the entire registration year. An institution that is so accredited qualifies for a streamlined registration process, and will not be required to submit information and/or documentation that documents compliance with Standards I through VI, set forth in ~~Subsections 200.10.a. through 200.10.f.~~ Section 301 of this rule. Such institution must submit the following information or documentation, or both, with its application for registration: ~~(4-9-09)~~(8-20-09)T

- i. Copy of most recent accreditation report; (4-9-09)
- ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-9-09)
- iii. Most recent copy of strategic plan; (4-9-09)
- iv. Enrollment data for current and past two (2) years; (4-9-09)
- v. Copy of annual audited financial statement; (4-9-09)
- vi. Any additional information that the Board may request. (4-9-09)

**b.** All other institutions applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the Standards I through VI, set forth in ~~Subsections 201.01 through 201.06~~ Section 301 of this rule. ~~(4-9-09)~~(8-20-09)T

**c.** The Board may, in connection with a renewal of registration; request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.078 of this rule, shall remain applicable. ~~(4-9-09)~~(8-20-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. THE BOARD MAY NOTIFY THE POST-SECONDARY EDUCATIONAL INSTITUTION OF ADDITIONAL INFORMATION REQUIRED.**

If the Board is unable to determine the nature and activities of an institution on the basis of the information provided by the institution under this rule, then the Board may notify the institution of additional information that it will be required to provide in connection with the application for registration. (4-9-09)

**01. Verification of Information.** The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant institution shall be responsible for any costs the Board incurs, including travel, associated with this review. (4-9-09)

**02. Criteria for Approval of Registration.** To be approved for registration, the institution must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule. An institution must remain in compliance for the registration year. (4-9-09)

**03. Public Information.** All information submitted to the Board in connection with the application is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-9-09)

**04. Certificate of Registration.** ~~(4-9-09)~~

~~a.~~ A certificate of registration will be issued to a post-secondary educational institution that has paid its registration fee and has been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No institution that is registered with the Board shall advertise or represent in any manner that it is accredited by the Board. An institution may only represent that it is "Registered with the Idaho State Board of Education." Registration is not an endorsement of the institution. (4-9-09)

~~**b.** If an institution wishes to offer additional courses, courses of study, or degrees during the course of a registration year that were not included in its application to the Board prior to issuance of the certificate of registration, then the institution may submit a supplemental application to the Board, on a form approved by the Board and pay any additional registration fees that are applicable. If approved, the Board will issue a revised certificate of registration evidencing such approval. (4-9-09)~~

**05. Disapproval and Appeal.** If a post-secondary educational institution's request for initial registration, or renewal of registration, is disapproved by the Board, then the institution may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to the office within thirty (30) days of the date the institution is notified of the disapproval. (4-9-09)

**06. Withdrawal of Approval.** (4-9-09)

**a.** The Board may refuse to renew, or may revoke or suspend approval of, an institution's registration by giving written notice and the reasons therefore to the institution. The institution may request a hearing relating to such decision under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-9-09)

**b.** Withdrawal of approval may be for one (1) or more of the following reasons (4-9-09)

**i.** Violation of Chapter 24, Title 33, Idaho Code or this rule; (4-9-09)

**ii.** Providing false, misleading, deceptive, or incomplete information to the Board; (4-9-09)

**iii.** Presenting to prospective or current students information about the institution which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-9-09)

**iv.** Refusing to allow reasonable inspection or to supply reasonable information after a written request by the Board has been received. (4-9-09)

**c.** If any information contained in the application submitted by the institution becomes incorrect or incomplete, then the registered institution shall notify the Board of such change within thirty (30) days. An institution that ceases operation during the course of a registration year shall immediately inform the Board of this event. (4-9-09)

**203. -- 299. (RESERVED).**

**300. REGISTRATION OF PROPRIETARY SCHOOLS.**

**01. Delegation.** Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board ~~or its designee~~. The Board delegates authority to its executive director, or his designee, and the Idaho Division of Professional Technical Education (PTE) to register Office of the State Board of Education to administer the registration of proprietary schools, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (4-9-09)(8-20-09)T

**02. Registration Requirement.** (4-9-09)

**a.** Unless exempted by statute or this rule, as provided herein, a proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually and hold a valid certificate of registration issued by ~~PTE~~ the Board. A school shall not conduct, provide, offer, or sell a course or courses of study unless registered. A school shall not solicit students for or on behalf of such school, or advertise in this state, unless registered. ~~The Board shall maintain a register of approved proprietary schools pursuant to Section 33-107(6)(e), Idaho Code.~~ (4-9-09)(8-20-09)T

**b.** Registration shall be for the period beginning July 1 of any year and continue through June 30 of the next succeeding year. For a school that has not previously registered with ~~PTE~~ the Board, registration shall be for the period beginning on the date of issue of a certificate of registration and continue through June 30 of the next

succeeding year. A registered proprietary school must renew its certificate of registration annually and renewal of registration is not automatic. ~~(4-9-09)~~(8-20-09)T

**c.** Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

**03. Idaho Presence.** A school shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho. (4-9-09)

**04. Exemptions from Registration.** The following individuals or entities are specifically exempt from the registration requirements of this rule: (4-9-09)

**a.** An individual or entity that offers instruction or training solely a vocational or recreational in nature, as determined by the Board. (4-9-09)

**b.** An individual or entity that offers courses recognized by the Board which comply in whole or in part with the compulsory education law. (4-9-09)

**c.** An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student. (4-9-09)

**d.** An individual or entity which is otherwise regulated, licensed, or registered with another state agency pursuant to Title 54, Idaho Code. (4-9-09)

~~**e.** Aviation school or instructors approved by and under the supervision of the Federal Aviation Administration. (4-9-09)~~

**fe.** An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation. (4-9-09)

**gf.** An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days. (4-9-09)

**hg.** A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. (4-9-09)

**ih.** An individual or entity that offers post-secondary credit through a consortium of public and private colleges and universities under the auspices of the western governors. (4-9-09)

**05. Application.** A proprietary school that is required to register under this rule must submit to ~~PTE~~ the Board office an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form ~~approved by PTE~~ provided by the Board office. The application must include a list of each course or courses of study the applicant school intends to conduct, provide, offer or sell in Idaho during the registration year. ~~(4-9-09)~~(8-20-09)T

**06. Registration Fees and Costs.** ~~A The Board shall assess an annual registration fee shall accompany each application for initial registration or renewal of registration. The fixed portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each school. The variable portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each course to be offered by the school during the registration year.~~ The registration fee must accompany the application for registration, and shall be one-half of one percent (.5%) of the gross Idaho tuition revenue of the school during the previous registration year, but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). The school shall provide documentation to substantiate the amount of revenue reported. Registration #fees are not refundable.

~~(4-9-09)~~(8-20-09)T

**07. Deadline for Registration.** An initial application for registration may be submitted to ~~PTE~~ the Board at anytime. A school should expect ~~PTE's~~ the Board review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to ~~PTE~~ the Board on or before the first business day of May that precedes a registration year. Schools that have not completed annual renewal of registration by July 1st must cease all active operations until approval of registration is received.

~~(4-9-09)~~(8-20-09)T

**08. Information Required.**

~~(4-9-09)~~

~~a-~~ Such application must include the information requested on the application form. In addition, a school applying for registration must submit information and/or documentation with its application for registration that documents compliance with ~~all of the~~ Standards I through V set forth in ~~Subsections 400.08.a. through 400.08.e.~~ Section 301 of this rule.

~~(4-9-09)~~

~~b-~~ PTE The Board may, in connection with a renewal of registration, request that a school only submit information that documents changes from the previous year, provided that the school certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 300.056 of this rule, shall remain applicable.

~~(4-9-09)~~(8-20-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. THE BOARD MAY NOTIFY THE PROPRIETARY SCHOOL OF ADDITIONAL INFORMATION REQUIRED.**

If ~~PTE~~ the Board is unable to determine the nature and activities of a school on the basis of the information provided by the school under this rule, then ~~PTE~~ the Board may notify the school of additional information that it will be required to provide in connection with the application for registration.

~~(4-9-09)~~(8-20-09)T

**01. Verification of Information.** ~~PTE~~ The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant school shall be responsible for any costs PTE incurs including travel, associated with this review.

~~(4-9-09)~~(8-20-09)T

**02. Criteria for Approval or Denial of Registration.** To be approved for registration, the school must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule, including all of the standards described in ~~Subsections 300.08.a. through 300.08.e.~~ Section 301 of this rule. A school must remain in compliance for the registration year.

~~(4-9-09)~~(8-20-09)T

**03. Public Information.** All information submitted to ~~PTE~~ the Board is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code.

~~(4-9-09)~~(8-20-09)T

**04. Certificate of Registration.**

(4-9-09)

**a.** A certificate of registration will be issued to a proprietary school that has paid its registration fee and been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No school that is registered with ~~PTE~~ the Board shall advertise or represent in any manner that it is accredited by ~~PTE~~ the Board. An institution may only represent that it is "Registered with Idaho Division of Professional-Technical Education." Registration is not an endorsement of the school. ~~(4-9-09)~~(8-20-09)T

**b.** If a school wishes to offer additional courses or courses of study during the course of a registration year that were not included in its application to ~~PTE~~ the Board prior to issuance of the certificate of registration, then the school may submit a supplemental application to ~~PTE~~ the Board, on a form approved by PTE, and pay any additional registration fees that are applicable. If approved, ~~PTE~~ the Board will issue a revised certificate of



registration evidencing such approval.

~~(4-9-09)~~(8-20-09)T

**05. Disapproval and Appeal.** If a proprietary school's request for initial registration or a renewal of registration is disapproved by PTE the Board, then the school may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to PTE the Board within thirty (30) days of the date the school is notified of the disapproval.

~~(4-9-09)~~(8-20-09)T

**06. Withdrawal of Approval.**

(4-9-09)

**a.** PTE The Board may refuse to renew, or may revoke or suspend approval of a school's registration by giving written notice and the reasons therefore to the school. The school may request a hearing under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General."

~~(4-9-09)~~(8-20-09)T

**b.** Withdrawal of approval may be for one (1) or more of the following reasons:

(4-9-09)

**i.** Violation of Chapter 24, Title 33, Idaho Code or this rule.

(4-9-09)

**ii.** Providing false, misleading, deceptive, or incomplete information to PTE the Board.

~~(4-9-09)~~(8-20-09)T

**iii.** Presenting to prospective or current students information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or

(4-9-09)

**iv.** Refusing to allow reasonable inspection or to supply reasonable information after a written request by PTE the Board has been received.

~~(4-9-09)~~(8-20-09)T

**c.** If any information contained in the application submitted by the school becomes incorrect or incomplete, then the registered school shall notify PTE the Board of such change within thirty (30) days. A school that ceases operation during the course of a registration year shall immediately notify PTE the Board of this event.

~~(4-9-09)~~(8-20-09)T

**07. Agent's Permit Certificate of Identification.** Each proprietary school shall ensure that its agents have a valid permit certificate of identification, and that all of its agents are in compliance with Section 33-2404, Idaho Code. The school shall complete a criminal history check that includes, at a minimum, the State Bureau of Identification, and statewide sex offender registry for each agent having unsupervised contact with minors in the minor's home or at secondary schools, prior to making application for the agent's permit certificate of identification. The criminal history check shall be valid for five (5) years. When an employee returns to any proprietary school after a break in service of six (6) months or more a new criminal history check must be obtained. When an employee changes employment between proprietary schools, a new criminal history check must be obtained.

~~(4-9-09)~~(8-20-09)T

**a.** The Board shall revoke any agent's certificate of identification issued or authorized under this Section and shall deny the application for issuance of a new certificate of identification of a person who pleads guilty to, or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child:

(8-20-09)T

**i.** The aggravated assault of a child, Section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, Section 18-909, Idaho Code.

(8-20-09)T

**ii.** The aggravated battery of a child, Section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, Section 18-911, Idaho Code.

(8-20-09)T

**iii.** The injury or death of a child, Section 18-1501, Idaho Code.

(8-20-09)T

**iv.** The sexual abuse of a child under sixteen (16) years of age, Section 18-1506, Idaho Code.

(8-20-09)T

- v. The ritualized abuse of a child under eighteen (18) years of age, Section 18-1506A, Idaho Code. (8-20-09)T
- vi. The sexual exploitation of a child, Section 18-1507, Idaho Code. (8-20-09)T
- vii. Possession of photographic representations of sexual conduct involving a child, Section 18-1507A, Idaho Code. (8-20-09)T
- viii. Lewd conduct with a child under the age of sixteen (16) years, Section 18-1508, Idaho Code. (8-20-09)T
- ix. The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, Section 18-1508A, Idaho Code. (8-20-09)T
- x. The sale or barter of a child for adoption or other purposes, Section 18-1511, Idaho Code. (8-20-09)T
- xi. The murder of a child, Section 18-4003, Idaho Code, or the voluntary manslaughter of a child, Section 18-4006 1., Idaho Code. (8-20-09)T
- xii. The kidnapping of a child, Section 18-4502, Idaho Code. (8-20-09)T
- xiii. The importation or exportation of a juvenile for immoral purposes, Section 18-5601, Idaho Code. (8-20-09)T
- xiv. The abduction of a person under eighteen (18) years of age for prostitution, Section 18-5610, Idaho Code. (8-20-09)T
- xv. The rape of a child, Section 18-6101 or 18-6108, Idaho Code. (8-20-09)T
- b.** The general classes of felonies listed in Section 302 shall include equivalent laws of federal or other state jurisdictions. For the purpose of Subsection 302.07, “child” means a minor or juvenile as defined by the applicable state or federal law. (8-20-09)T
- ~~**08.** Annual Agent’s Permit Fee. *The annual fee for the agent’s permit shall be fifty dollars (\$50.00). The agent’s permit must be renewed annually upon reapplication and proper qualifications, as required by Section 33-2404, Idaho Code.* (4-9-09)~~
- 098.** **Surety Bond.** Each proprietary school shall comply with the provisions in Section 33-2406, Idaho Code, relating to a surety bond. (4-9-09)
- a.** The amount of the surety bond shall be equal to the total tuition and fees charged by the school during the previous registration year. If a school is just starting or expects a significant expansion during the next year, the surety bond must cover the expected total tuition and fees. (8-20-09)T
- b.** Schools shall ensure that all bonds include “extended coverage” clauses to remain in effect for one hundred twenty (120) days after the date of closure. (8-20-09)T
- c.** No party to the surety bond may cancel without one hundred twenty (120) day prior notice to all parties, including the Office of the State Board of Education. (8-20-09)T
- d.** The Board shall be the beneficiary of the bond and shall oversee the distribution of funds to students who file claims. Schools shall provide proof of the required bond and submit said documentation with their registration applications. (8-20-09)T
- ~~**10.** Student Tuition Recovery Account. *Each proprietary school shall comply with the provisions of Section 33-2407, Idaho Code, relating to a student tuition recovery account.* (4-9-09)~~

**IDAPA 08 - STATE BOARD OF EDUCATION**  
**08.01.14 - IDAHO RURAL PHYSICIAN INCENTIVE PROGRAM**  
**DOCKET NO. 08-0114-0901 (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 Sections 33-105, 33-2402, and 33-2403, 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 October 21, 2009.

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

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

This rule sets out procedures for individuals to access the rural physicians incentive fund as described in Section 33-3724, Idaho Code.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the non-controversial nature of this rule. The proposed language was worked on by Board staff and a group of stakeholders from around the state.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tracie Bent at 332-1582.

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 October 28, 2009.

DATED this 28th day of August, 2009.

Tracie Bent  
Chief Planning, Policy and HR Officer  
State Board of Education  
650 West State Street  
PO Box 83720-0037  
Boise, ID 83720-0037  
(208) 332-1582 phone  
(208) 334-2632 FAX

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0114-0901**

**IDAPA 08  
TITLE 01  
CHAPTER 14**

**08.01.14 - IDAHO RURAL PHYSICIAN INCENTIVE PROGRAM**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to the authority of the State Board of Education (the Board) under Section 33-105, and Sections 33-3723 through 33-3725, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be known as IDAPA 08.01.14, "Idaho Rural Physician Incentive Program." ( )

**02. Scope.** These rules constitute the requirements for the Idaho Rural Physician Incentive Program. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code any written interpretation of the rules of this chapter are available at the Board office. ( )

**003. ADMINISTRATIVE APPEAL.**

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

**004. INCORPORATION BY REFERENCE.**

There are no documents to incorporate by reference pursuant to, and in accordance with, Section 67-5229, Idaho Code. ( )

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

The principal place of business of the Board is in Boise, Idaho. ( )

**01. Mailing Address.** The mailing address is PO Box 83720, Boise, ID 83720-0037. ( )

**02. Street Address.** The Board's street address is 650 West State Street, Room 307, Boise, Idaho 83702. ( )

**03. Office Hours.** The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This rule has been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and is a public record. ( )

**007. COMMUNICATION WITH STATE OFFICIALS.**

All inquiries concerning the Rural Physician Incentive Program will be directed to the Office of the Board. ( )

**008. -- 009. (RESERVED).**

**010. DEFINITIONS.**

These definitions are applicable to this chapter only. ( )

**01. Community Sponsoring Organization.** A hospital, medical clinic or other medical organization which is located in an eligible area and that employs physicians for purposes of providing primary care medical services to patients. ( )

**02. Eligible Area.** A medically underserved area of Idaho, further defined to mean an area designated by the U.S. Secretary of Health and Human Services as a health professions shortage area. ( )

**03. Oversight Committee.** The committee constituted pursuant to Section 33-3724, Idaho Code, composed of knowledgeable individuals or organizations to assist in the administration of the rural physician incentive program. ( )

**04. Primary Care Medicine.** Family medicine, general internal medicine, and general pediatrics, but if there is a demonstrated high level of need in an eligible area, as determined by the oversight committee, may also include obstetrics and gynecology, general psychiatry, general surgery and emergency medicine. ( )

**05. Qualified Medical Education Debt.** Debt with a financial aid program or financial institution incurred to meet the educational costs of attending a medical school. ( )

**06. Rural Physician.** A licensed Idaho physician, MD or DO, who spends a minimum of twenty-eight (28) hours per week, on average, providing primary care medicine services to patients in an eligible area. ( )

**07. Rural Physician Incentive Fee.** The fee assessed by the State to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for professional education in those fields, as those fields are defined by the compact. ( )

**08. Rural Physician Incentive Fund.** The special revenue account in the state treasury created pursuant to Section 33-3724, Idaho Code, relating to the Rural Physician Incentive Program. ( )

**011. OBJECTIVES OF THE RURAL PHYSICIAN INCENTIVE PROGRAM.**

This program is established as a tool to help recruit and retain rural physicians to serve in eligible areas. The granting of an award under this program requires the support of a community sponsoring organization in an eligible area that has experienced physician recruiting difficulties and that can demonstrate broad support for this program from the medical community and community leaders located in the eligible area. ( )

**012. ADMINISTRATION.**

The Board, through the advice and recommendations of the oversight committee, is the administrative agent for the Rural Physician Incentive Program. The Board designates its executive director, or his designee, as its administrative officer for this program and delegates to its executive director, or his designee, and to the Office of the State Board of Education, such administrative responsibilities as are necessary to carry out and administer the Rural Physician Incentive Program in accordance with this rule. ( )

**013. ASSESSMENT OF A RURAL PHYSICIAN INCENTIVE FEE.**

**01. Assessment.** Pursuant to Section 33-3723, Idaho Code, the rural physician incentive fee assessed to, and required to be paid by, all state-supported medical students who are preparing to be physicians in the fields of medicine or osteopathic medicine shall be equal to four percent (4%) of the average annual medical support fee paid by the State on behalf of each such student. ( )

**02. Annual Collection.** The rural physician incentive fee assessed by the Board shall be collected by the Office of the State Board of Education annually from each state-supported student during each year of undergraduate medical training and shall be deposited into the state treasury as required by Section 33-3723, Idaho Code. ( )

**03. Deposits.** Income and earnings from the rural physician incentive fund shall be returned to such fund. ( )

**014. ELIGIBILITY FOR A RURAL PHYSICIAN INCENTIVE PROGRAM AWARD.**

**01. Eligibility Requirements.** A physician who meets the following requirements is eligible to apply for a Rural Physician Incentive Program award: ( )

**a.** The physician, while pursuing a medical education, must have been assessed a rural physician incentive fee and paid into the rural physician incentive fund; ( )

**b.** During the period covered by the award, the physician must be a rural physician providing primary care medicine in an eligible area. A physician may provide patient care services in primary care medicine in more than one (1) eligible area; ( )

**c.** The physician must be a Doctor of Medicine (M.D.) or Doctor of Osteopathic Medicine (D.O.) and have completed an Accreditation Council of Graduate; ( )

**d.** Medical Education or American Osteopathic Association residency; ( )

**e.** The physician must be Idaho Medical Board certified/Board eligible, hold an unrestricted Idaho medical license, and be able to meet the medical staffing requirements of the sponsoring organization when applicable; and ( )

**f.** The physician must be eligible to care for Medicare and Medicaid patients within the scope of the physician's primary care medicine practice. ( )

**02. Ineligibility.** Notwithstanding Subsection 014.01 of these rules, a physician shall not be entitled to receive an award under this program if the physician is receiving payments for purposes of repaying qualified medical education debt from another state or from a federal debt repayment program. ( )

**015. APPLICATION PROCESS.**

**01. Applications.** Applications for the Rural Physician Incentive Program must be on a form prescribed by the Office of the State Board of Education and must include a letter of support, along with supporting documentation establishing the criteria in Subsections 021.01 and 021.02 of these rules, from a sponsoring organization. Applications must be received by the Office of the State Board of Education not earlier than October 1st and not later than December 31st for consideration for the award period beginning July 1st of the next succeeding year. ( )

**02. Announcement of Award.** Announcement of program awards shall be made not later than April 30th each year, with awards to be effective beginning July 1st of that year. Applicants must respond by the date specified in any communication from officials of the Rural Physician Incentive Fund Program. Failure to respond within the time period specified will result in cancellation of the application and forfeiture of the award unless extenuating circumstances can be shown by the applicant. ( )

**016. SELECTION OF RURAL PHYSICIAN INCENTIVE FUND AWARD RECIPIENTS.**

**01. Selection of Recipients.** The selection of recipients of Rural Physician Incentive Program awards shall be based on ranking and priority of applicants in accordance with the following criteria: ( )

**a.** Demonstrated physician shortage in the eligible area to be benefitted; ( )

**b.** Demonstrated physician recruiting difficulties in the eligible area to be benefitted; and ( )

**c.** Support of the medical community and community leaders in the eligible area. ( )

**02. Relevant Factors.** In reviewing and weighing these criteria, all relevant factors shall be considered. ( )

**03. Debt Payments Not Accepted.** If a physician selected for an award of debt payments does not accept the award in the manner provided in these rules, then the award shall be awarded to the next eligible applicant who has not received an award. ( )

**017. MONETARY VALUE OF THE AWARD.**

**01. Award Amounts.** A physician selected to receive a Rural Physician Incentive Program award shall be entitled to receive qualified medical education debt repayments for a period not to exceed five (5) years in such amount as is determined annually. The award shall not exceed the qualified medical education debt incurred by the recipient, and the maximum amount of educational debt repayments that a rural physician may receive shall be fifty thousand dollars (\$50,000) over such five (5) year period. Payments shall be limited to a maximum of ten thousand dollars (\$10,000) in a single year. ( )

**02. Establishing Award Amounts.** Award amounts shall be established annually based on recommendations of the oversight committee utilizing such factors as availability of funding, the number of new applicants, and the hours an award recipient will devote to providing primary care services in an eligible area. ( )

**03. Repayment of Qualified Medical Education Debt.** All qualified medical education debt repayments shall be paid directly to the financial organization holding such debt. ( )

**04. Incentive Fund.** Pursuant to Section 33-3725, Idaho Code, the total of all awards from the rural physician incentive fund contractually committed in a year shall not exceed the annual amount deposited in the rural physician incentive fund that same year. ( )

**05. Annual Adjustments.** An award payment to a recipient in a single year is not guaranteed or assured in subsequent years and may be increased or reduced. Annual award payments for new and existing award recipients will be announced no later than April 30th of each year. ( )

**018. ANNUAL CONTRACT.**

**01. Annual Contract.** An award recipient physician must enter into an annual contract to be eligible for qualified medical education debt repayments. ( )

**02. Verification of Eligibility.** Prior to entering into a contract covering a new award year, an award recipient must verify that he has met and will continue to meet the award eligibility requirements specified in this rule. Annual verification of continued eligibility must be on a form provided by OSBE and submitted to OSBE no later than December 31st each year. ( )

**03. Award Recipient Liability.** Pursuant to Section 33-3725, Idaho Code, the contract must provide that the award recipient is liable to the Board for the award payments made on his behalf should the recipient cease to practice in the eligible area during the contract period or fail to perform according to the terms of the contract. ( )

**019. FRAUDULENT INFORMATION.**

Providing false information on any application or document submitted under this chapter is grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the rural physician incentive fund. This Section shall not limit other remedies which may be available for the filing of false or fraudulent applications. ( )

**020. APPEAL PROCEDURE.**

**01. Filing an Appeal.** Any Idaho Rural Physician Incentive Program award applicant or recipient adversely affected by a decision made under provisions of these rules may appeal such adverse decision as follows: ( )

**a.** The Idaho Rural Physician Incentive Program applicant or recipient must appeal no later than thirty (30) days following notice of the decision. The written statement must include a statement of the reason the applicant or recipient believes the decision should be changed or overturned. ( )

**b.** 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 appeal, or may appoint a subcommittee of three (3) persons to review the appeal. ( )

**02. 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 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. ( )

**03. 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 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. ( )

**04. 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 applicant or recipient in writing of the decision of the Board. ( )

**021. -- 999. (RESERVED).**



# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0901

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-107, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change: According to surveys and testimony given to the Idaho Legislature, Idaho has a lack of consistency, reliability and validity in measuring teacher performance. Both the standards and procedures by which teachers are being evaluated have been found to lack consistency from one district to the next and often within a district from one school to another. Many teachers across Idaho have expressed concerns about the quality, fairness, consistency and reliability of teacher evaluation systems currently being used in their school district. Part of the recommendations made by the Teacher Evaluation Task Force included making changes to Idaho Administrative code, IDAPA 08.02.02. - Section 120, Local District Evaluation Policy. The changes establish state wide minimum standards for a fair, thorough, consistent and efficient system for evaluating teacher performance in Idaho based on Dr. Charlotte Danielson's Framework For Teaching. Dr. Danielson is a nationally recognized expert on school improvement. Danielson developed the Framework for Teaching as a guide to help teachers become more effective and help them focus on areas in which they could improve. The framework groups teachers' responsibilities into four major areas, which are clearly defined, and then further divided into components that highlight the practice of effective teaching.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 30 through 33.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nick Smith at 208-332-6959.

DATED this 21st Day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education

650 West State St., 2nd Floor  
(208) 332-6812; f (208) 334-2228  
PO Box 83720, Boise, ID 83720-0027

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### DOCKET NO. 08-0202-0901 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 09-6, June 3, 2009, pages 30 through 33.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0902

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective May 8, 2009, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 33-1201 and 33-1258, Idaho Code.

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

This rule change is in response to the Highly Qualified Teacher (HQT) mandate. In order to assist teachers in meeting highly qualified teacher status this immediate rule change is necessary. The traditional route to endorsement for in-service professionals seeking other endorsement areas is not sufficiently meeting the demands of school districts, particularly those in rural areas. These changes are in alignment with No Child Left Behind (NCLB) and allow for additional options to attain an endorsement. The four options include traditional coursework through a college or university, National Board certification, content specific graduate degree, and standardized content testing (Praxis II) with a mentoring component and/or pedagogical assessment. These additional routes expedite the attainment of endorsements for teachers who are needed to teach in areas outside of their current endorsement. Under the alternative authorization provisions these additional routes are available to Idaho school districts requesting endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification and is only valid for up to three years and is nonrenewable. All of these additional options for endorsement bring Idaho rule into further alignment with NCLB and the Highly Qualified Teacher mandate.

**Option I** - Teacher to New Certification was pre-existing under this section before and is now designated option one and titled accordingly. This option is for initial certification and/or endorsement and is for traditional coursework through a postsecondary institution.

**Option II** - National Board for adding an endorsement. By earning National Board certification in a content specific area, candidates may add an endorsement in that same content area to a valid certificate.

**Option III** - Master's degree or higher for adding an endorsement. By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid certificate.

**Option IV** - Testing and/or Pedagogical Assessment is for endorsement only. Two pathways are available to some candidates, depending upon endorsement(s) already held. Pathway I acknowledges content areas that are closely compatible in pedagogy with an endorsement area the candidate already qualifies and is experienced. This route requires no coursework once content competency has been shown as a result of a passing score on the appropriate Praxis II test and completion of a mentoring component. Pathway II addresses less closely aligned areas and therefore additional pedagogy in content area best practices is required in addition to content knowledge. Both Pathway I and II require a minimum of one year of supervision and mentoring.

Major additions to the alternate route to endorsement were already passed by the Legislature this 2009 session; however, the wording between Pathway I and Pathway II is in need of some minor clarifications. In addition, we are taking this opportunity to delete the "emergency" language. While all requests must still pass through the Professional Standards Commission Authorizations Committee, and districts must still communicate why it is in their best interest to choose this route rather than hire a person who is already appropriately certificated, the district will not need to prove that it is an emergency situation. The only other change is to include the option of awarding a teacher an additional endorsement for attaining a Master's Degree in a specific content area. Both changes bring the state into greater alignment with Title II-A guidance.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 34 through 36.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Christina Linder at (208) 332-6886 or Katie Rhodenbaugh (208) 332-6885.

DATED this 21st Day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St., 2nd Floor  
PO Box 83720, Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**DOCKET NO. 08-0202-0902 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 09-6, June 3, 2009, pages 34 through 36.](#)**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.**

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0903

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 33-1201 and 33-1258, Idaho Code.

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

**Section 021:** This rule change responds to a statewide challenge in meeting federal guidelines for Highly Qualified status and teacher shortages. In light of increased math and science graduation requirements, it is clear that the state may be facing an even greater shortage in these core content areas. This rule change proposes an avenue to head off a dramatic deficiency. It also allows for more local control and flexibility in meeting certification requirements, especially in consideration of rural districts that have difficulty in hiring and retaining qualified support personnel.

This rule change allows endorsements to be added to Professional Technical certificates. Up to this point, Professional Technical Education (PTE) issued full certificates but only in technical content areas. This will allow our technical education teachers to become highly qualified in core content area endorsements (math, science, language arts, etc.) so they can be highly qualified and take on additional assignments. This will particularly assist rural districts, provide students more options for meeting graduation requirements, and allow for more flexibility in assigning PTE certified teachers.

**Section 024:** In 2005 Idaho redesigned the social studies endorsement to meet the mandate of No Child Left Behind. An interdisciplinary endorsement was no longer sufficient; content expertise was to be proven in all four of the core content areas contained within the endorsement – government, economics, geography, and history. Though the original design intended to satisfy these requirements making social studies endorsed teachers highly qualified in all of these areas, it was found unacceptable to the US Department of Education (USDOE).

Because of the widely rural nature of Idaho, having teachers who can teach in more than one subject area is an absolute necessity. In accordance with direction given from the USDOE, changes have been made to the endorsement to bring the integrated social studies endorsement into compliance with highly qualified status in all four of the core content areas.

**Section 027:** This rule change is in response to a need for more uniform language. The term “provisional” is used erroneously to describe what is truly an “interim” certificate. A “provisional authorization” is granted as a one (1) year waiver whereas an “interim certificate” is granted for a period of three (3) years while educational requirements are actively being sought. This endorsement as it applies to the school nurse is an “interim endorsement” and needs to be worded appropriately.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 37 through 41.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Christina Linder at (208) 332-6886 or Katie Rhodenbaugh (208) 332-6885.

DATED this 26th day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St., 2nd Floor  
PO Box 83720, Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**DOCKET NO. 08-0202-0903 - ADOPTION OF PENDING RULE**

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 09-6, June 3, 2009, pages 37 through 41.](#)**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.**

**IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0905**

**NOTICE OF PUBLIC HEARING**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 33-105 and 33-107, Idaho Code.

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

**MONDAY - OCTOBER 19, 2009 -- 3:00 p.m. to 5:00 p.m.**

**IDAHO STATE DEPARTMENT OF EDUCATION**

**Len B. Jordan Building  
Lewis and Clark Conference Room  
2nd Floor  
650 W. State Street, 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 summary of this action is found in Idaho Administrative Bulletin Vol. 09-8, dated August 5, 2009, pages 33 through 35.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking or the hearing schedule, contact Brian Johns at (208) 332-6984.

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

DATED this 20th day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St., 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0906

### 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 33-105 and 33-1258, 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, October 21, 2009.

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:

A professional development opportunity has been developed in a three (3) credit course called Mathematical Thinking for Instruction (MTI). The foundation for the course is to focus on Teaching for Understanding and building mathematical thinking for students. Instructors emphasize five underlying principles of the course and encourage teachers to carry them out back in their classrooms. They include: taking students ideas seriously, pressing students conceptually, encouraging multiple strategies, addressing misconceptions, and focusing on the structure of the mathematics. Participants in the course increase both their content knowledge and their pedagogical knowledge.

Three MTI classes have been developed that are grade level specific including; K-3, 4-8, 6-12. Through this rule change, teachers and administrators will be required take one of the three courses developed that most closely aligns with their current assignment prior to September 1, 2014. Teachers are expected to take what is learned in the MTI class back to their classrooms and implement those practices in their instruction. Follow up support is being provided by regional math specialists and online webinars.

A five (5) year timeline has been established for over 10,000 educators to get through the MTI course. The Institute for Developing Mathematical Thinking through the Boise State Center for School Improvement and the State Department of Education are also working with other post secondary educational institutions to ensure the sustainability is in place for after the initial five (5) year phase. At this point only in-service teachers will be required to participate in this professional development opportunity. Priority will be given to public school math teachers for the first three years. The State Department of Education will provide stipends for the certified instructors, three (3) university credits for participants successfully completing the requirements of the course, and course materials for participants. The funding for this is provided through the Idaho Math Initiative State Funding.

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

No fee or charge is being imposed or changed through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the recommendations for change were proposed by the Idaho Math Initiative Task Force (which included administrators, teachers, parents, business representatives, a higher education professor, and a representative from the Idaho School Boards Association) and representatives from the College of Southern Idaho, Idaho State University, Northwestern Nazarene University, University of Idaho, Boise State University, and BYU-Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance

on technical questions concerning the proposed rule, contact Christina Linder at (208) 332-6886.

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, October 28, 2009.

DATED this the 21st day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720, Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-0907**

**016. IDAHO EDUCATOR CREDENTIAL.**

The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. (Section 33-1201, Idaho Code)  
(3-16-04)

**01. Renewal Requirement - Mathematics In-Service Program.** In order to recertify, the state approved mathematics instruction course titled “Mathematical Thinking for Instruction” shall be required. The “Mathematical Thinking for Instruction” course consists of three (3) credits (or forty-five (45) contact hours of in-service training). Teachers and administrators shall take one (1) of the three (3) courses developed that each teacher deems to be most closely aligned with their current assignment prior to September 1, 2014. Successful completion of state approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals listed in Subsection 016.01.a. through 016.01.e. shall successfully complete the “Mathematical Thinking for Instruction” course in order to recertify: ( )

**a.** Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); ( )

**b.** Each teacher holding a Standard Elementary Certificate (K-8); ( )

**c.** Each teacher holding a Standard Secondary Certificate (6-12) teaching in a math content classroom (grade six (6) through grade twelve (12)) including Title I classrooms; ( )

**d.** Each teacher holding a Standard Exceptional Child Certificate (K-12); and ( )

**e.** Each school administrator holding an Administrator Certificate (Pre K-12). ( )

**02. Out-of-State Applicants.** Out-of-state applicants shall take the state approved mathematics instruction course titled “Mathematical Thinking for Instruction” as a certification requirement. The “Mathematical Thinking for Instruction” course consists of three (3) credits (or forty-five (45) contact hours of in-service training). ( )



# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0907

### 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 33-105, 33-1201, 33-1204 and 33-1206, 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, October 21, 2009.

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

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

The Idaho Math Initiative is offering a professional development opportunity for math educators and administrators. Many teachers that have taken the Mathematical Thinking for Instruction (MTI) course during the first year of implementation have requested additional classes in this field of study. Research shows that in order for a professional development opportunity to be successfully implemented, follow up opportunities must be made available. As part of the math initiative, the follow up support includes working closely with regional math specialists and district instructional coaches. To ensure that qualified educators are conducting this additional follow up support, a mathematical consulting teacher endorsement has been developed.

The MTI courses have already been developed and other courses will be developed in cooperation with all of the participating institutions of higher education and the State Department of Education. One primary goal of the endorsement program is to produce exemplar teachers, who will lead and build the knowledge of their colleagues throughout the state of Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the recommendations for change were proposed by the Idaho Math Initiative Task Force which was comprised of a variety of stakeholders. Stakeholder representation included administrators, teachers, parents, higher education representatives, business representatives, and a representative from the Idaho School Boards Association.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Christina Linder at (208) 332-6886 or Cindy Johnstone at (208) 332-6932.

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, October 28, 2009.

DATED this the 21st Day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-0906**

**029. CONSULTING TEACHER ENDORSEMENT.**

~~01. **Technical Assistance to Teachers.**~~ Consulting teachers provide technical assistance to teachers and other staff in the school district with regard to the selection and implementation of appropriate teaching materials, instructional strategies, and procedures to improve the educational outcomes for students ~~with exceptional needs~~. They may also provide direct intervention for students with significant needs. ~~(4-11-06)( )~~

~~021. **Eligibility for a Consulting Teacher Endorsement**~~ **Special Education Consulting Teacher - Eligibility for Endorsement.** To be eligible for a Special Education Consulting Teacher endorsement on the Standard Exceptional Child Certificate, the Early Childhood /Early Childhood Special Education Blended Certificate (Birth-Grade 3), the Standard Elementary Certificate or the Standard Secondary Teaching Certificate, a candidate must have satisfied the following requirements: ~~(3-16-04)( )~~

**a.** Education Requirements. Qualify for or hold a Standard Exceptional Child Certificate and qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3). Plus completion, in an accredited college or university, of a master's degree or an approved fifth year program as defined by the Idaho State Board of Education, and have demonstrated competencies in the following areas: Assessment of learning behaviors; Individualization of instructional programs based on educational diagnosis; Behavioral and/or classroom management techniques; Program implementation and supervision; Knowledge in use of current methods, materials and resources available and management and operation of media centers; Ability in identifying and utilizing community or agency resources and support services; and Counseling skills and guidance of professional staff. (4-11-06)

**b.** Experience. Completion of a minimum of three (3) years' teaching experience, at least two (2) years of which must be in a special education classroom setting. (3-16-04)

**c.** Letter of Recommendation. Provide a letter of recommendation from the superintendent of a school district that provides verification of demonstrated competencies in the following areas: assessment of learning behaviors; individualization of instructional programs based on educational diagnosis; behavioral and/or classroom management techniques; program implementation and supervision; knowledge in use of current methods, materials and resources available and management and operation of media centers; ability in identifying and utilizing community or agency resources and support services; and counseling skills and guidance of professional personnel and three (3) years of successful experience as a special education teacher working with classroom teachers in elementary or secondary schools; and (4-11-06)

**d.** Three (3) years of successful experience as a special education teacher working with classroom teachers in elementary or secondary schools. (4-11-06)

**02. Mathematics Consulting Teacher - Eligibility for Endorsement.** To be eligible for a Mathematics Consulting Teacher endorsement on the Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended

Certificate (Birth-Grade 3), a candidate must have satisfied the following requirements: ( )

**a.** Education Requirements. Qualify for or hold a Standard Elementary Certificate, Standard Secondary Certificate, Standard Exceptional Child Certificate, or Early Childhood/Early Childhood Special Education Blended Certificate (Birth-Grade 3) and have demonstrated competencies in the following areas through a minimum of twenty (20) semester credit hours of coursework. ( )

**b.** The competencies are centered on four emphases: Big Ideas in Mathematics, Proof and Argumentation, Mathematics Knowledge for Teaching, and Rich Tasks. Coursework required includes the full series of Mathematics Thinking for Instruction (MTI), Geometry & Measurement, Algebraic Reasoning, and Data Analysis & Probability. ( )

**c.** Experience. Completion of a minimum of three (3) years' teaching experience. ( )

**d.** Assessment of Performance. Prior to being granted the Mathematics Consulting Teacher endorsement, candidates must have proof of successful performance through teacher portfolios. These portfolios will include both quantitative and qualitative measurements such as pre- and post-interviews, teacher knowledge inventories, classroom video, lesson plans, and student work samples. ( )

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0902

### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 33-107 and 33-1612, Idaho Code.

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

The Idaho Content Standards for Social Studies, Physical Education, Health, Chemistry (as part of the Science standards), and Humanities are due for revision as part of the six year curricular materials adoption cycle. Idaho Curricular Materials Adoption Process provides review and evaluation of new curricular materials for these content areas in 2010 and requires the most up to date standards for textbook submission by vendors. Idaho Content Standards were also reviewed and revised in order to meet the needs of the increased high school graduation requirements for the Class of 2013. For each content area, committees were solicited to participate in the revision process.

The standards for Chemistry and Humanities were introduced as temporary rule in the last rulemaking year, because they needed to be used prior to the end of the 2009 legislative session as schools began to review their district curricular needs. They are now being presented in the current rulemaking year as a proposed rule.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 42 through 44.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Peter Kavouras at 332-6975, Pat Stewart at 332-6929, Rhonda DeMers at 332-6950, Peggy Wenner at 332-6949, or Scott Smith at 332-6952.

DATED this 21st Day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education

650 West State St., 2nd Floor  
PO Box 83720, Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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### DOCKET NO. 08-0203-0902 - ADOPTION OF PENDING RULE

**No substantive changes have been made to the pending rule.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 09-6, June 3, 2009, pages 42 through 44.**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.**

**IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0903**

**NOTICE OF PUBLIC HEARING**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 33-105 and 33-107, and 33-1612, Idaho Code.

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

**WEDNESDAY - OCTOBER 14, 2009 - 3:00 p.m.**

**IDAHO STATE DEPARTMENT OF EDUCATION**

**Len B. Jordan Building**

**Lewis and Clark Conference Room**

**2nd Floor**

**650 W State Street, 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 summary of this action is found in Idaho Administrative Bulletin Vol. 09-8, dated August 5, 2009, pages 36 and 37.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking or the hearing schedule, contact Rob Sauer at (208) 332-6934.

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

DATED this 20th day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St., 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0905

### 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 33-105 and 33-1612, 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, October 21, 2009.

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 State Department of Education continues to field numerous calls regarding the number of instructional hours necessary to grant a high school credit. Currently state law does not define this. This question has become more prevalent as districts look at adopting a variety of different scheduling alternatives to meet the demands of NCLB and the new increased graduation requirements established by the State Board of Education.

To provide districts with the guidance necessary to establish their instructional calendars, as well as for consistency of credit hours for transferability, this rule change will define a credit as a minimum of 60 hours of instruction. The 60 hours is in line with a Carnegie Unit which is the national standard for contact time with an instructor to earn a credit at the secondary level. This change also includes a waiver process for those districts that would like to require less than 60 hours of total instruction but can substantiate a legitimate reason for doing so. Currently all but three school districts in the state of Idaho require 60 hours of instruction or more per credit.

In addition to establishing a number of hours per credit, this rule change will establish a policy for mastery of a subject. Research and national trends in secondary education are moving many states towards policies that allow for granting credit based on mastery rather than traditional seat time. This change in policy would give districts the flexibility to establish mastery policies that would provide students the opportunity to challenge courses that they are knowledgeable in and focus on courses that they may need more assistance in or on courses where they may want to spend more time exploring.

Currently, IDAPA 08.02.03.105 allows for students at the middle school to earn high school credit in Math and Science courses as long as that course meets the same standards that are required in high school. This rule change will expand this opportunity to all subject areas.

For students who enter high school at the 9th grade level in the Fall of 2009 or later, the minimum number of credits required for graduation is 46 not 45. This error was inadvertently made in a previous rulemaking promulgated under Docket No. 08-0203-0805 and is being corrected here.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rule changes were a result of feedback gained from numerous meetings and presentations on High School Redesign. During the past two years, SDE staff has presented information on High School Redesign and the changes that school districts would be required to implement for the graduating class of 2013 at a number of conferences and regional meetings. During these presentations, the staff received a considerable amount of feedback and suggestions on other changes that districts wanted to see included in this rule. The changes contained in this rule, are a result of that feedback.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nick Smith at (208) 332-6959.

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, October 28, 2009.

DATED this the 21st day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-0905**

**105. HIGH SCHOOL GRADUATION REQUIREMENTS.**

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

**01. Credit Requirements.** The State minimum graduation requirement for all Idaho public high schools is forty-two (42) ~~semester~~ credits. The forty-two (42) ~~semester~~ credits must include twenty-five (25) ~~semester~~ credits in core subjects as identified in Paragraphs 105.01.~~ac~~ through 105.01.~~fh~~. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, the minimum graduation requirement will be forty-~~five six~~ (45~~6~~) ~~semester~~ credits and must include twenty-nine (29) ~~semester~~ credits in core subjects as identified in Paragraphs 105.01.~~ab~~ through 105.01.~~fg~~. (~~5-8-09~~)(    )

**a.** Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (    )

**b.** Mastery. Students may also achieve credits by demonstrating mastery of a subject's content standards through one (1) or more of the following as defined and approved by the local school district or LEA: (    )

**i.** Successfully passes a local school district or LEA end of course assessment with a minimum score of eighty percent (80%) correct; (    )

**ii.** Provides sample of work or other evidence which demonstrates equivalent knowledge or skill to that which would be gained by taking the course; (    )

iii. Provides documentation of prior learning activities or experiences (e.g., certification of training, letters, diplomas, awards, etc.) that demonstrates equivalent knowledge or skill to that which would be gained by taking the course. ( )

~~ac.~~ Secondary Language Arts and Communication. Nine (9) ~~semester~~ credits are required, ~~that include~~ ~~Eight (8) semester~~ credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature; ~~including and be aligned to the Idaho Content Standards for the appropriate grade level.~~ ~~One (1) semester~~ credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the ~~state high school communications~~ Idaho Speech Content ~~Standards~~ requirements. (5-8-09)( )

~~bd.~~ Mathematics. Four (4) ~~semester~~ credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. (5-8-09)

~~i.~~ *If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement for such course. However, the student must complete the required four (4) credits of high school math in addition to the courses completed in middle school.* (5-8-09)

~~ii.~~ For all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) ~~semester~~ credits are required. For such students, secondary mathematics includes instruction in the following areas: (5-8-09)( )

~~(1)i.~~ Two (2) ~~semester~~ credits of Algebra I or courses that meet the Idaho Algebra I Content ~~Standards~~ as approved by the State Department of Education; (5-8-09)( )

~~(2)ii.~~ Two (2) ~~semester~~ credits of Geometry or courses that meet the Idaho Geometry Content ~~Standards~~ as approved by the State Department of Education; and (5-8-09)( )

~~(3)iii.~~ Two (2) ~~semester~~ credits of mathematics of the student's choice. (5-8-09)( )

~~(4)iv.~~ Two (2) ~~semester~~ credits of the required six (6) ~~semester~~ credits of mathematics must be taken in the last year of high school. (5-8-09)( )

~~ec.~~ Science. Four (4) ~~semester~~ credits are required, two (2) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (5-8-09)( )

i. Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) ~~semester~~ credits will be required. ( )

ii. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) ~~semester~~ credits of these courses must be laboratory based. (5-8-09)( )

~~ii.~~ *If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement for such course. However, the student must complete the required number of semester credits of high school science in addition to the courses completed in middle school.* (5-8-09)

~~df.~~ Social Studies. Five (5) ~~semester~~ credits are required, including government (two (2) ~~semester~~ credits), United States history (two (2) ~~semester~~ credits), and economics (one (1) ~~semester~~ credit). ~~Current world affairs and geography will be integrated into all social studies instruction.~~ Courses such as geography, sociology, ~~world affairs~~ psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (5-8-09)( )



**eg.** Humanities. Two (2) ~~semester~~ credits are required. Humanities courses include instruction in ~~interdisciplinary humanities~~, visual ~~and performing~~ arts, ~~music, theatre, dance~~, or world language aligned to the Idaho content standards for those subjects. Other courses such as world literature, world history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course ~~syllabus is approved by the State Department of Education as being aligned with the~~ is aligned to the Idaho Interdisciplinary Humanities Content Standards. (5-8-09)(\_\_\_\_)

**fh.** Health/Wellness. One (1) ~~semester~~ credit is required. Course must ~~focus on positive health habits~~ be aligned to the Idaho Health Content Standards. (5-8-09)(\_\_\_\_)

**02. Achievement Content Standards.** Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (4-2-08)(\_\_\_\_)

**063. College Entrance Examination.** (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: COMPASS, ACT or SAT. Scores must be included in the Learning Plan. (5-8-09)

**074. Senior Project.** (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) A student must complete a senior project by the end of grade twelve (12). The project must ~~also~~ include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (5-8-09)(\_\_\_\_)

**05. Middle School.** If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement for such course. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.b. through 105.01.g. in addition to the courses completed in middle school. (\_\_\_\_)

**036. Proficiency.** Each student must achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. For all public school students who enter high school at the 9th grade level in the Fall 2009 or later, each student must also achieve a proficient or advanced score on the science portion of the ISAT in order to graduate. A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established mechanism. All locally established mechanisms used to demonstrate proficiency will be forwarded to the State Board of Education for review and information. Districts with alternate measures on file with the Board on the effective date of this rule must re-submit their plans to the Board. Alternate mechanisms must be re-submitted to the Board when changes are made in their plans. (5-8-09)

- a.** Before entering an alternate measure, the student must be: (4-2-08)
  - i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)
  - ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)
  - iii. Enrolled in the fall semester of the senior year. (3-20-04)
- b.** The measure must be: (5-8-09)
  - i. Aligned at a minimum to tenth grade state content standards; (3-20-04)
  - ii. Aligned to the state content standards for the subject matter in question; (5-8-09)

- iii. Valid and reliable; and (5-8-09)
  - iv. Ninety percent (90%) of the criteria of the measure, or combination of measures, must be based on academic proficiency and performance. (3-20-04)
  - c. A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)
    - i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must be approved by the State Board of Education and must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)
    - ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.036; or ~~(5-8-09)~~( )
    - iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)
    - iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)
- 057. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)
- 048. Foreign Exchange Students.** Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0906

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2009.

**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 33-116, 33-2002, Idaho Code, and 20 U.S.C, Section 1412, Individuals with Disabilities Education Act (IDEA).

**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, October 21, 2009.

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 proposed changes to this rule provide greater clarity to these rules and reduce confusion. It also removes references to things that Idaho does not or cannot recognize. It also defines and establishes the Idaho Special Education Manual as the official policies, procedures and criteria for special education in Idaho in accordance with federal law.

In Subsection 109.03, Eligibility for Special Education, references to noncategorical eligibility have been struck; Idaho and IDEA do not have noncategorical eligibility.

This change also removes 109.02.d. which addresses proportionate expenditures for home school students with disabilities. This subsection extends beyond the IDEA regulations which define the requirement for proportionate expenditures based on the number of students with disabilities who are parentally-placed in a private school. Subsection 109.02.d. applies the proportionate expenditure beyond IDEA requirement to include home school students which would be incalculable for the district as well as being in conflict with IDEA and the use of a district's special education funds.

IDEA (20 U.S.C, Section 1412) requires that states and districts establish policies, procedures and criteria – in accordance, Idaho developed the Special Education Manual (the manual was initially developed prior to 2001 and has undergone periodic revisions) to which all Idaho school districts already adhere. Idaho's application for the IDEA grant requires that the state give assurances related to policies and procedures and this will further strengthen these assurances.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in governing law or federal programs.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes were in accordance with federal regulation. A number of stakeholders have been included and consulted in updating the Idaho Special Education Manual including, state staff, regional consultants, district

special education directors and staff, and parents of students with disabilities and parent organizations supporting parents of children with disabilities.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jacquie Hyatt at (208) 332-6951.

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, October 28, 2009.

DATED this the 20th day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 08-0203-0906**

**109. SPECIAL EDUCATION.**

- 01. Definitions.** The following definitions apply only to Section 109 of these rules. (4-5-00)
- a.** Adult Student. A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (4-5-00)
  - b.** Department. State Department of Education. (4-5-00)
  - c.** Due Process Hearing. An administrative hearing that is conducted to resolve disputes. (8-20-09)T
    - i.** Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (8-20-09)T
    - ii.** For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (8-20-09)T
  - ed.** Education Agency. Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (4-5-00)
  - ~~**d.** Expedited due process hearing. An administrative hearing to resolve disputes concerning discipline for which shortened time lines are in effect in accordance with the Individuals with Disabilities Education Act. (4-5-00)~~
  - e.** Governing Special Education Requirements. Sections 33-201, 33-2001 through 2002, 33-2004 through 2005, and 33-2010, Idaho Code; Section 109 of these rules; the Individuals with Disabilities Education Act

(IDEA), Parts A and B, (20 U.S.C., Sections 1400-1419); IDEA Regulations (34 C.F.R. Part 300); ~~policies and procedures the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C. Section 1412~~ Idaho Special Education Manual; and special education case law that sets precedence in Idaho.

~~(4-5-00)~~(8-20-09)T

**f.** ~~Regular due process hearing. An administrative hearing that is conducted to resolve disputes on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education except for disputes concerning discipline for which an expedited hearing may be requested under the Individuals with Disabilities Education Act.~~ Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C. Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements.

~~(4-5-00)~~(8-20-09)T

**g.** Special education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech-language pathology services to meet the unique needs of a special education student.

(4-5-00)

**02. Legal Compliance.** The State Department of Education and education agencies shall comply with all governing special education requirements.

(4-5-00)

**a.** The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements.

(4-5-00)

**b.** The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures.

(4-5-00)

**c.** Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements.

(4-5-00)

~~**d.** The child find, services plan, and proportionate expenditure requirements of the Individuals with Disabilities Education Act that apply to students who are voluntarily enrolled in private schools by their parents shall also apply to home school students.~~

~~(4-5-00)~~

**ed.** Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The Department may approve a private school or facility to provide special education services upon application to the Department if it:

(4-5-00)

i. Is an accredited school or a licensed rehabilitation center; and (4-5-00)

ii. Meets minimum health, fire and safety standards; and (4-5-00)

iii. Is nonsectarian; and (4-5-00)

iv. Provides special education services consistent with governing special education requirements. (4-5-00)

v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education. (4-5-00)

**fe.** Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the Bureau of Occupational Licensing. Education agencies shall employ individuals who meet the highest entry-level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry-level standard within three (3) years. (4-5-00)

**gf.** Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education. (4-5-00)

**hg.** Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act. (4-5-00)

**ih.** Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate. (4-5-00)

**03. Eligibility for Special Education.** The State Department of Education shall provide state eligibility criteria for special education services for categorical ~~and noncategorical~~ eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. ~~Noncategorical eligibility procedures and criteria may be used only by schools and education agencies that have applied for and been granted a noncategorical eligibility waiver.~~ (4-5-00)(8-20-09)T

**04. Individualized Education Programs.** Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the date of receipt of written parental consent for an initial assessment to the date of IEP implementation shall not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. A new IEP shall be developed at least annually, on or before the date the previous IEP was developed. (4-5-00)

**a.** IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal. (4-5-00)

**b.** Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (4-5-00)

**c.** The IEP team shall determine the student's placement in the least restrictive environment. (5-3-03)

**d.** At the discretion of the education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (4-5-00)

**i.** The child is ages three (3) through five (5), and (4-5-00)

**ii.** The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (4-5-00)

- iii. The child's parents provide written consent to use the IFSP, and (4-5-00)
- iv. The IFSP is developed in accordance with IDEA Part B policies and procedures. ~~(5-3-03)~~(8-20-09)T
- v. Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year olds nor to implement more than the educational components of the IFSP. (4-5-00)
- e. When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP. (4-5-00)
- f. If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (4-5-00)
- 05. Procedural Safeguards.** Education agencies will use appropriate procedural safeguards consistent with the Individuals with Disabilities Education Act. (8-4-99)
- a. If a parent or adult student disagrees with an individualized education program change or placement change proposed by the district, the parent or adult student may file a written objection to all or parts of the proposed change. If the written objection is postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed change, the proposed change cannot be implemented. Informal methods such as additional IEP team meetings or voluntary mediation may be used to resolve the disagreement. If these methods fail, the education agency may request a due process hearing to obtain a hearing officer's decision regarding the proposed change. The written objection cannot be used to prevent the education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline procedures. (4-5-00)
- b. Mediation may be requested by an education agency, parent, or adult student, or offered by the State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department ~~will reimburse the mediator for an honorarium and travel expenses~~ shall be responsible for compensating the mediator. All mediation participants shall be required to sign a confidentiality pledge. Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. ~~(4-5-00)~~(8-20-09)T
- c. The State Department of Education shall administer a single-tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's ~~Bureau~~ Director of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. ~~(4-5-00)~~(8-20-09)T
- d. The education agency that is a party to the hearing shall be responsible for compensating the hearing officer and paying for the cost of a verbatim transcript of the hearing. (4-5-00)

e. Due process hearings shall be conducted pursuant to ~~the Idaho Administrative Procedures Act (APA) and the~~ IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Education Act (IDEA) requirements, and the Idaho Special Education Manual. In case of any conflict between the IDAPA 04.11.01 and the IDEA, the IDEA shall supersede the IDAPA 04.11.01, and IDAPA 04.11.01 shall supersede the Idaho Special Education Manual. ~~(4-5-00)(8-20-09)T~~

f. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty-five (45) calendar days of the date a regular hearing is requested, unless a specific extension of this time line is requested by one (1) of the parties and granted by the hearing officer. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within twenty (20) calendar days of a written request for an expedited hearing, unless a specific extension of this time line has been granted. An extension of the time line for an expedited hearing shall not exceed an additional twenty-five (25) calendar days, and may be granted only if requested by one (1) of the parties and agreed to by both parties. The decision shall be sent to the parent or adult student, the education agency administrator, their respective representatives, and the State Department of Education. (4-5-00)

g. The hearing officer's decision shall be binding unless either party appeals the decision by initiating a civil action. The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless an appeal is filed by a parent or adult student or the decision specifies a different implementation date. An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision. (4-5-00)

h. During the hearing the education agency shall provide reasonable accommodations as required by federal and state regulations. Disputes concerning reasonable accommodations shall be referred to the Department of Education's Americans with Disabilities Act (ADA) Committee for resolution. (4-5-00)

i. During the pendency of any due process hearing or civil appeal the child's educational placement shall be determined by the Individuals with Disabilities Education Act "stay put" requirements. (4-5-00)

j. A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education agency's cost criteria, and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (4-5-00)

k. Student records shall be managed in accordance with IDEA and Family and Educational Rights and Privacy Act regulations governing security, confidentiality, access, maintenance, destruction, inspection and amendment. (4-5-00)

**06. Assistive Technology Devices.** Education agencies may hold a parent liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the education agency if it is lost, stolen, or damaged due to negligence or misuse at home or in another setting outside of school time. (4-5-00)

**07. Diplomas and Graduation.** School districts shall use a regular diploma for students who are eligible for special education at the completion of their secondary program. The transcript serves as a record of individual accomplishments, achievements, and courses completed. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities. If a student is not granted a regular high school diploma or if a regular high



school diploma is granted for completing requirements that are not comparable to regular graduation requirements, a student who is eligible for special education is entitled to receive a free appropriate public education through the semester in which the student turns twenty-one (21) years of age or until the student completes requirements that are comparable to regular graduation requirements, whichever comes first. (4-5-00)

**08. Special Education Advisory Panel.** The State Superintendent of Public Instruction shall appoint members to serve on the Special Education Advisory Panel. Panel members shall elect annually an individual to serve a one (1) year term as vice-chair followed by a one (1) year term as chair. (4-5-00)

# IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

## 08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0907

### 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 33-105, 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, October 21, 2009.

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:

In 2005, Idaho submitted assessment materials for review under the standards and assessment requirements of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). External peer reviewers and U.S. Department of Education staff evaluated Idaho's submission and found it was not in compliance with certain regulatory and statutory requirements. During the 2005-2006 school year, Idaho addressed critical elements summarized in the report findings including that the achievement standards should be reviewed and reorganized to solve the problems and inconsistencies that were revealed and that they be renamed the Idaho Content Standards. Since then, the term "state achievement standards" has been updated in IDAPA 08.02.03.004 to read "Idaho Content Standards." However, the term was not changed elsewhere in rule. The rule change will update the term usage, as well as correct an incorrect citation.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes being made to the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Luci Willits (208) 332-6814.

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, October 28, 2009.

DATED this the 21st day of August, 2009.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-0907

**200. K-12 ~~STATE ACHIEVEMENT~~ IDAHO CONTENT STANDARDS.**

As stated in Subsection 105.02 of these Thoroughness rules, all students graduating from Idaho public high schools must meet locally established ~~achievement content~~ standards. The standards set forth in Sections ~~250 through 954, inclusive, 004 of this rule~~ are state ~~achievement content~~ standards that shall be the minimum standards used by every school district in the state in order to establish a level of academic ~~achievement content~~ necessary to graduate from Idaho's public schools. Each school district may set standards more rigorous than these state ~~achievement content~~ standards but no district shall use any standards less rigorous than those set forth in these Thoroughness rules. The implementation time and effective date for these ~~Achievement Content~~ Standards rules is the graduating senior class of 2005. (3-15-02)( )

## **IDAPA 09 - DEPARTMENT OF LABOR**

### **09.03.01 - RULES OF THE RURAL BROADBAND DEVELOPMENT MATCHING FUND PROGRAM**

#### **DOCKET NO. 09-0301-0901 (CHAPTER REPEAL)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2009.

**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 72-1333, 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 October 21, 2009.

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 Broadband Development Matching Fund program is no longer funded by the legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The repeal of this rule confers a cost saving benefit to the public and the State.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the legislative appropriation for this program ended June 30, 2008.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Bob Fick, Communications & Legislative Liaison, (208) 332-3570 ext. 3628.

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, October 28, 2009.

DATED this 10th day of August, 2009.

Bob Fick, Communications & Legislative Liaison  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
(208) 332-3570 ext. 3628, Fax (208) 334-6455

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**IDAPA 09.03.01 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 11 - IDAHO STATE POLICE

### 11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

#### DOCKET NO. 11-0501-0901 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 67-2901 and 49-901 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 October 21, 2009.

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 increases fingerprint fees, establishes definitions and fees for multi-purpose arenas, clarifies existing rules by providing additional information for licensees to ensure compliance with regulations and allow more consistent enforcement of alcohol beverage laws. Provides specific circumstances when minors are permitted or prohibited on premises, considering modern business concepts and the specific types of establishments. Proposes rules requiring display of suspension notices providing notification to the public.

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

Provides increased fingerprint fees for staff processing and verification for license applicant qualifications. The current fee is thirty-four dollars (\$34) deposited into the miscellaneous revenues account, an increase of eleven dollars (\$11) is proposed to cover the approximately one hour ABC staff time needed to track, process, and review fingerprint qualification results. The new fee would be forty-five dollars (\$45), and could provide approximately \$22,000 in additional revenue. Provides for a definition of multi-purpose arena and a designated endorsement to the alcohol beverage license. Provides for an annual fee of \$2,500 for the multi-purpose arena license endorsement.

**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: No negative fiscal impact will result from this change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because all stakeholders were involved or invited to participate in discussions resulting in these rules changes and will receive copies for review.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lt. Bob Clements, (208) 884-7060 or robert.clements@isp.idaho.gov.

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 October 28, 2009.

DATED this 21st day of August, 2009.

Colonel G. Jerry Russell, Director  
Idaho State Police  
700 S. Stratford Drive  
Meridian, ID 83643  
(208) 884-7003 / (208) 884-7090 fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-0501-0901

001. TITLE AND SCOPE.

01. **Title.** These rules shall be cited as IDAPA 11.05.01, "Rules Governing Alcohol Beverage Control." (2-20-01)

02. **Scope.** The rules relate to the governance and operation of Alcohol Beverage Control. Unless a specific reference herein limits application of a rule to a particular kind of alcoholic beverage, these rules apply to ~~and implement Idaho Code Sections for liquor ( all licensees of alcoholic beverages governed by Title 23, Chapter 9, Idaho Code), beer (Title 23, Chapter 10, Idaho Code), and wine (Title 23, Chapter 13, Idaho Code).~~ (2-20-01)( )

(BREAK IN CONTINUITY OF SECTIONS)

004. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Bureau of Alcohol Beverage Control, ~~P.O. Box 700 S. Stratford Drive, Meridian, ID 83680-0700~~ 83642-6202. Lobby hours are Monday through Friday, 8 a.m. to 4:30 p.m. (3-6-07)( )

005. PUBLIC RECORDS AVAILABILITY.

Public Records are available during normal working hours for inspection and copying at the Idaho State Police, Bureau of Alcohol Beverage Control, 700 South Stratford Drive, Meridian, ID ~~83680-0700~~ 83642-6202. (2-20-01)( )

006. WEBSITE.

Alcohol Beverage Control information including licensing, applicable statutes, and these rules is available at: <http://www.isp.state.id.us/abc>. ( )

~~006~~7. -- 009. (RESERVED).

010. DEFINITIONS.

01. **Bona Fide Owner.** For the purposes of Section 23-1010(2)(a), Idaho Code, the bona fide owner of a business engaged in the sale of alcoholic beverages is the genuine or actual person or entity exercising exclusive control over the privileges of selling alcoholic beverages. ( )

a. Applicant shall disclose the interest of any person or entity in the business through tax records, bank statements, personnel records, or any other business records pursuant to Section 23-905, Idaho Code. ( )

02. **Goodwill.** For the purposes of Section 23-908(5), Idaho Code, goodwill is the current fair market value of the liquor license privilege in the incorporated city where the license is transferred. ( )

~~04~~3. **Licensee.** Any person who has received a license from the Director under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. (7-1-93)

024. **Licensed Premises.** Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee's application for a license constitute the licensed premises. ~~In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license.~~ All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. ~~An additional sixty (60) days may be granted by the Director, upon petition by the license holder, who is the bona fide owner of the business and available for legitimate sales of alcoholic beverages by the drink.~~ (3-6-07)( )

**a.** A suitable premises includes an establishment primarily engaged in food or beverage sales, or both, that is in compliance with all city, county, state and federal laws and regulations and includes, but is not limited to, one (1) or more of the following characteristics: ( )

i. Separate and distinct entrance and physical address; ( )

ii. Accessible restroom and washing facilities; ( )

iii. Suitable facilities or equipment for sanitation of glasses and bar ware. ( )

**b.** In the event of loss, move, or closure of the physical licensed premises, the licensee has ninety (90) days to reopen or secure and occupy a new premises in which to display the license and begin actual sales of alcoholic beverages, or the licensee shall return the alcohol beverage license to the state. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. ( )

**035. New Licenses.** For purposes of Section 23-908(4), Idaho Code, a “new license” is one that has become available as an additional license within a city’s limits under the quota system after July 1, 1980. ( )

**a.** The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the original licensee and remain in use for at least six (6) consecutive months is satisfied if the license is prominently displayed in a suitable premises and the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (-3-6-07)( )

**b.** A new license shall be forfeited back to the state without the provisions of Chapter 52, Title 67, Idaho Code, for failure to place that license into actual use as required by Section 23-908(4), Idaho and these rules. A forfeiture of an alcohol beverage license does not affect the licensee’s qualification to secure an alcohol beverage license in the future. ( )

**06. Multipurpose Arena.** ( )

**a.** For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: ( )

i. Publicly or privately owned or operated arena, coliseum, stadium, or other facility where sporting events, concerts, live entertainment, community events, and other functions are presented for a ticketed price of admission or one (1) whose premises are leased for private events such as receptions; ( )

ii. Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and ( )

iii. Facility that has been endorsed by the director. ( )

**b.** A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. The fee for a Multipurpose Arena endorsement is two thousand five hundred dollars (\$2,500) per year. ( )

**c.** To receive a Multipurpose Arena endorsement under this Section will require the facility to have food available including, but not limited to, hamburgers, sandwiches, salads, or other snack food. The director may also restrict the type of events at a Multipurpose Arena facility at which beer, wine, and liquor by the drink may be served. The Director will also consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a Multipurpose Arena facility before the director will endorse the license. ( )

**d.** A licensee that applies for a Multipurpose Arena endorsement must submit with the application an operating/security plan to the director and the local law enforcement agency for review and approval. Once approved, the plan remains in effect until the licensee requests a change or the director determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan. The plan must be submitted in a format designated by the director and must contain all of the following elements: ( )

i. How the Multipurpose Arena facility will prevent the sale and service of alcohol to persons under twenty-one (21) years of age and those who appear to be intoxicated. ( )

ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served. ( )

iii. Training provided to staff who serve, regulate, or supervise the service of alcohol. ( )

iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction. ( )

v. A list of event type/categories to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event. ( )

vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. ( )

e. Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the director and local law enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the director and local law enforcement at least twenty-four (24) hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. ( )

f. To prevent persons who are under twenty-one (21) years of age or who appear intoxicated from gaining access to alcohol, the director may require that an operating plan include additional mandatory requirements if it is determined that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one (21) years of age or who are apparently intoxicated from obtaining alcohol. ( )

g. If premises, licensed as a Multipurpose Arena, subsequently ceases to meet the qualifications of a Multipurpose Arena, the restrictions contained in Section 23-943, Idaho Code, shall apply and the posting of signs as provided for in Section 23-945, Idaho Code, shall be required. The licensee shall advise the director, by mail, that his premises no longer constitute a Multipurpose Arena, so that the license may be modified accordingly. ( )

**047. Partition.** A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: (3-6-07)

**a.** Permanently fixed from the premises ceiling to the premises floor. (3-6-07)

**b.** Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-6-07)

**c.** Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-6-07)

**d.** All partitions must be approved by the Director. (3-6-07)

**058. Place.** For the purposes of Section 23-943, Idaho Code, "Place" as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. (3-6-07)

**069. Restaurant.** The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premises consumption.



The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following:

(3-6-07)

- a. An established menu identifying the individually priced meals for consumption; (3-20-04)
- b. Food service and preparation occurs on the premises by establishment employees; (3-20-04)
- c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-20-04)
- d. The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that ~~the establishment is advertised and held out to the public as primarily a food eating establishment, or that~~ at least forty percent (40%) of the establishment's consumable purchases are derived from purchases of food and non-alcoholic beverages. ~~(3-20-04)~~( )

**0710. Stock Transfer.** For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, is not a transfer. A transfer among family members means between two (2) or more members of the same immediate family, not from one (1) or more individuals to an entity created by that individual or individuals. ~~(3-6-07)~~( )

**011. GENERAL PROVISIONS.**

**01. Repeal of Prior Rules.** The Director intends to promulgate a uniform and consistent set of alcoholic beverage rules. Accordingly, all rules adopted before the effective date of this chapter (Sections 000 through 021), which concern or involve the licensing of alcoholic beverages, specifically rules 1-L; 2-L; 3-L; 4-L; 6-L; 10-L; 11-L; 1-B; 2-B; 3-B; 5-B; 6-B; 7-B; 9-B; 11.05.A,1.0; 11.05.A,1.1; and 11.05.A,1.2, are hereby repealed and declared null and void. (7-1-93)

**02. Delegation of Authority to License Alcoholic Beverages.** The Director hereby delegates his authority for the licensing of establishments which sell alcoholic beverages, as contained in Title 23, Chapters 9, 10, and 13, Idaho Code, to the, Alcohol Beverage Control Bureau, Idaho State Police. All applications and inquiries concerning alcoholic beverage licenses must be directed to the Alcohol Beverage Control Bureau at P.O. Box 700, Meridian, Idaho 83680. The Alcohol Beverage Control Bureau provides forms for all applications and inquiries. Nothing contained herein shall interfere with the Director's supervisory authority for alcoholic beverage licensing. (Section 67-2901(4), Idaho Code). (3-6-07)

**012. LICENSING AND APPLICATIONS.**

**031. Authority to Stagger the Renewal of Licenses to Sell Alcohol.** For the purposes of Sections 23-908, 23-1010 and 23-1316, Idaho Code, the Director may adjust the renewal month to accommodate population increases. The following table sets out the notification months and renewal months established to renew licenses to sell alcohol:

Renewal Notices	County	Renewal Month
January	Kootenai	1-Mar
January	Benewah	1-Mar
February	Ada	1-May
March	Ada	1-May
April	Canyon	1-Jun
April	Owyhee	1-Jun

<b>Renewal Notices</b>	<b>County</b>	<b>Renewal Month</b>
April	Payette	1-Jun
May	Twin Falls	1-Jul
May	Gooding	1-Jul
May	Camas	1-Jul
May	Lincoln	1-Jul
May	Jerome	1-Jul
June	Cassia	1-Aug
June	Minidoka	1-Aug
June	Butte	1-Aug
June	Blaine	1-Aug
June	Power	1-Aug
July	Lemhi	1-Sep
July	Custer	1-Sep
July	Boise	1-Sep
July	Valley	1-Sep
August	Elmore	1-Oct
August	Clark	1-Oct
August	Fremont	1-Oct
August	Jefferson	1-Oct
August	Madison	1-Oct
August	Teton	1-Oct
August	Bonneville	1-Oct
September	Bingham	1-Nov
September	Bannock	1-Nov
September	Caribou	1-Nov
September	Oneida	1-Nov
September	Franklin	1-Nov
September	Bear Lake	1-Nov
October	Boundary	1-Dec
October	Bonner	1-Dec
October	Shoshone	1-Dec
November	Adams	1-Jan
November	Gem	1-Jan
November	Washington	1-Jan

<b>Renewal Notices</b>	<b>County</b>	<b>Renewal Month</b>
December	Latah	1-Feb
December	Nez Perce	1-Feb
December	Idaho	1-Feb
December	Lewis	1-Feb
December	Clearwater	1-Feb
<b>Renewal Notices</b>	<b>Certs of Approval</b>	<b>Renewal Month</b>
November	Out of State	1-Jan

(5-3-03)

**02. Expiration of Licenses.** Pursuant to Sections 23-927 and/or 23-1012, Idaho Code, when a county has passed an ordinance extending the hours of sale of liquor or beer, or both, to 2 a.m., all liquor and beer licenses in that county expire at 2 a.m., on the first of the month of the year following their issuance. (Section 23-908(1), Idaho Code). ( )

**03. Failure to Renew.** When a licensee has failed to renew his valid alcohol beverage license and the thirty-one (31) day extended time period granted in Sections 23-908, 23-1010 and 23-1316, Idaho Code, has elapsed, the licensee has no further rights to renew that same license and the license shall be offered in writing to the applicant whose is first on the priority list as provided in Subsection 013.02 of these rules. ( )

**04. Changes in Information.** ( )

**a.** On the annual renewal application, the licensee must sign an affidavit verifying that the information contained in the original application is unchanged, or if there are material changes, indicating such changes. ( )

**b.** At anytime during the licensing period if the licensee, or a partner of the licensee, has a license revoked, or is convicted of any violation of any local ordinance, law of the state of Idaho or the United States regulating, governing, or prohibiting the sale of alcoholic beverages, the licensee must notify the director in writing within thirty (30) days of the revocation or conviction. ( )

**c.** Failure to notify the director of any material changes that would have disqualified the licensee from the privilege of selling alcohol beverages at the time the disqualification was entered, may result in administrative proceedings to recover any proceeds obtained by the sale of alcoholic beverages during the period of time the licensee was disqualified and withheld that information from the director. ( )

**05. Fingerprinting.** Pursuant to Sections 23-907, 23-1003, 23-1010, 23-1307, 23-1308, 23-1308A Idaho Code, all persons applying for an alcohol beverage license must have a fingerprint based criminal history check. ( )

**a.** Existing licensees. Any person that currently holds a valid alcohol beverage license shall be re-fingerprinted for a criminal history check every five (5) years. ( )

**b.** New applicants. Any person that applies for an alcohol beverage license and is not currently licensed must have a fingerprint based criminal history check prior to a license being issued. ( )

**c.** Fee. There is a forty-five dollar (\$45) fee for processing the fingerprint card/criminal history check. ( )

**0123. TRANSFER OF ALCOHOLIC BEVERAGE LICENSES.**

**01. Transfer of License Subject to Sanctions.** The Director of the Idaho State Police may deny the

transfer of an alcoholic beverage license which is subject to possible disqualification, revocation or suspension under the provisions of Title 23, Chapters 9, 10, and 13, Idaho Code, or these rules, when an action has been filed to such effect before the Idaho State Police pursuant to Sections 23-933, 23-1037 or 23-1331, Idaho Code. (7-1-93)

**02.** **Transfer Fees.** For the purposes of Section 23-908(5), Idaho Code, the calculation of a transfer fee is based on the actual sales price or goodwill, whichever is greater. For applications for transfers that allow collection of a transfer fee, but do not reflect the sales price of the alcohol beverage license, the transfer fee is based on goodwill. ( )

**023.** **Death or Incapacity of Licensee.** In the event of the incapacity, death, receivership, bankruptcy, or assignment for the benefit of creditors of a licensee, his guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may, upon written authorization from the Alcohol Beverage Control Bureau, continue the business of the licensee on the licensed premises for the duration of the license or until the business is terminated except:- ( )

**a.** Any person operating the licensed premises under this ~~regulation rule~~ must submit a signed ~~agreement affidavit~~ within ten (10) days that he will assume all of the responsibilities of the licensee for operation of the premises in accordance with law. Any person operating licensed premises under ~~the regulation this rule~~ must submit an alcohol beverage license application within ninety (90) days and demonstrate to the satisfaction of the Alcohol Beverage Control Bureau that he is qualified to hold an alcoholic beverage license. ( )

**b.** A guardian, executor, administrator, receiver, trustee in bankruptcy, or assignee for benefit of creditors may renew or transfer a license so held, in the same manner as other licensees, subject to the approval of the Alcohol Beverage Control Bureau. (Sections 23-908(1), 23-1005A, and 23-1317, Idaho Code). ~~(3-31-95)~~( )

**034.** **Authorization to Transfer and Assignment of Privilege to Renew.** Any person applying to renew a liquor license who was not the licensee at the applicable premises for the preceding year, must submit with the application to renew, a written Authorization to Transfer and Assignment of Privilege to Renew signed by the current licensee. (7-1-93)

**045.** **Temporary Permits.** When application for transfer of an alcoholic beverage license has been made, the Alcohol Beverage Control Bureau, in its discretion, may authorize issuance of a temporary permit during the review of the application, during which time the applicant for transfer may conduct business as a temporary permit holder. The permit holder, in accepting the temporary permit, is responsible for complying with all statutes and rules pertinent to the sale of alcoholic beverages. Sanctions against such permit holder, whether civil, administrative, or criminal lies with the permittee, and acceptance of the permit constitutes a waiver of any defenses by permit holder based upon the fact that the permit holder is not, technically, a licensee. The Alcohol Beverage Control Bureau may withdraw a temporary permit it has issued pursuant to this rule at any time without hearing or notice. (3-6-07)

**05.** **Product Replacement and Credit.** ~~Any beer or wine products removed from the licensed retailer's premises by a wholesaler/distributor for quality control or public health are not considered to be a violation of Section 23-1033 or 23-1325, Idaho Code, which prohibit aid to the retailer or of Sections 23-1031 or 23-1326, Idaho Code, which prohibit extension of credit to a retailer, if:~~ (3-6-07)

**a.** ~~The packages or kegs are replaced with identical product and quantity; or~~ (8-1-95)

**b.** ~~In the instance of replacement of a partial keg of beer or wine, a credit to be redeemed on subsequent alcoholic beverage purchases by the retailer is given for the value of the unused portion; or~~ (3-6-07)

**c.** ~~In the instance of removal of product for which the identical product or quantity thereof is not immediately available to the wholesaler/distributor at the time of removal of the product, a credit is given. The credit shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or~~ (8-1-95)

**d.** ~~In the case of a licensed establishment which is in operation no less than two (2) months and no more than nine (9) months of each year, prior to its period of closure, it is apparent that product will become outdated or spoiled before the date of re-opening, a wholesaler/distributor may remove product from the retailer's premises and may give a credit to the retailer. Such credit shall be redeemed on subsequent alcoholic beverage purchases by~~

~~the same retailer.~~

~~(8-1-95)~~

~~e. Credit is given to a retailer for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor.~~

~~(3-6-07)~~

~~06. Expiration of Licenses. When a county has, pursuant to Sections 23-927 and/or 23-1012, Idaho Code, passed an ordinance extending the hours of sale of liquor and/or beer to two o'clock a.m. (2:00 a.m.), all liquor and/or beer licenses in that county expire at two a.m. (2 a.m.), on the first of the month of the year following their issuance. (Section 23-908(1), Idaho Code).~~

~~(3-6-07)~~

~~07. Maintenance of Keg Receipts. Licensees shall retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months.~~

~~(3-6-07)~~

#### 0134. PRIORITY LISTS.

**01. Priority Lists for Incorporated City Liquor Licenses.** The Alcohol Beverage Control Bureau maintains a priority list of applicants for those cities in which no incorporated city liquor license is available. A separate list is maintained for each city. A person, partnership, or corporation desiring to be placed on a priority list shall file a completed application for an incorporated city liquor license, accompanied by payment of one-half (1/2) of the annual license fee. Such application need not show any particular building or premises upon which the liquor is to be sold, nor that the applicant is the holder of any license to sell beer. Priority Placement on the list is determined by the earliest application, each succeeding application is placed on the list in the order received. ~~(3-6-07)~~( )

#### **02. Written Notification.**

( )

**a.** When an incorporated city liquor license becomes available, Alcohol Beverage Control offers it in writing to the applicant whose name appears first ~~on the priority list.~~ in the following priority order: ( )

**i.** An applicant who has an existing, currently operating business establishment and who holds a beer or wine by the drink license. ( )

**ii.** An applicant who has an existing, currently operating business establishment with a suitable premises to be licensed for alcoholic beverages, but does not currently hold a beer or wine by the drink license. ( )

**iii.** An applicant who does not have an existing or currently operating business establishment. ( )

**b.** If the applicant does not notify the Alcohol Beverage Control Bureau in writing within ten (10) days of receipt of the notice of his intention to accept the license, the license is offered to the next applicant in priority. An applicant accepting the license shall have a period of one hundred eighty (180) days from the date of receipt of Notice of License Availability in which to complete all requirements necessary for the issuance of the license. Provided, however, that upon a showing of good cause the Director of the Idaho State Police may extend the time period in which to complete the necessary requirements for a period not to exceed ninety (90) days.

~~(3-6-07)~~( )

**03. Refusal to Accept Offer of License or Failure to Complete Application for License or Meet Requirements.** An applicant refusing a license offered under this rule or an applicant who fails to complete his application or does not meet licensing requirements may have his name placed at the end of the priority list upon his written request. ~~Should~~ If the applicant holding first priority refuses or fails to accept the license or to complete the application within the time specified, or does not meet licensing requirements, the applicant shall be dropped from the priority list, the deposit refunded, and the license offered to the applicant appearing next ~~on the list in priority, unless a written request is made to be placed at the end of the priority list.~~

~~(3-6-07)~~( )

**04. Cost for Investigation.** An applicant who has notified the Alcohol Beverage Control Bureau of his intention to proceed with the application process, and cannot place the license in a suitable premises within the maximum time period allowed by these rules, shall have his application denied and the license fee returned, less the costs and expenses of investigation. ( )

**045. Limitations on Priority Lists.** An applicant shall hold only one position at a time on each incorporated city priority list. An applicant must be able to demonstrate to the Director the ability to place an awarded license into actual use as required by Section 23-908(4), Idaho Code and these rules. An applicant for a place on an incorporated city liquor license priority list may not ~~execute an inter vivos transfer or assignment of his~~ substitute, assign or change his place on the priority lists, except for the creation of a legal entity in which the applicant is the sole owner, manager or member. ~~For the purposes of this rule, "inter vivos transfer or assignment" means the substitution of any individual; partnership; corporation, including a wholly owned corporation; organization; association; or any other entity for the original applicant on the waiting list. An attempt to assign inter vivos a place on an incorporated city liquor license priority list shall result in the removal of the name of the applicant from the lists. An applicant, however, may assign his or her place on an alcoholic liquor license priority list by devise or bequest in a valid will. A place on an incorporated city liquor license priority list becomes part of an applicant's estate upon his or her death.~~ (3-6-07)(\_\_\_\_)

**056. Priority Lists Where Licenses Are Available.** The Alcohol Beverage Control Bureau shall not maintain a list for a city in which a liquor license is available, nor for a city that does not permit retail sale of liquor. If, prior to the promulgation of this rule, the Alcohol Beverage Control Bureau has maintained a priority list for any such city, the list shall be abolished and all license fees returned to the respective applicants. (3-31-95)

**07. Withdrawal of Name from Priority List.** When an applicant files an application to be on an incorporated city's priority list under more than one (1) individual, partnership or corporation, or other entity and one (1) of those entities withdraws its name, or has its name withdrawn, the remaining applicants must amend the application with only the names of those entities that wish to be considered for an incorporated city liquor license. An amendment to the application may not include additional entities, but may only be a change to those previously named entities. Failure to amend the application, or if an applicant fails to devise or bequest his place on the priority list, before the offering of an incorporated city liquor license to the original applicant, the applicant shall be dropped from the priority list as provided in Subsection 013.03 of these rules. (\_\_\_\_)

**015. WHOLESALE/DISTRIBUTORS.**

**01. Price Posting.** Sections 23-1029 and 23-1329, Idaho Code, require all wholesalers, distributors, wineries, breweries, importers and dealers to file a written schedule of prices with the director. Prices and product information must be submitted electronically through the price posting program located at: <http://www.isp.state.id.us/PricePosting2/toPricePostSearch.action>. (\_\_\_\_)

**02. Product Replacement and Credit.** Removal of any beer or wine products from a licensed retailer's premises by a wholesaler/distributor for quality control or public health reasons is not considered to be a violation of Sections 23-1033 or 23-1325, Idaho Code, which prohibit aid to the retailer, or of Sections 23-1031 or 23-1326, Idaho Code, which prohibit extension of credit to a retailer, if: (\_\_\_\_)

**a.** The packages or kegs are replaced with identical product and quantity; or (\_\_\_\_)

**b.** In the instance of replacement of a partial keg of beer or wine, a credit to be redeemed on subsequent alcoholic beverage purchases by the retailer is given for the value of the unused portion; or (\_\_\_\_)

**c.** In the instance of removal of product for which the identical product or quantity thereof is not immediately available to the wholesaler/distributor at the time of removal of the product, a credit is given. The credit shall be redeemed on subsequent alcoholic beverage purchases by the retailer; or (\_\_\_\_)

**d.** In the case of a licensed establishment that is in operation no less than two (2) months and no more than nine (9) months of each year, if prior to its period of closure it is apparent that product will become outdated or spoiled before the date of re-opening, a wholesaler/distributor may remove product from the retailer's premises and may give a credit to the retailer. Such credit shall be redeemed on subsequent alcoholic beverage purchases by the same retailer. (\_\_\_\_)

**e.** Credit is given to a retailer for the amount paid by the retailer at the time of purchase of the product being removed by the wholesaler/distributor. (\_\_\_\_)

**016. AGE RESTRICTION REQUIREMENTS.**

**01. Over/Under Clubs.** Minors shall not enter, remain or loiter in any licensed establishment that sells alcohol by the drink except for those premises listed as exceptions in Section 23-944, Idaho Code. ( )

**02. Posting of Age Restriction Signs.** Section 23-945, Idaho Code, requires alcoholic beverage licensees to post an age restriction sign in certain premises. In those certain premises, such sign must contain the following words in lettering of at least one (1) inch in height: "Admittance of persons under 21 years of age prohibited by law." Such sign must be placed conspicuously over, beside, or on the door of each entrance to the licensed premises and must be clearly visible from the exterior when approaching such premises. ( )

**03. Restaurants - When Minors Prohibited.** For licensees that maintain a restaurant endorsement pursuant to Section 23-944(1), Idaho Code, and Subsection 010.04 of these rules, and wish to operate primarily serving alcoholic beverages after 9:00 p.m., the licensee must notify the Alcohol Beverage Control Bureau of his intention of operating as a dual premises before operating in such a manner. ( )

**a.** The licensee must post an age restriction sign as required in Subsection 016.02 of these rules containing the following words in lettering of at least one (1) inch in height: "Persons under twenty-one (21) years of age prohibited after 9:00 p.m." ( )

**b.** The licensee shall comply with Section 23-943, Idaho Code, restriction of minors, after 9:00 p.m. ( )

**04. Licensed Movie Theaters - When Minors Permitted.** ( )

**a.** A movie theater that is licensed to sell alcoholic beverages by the drink, except for those theaters that qualify under Section 23-944(7), Idaho Code, during the times the movie theater is showing films may permit minors upon the premises. No age restriction posting is required and all alcoholic beverages must be secured, locked up and not available for sale or consumption. ( )

**b.** If the licensed movie theater chooses to have events other than the showing of films, such as comedy shows, theatrical plays, or concerts, age restriction signs must be posted as required in Subsection 016.02 of these rules and persons under twenty-one (21) years of age must be prohibited from entering the premises during the times alcoholic beverages are sold, served, and consumed. ( )

**05. Counterfeit or Altered Age Documents.** If alcoholic beverage licensees, their employees, or agents receive age identification documents that have been lost or voluntarily surrendered, they must deliver the documents to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials within fifteen (15) days from the date they were received, found, or voluntarily surrendered. When identification documents that appear to be mutilated, altered, or fraudulent are presented to a licensee, their employees or agents, they must contact law enforcement or refuse service, or both. ( )

**017. CONDUCT OF LICENSED PREMISES.**

**01. Produce Records.** Upon request of an agent of the director, a licensee, or anyone acting on his behalf, must produce any records required to be kept pursuant to Title 23, Chapters 9, 10, or 13, Idaho Code, and permit the agent of the director or peace officer to examine them and permit an inspection of the licensee's premises in accordance with Sections 23-930 and 23-1006, Idaho Code. ( )

**02. Premises Inspections.** Upon request by a peace officer, a licensee, their employees, agents, or anyone acting on his behalf, must permit an inspection of the licensee's premises. Any inspection performed pursuant to this rule must occur in accordance with Section 23-1011A, Idaho Code. ( )

**03. Maintenance of Keg Receipts.** Licensees must retain a copy of all completed keg receipts required by Section 23-1018, Idaho Code, for a period of six (6) months. ( )

**04. Violations.** The failure to produce such records or to permit such inspection on the part of any licensee is a violation of these rules. A violation of these rules, federal or state law or local code or ordinance may subject the licensee to administrative sanctions pursuant to Sections 23-933, 23-1037 and 23-1331, Idaho Code. This rule is not intended to eliminate the protection provided in Section 23-807, Idaho Code. ( )

**0158. -- 020. (RESERVED).**

**021. AGE RESTRICTION REQUIREMENTS.**

**01. ~~Over/Under Clubs.~~** ~~Minors shall not enter, remain or loiter in any licensed establishment that sells alcohol by the drink except for those premises listed in Section 23-944, Idaho Code.~~ (3-6-07)

**02. ~~Posting of Age Restriction Signs.~~** ~~Sections 23-945 and 23-1026, Idaho Code, require every alcoholic beverage licensee to post an age restriction sign. Such sign must contain the following words in lettering of at least one (1) inch in height: "Admittance of persons under twenty-one (21) years of age prohibited by law." Such sign must be placed conspicuously over or on the door of each entrance to the licensed premises and must be clearly visible from the exterior approached to such premises.~~ (3-6-07)

**03. ~~Counterfeit or Altered Age Documents.~~** ~~If alcoholic beverage licensees, their employees, or agents receive age identification documents which have been lost or voluntarily surrendered, they shall deliver the documents to an agent or investigator of the Alcohol Beverage Control Bureau or to other law enforcement officials within fifteen (15) days from the date they were received, found or voluntarily surrenders. When identification documents that appear to be mutilated, altered or fraudulent are presented to a licensee, their employees or agents, they must contact law enforcement and/or refuse service.~~ (3-6-07)

**021. RESPONSIBLE RETAILER PROGRAM (RRP).**

**01. ~~Seller/Server Training Program.~~** Licensees operating establishments where alcoholic beverages are sold, dispensed, served or consumed on the premises are encouraged to ensure that each seller/server of alcoholic beverages employed on the premises completes an approved seller/server training program within sixty (60) days after the date the seller/server begins employment at the establishment. Participation in the RRP allows licensees to seek reduced penalties upon complying with seller/server training when the licensee has been issued an administrative violation that include Sections 23-603, 23-605, 23-615, 23-943, 23-1013, Idaho Code. ( )

**02. ~~Voluntary Server Training -- Verification Records -- Reduced Penalties.~~** ( )

**a. ~~A seller/server of alcoholic beverages may complete an approved seller/server training program within sixty (60) days after the date the alcoholic beverage seller/server begins employment at a licensed establishment unless the seller/server has already completed an approved server-training program within the last three (3) years.~~** ( )

**b. ~~Only the seller/server training programs listed here in Subsection 021.02.b., or otherwise approved by the director, will be recognized as complying with the provisions of these rules.~~** ( )

**i. ~~"ServSafe Alcohol" programs of the National Restaurant Association Educational Foundation.~~** ( )

**ii. ~~"TIPS" Training for Intervention Procedures programs of Health Communications, Inc.~~** ( )

**iii. ~~Idaho State Police Alcohol Beverage Control Bureau training programs.~~** ( )

**iv. ~~Internal licensee training programs with prior approval by the director.~~** ( )

**c. ~~The licensee may seek reduced penalties upon documentation of approved training in accordance with the penalty schedule contained in these rules. The Alcohol Beverage Control Bureau reserves the right to impose reduced penalties based on aggravating circumstances involved in each violation.~~** ( )



- d.** To remain compliant with the RRP, licensees must: ( )
- i.** Maintain records of their sellers and servers approved training; ( )
- ii.** Show proof of training upon request of the Alcohol Beverage Control Bureau; ( )
- iii.** Require any server/seller of alcoholic beverages to complete an approved server-training program every three (3) years; ( )
- iv.** Have less than (3) three violations within a (3) three year period. ( )

**022. PENALTIES AND PENALTY SCHEDULES.**

Pursuant to Sections 23-603, 23-614, 23-804, 23-901, 23-905, 23-932, 23-933, 23-933A, 23-1037 and 23-1331, Idaho Code, the following schedules are meant to serve as guidelines and are not an all-inclusive list of violations. Based on mitigating or aggravating circumstances, Alcohol Beverage Control Bureau may impose a different penalty, unless specified by statute, than the standard penalties outlined in these schedules. Penalties are calculated on violations that occur within a three-year (3) period and the mitigating or aggravating factors of each violation. More than four (4) violations in any category within a three-year (3) period may result in revocation. ( )

**01. Category One Violations.** The following violations directly concern public safety and are considered the most serious.

<b><u>VIOLATION</u></b>	<b><u>FIRST VIOLATION</u></b>	<b><u>SECOND VIOLATION</u></b>	<b><u>THIRD VIOLATION</u></b>	<b><u>FOURTH VIOLATION</u></b>
<u>Sale/dispensing to intoxicated person.</u>  23-605, 23-615, IC	<u>10 days suspension or \$1,000 monetary penalty</u>  <b><u>RRP: \$500</u></b>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>  <b><u>RRP: \$2,000</u></b>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>  <b><u>RRP: \$5,000</u></b>	<u>Revocation</u>
<u>Sale/dispensing to person under 21 years of age.</u>  23-603, 23-615, 23-949, 23-1013, IC	<u>10 days suspension or \$1000 monetary penalty</u>  <b><u>RRP: \$500</u></b>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>  <b><u>RRP: \$2,000</u></b>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>  <b><u>RRP: \$5,000</u></b>	<u>Revocation</u>
<u>Allowing a person under 21 years of age to loiter.</u>  23-943, IC	<u>10 days suspension or \$1,000 monetary penalty</u>  <b><u>RRP: \$500</u></b>	<u>30 days suspension or 15 days suspension and \$1500 monetary penalty</u>  <b><u>RRP: \$2000</u></b>	<u>90 days suspension or 45 days suspension and \$4500 monetary penalty</u>  <b><u>RRP: \$5,000</u></b>	<u>180 days suspension or 90 days suspension and \$5000 monetary penalty</u>
<u>Failure to Admit Officer.</u>  23-930, 23-1011A, IC	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>90 days suspension</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Allowing after hours consumption.</u> <u>23-927, 23-1012, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>90 days suspension or 45 days suspension and \$4,500 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Prohibited Acts of 23-614, IC.</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>	<u>Revocation</u>
<u>Conviction of Obscenity Laws.</u> <u>23-933A, 23-1037A IC</u>	<u>6 months suspension required</u>	<u>Revocation required</u>		
<u>Gambling on licensed premises.</u> <u>23-928, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>	<u>Revocation</u>
<u>Possession/sale of liquor not purchased from the state liquor dispensary.</u> <u>23-914, IC</u>	<u>Revocation</u>			
<u>Re-pouring or reuse of liquor container.</u> <u>23-926, IC</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>	<u>Revocation</u>	
<u>Possession or use of Alcohol without liquid device.</u> <u>23-616, IC</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>	<u>Revocation</u>	

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**02. Category Two Violations.** The following violations concern conduct of the licensed premises that could indirectly involve public safety.

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Failure to lock up liquor.</u> 23-927, IC	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Failure to deface government or state stamp/label.</u> 23-926, IC	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Keg Sale violation.</u> 23-1018, IC	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Sale of Liquor by the bottle.</u> 23-921, IC	<u>30 days suspension or \$3,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>	<u>Revocation</u>
<u>Failure to Post Premises.</u> 23-945, IC	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>	<u>Revocation</u>
<u>Submitting false application/hidden ownership.</u> 23-905, 23-1010, 23-1306, IC	<u>Revocation</u>			
<u>Employing a minor under 19 years of age to sell, serve or dispense.</u> 23-943, IC	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Selling liquor without a license.</u> 23-938, IC	<u>Revocation</u>			

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Alcoholic Beverage sales away from licensed premises.</u> <u>23-928, IC &amp; IDAPA 11.05.01.010.03</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Sanitation rules for retailers.</u> <u>23-1034, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Keep or maintain unlicensed room.</u> <u>23-934, IC</u>	<u>180 days suspension or 90 days and a \$5,000 monetary penalty</u>	<u>Revocation</u>		
<u>Selling alcoholic beverages during the 31-day grace period after the license has expired.</u> <u>23-908, 23-1010(7), 23-1316, IC</u>	<u>10 days suspension or \$1000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5000 monetary penalty</u>

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**03. Category Three Violations.** The following are violations of administrative requirements and are required to comply with licensing in Title 23, Idaho Code.

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Illegal Advertising/Signs/ Brand.</u> <u>23-607, 23-931, 23-1035, IC</u>	<u>Written warning</u>	<u>10 days suspension or 5 days suspension and \$500 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>
<u>Purchasing beer from other than a wholesaler.</u> <u>23-1055, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Purchasing Wine from other than a distributor.</u> <u>23-1313, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Failure to sign/post license.</u> <u>23-908, 23-916, 23-1009, 23-1306, IC</u>	<u>Warning</u>	<u>10 days suspension or 5 days suspension and \$500 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>
<u>Failure to obtain required city/county licenses.</u> <u>23-916, 23-1009, 23-1315, 23-1318, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Tap markers.</u> <u>23-1037, IC</u>	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>

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**04. Category Four Violations.** The following are violations of the wholesaler, distributor, dealer, supplier and importer licensing requirements in Title 23, Idaho Code.

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Financial aid giving/receiving.</u> <u>23-1033, 23-1325, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Extension of credit.</u> <u>23-1031, 23-1326, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension or 90 days suspension and \$5,000 monetary penalty</u>

<u>VIOLATION</u>	<u>FIRST VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>	<u>FOURTH VIOLATION</u>
<u>Restrictions on importation and distribution.</u>  <u>23-1028, 23-1309, 23-1310, 23-1311, IC</u>	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5000 monetary penalty</u>
<u>Size of containers.</u>  <u>23-1030, 23-1327, IC</u>	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Violation of trade practices.</u>  <u>23-1033A, 23-1328A, IC</u>	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Prohibited Acts of 23-1103, IC.</u>	<u>5 days suspension or \$500 monetary penalty</u>	<u>20 days suspension or 10 days suspension and \$1,000 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>	<u>180 days suspension days suspension or 90 days suspension and \$5,000 monetary penalty</u>
<u>Failure to submit required reports.</u>  <u>23-1006, 23-1314, IC</u>	<u>Written warning</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>60 days suspension or 30 days suspension and \$3,000 monetary penalty</u>
<u>Direct Shipper wine violations.</u>  <u>23-1309A, IC</u>	<u>10 days suspension or \$1,000 monetary penalty</u>	<u>30 days suspension or 15 days suspension and \$1,500 monetary penalty</u>	<u>90 days suspension or 45 days suspension \$5,000 monetary penalty</u>	<u>Revocation</u>

( )

**02. Public Information About Alcohol Beverage License Suspensions.** On the date an alcohol beverage license suspension goes into effect, the licensee will post the suspension notice that has been issued by the Alcohol Beverage Control Bureau in a conspicuous place on or about the licensed premises. The notice will state that the license has been suspended by order of the Alcohol Beverage Control Bureau due to a violation of law or rule.

( )

**a.** During the period of alcohol beverage license suspension, the licensee and employees: ( )

**i.** May not remove, alter, or cover the posted suspension notice and may not permit anyone else to do

so.

( )

ii. May not place or permit the placement of any statement on the licensed premises indicating the premises have been closed for any reason other than as stated in the suspension notice. ( )

**03. Emergency Administrative Proceedings.** Pursuant to Section 67-5247, Idaho Code, upon competent evidence that there is an immediate danger to public health, safety or welfare at a licensed premises that requires immediate action, Alcohol Beverage Control shall issue an order to a licensee to cease and desist the sale of alcoholic beverages. The order shall include a brief, reasoned statement to justify both the decision that an immediate danger exists and the decision to cease and desist the sale of alcohol by the licensee. The order is effective when issued and reasonable notice shall be given to the licensee required to comply. ( )

**0223. -- 999. (RESERVED).**

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL (POST)

DOCKET NO. 11-1101-0901

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

**EFFECTIVE DATE:** The effective date of the temporary rule is June 11, 2009.

**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) 19-5107, 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 October 21, 2009.

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 proposed rule establishes that the certification of a former officer who is under decertification investigation will not lapse while he is under decertification investigation. This allows POST Council to retain jurisdiction over the former officer while the decertification proceedings are being completed. Additionally, applicants will be required to disclose any prior decertification proceedings against them and the results thereof.

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

If an officer's certification lapses, the POST Council no longer has authority over them, and cannot decertify them even though the decertification investigation confirms conduct that warrants decertification. This rulemaking is necessary to protect the public health, safety and welfare.

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

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Trish Christy at (208) 884-7253.

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 October 28, 2009.

DATED this 4th day of August, 2009.

Jeffrey J. Black  
Executive Director  
Idaho State Police/Peace Officer Standards and Training  
700 S. Stratford Dr.  
Meridian, ID 83642-6202  
(208) 884-7251/(208) 884-7295



**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 11-1101-0901**

**092. LAPSE OF PEACE OFFICER CERTIFICATION.**

The certification of any peace officer will be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(4-2-08)~~(6-11-09)T

**01. Three to Five Years.** A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: ~~(4-6-05)~~(6-11-09)T

**a.** Submit a POST Certification Patrol Challenge Packet; (4-2-03)

**b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (6-11-09)T

~~b.c.~~ Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

~~ed.~~ Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)

ii. The POST Firearms Qualification Course; (4-2-03)

iii. The POST Physical Fitness Test Battery; and (4-2-03)

~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

**02. Over Five Years.** A peace officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Patrol Academy to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: ~~(4-6-05)~~(6-11-09)T

**a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (6-11-09)T

~~ab.~~ Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

~~bc.~~ Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

~~ed.~~ Pass the following tests administered by a POST Training Specialist: (4-2-03)

- i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)
- ii. The POST Firearms Qualification Course; (4-2-03)
- iii. The POST Physical Fitness Test Battery; and (4-2-03)
- ~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

**03. Over Eight Years.** A peace officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

**04. Exception.** The provisions of Subsections 092.01 through 092.03 will not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**171. LAPSE OF DETENTION OFFICER CERTIFICATION.**

The certification of any county detention officer will be considered lapsed if the officer does not serve as a county detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified county detention officer who remains in an administrative, patrol, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall be tolled during any time period that a county detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (~~4-2-08~~)(6-11-09)T

**01. Three to Five Years.** A county detention officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: (~~4-6-05~~)(6-11-09)T

- a. Submit a POST Certification Detention Challenge Packet; (4-2-03)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (6-11-09)T
- ~~bc.~~ Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)
- ~~ed.~~ Pass the following tests administered by a POST Training Specialist: (4-2-03)
  - i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)
  - ii. The POST Firearms Qualification Course; (4-2-03)
  - iii. The POST Physical Fitness Test Battery; and (4-2-03)
  - ~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

**02. Over Five Years.** A county detention officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Detention Academy to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Detention Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: ~~(4-6-05)~~(6-11-09)T

**a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (6-11-09)T

**~~b.~~** Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

**~~b.c.~~** Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

**~~ed.~~** Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; (4-6-05)

iii. The POST Physical Fitness Test Battery; and (4-6-05)

**~~de.~~** Satisfy the probationary period requirement of Section 064. (4-2-08)

**03. Over Eight Years.** A county detention officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Detention Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

## IDAPA 11 - IDAHO STATE POLICE

### 11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL (POST)

DOCKET NO. 11-1101-0902

#### 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. This action is authorized pursuant to Section 19-5107, 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 October 21, 2009.

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:

Updates contact information, as it has changed; establishes the requirements for Conducted Energy Device certification; updates the property language to encompass all disciplines POST Council certifies; adds requirement that an officer charged with a felony or non-traffic misdemeanor notify the POST Executive Director; establishes that a decertified officer is not eligible for POST certification of any kind in the future, and that an officer under decertification investigation is not eligible for certification while under investigation; and requires applicants to disclose any decertification proceedings against them and the results thereof.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 October 28, 2009.

DATED this 4th day of August, 2009.

Jeffrey J. Black  
Executive Director  
Idaho State Police/Peace Officer Standards and Training  
700 S. Stratford Dr.  
Meridian, ID 83642-6202  
(208) 884-7251/(208) 884-7295

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#### THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1101-0902

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- WEBSITE.**

The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, ~~P.O. Box 700 S. Stratford Dr.~~, Meridian, Idaho 83680-0700 ~~42-6202~~. The telephone number of ~~the office administration~~ is (208) 884-7250 and the telephone number of basic academy training is (208) 884-7337. The facsimile number of ~~the office administration~~ is (208) 884-7295 and the facsimile number of basic academy training is (208) 884-7398. The Peace Officer Standards and Training website is <http://www.idaho-post.org>. ~~(4-11-06)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**091. INTRODUCTION.**

**01. Certificates and Awards.** Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (3-20-97)

**02. Property.** Certificates and awards remain the property of the Council and are only valid as long as the officer is appointed as an Idaho ~~peace, detention, juvenile detention, or juvenile probation~~ officer as defined by Section 19-5101, Idaho Code, and has not been decertified. ~~(4-2-03)( )~~

**03. Decertification.** (3-30-07)

**a.** The Council shall decertify any officer who is convicted, as defined in Idaho Code Section 19-5109, of any felony or offense which would be a felony if committed in this state. The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; willfully or otherwise falsifies or omits any information to obtain any certified status; or violates any of the standards of conduct as established by the council's code of conduct or code of ethics, as adopted and amended by the council. Any officer charged with a felony, a non-traffic misdemeanor, or a misdemeanor that would be a felony if committed in this state, must notify the POST Executive Director within fourteen (14) business days. Failure to notify constitutes a violation of the Law Enforcement Code of Ethics and the Law Enforcement Code of Conduct. ~~(3-30-07)( )~~

**b.** Any officer decertified by the Council is not eligible for POST certification of any kind in the future ~~except as a correction officer with approval by the POST Council.~~ Any officer who is the subject of a POST decertification investigation is not eligible for POST certification of any kind while under investigation. ~~(3-30-07)( )~~

**04. Law Enforcement Code of Conduct.** As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality, and justice. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. In furtherance of these duties, I hereby adopt and accept the following code of conduct: (7-1-99)

**a.** I shall conduct myself at all times in a manner that does not damage or have the likely result of damaging or bringing the public image, integrity, or reputation of my department or myself into discredit or disrepute. (7-1-99)

**b.** I shall not possess or consume alcoholic beverages on duty or while in uniform on duty or off duty, except as expressly required for the lawful performance of my duties. Nor shall I unlawfully possess, sell, consume, use or assist in the use of any illegal or unauthorized drugs or medications on duty or off duty. (7-1-99)

**c.** I shall not engage in any illegal or unlawful harassment or intimidation of another, nor shall I permit personal prejudices, political beliefs, animosities, or friendships to influence my decisions. (7-1-99)

**d.** I shall not lie, give misleading information, or falsify written or verbal communications in official reports or in my actions with another person or organization when it is reasonable to expect that such information may be relied upon because of my position or affiliation with my department. (3-30-07)

**e.** I shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of my department. I shall also subordinate my personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of my department, as well as to the lawful orders and directives of supervisors and superior command personnel of my department. I shall willfully perform all lawful duties and tasks assigned by supervisory and/or superior-ranked personnel. Direct, tacit, or constructive refusal to do so is insubordination. (7-1-99)

**f.** I shall obey the constitutional, criminal and civil laws of the city, county, state, and federal government. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. (7-1-99)

**05. Law Enforcement Code of Ethics. (3-30-07)**

**a.** As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. (3-30-07)

**b.** I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty. (3-30-07)

**c.** I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. (3-30-07)

**d.** I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. (3-30-07)

**e.** I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**098. CHALLENGING THE BASIC PATROL ACADEMY.**

Any peace officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Patrol Academy, provided the officer: (4-6-05)

**01. Submission of Challenge Packet.** Submits a POST Certification Patrol Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training;

and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

**02.** Discloses Decertification Information. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**023.** **Law Course Attendance.** Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-03)

**034.** **Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-2-03)

**a.** The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)

**b.** The POST Firearms Qualification Course; and (4-2-03)

**c.** The POST Physical Fitness Test Battery. (4-2-03)

**045.** **Completes Probationary Period.** Completes his probationary period as required by Subsection 097.01. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**136. CHALLENGING THE LEVEL I RESERVE CORE CURRICULUM.**

**01. Certified in Idaho.** A reserve peace officer who has within the last three (3) years served as a full-time certified Idaho peace officer shall be eligible for Level I Reserve certification without attending the Level I Reserve core curriculum, submitting a completed Level I Reserve Certification Packet, or passing the Level I Reserve certification examination provided he submits a completed Application for Certification form. (4-2-03)

**02. Certified in Another State, Commissioned by the Federal Government, or a Graduate of a Basic Police Academy.** A reserve peace officer who has within the last three (3) years served as a full-time certified peace officer in another state or as a full-time commissioned peace officer of the federal government or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years shall be eligible for Level I Reserve certification in the state of Idaho without attending the Level I Reserve core curriculum, provided he: (4-2-03)

**a.** Submits a completed POST Level I Reserve Certification Packet to POST Council, which shall include copies of POST certifications and training records from other states, transcripts, certificates, diplomas, or other documents that substantiate the officer's training and experience; (4-2-03)

**b.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**bc.** Attends an approved course of study in Idaho law and passes the POST Idaho law exam; and (4-2-03)

**ed.** Passes the POST Level I Reserve certification examination conducted in the manner set forth in Section 135. (4-2-03)

**03. Out Over Three Years.** A reserve peace officer who has been out of full-time law enforcement for over three (3) years shall complete all requirements as set forth in Sections 130 through 135 to be awarded a Level I Reserve certification. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. CHALLENGING THE LEVEL I RESERVE MARINE DEPUTY CORE CURRICULUM.**

**01. Certified in Idaho.** A reserve marine deputy who has within the last three (3) years served as a full-time certified Idaho peace officer shall be eligible for Level I Reserve Marine Deputy certification without attending the Level I Reserve Marine Deputy core curriculum or submitting a completed Level I Reserve Marine Deputy Certification Packet provided he passes the Level I Reserve Marine Deputy certification examination and submits a completed Application for Certification form. (4-2-03)

**02. Certified in Another State, Commissioned by the Federal Government, or a Graduate of a Basic Police Academy.** A reserve marine deputy who has within the last three (3) years served as a full-time certified peace officer in another state or as a full-time commissioned peace officer of the federal government or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years shall be eligible for Level I Reserve Marine Deputy certification in the state of Idaho without attending the Level I Reserve Marine Deputy core curriculum, provided he: (4-2-03)

**a.** Submits a completed POST Level I Reserve Marine Deputy Certification Packet to POST Council, that shall include copies of POST certifications and training records from other states, transcripts, certificates, diplomas, or other documents that substantiate the officer's training and experience; (4-2-03)

**b.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**~~b.c.~~** Attends an approved course of study in Idaho law and passes the POST Idaho law exam; and (4-2-03)

**ed.** Passes the POST Level I Reserve Marine Deputy certification examination conducted in the manner set forth in Section 149. (4-2-03)

**03. Out Over Three Years.** A reserve marine deputy who has been out of full-time law enforcement for over three (3) years shall complete all requirements as set forth in Sections 130 and 131 and 146 through 149 to be awarded a Level I Reserve Marine Deputy certification. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**176. THE LEVEL I CERTIFICATE.**

In addition to the requirements set forth in Section 173 of these rules, the requirements in Section 176 are necessary for award of the Level I Certificate. (4-2-03)

**01. Probation.** The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic detention academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)

**02. Basic Training.** The applicant shall have satisfactorily completed: (4-2-03)

**a.** The POST Basic Detention Academy as required by the Council in Section 071; (4-2-03)

**b.** The POST Patrol-to-Detention Transition Academy; or (4-2-03)



**c.** Be a graduate of a law enforcement vo-tech program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Detention Academy, and shall have passed the POST detention certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Detention Academy to be certified. (4-2-03)

**03. Jail Training.** The applicant shall have satisfactorily completed forty (40) hours of POST-approved jail training. (4-2-03)

**04. Vo-Tech Program Graduates.** Graduates from Idaho POST-certified law enforcement vo-tech programs shall also comply with the requirements of Subsection 073.02. (4-2-03)

**05. Patrol and Detention Vo-Tech Program Graduates.** An applicant who is appointed to a detention officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified law enforcement vo-tech program, shall be eligible for detention officer certification in Idaho without attending the POST Basic Detention Academy, provided the officer: (4-2-08)

**a.** Was appointed to a peace officer position in Idaho within three (3) years from graduating from the vo-tech program; (4-2-08)

**b.** Possesses peace officer certification from Idaho; (4-2-08)

**c.** Submits a POST Certification Detention Challenge Packet; (4-2-08)

**d.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**de.** Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-2-08)

**ef.** Passes the following tests administered by a POST Training Specialist: (4-2-08)

**i.** The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

**ii.** The POST Firearms Qualification Course; (4-2-08)

**iii.** The POST Physical Fitness Test Battery; and (4-2-08)

**fg.** Satisfies the probationary period requirement of Section 064. (4-2-08)

**177. CHALLENGING THE BASIC DETENTION ACADEMY.**

Any county detention officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a detention officer or a student who has satisfactorily completed a Basic Detention Academy equivalent to the Idaho POST Basic Detention Academy within the last three (3) years will be eligible for certification in the state of Idaho without attending the Basic Detention Academy, provided the officer: (4-6-05)

**01. Submission of Challenge Packet.** Submits a POST Certification Detention Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

**02. Discloses Decertification Information.** Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**023. Detention Legal Issues Course Attendance.** Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-6-05)

**034. Passes Required Tests.** Passes the following tests administered by a POST Training Specialist: (4-2-03)

**a.** The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

**b.** The POST Firearms Qualification Course; and (4-2-03)

**c.** The POST Physical Fitness Test Battery. (4-2-03)

**045. Completes Probationary Period.** Completes his probationary period as required by Subsection 176.01. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**197. GENERAL PROVISIONS.**

**01. Certificates and Awards.** Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Communications Specialist Certification is not statutorily mandated, but is voluntary. (4-2-03)

**02. Property.** Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law enforcement agency and has not been decertified. (~~4-2-03~~)(\_\_\_\_)

**03. Eligibility.** To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

**04. Applications.** All applications for award of the Level I, Level II, Level III, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

**05. Submission.** The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

**06. Training.** Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

**07. Minimum Standards.** Each applicant shall meet the minimum standards for employment as provided in Sections 050 through 058. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**256. RENEWAL.**

**01. Notification.** At the end of the certification period, the POST Council shall send notification to the instructor, provided the instructor still meets the qualifications for instructor certification. (4-2-03)

- 02. Requirements.** To renew the certification, the instructor shall submit the following to POST Council: (4-2-03)
- a.** A teaching log indicating the instruction of at least one (1) class during the last certification period; (4-2-03)
  - b.** An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)
  - c.** A POST Short Course firearms qualification score sheet witnessed by a POST-certified firearms instructor other than the renewing instructor. This requirement applies only to POST-certified firearms instructors who are renewing their firearms instructor certification. (4-2-03)
  - d.** Instructors must meet recertification requirements in compliance with Council and applicable industry standards. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**266. MASTER INSTRUCTOR CERTIFICATION.**

Master Instructor Certificates are established for the purpose of recognizing competence as an instructor of instructors of law enforcement subjects and/or general subjects pertinent to law enforcement personnel, especially high liability subjects such as Arrest Techniques, Conducted Energy Devices, DUI, Emergency Vehicle Operation, Firearms, Impact Weapons, Instructor Development, and Weapons Retention. (~~5-8-09~~)( )

**267. REQUIREMENTS.**

In addition to the requirements set forth in Sections 250 and 251 of these rules, the requirements in Sections 266 through 269 are necessary for award of the master instructor certificate: (4-2-03)

**01. Instructor Development Course.** The applicant shall have satisfactorily completed an Instructor Development Course approved by the Council. (4-2-03)

**02. POST-Certified Instructor.** The applicant shall be a current POST-certified instructor in the subject he is applying for Master Instructor certification in, and shall have held that certification for a minimum of three (3) years prior to application. The Council may waive this requirement in exceptional cases reflecting outstanding education, experience, or achievement; or under unusual circumstances upon written application by the POST Executive Director. (4-2-03)

**03. Instruction.** The applicant shall have instructed a minimum of forty (40) hours of classes in the subject he is applying for Master Instructor certification in during each of the previous two (2) years. (4-2-03)

**04. Additional Training or Education.** The applicant shall have received additional training or education beyond basic training in the area of their instructor certification. In addition to this requirement, an applicant who is applying to become a Master Instructor in Conducted Energy Devices shall attend and successfully complete a "Master Instructor"-level Conducted Energy Device course offered by a reputable manufacturer as approved by the POST Council. (~~4-2-03~~)( )

**05. Exceptional Ability.** The applicant shall have demonstrated exceptional ability to develop and present training. (4-2-03)

**06. Recommendation.** The applicant shall be recommended for master instructor certification by a POST Regional Training Specialist or a current POST-certified master instructor. (4-2-03)

**07. Maintain Certification.** The applicant shall be willing to commit to teaching a minimum of one (1) instructor class during the certification period to maintain certification. (4-2-03)

## IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1104-0901

#### 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. This action is authorized pursuant to Section 19-5107, 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 October 21, 2009.

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:

Updates contact information, as it has changed; allows the POST Executive Director to review "General Under Honorable Conditions" and "Uncharacterized" military discharges for possible waiver; and requires applicants to disclose any decertification proceedings against them and the results thereof.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

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 October 28, 2009.

DATED this 4th day of August, 2009.

Jeffrey J. Black  
Executive Director  
Idaho State Police/Peace Officer Standards and Training  
700 S. Stratford Dr.  
Meridian, ID 83642-6202  
(208) 884-7251/(208) 884-7295

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#### THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1104-0901

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- WEBSITE.**

**01. Idaho State Police, Peace Officer Standards and Training.** The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, ~~P.O. Box 700 S. Stratford Dr.~~, Meridian, Idaho 83680-0700 42-6202. The telephone number of ~~the office~~ administration is (208) 884-7250 and the telephone number of basic academy training is (208) 884-7337. The facsimile number of ~~the office~~ administration is (208) 884-7295 and the facsimile number of basic academy training is (208) 884-7398. The Peace Officer Standards and Training website is <http://www.idaho-post.org>. (4-11-06)( )

**02. Idaho Department of Correction.** The principal place of business of the Idaho Department of Correction is in Boise, Idaho. The office is located at 1299 North Orchard, Suite 110, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Correction, P.O. Box 83720, Boise, Idaho 83720-0018. The telephone of the office is (208) 658-2000. The facsimile number of the office is (208) 327-7496. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. GENERAL PROVISIONS.**

**01. POST Basic Correction Academy Costs for Personnel of Private Prison Contractors.** Pursuant to Section 20-241A(3)(c), Idaho Code, the Idaho Department of Correction may provide training to personnel of private prison contractors and charge a fee not to exceed the cost of training. Since the Basic Correction Academy is conducted by the Peace Officer Standards & Training Council, any fees collected by the Idaho Department of Correction for attendance at the POST Basic Correction Academy by personnel of private prison contractors must be submitted to the POST Council. (4-11-06)

**02. Property.** Certificates and awards remain the property of the Council and are only valid as long as the officer is appointed as an Idaho ~~correction or adult probation and parole~~ officer as defined by Section 19-5101, Idaho Code, and has not been decertified. (4-11-06)( )

**03. Eligibility.** To be eligible for the award of a Basic Correction Officer certificate, each applicant must be a full-time correction officer or a professional member of the POST Council staff. To be eligible for the award of a Basic Adult Probation and Parole Officer certificate, each applicant must be a full-time adult probation and parole officer or a professional member of the POST Council staff. (4-11-06)

**04. Applications.** All applications for award of certification must be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-11-06)

**05. Submission.** The Application for Certification form must be submitted by the applicant to his agency head who must review it for accuracy prior to signing it and forwarding it to the Council. Certificates will be issued to the agency head for award to the applicant. (4-11-06)

**06. Decertification.** The Council may decertify any correction or adult probation and parole officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**037. MILITARY RECORD.**

A "dismissal," "bad conduct discharge" (BCD), "dishonorable discharge" (DD), or administrative discharge of other than honorable (OTH) from the military service will disqualify the applicant. The administrative discharge of

“general under honorable conditions” (GEN), a “general” discharge, or an “uncharacterized” discharge may be grounds for rejection. In the case of a “general under honorable conditions” or “uncharacterized” discharge, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will have the discretion to refer the application to the POST Council. In the case of a “general” discharge, the POST Council will review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. (4-11-06)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. LAPSE OF CORRECTION OFFICER CERTIFICATION.**

The certification of any correction officer will be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years. The three-year period provided herein shall be tolled during any time period that a correction officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-11-06)( )

**01. Three to Five Years.** A correction officer who has been out of full-time correction officer status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: (4-11-06)( )

**a.** Submit a POST Certification Correction Challenge Packet; (4-11-06)

**b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

~~b.c.~~ Pass the following tests administered by a POST Training Specialist: (4-11-06)

**i.** The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; and (4-11-06)

**ii.** The POST Correction Officer Physical Agility Test; and (4-11-06)

~~ed.~~ Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** A correction officer who has been out of full-time correction officer status for over five (5) years must attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence must be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (4-11-06)( )

**a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

~~ab.~~ Pass the following tests administered by a POST Training Specialist: (4-11-06)

**i.** The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; and (4-11-06)

**ii.** The POST Correction Officer Physical Agility Test; and (4-11-06)

~~bc.~~ Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**03. Over Eight Years.** A correction officer who has been out of full-time correction officer status for

over eight (8) years must attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement will be granted by the Council.  
(4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.**

The certification of any adult probation and parole officer will be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. The three-year period provided herein shall be tolled during any time period that an adult probation and parole officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-11-06)( )

**01. Three to Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: (4-11-06)( )

**a.** Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)

**b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**bc.** Pass the following tests administered by a POST Training Specialist: (4-11-06)

i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-08)

iii. The POST Adult Probation and Parole Officer Physical Agility Test; and (4-11-06)

**ed.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

**02. Over Five Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years must attend the POST Basic Adult Probation and Parole Academy to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence must be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (4-11-06)( )

**a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ( )

**ab.** Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)

**bc.** Pass the following tests administered by a POST Training Specialist: (4-11-06)

i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-08)

- iii. The POST Adult Probation and Parole Officer Physical Agility Test; and (4-11-06)
  - ed.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)
- 03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years must attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-11-06)



## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.03 - PUBLIC USE OF THE LANDS OWNED OR CONTROLLED BY THE DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0103-0901

#### 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 36-104(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 October 21, 2009.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Allow the Director to delegate more authority to regional staff. Clarify several rules and definitions. Define 'designated roads and trails' and 'commercial use.' Prohibit certain unpermitted uses, such as: landing or launching aircraft, discharging paintball guns, placing geocaches, group events of over 15 people, and use of non-certified weed-seed-free hay. Prohibit leaving portable hunting blinds and tree stands unattended for more one-half hour.

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

No fees or charges are being imposed or changed through this rulemaking.

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

There is no negative impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Tom Hemker (208) 287-2749.

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 October 28, 2009.

DATED this 28th day of August, 2009.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0103-0901

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-104(7), Idaho Code, to adopt rules concerning the public use of lands owned or controlled by the Department of Fish and Game. ~~(5-3-03)~~()

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

~~01. **Access Area.** Real property which is owned or controlled by the Idaho Department of Fish and Game to provide the public access to public lands and waters.~~ **Aircraft.** Every description of aircraft that is capable of being used as a means of transportation on or in the air. (7-1-93)()

~~02. **Commercial Use.** Any use or activity that is related to a business venture or for which a fee is charged, or in which the primary purpose is the sale or barter of goods or services, regardless of whether the use or activity is intended to produce a profit.~~ ()

~~023. **Department Lands and Access Areas.** Real property, which is owned or controlled by the Idaho Department of Fish and Game, which is managed for public recreation and for the protection, maintenance, and enhancement of fish and wildlife.~~ (7-1-93)

~~03. **Floating Device.** Every description of watercraft, including a seaplane used on water or capable of being used as a means of transportation on or in the water.~~ (7-1-93)

~~04. **Designated Roads and Trails.** All roads and trails posted as open or included on travel plan maps provided by the Department, or both. Roads and trails not posted as open or included on travel plan maps, or both, are closed to motorized vehicles.~~ ()

~~045. **Motorized Vehicle.** Any water, land, or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power. Every vehicle that is self-propelled, except vehicles that are moved solely by human power.~~ (7-1-93)()

~~05. **Sanctuary Area.** Refers to any portion of a Wildlife Management Area which is posted as closed to fishing, hunting or trapping, or entry by the public for any other purpose.~~ (7-1-93)

~~06. **Safety Zone.** A posted area established for the safety and protection of persons, equipment, structures, or livestock and where shooting within, across, or into the area is not permitted.~~ ()

~~067. **Snow Machine.** Any self-propelled vehicle designed primarily for travel on snow or ice or over natural terrain, which may be that is steered by tracks or, skis, or runners and propelled by tracks.~~ (7-1-93)()

~~078. **Unattended.** As it pertains to decoys shall mean to be over one hundred (100) yards from the decoys for a period of more than one-half (1/2) hour. As it pertains to campfires shall mean not within twenty (20) yards.~~ (7-1-93)()

~~09. **Watercraft.** Any vessel that is capable of being used as a means of transportation on or in the water.~~ ()

**011. -- 099. (RESERVED).**

**100. PUBLIC USE RESTRICTIONS.**

**01. Activities Prohibited Without Director Authorization.** ~~Except as specifically approved by the Director as an exception or for administrative purposes, the following activities are PROHIBITED on all lands, waters, and roads under control or administration of the Department~~ Unless specifically authorized by the Commission or under lease, permit, contract, or agreement issued by the Director, Regional Supervisor, or other authorized agent, the following activities are PROHIBITED: (7-1-93)(\_\_\_\_)

**a.** To enter, use, or occupy lands or water when said lands are posted against such entry, use, or occupancy. (7-1-93)

**b.** To camp, park a vehicle and/or a trailer in any area posted against such use or to leave unattended a camp, vehicle, and/or trailer for more than forty-eight (48) hours or to camp or park a vehicle and/or trailer for more than ten (10) consecutive days in any thirty (30) day period in any one designated area; ~~except shorter periods may be set and posted for specific areas by the appropriate regional supervisor.~~ (7-1-99)(\_\_\_\_)

**c.** To operate any motorized vehicles, including snow machines, except on established designated roads and trails. ~~Operation of vehicles on established roads is prohibited when posted against such use.~~ Designated roads and trails are posted as open or included on travel plan maps provided by the Department, or both. (7-1-93)(\_\_\_\_)

**d.** To use ~~floating devices, with or without motors,~~ watercraft on any waters which are posted against such use. (7-1-93)(\_\_\_\_)

**e.** To start a fire without taking necessary measures to prevent its spreading or to leave a fire unattended. All fires are prohibited in areas posted against their use. (7-1-93)

**f.** To use any form of fireworks or explosives at any time. (7-1-93)

**g.** To permit dogs or other domestic animals to run at large when the owner or guardian is not present to control or care for them or to permit dogs to be off leash or conduct dog training when prohibited by posted notice. (7-1-93)(\_\_\_\_)

**h.** To conduct ~~bird~~ dog field trials of any type during the period October 1 through July 31. All ~~bird~~-dog field trials and ~~bird~~-dog training with the use of artificially propagated game birds between August 1 and September 30 will be under department permit as authorized by the director under the rules set forth in IDAPA 13.01.15, "Rules Governing the Use of Dogs," Section 300. (5-3-03)(\_\_\_\_)

**i.** To construct blinds, pits, platforms, or tree stands where the soil is disturbed, trees are cut or altered, and artificial fasteners, such as wire, rope, or nails are used. All blinds shall be available to the public on a "first-come - first-served" basis. Portable manufactured blinds and tree stands are allowed but may not be left overnight. (7-1-93)(\_\_\_\_)

**j.** To release or abandon any domestic or exotic fish, birds, mammals, amphibians, or reptiles. (7-1-93)

**k.** To adjust, open, close, tamper with, or manipulate in any manner, any diversion structure, headgate, flume, recorded or flow dock or any device for water control. This shall not be construed as limiting the powers of other agencies or irrigation districts as provided by statutory law or rule. (7-1-93)

**l.** To discard dead fish, birds, animals, or parts or remains thereof, ~~human excrement,~~ waste water, metallic cans, bottles, plastic or paper cartons, shotgun shell casings, yard and agricultural wastes, garbage, machines, appliances, or other litter on or in any lands or waters. (7-1-93)(\_\_\_\_)

**m.** To remove, destroy, mutilate, modify, or deface any building or other structure, water control device, fence, gate, poster, notice, sign, survey or section marker, or any object of archaeological, geological, or historical value or interest. (7-1-93)

- n.** To ~~discharge any firearm~~ shoot within, across, or into posted safety zones. (7-1-93)(    )
- o.** To leave decoys unattended. Decoys cannot be put in place any earlier than two (2) hours prior to official shooting hours for waterfowl and all decoys must be picked up and removed from the hunting site no later than two (2) hours after official shooting hours for waterfowl that particular day. (7-1-93)
- ~~02-~~** ~~Activities Prohibited Without Other Authorization. Unless specifically authorized by the Commission, or under lease, permit, contract, or agreement, issued by the Director, Regional Supervisor, or authorized agent, the following activities are PROHIBITED:~~ (7-1-93)
- p.** To discharge any paintball guns. (    )
- ~~q.~~** To disturb or remove any soils, gravel, or minerals. (7-1-93)
- ~~r.~~** To turn domestic livestock into, or allow said animals to graze or trail on or across Department lands, except riding and pack animals may be used in association with hunting and for recreational uses or as posted. (7-1-93)
- ~~s.~~** To cut, dig, or remove any crops, trees, shrubs, grasses, forbs, logs, or fuel wood. (7-1-93)
- ~~t.~~** To place, maintain, or store any beehives or bee boards. (7-1-93)
- ~~u.~~** To use lands for any commercial purpose. (7-1-93)
- ~~f.~~** ~~To exercise or train any dogs in posted areas or during periods closed to such uses. In conjunction with authorized field trials, participants may train dogs in the designated area one (1) day prior to and one (1) day following the trial.~~ (7-1-93)
- ~~g.~~** ~~To prospect or drill for oil and gas on any state owned Wildlife Management Area or other property under the supervision of the Fish and Game Department.~~ (7-1-93)
- v.** To place a geocache. (    )
- w.** To use for group events of over fifteen (15) people. (    )
- x.** To land or launch aircraft except on public airstrips. (    )
- y.** To use or transport any hay, straw or mulch that is not weed seed free certified. (    )

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-0901

### 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 36-104(b) and 36-901, 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 October 21, 2009.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Biennial updating and correction of fishing rules, and addressing management and anglers' concerns. The proposed changes include:

- 1) eliminating the definition of 'no bait';
- 2) correct wording regarding the two pole permit;
- 3) require a sliding sinker for sturgeon fishing;
- 4) allow unlimited poles for boat fishing on Lake Pend Oreille in conjunction with the Angler Incentive Program;
- 5) amend requirements for trapping or seining minnows or crayfish;
- 6) eliminate statewide bag and possession limits to allow regional limits;
- 7) require a maximum 5/8" hook gap for steelhead fishing;
- 8) correct wording regarding steelhead and salmon permits and recording of harvested fish.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Bill Horton (208) 287-2783.

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 October 28, 2009.

DATED this 26th day of August, 2009.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0111-0901**

**004. DEFINITIONS.**

For the purposes of this chapter, the following terms will be defined as follows: (3-20-97)

**01. Artificial Fly.** Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-20-97)

**02. Artificial Lure.** Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. No bait of any kind may be used with artificial lures when fishing artificial flies and lures-only waters. (3-20-97)

**03. Bag Limit.** The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day. The term "bag limit" shall be construed to be an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another. The bag and possession limits are equal except for salmon and steelhead. (3-20-97)

**04. Bait.** Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (Live fish prohibited.) (See: Subsection 004.19 - NO BAIT.) (3-20-97)

**05. Barbless Hook.** A fish hook without barbs or on which barbs have been bent completely closed. (3-20-97)

**06. Catch-and-Release.** Effort, by permitted methods, to catch or attempt to catch a fish or species of fish is lawful, with the restriction that any fish so caught must be released immediately, unharmed, back to the water. NOTE: Species of fish not specifically listed as catch-and-release may be harvested under their appropriate limits. (3-30-07)

**07. Confluence of a Stream or River.** The point where two (2) rivers or streams come together. (3-20-97)

**08. Electric Motors Only.** When fishing waters listed "electric motors only," gas (internal combustion) motors may be attached to the boat; but use of the gas motor is prohibited. (3-20-97)

**09. Fishing.** Any effort made to take, kill, injure, capture, or catch any fish, crayfish, or bullfrog. (3-20-97)

**10. Float Tube.** A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (4-6-05)

**11. Fly Fishing.** Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-20-97)

**12. Game Fish.** Brook, brown, bull (Dolly Varden), cutthroat, golden, lake (Mackinaw), rainbow (including steelhead), splake and sunapee trout; trout hybrids; Chinook, coho, Atlantic and kokanee (blueback) salmon; grayling; whitefish; cisco; crappie; perch; bass; catfish; bullheads; sunfish; sturgeon; northern pike; tiger muskie; walleye and sauger; and burbot (ling). Bullfrogs and crayfish are also defined as game fish. (4-6-05)

**13. Harvest.** Reduce a fish to possession. (3-20-97)

**14. Hook.** A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically prohibited. (3-20-97)

15. **Ice Fishing.** Fishing through an opening broken or cut through the ice. (3-20-97)
16. **Length.** The length between the tip of the nose or jaw and the tip of the tail fin. (3-20-97)
17. **Motor.** Includes electric and internal combustion motors. (See Subsection 004.09 - Electric Motors (3-20-97)  
Only.)
18. **Mouth of River or Stream.** The place where a river or stream enters a larger body of water. (3-20-97)
- ~~19.~~ **~~No Bait.~~** *Requires the use of artificial flies or lures, with one (1) barbless hook ONLY per fly or lure.* (3-20-97)
- ~~20.~~ **No Motors.** Fishing from a boat with a motor attached is prohibited. (3-20-97)
- ~~21.~~ **Possession Limit.** Maximum number of fish that may be lawfully in possession of any person. "Possession limit" shall apply to fish while in the field or being transported to the final place of consumption or storage. (3-20-97)
- ~~22.~~ **Reservoir.** The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-20-97)
- ~~23.~~ **Season Limit.** The maximum number of fish that may be lawfully taken in any declared season. (3-20-97)
- ~~24.~~ **Sliding Sinker.** A method of attaching a sinker to a device that slides freely on the main line. The line used to attach the sinker to the sliding device must be of lower breaking strength than the main line. ( )
24. **Snagging.** Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. Game fish which are hooked other than in the jaw or mouth must be released immediately. (4-6-05)
25. **Steelhead.** Rainbow trout longer than twenty (20) inches in length in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage (excluding lakes and the Lemhi and the Pahsimeroi rivers), and the Clearwater River drainage (excluding that portion above Dworshak Dam, and lakes). Rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) are defined as steelhead in the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam, ~~and in the Payette River from its mouth upstream to Black Canyon Dam during steelhead seasons.~~ (4-6-05)( )
26. **Tributary.** A stream flowing into a larger stream or lake. (3-20-97)
27. **Trout.** Includes the following trout family fishes: brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow, splake, Sunapee; trout hybrids; and the landlocked forms of Chinook, coho, Atlantic and kokanee (blueback) salmon. (3-30-07)
28. **Unattended Line.** A line not under the immediate surveillance by the angler. (3-20-97)
29. **Unprotected Nongame Fish.** All fish species other than game fish and protected nongame fish. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. FISHING METHODS AND GEAR.**

Unless modified by a regional exception, the following fishing methods and restrictions are applicable in all Idaho waters. (3-20-97)

**01. Archery and Spear Fishing.** Fishing with the use of bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of bullfrogs and unprotected nongame fish, and only in those waters during the season set for the taking of game fish. (7-1-99)

**02. Bait Restricted.** It is unlawful to fish with bait in waters designated as artificial flies and lures only, fly fishing only, or no bait. (3-30-07)

**03. Barbed Hooks.** It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead or Chinook salmon with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. It is unlawful to fish in no bait waters with barbed hooks. (~~3-30-07~~)( )

**04. Fishing Gear.** It is unlawful to fish in any waters of Idaho with more than one (1) handline or pole with a line attached, except a person with a two (2) pole ~~validation permit~~ may use two (2) poles; or with more than five (5) lines while ice fishing; or by archery, spearfishing, snagging, hands, and netting except as permitted. Not more than five (5) hooks may be attached per line. The line or lines must be attended by the person fishing. In conjunction with the Angler Incentive Program, unlimited poles and lines may be used while fishing from a boat on Lake Pend Oreille. A sliding sinker must be used when fishing for sturgeon. (~~4-6-05~~)( )

**05. Fishing Shelters.** Any enclosure or shelter which is left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address legibly marked on two (2) opposing sides of the enclosure or shelter. (7-1-99)

**06. Gaff Hook.** It is unlawful to land fish of any species with a gaff hook except through a hole cut or broken in the ice in waters which have no length restrictions or harvest closures for that species. (3-20-97)

**07. Molesting Fish.** It is unlawful to molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (3-20-97)

**08. Snagging.** It is unlawful to snag game fish, unless otherwise stated by Commission rules/exceptions. Snagging of unprotected nongame fish species is permitted. (3-20-97)

**09. Trapping and Seining Minnows or Crayfish.** It is lawful to take unprotected nongame fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, subject to the following restrictions: ( )

a. Unprotected nongame fish, yellow perch, and crayfish may be taken only in waters open to fishing; provided the seine or net does not exceed ten (10) feet in length or width, and nets and seines must have three-eighths (3/8) inch square or smaller mesh; and the minnow or crayfish trap does not exceed two (2) feet in length, width or height. If the trap is of irregular dimension, but its volume does not exceed the volume of an eight (8) cubic foot trap, it is also lawful to use. ( )

b. Nets and seines may not be left unattended. Traps must be checked at least every forty-eight (48) hours. All game fish (except yellow perch) and protected nongame fish incidentally taken while trapping or seining must be immediately released alive. All fish so taken must immediately be killed except where stated otherwise. ( )

c. All traps must have a tag attached bearing the owner's name and address. ( )

d. Minnows and crayfish may only be taken during the season set for the taking of game fish in those waters. Crayfish may be taken alive to be used as bait ONLY on the water where captured. (~~5-8-09~~)( )



**10. Use of Bait.** It is unlawful to use live fish, leeches, frogs, salamanders, waterdogs or shrimp as bait, except that live crayfish and bull frogs may be used if caught on the body of water being fished. (5-8-09)

**11. Use of Hands.** It is lawful to take any fish (except bull frogs and crayfish) with ~~the~~ hands. (3-20-97)(    )

**202. BAG AND POSSESSION LIMITS.**

**01. Bag Limit.** Maximum number of fish that may be lawfully taken by one (1) person in one (1) day. The bag and possession limits are equal, except where listed in region exceptions and for salmon and steelhead. (3-20-97)

**02. Possession Limit.** Maximum number of fish that may be lawfully in possession of any one (1) person. Possession limit shall apply to fish while in the field or being transported. All fish that are hooked, landed and not immediately released shall be counted in the possession limit of the person hooking the fish. (3-20-97)

**03. Transport or Gift.** No person shall transport for another or accept as a gift any game fish unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. However, no person may claim ownership of more fish than allowed by the possession limit. (7-1-99)

**04. Table on Bag and Possession Limits for Specified Fish.**

<b>SPECIES</b>	<b>BAG AND POSSESSION LIMITS</b>	
<b>BASS</b> - Largemouth and Smallmouth North of and including the Salmon River drainage (Panhandle, Clearwater, Salmon and northern part of Southwest regions)	<b>6</b>	<i>In the aggregate of both species.</i>
<b>BASS</b> - Largemouth and Smallmouth South and east of the Salmon River drainage (Upper Snake, Southeast, Magic Valley and southern part of Southwest regions)	<b>6</b>	<i>In the aggregate of both species, NONE under 12 inches.</i>
<b>BROOK TROUT</b>	<b>25</b>	
<b>BULL TROUT</b> (Dolly Varden)	<b>NONE</b>	<i>There is no harvest season for bull trout. Any bull trout caught may not be removed from the water and must be released immediately.</i>
<b>BURBOT</b> (Ling)	<b>NONE</b>	<i>There is no harvest season for burbot. Any burbot caught may not be removed from the water and must be released immediately.</i>
<b>NORTHERN PIKE</b>	<b>6</b>	
<b>SALMON</b> (Anadromous)		<i>See Rules 500 to 599</i>
<b>STEELHEAD</b>		<i>See Rules 400 to 499</i>
<b>STURGEON</b>	<b>NONE</b>	<i>There is no harvest season for sturgeon. Any sturgeon caught may not be removed from the water and must be released immediately. Barbless hooks required.</i>
<b>TIGER MUSKIE</b>	<b>2</b>	<i>NONE under 40 inches.</i>

<b>SPECIES</b>	<b>BAG AND POSSESSION LIMITS</b>	
<del><b>TROUT</b>—includes the following trout family fishes brook, brown, cutthroat, golden, grayling, lake, (Mackinaw), rainbow, splake, sunapee; trout hybrids; and the landlocked forms of chinook, coho, Atlantic and kokanee (blueback) salmon.</del>	<del><b>6</b></del>	<del><i>In the aggregate of all species (see Magic Valley Southeast, Upper Snake regions for special cutthroat trout restrictions).</i></del>
<del><b>WALLEYE</b></del>	<del><b>No Limit</b></del>	<del><b>SEE MAGIC VALLEY and SOUTHEAST REGIONAL EXCEPTIONS</b></del>
<del><b>WHITEFISH</b></del>	<del><b>25</b></del>	
<del><b>PROTECTED NONGAME FISH</b>—Shoshone, Wood River and Bear Lake sculpin, sand roller, leatherside chub, Pacific lamprey.</del>	<del><b>NONE</b></del>	<del><i>May not be taken or possessed.</i></del>
<del><i>All Species other than those listed above.</i></del>	<del><b>NO LIMIT</b></del>	

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons and regional exceptions by proclamation, which includes regional bag and possession limits for specified fish. The proclamation is published in a brochure available at Department offices and through license vendors. (5-8-09)( )

~~**05. Family Fishing Waters.** Waters designated as Family Fishing Waters shall have a year round season: a general bag limit of six (6) trout, of six (6) bass; no length limits; and allow the use of standard fishing gear. Pursuant to Section 36-105(3), Idaho Code, the Commission sets seasons and regional exceptions, including designated Family Fishing Waters, by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-30-07)~~

**065. Special Limits.** No person shall fish in any waters while having fish in possession in excess of the limits for those waters. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. PANHANDLE REGION EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**311. -- 314. (RESERVED).**

**315. CLEARWATER REGION EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**316. -- 319. (RESERVED).**

**320. SOUTHWEST REGION EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**321. -- 324. (RESERVED).**

**325. MAGIC VALLEY REGION, EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**326. -- 329. (RESERVED).**

**330. SOUTHEAST REGION EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**331. -- 334. (RESERVED).**

**335. UPPER SNAKE REGION EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**336. -- 339. (RESERVED).**

**340. SALMON REGION EXCEPTIONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and through license vendors. (3-30-01)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**403. PERMIT VALIDATION.**

When a steelhead trout has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately do the following: (3-20-97)

**01. Permit.** Completely remove one (1) numbered notch from the permit. (3-20-97)

**02. Number Code.** Look up the number code from the location code list and write it in the space provided.

RIVER LOCATION CODES	
<b>SNAKE RIVER</b>	
Snake River, downstream from Salmon River	01
Snake River, from Salmon River to Hells Canyon Dam	02
Snake River, Hells Canyon Dam to Oxbow Dam	27
<b>CLEARWATER RIVER</b>	
Clearwater River, downstream from Orofino Bridge	03
Clearwater River, upstream from Orofino Bridge	04
North Fork Clearwater River	05
South Fork Clearwater River	07

RIVER LOCATION CODES	
<b>SALMON RIVER</b>	
Salmon River, downstream from Whitebird Creek	10
Salmon River, Whitebird Creek to Little Salmon	11
Salmon River, Little Salmon to Vinegar Creek	12
Salmon River, Vinegar Creek to South Fork	13
Salmon River, South Fork to Middle Fork	14
Salmon River, Middle Fork to North Fork	15
Salmon River, North Fork to Lemhi River	16
Salmon River, Lemhi River to Pahsimeroi River	17
Salmon River, Pahsimeroi River to East Fork	18
Salmon River, upstream from the East Fork	19
<b>OTHER</b>	
Little Salmon River	20
Panther Creek	24
Boise River	28
<del>Payette River</del>	<del>29</del>

~~(3-30-07)~~( )

**03. Date Entry.** Enter the month and day the fish was caught. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. STEELHEAD METHODS OF TAKE.**

**01. Hooks.** It is unlawful to use any hook larger than five-eighths (5/8) inch measured from the point of the hook to the shank. Steelhead may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages. Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Steelhead may be taken with barbed hooks in the Boise ~~and Payette~~ River drainages, and the Snake River between Hells Canyon and Oxbow Dams. (4-6-05)( )

**02. Snagging.** No person shall kill or retain in possession any steelhead which has been hooked other than in the mouth or jaw. Any steelhead hooked other than in the mouth or jaw must be immediately released unharmed. (4-6-05)

**03. Legal Catch.** Any steelhead caught in a legal manner must be either released or killed immediately after it is landed. (3-20-97)

**04. Cease Fishing.** Once an angler has attained his bag, possession or season limit on those waters with steelhead limits, he must cease fishing for steelhead, including catch-and-release fishing. (4-6-05)

**05. No Harvest or Closed to Harvest.** Effort, by permitted methods, to catch or attempt to catch a steelhead is lawful with the restriction that any steelhead so caught must be released immediately, unharmed, back to

the water. (3-20-97)

**06. Keeping Marked Fish.** Only steelhead which have been marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainage. (3-20-97)

**07. Fish Counted in Limit.** All fish that are hooked, landed, and ~~not immediately released~~ reduced to possession shall be counted in the limits of the person hooking the fish. ~~(3-20-97)( )~~

**08. Special Limits.** No person shall fish in waters having special limits while possessing fish of those species in excess of the special limits. (3-20-97)

**406. FALL STEELHEAD SEASONS AND LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. ~~(3-30-01)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. SALMON DEFINITIONS.**

**01. Chinook Salmon.** Anadromous (ocean run) salmon of the species *Oncorhynchus tshawytscha* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage, (excluding lakes and the North Fork of the Clearwater River above Dworshak Dam), and the Boise ~~and Payette~~ River Drainages. ~~(4-6-05)( )~~

~~**02. Jack Salmon.** Chinook salmon under twenty (20) inches in total length are commonly called jack salmon. (3-20-97)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. PERMIT VALIDATION.**

When a Chinook salmon has been hooked, landed, and reduced to ~~permission~~ possession, the angler hooking the fish must immediately complete the following: ~~(4-6-05)( )~~

**01. Permit.** Cut out and completely remove one (1) numbered notch from the permit. (3-20-97)

**02. Number Code.** Look up the number code from the location code list in Subsection 403.02 of these rules and write it in the space provided. (4-6-05)

**03. Date Entry.** Enter in the space provided, the month, and day the fish was caught. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**505. SALMON SPECIAL RESTRICTIONS.**

**01. Method of Take.** It is unlawful to use any hook larger than five-eighths (5/8) inch measured from the point of the hook to the shank. Salmon may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages. Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Salmon may be taken with barbed hooks in the Boise ~~and Payette~~ River drainages, and the Snake River

between Hells Canyon and Oxbow Dams.

~~(4-6-05)~~(\_\_\_\_)

**02. Snagging.** No person shall kill or retain in possession any salmon which has been hooked other than in the mouth or jaw. Any salmon hooked other than in the mouth or jaw must be immediately released unharmed. (4-6-05)

**03. Legal Catch.** Any salmon caught in a legal manner must be either released or killed immediately after it is landed. (4-6-05)

**04. Cease Fishing.** Once an angler has attained his bag, possession, or season limit on those waters with salmon limits, he must cease fishing for salmon. (3-20-97)

**05. No Harvest or Closed to Harvest.** Effort, by permitted methods, to catch or attempt to catch a salmon is lawful with the restriction that any salmon so caught must be released immediately, unharmed, back to the water. (4-6-05)

**06. Keeping Marked Fish.** Only salmon which have been marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainages. (4-6-05)

**07. Fish Counted in Limit.** All fish that are hooked, landed, and not immediately released shall be counted in the limits of the person hooking the fish. (4-6-05)

**08. Special Limits.** No person shall fish in waters having special limits while possessing fish of those species in excess of the special limits. (4-6-05)

**506. SALMON SEASONS AND LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons and regional exceptions by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

~~(3-30-01)~~(\_\_\_\_)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.14 - RULES GOVERNING FALCONRY

#### DOCKET NO. 13-0114-0901 (CHAPTER REPEAL)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-1102(c), 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 October 21, 2009.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This chapter is being repealed in preparation for replacement by new proposed rules.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible. The Department of Fish and Game has consulted with the Idaho Falconers Association on the proposed rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Wolfe (208) 465-8470.

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 October 28, 2009.

DATED this 27th day of August, 2009.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25  
Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

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**IDAPA 13.01.14 IS BEING REPEALED IN ITS ENTIRETY.**

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.14 - RULES GOVERNING FALCONRY

#### DOCKET NO. 13-0114-0902 (CHAPTER REWRITE)

#### 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 36-104(b) and 36-1102(c), 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 October 21, 2009.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In 2008, the U.S. Fish and Wildlife Service implemented major revisions to federal falconry regulations designed to eliminate federal permitting requirements and increase state management authority/responsibility for regulating falconry. The state of Idaho has until 2014 to promulgate rules consistent with the new federal regulations.

**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 funds greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the lack of an identified group to represent interested persons makes it infeasible. The Department of Fish and Game did consult with the Idaho Falconers Association on the draft rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Wolfe (208) 465-8470.

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 October 28, 2009.

DATED this 26th day of August, 2009.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707  
(208) 334-3715  
Fax (208) 334-2148

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0114-0902



**IDAPA 13, TITLE 01, CHAPTER 14**

**13.01.14 - RULES GOVERNING FALCONRY**

**000. LEGAL AUTHORITY.**

The Idaho Fish and Game Commission is authorized under Sections 36-104 (b) and 36-1102 (c), Idaho Code, to adopt rules concerning falconry in the state of Idaho. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as IDAPA 13.01.14.000, et seq., Idaho Fish and Game Commission Rules, IDAPA 13.01.14, "Rules Governing Falconry." ( )

**02. Scope.** These rules establish a falconry program in the state of Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written statements which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter are available for public inspection and copying at cost at the headquarters office at 600 South Walnut, Boise, Idaho. ( )

**003. ADMINISTRATIVE APPEALS.**

All contested cases shall be governed by the provisions of IDAPA 13.01.01, "Rules of Practice and Procedure of the Idaho Fish and Game Commission." ( )

**004. INCORPORATION BY REFERENCE.**

Federal Regulations. All regulations pertaining to raptors as adopted by the U.S. Secretary of the Interior pursuant to the Migratory Bird Treaty Act (50 CFR, Parts 21 & 22) are incorporated herein by reference and shall have full force and effect as state rules, with additional state restrictions and applicability to raptors not listed in 50 CFR Part 10.13 as herein set forth. ( )

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

The principal place of business of the Department of Fish and Game is in Boise, Idaho. The office is located at 600 South Walnut, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: P.O. Box 25, Boise, Idaho 83707 ( )

**006. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Calendar Year.** January 1 through December 31, as defined by the state of Idaho to address any reference to the use of the terms twelve-month (12) period, annual, or year within this rule and federal regulations. ( )

**02. Captive-Bred.** Any raptor raised in captivity from eggs laid by captive raptors. ( )

**03. Commission.** Idaho Department of Fish and Game Commissioners appointed by the governor to administer state fish and game rules and policy. ( )

**04. Department.** Idaho Department of Fish and Game, its employees, and designated volunteers. ( )

**05. Director.** Administrative head of the Idaho Department of Fish and Game, and any person authorized to act in his name. ( )

**06. Falconry.** Capturing, possessing, caring for, transporting, training, and using raptors to hunt wild or artificially propagated birds and animals as a recreational sport, not to include any propagation, breeding or commercial use. ( )

**07. Federal.** United States Code of Federal Regulations -- CFR Title 50 Parts 21 & 22 -- administered by the United States Department of Interior and U.S. Fish and Wildlife Service. ( )

**08. Form 3-186A.** A Migratory Bird Acquisition and Disposition Report required by the United States Fish and Wildlife Service and the Department to track and record possession and status of raptors. ( )

**09. New U.S. Resident.** Any person who has legally moved into the United States or a recognized U.S. Territory to reside and who may or may not have obtained U.S. citizenship. ( )

**10. Non-Resident.** Any person who has not met the criteria to become an Idaho resident as stated in 36- 202 (s), Idaho Code, and possesses resident status and privileges from another U.S. state, territory or tribe.( )

**11. Raptor.** Any bird of prey classified under the Families Falconidae, Strigidae, Accipitridae, and hybrids thereof. ( )

**12. Resident.** Any person meeting the residency requirements set forth in 36-202 (s), Idaho Code. ( )

**13. Territory.** Recognized territories of the United States. ( )

**14. Tribe.** Any United States recognized Native American or territorial tribe, its members and federal lands designated as reservations administered under a sovereign tribal government. ( )

**15. Transfer.** To convey, deliver, loan, gift, give, barter, sell or move a raptor, raptor parts or any permit from one person, place or situation to another. ( )

**16. Visitor.** Any person not legally residing in the United States or a recognized territory, and who is temporarily in the U.S. as a visitor. ( )

**17. Wild-Caught.** Any raptor captured, removed or originating from the wild. Wild-caught raptors shall maintain wild-caught status throughout their life span in regard to capture, possession and transfer restrictions. ( )

**011. -- 099. (RESERVED)**

**100. PERMITS REQUIRED, POSSESSION, IMPORTATION, AND SALE.**

This Section addresses permits, importation, validity, temporary possession, expiration, transfer, renewal and the unlawful sale and possession of raptors. ( )

**01. Falconry Permit Required.** Except as otherwise provided by this rule, an Idaho Falconry Permit (at a fee set forth under 36-416, Idaho Code) is required before any person may possess, capture, transport, import, export or purchase any raptor for the purpose of falconry. ( )

**02. Raptor Captive Breeding Permit Required.** Except as otherwise provided by this rule, an Idaho Raptor Captive Breeding Permit (at a fee set forth under 36-416, Idaho Code) and a Federal Raptor Propagation Permit is required before any person may take, possess, transport, import, export, purchase, barter, sell or offer to sell, purchase, or barter any raptor, raptor egg, or raptor semen for propagation purposes. ( )

**03. Non-Residents, New U.S. Residents Permit Purchase.** Non-Residents and New U.S. Residents may be issued Idaho Apprentice, General, Master Falconer, or Raptor Captive Breeding Permits without a waiting period upon permanently moving into the state of Idaho. ( )

**a.** Non-Resident and New U.S. Resident applicants shall surrender any permit(s) issued by another

state or country to the Department, and must provide a written and signed statement verifying intent to become an Idaho resident. ( )

**b.** Non-Resident applicants will be issued an equivalent Idaho class permit(s) to the permit(s) surrendered from the applicant's past resident state, territory or tribe. ( )

**c.** New Residents to the U.S. will be required to pass the Department Apprentice Falconry Examination and provide documentation to support the class of permit applied for. The Department, based on applicant experience, shall determine and assign the appropriate class of permit. ( )

**04. Non-Resident, New U.S. Resident Permit Purchase within Thirty (30) Days.** Non-Resident and New U.S. Resident falconers taking permanent residency in Idaho, shall, within thirty (30) consecutive days, purchase an Idaho Falconry Permit and a Raptor Captive Breeding Permit as required by Subsections 100.01 and 100.02 of this rule. ( )

**05. Expiration of Permits.** Idaho Falconry Permits and Raptor Captive Breeding Permits shall be valid three (3) years from date of issuance or renewal. ( )

**06. Permit Renewal.** Permit issuance or renewal shall be initiated with the completion and submission of a Department Falconry Application Form to the appropriate Department Regional Office accompanied by the appropriate fee(s) as set forth under 36-416, Idaho Code. ( )

**07. Transfer of Permits.** Idaho Falconry and Raptor Captive Breeding Permits are not transferable to another person, but may be updated to a new in-state location. ( )

**08. Permit-Class Upgrades.** ( )

**a.** Falconry Permit-class upgrades (e.g., moving from Apprentice to General status) shall be made at no cost to the applicant. Permit-class change requests shall be submitted to the appropriate Department Regional Office on a Department Falconry Permit Application Form with required documentation to verify that prerequisites for the permit-class upgrade have been satisfied. ( )

**b.** Permit Exemption for Temporary Possession. Except as otherwise provided, Non-Residents, Visitors and New U.S. Residents possessing a valid federal, territory, tribe, another state or country's equivalent Falconry or Raptor Captive Breeding/Propagation Permit, and not utilizing or possessing any Idaho resident privilege, may temporarily import, possess and transport raptors listed under their Falconry or Captive Breeding/Propagation Permits for up to thirty (30) consecutive days without purchasing an Idaho Falconry or Raptor Captive Breeding Permit. ( )

**i.** Visitors and New U.S. Residents shall comply with federal raptor importation and registration laws and shall obtain a Department Wildlife Importation Permit before importing any raptor. ( )

**ii.** Visitors and New U.S. Residents entering Idaho with a raptor(s) under an Idaho Wildlife Import Permit shall contact the nearest Department Regional Office to take the Idaho Falconry Examination. Only applicant's correctly answering at least eighty percent (80%) of the test questions will be issued a Temporary Idaho Falconry Permit. Wildlife Import and Temporary Falconry Permits shall be carried at all times when possessing raptors. ( )

**iii.** Exceptions to extend the thirty (30) day exemption period shall be at the Department's discretion and any temporary possession in excess of one hundred twenty (120) days shall require raptor housing in a falconry facility that has been approved by the Department under an existing Falconry or Captive Breeding Permit. ( )

**iv.** Non-Residents, New U.S. Residents and Visitors in addition to possessing a valid Falconry or Captive Breeding/Propagation Permit from their home state, territory, tribe or country shall comply with all other Idaho and federal rules regulating hunting and the possession of wildlife to include possession of appropriate non-resident licenses, tags, permits, stamps and validations. ( )

**09. Unlawful Sale and Possession of Raptors.** Except as otherwise provided by this rule, no person shall sell, purchase or barter any raptor or parts thereof, or possess raptors or parts that have been unlawfully obtained, sold, purchased or bartered. ( )

**a.** Only live captive-bred raptors banded or micro-chipped in compliance with section 400.01 of this rule may be sold, purchased or bartered between holders of valid state, federal, tribal, territory or another country's Falconry and Raptor Captive Breeding or Propagation Permit. ( )

**b.** Holders of valid Idaho Raptor Captive Breeding Permits and federal Raptor Propagation Permits may only sell, purchase and barter raptor eggs and semen produced and originating from raptor propagation or captive breeding programs under valid permit. ( )

**101. -- 199. (RESERVED)**

**200. INSPECTION OF RAPTORS, FACILITIES, POSSESSION AND RECORDS.**

**01. Facilities Covered by Permits.** All raptors, facilities, equipment and falconry records required in accordance with federal and Idaho rules shall be subject to reasonable business-hour inspection, any day of the week, in the presence of the applicant or permit holder. All raptors, equipment, and related records required by law shall be produced for inspection upon Department request. ( )

**02. Inspection Prior to Possession of Raptors.** ( )

**a.** Except as otherwise provided by Section 100 of this rule, no person shall possess any raptor(s) under the issuance of an Idaho Falconry or Raptor Captive Breeding Permit, until holding facilities and equipment have been inspected and approved by the Department to verify that facilities and equipment meet federal and Idaho standards. ( )

**b.** Facility inspections shall be required any time a permit holder moves his holding facilities to any physical address location that is not recorded on his current Falconry or Raptor Captive Breeding Permits. Facility location changes shall be reported to the Department within five (5) days. ( )

**03. Facilities Accepted.** Either indoor, including a personal residence, or outdoor falconry facilities, or a combination of both meeting federal standards of care, shall be authorized. ( )

**201. -- 299. (RESERVED)**

**300. APPROVED SPECIES, WILD CAPTURE, LIMITS, PERMITS, HACKING, AND REHABILITATION.**

**01. Approved Raptor Species.** Except as otherwise provided by this rule, any species of raptor defined under Subsection 010.11 of this rule shall be authorized for use in falconry or captive breeding. ( )

**02. Capture Permits Required.** Raptors may only be captured from the wild by persons possessing a valid Idaho Falconry Permit, or a Non-resident federal, state, territory or tribal Falconry Permit. Non-residents must also possess an Idaho Bird of Prey Capture Permit. ( )

**03. Capture of Wild Raptors, Approved Species and Limitations.** ( )

**a. Resident Falconers.** Except as otherwise provided by this rule, residents possessing a valid Idaho Falconry Permit shall be authorized to capture no more than two (2) wild raptors, as their permit class authorizes, each calendar year. ( )

**i.** Not more than one (1) Golden Eagle shall be captured in any calendar year. ( )

**ii.** Capture and possession of any raptor classified under federal or state law as threatened or endangered is unlawful without Department approval and a special permit. ( )

- iii. The issuance of an Idaho Eagle Falconry Permit is required to capture or possess golden eagles. ( )
- iv. Capture and possession of Bald Eagles is unlawful. ( )
- v. Capture and possession of wild Peregrines, as listing status allows, shall be restricted to a limited number of resident Peregrine Capture Permits. ( )
- vi. The Commission, pursuant to Section 36-105 (3), Idaho Code, may establish capture quotas, and a capture permit allocation system by proclamation. ( )
- b. Non-Resident Falconers.** Non-resident falconers intending to capture any wild Idaho raptor shall comply with the following: ( )
  - i. Apply to the Department Licensing Bureau in Boise for a Non-Resident Bird of Prey Capture Permit at a fee set forth under 36-416, Idaho Code. Permits shall be issued on a calendar year basis. ( )
  - ii. The Commission, pursuant to Section 36-105 (3), Idaho Code, will designate raptor species approved for capture, capture quotas, and a capture permit allocation system by proclamation. ( )
  - iii. Non-residents shall be limited to the purchase of only one (1) Bird of Prey Capture Permit per calendar year. ( )
  - iv. Non-residents receiving a Bird of Prey Capture Permit shall be authorized to only capture and possess the species of raptor specified on their permit. ( )
  - v. Non-resident Capture Permit holders, successful with the capture of a raptor shall, within seventy-two (72) hours of capture, have their Capture Permit validated by the Department at any Regional Office prior to transporting any captured raptor out of Idaho. ( )
- 04. Approved Capture Dates – Resident and Non-Resident Falconers.** ( )
  - a.** Immature raptors (birds less than one (1) year of age) shall be open to capture all year with no restrictions in regard to days of the week or times of capture. ( )
  - b.** Kestrels and Great-horned Owls may be captured as immature or adult birds (birds that are one (1) year of age or older). The take of adult birds shall be prohibited from March 1<sup>st</sup> through July 31<sup>st</sup>. ( )
- 05. Capture Area Restrictions.** ( )
  - a.** No person shall capture or attempt to capture any raptor when such activity is unlawful under federal, state, tribal, county or city law or ordinance. ( )
  - b.** Raptors taken in violation of any federal, state, tribal, county or city law shall be unlawful to possess. ( )
- 06. Capture and Possession Limits.** No person shall exceed approved state and federal raptor possession and capture limits. ( )
- 07. Raptor Hacking.** Raptor hacking in compliance with federal rules, by holders of a valid Idaho Falconry or Rehabilitation Permits, is authorized. ( )
- 08. Assisting with Raptor Rehabilitation.** General or Master Class Falconers possessing a valid Idaho Falconry Permit may assist the Department and permitted raptor rehabilitators with the rehabilitation, conditioning and hacking of raptors. Any raptor taken into possession for rehabilitative conditioning or training shall be coordinated and pre-approved by the appropriate Department Regional Office. ( )

**301. -- 399. (RESERVED)**

**400. RAPTOR BANDING, RADIO TRANSMITTERS REQUIRED, TRANSFERS, REPORTING, AND RELEASE.**

**01. Raptor Banding.** Except as otherwise provided for temporary possession and housing under federal rule and Section 100 of this rule, falconers and captive breeders possessing raptors shall comply with all federal banding and micro-chipping regulations. ( )

**a.** Wild-caught Peregrines, Harris' Hawks, Gyrfalcons and Goshawks shall be banded with a black federal, non-reusable leg band or an approved micro-chip (ISO compliant at 134.2 kHz). ( )

**b.** All Captive-bred raptors shall be banded with a seamless band within two (2) weeks of hatching. Federally approved micro-chips or yellow federal, non-reusable leg bands may be used to replace seamless bands that are broken or have become unreadable. ( )

**c.** Raptors that suffer injury or develop health issues caused by leg bands, or routinely remove or damage bands, shall be micro-chipped. Based on unusual circumstances, the Department may approve a special written exemption to banding or micro-chipping. ( )

**d.** Bands or micro-chips shall be attached or placed on all federally required wild-caught raptors within five (5) days of acquisition or capture. ( )

**e.** Bands shall be provided by the Department. Micro-chips shall be provided by the falconer. ( )

**02. Radio Transmitters Required.** At least two (2) functioning radio transmitters shall be attached to any raptor hybrid, or any raptor not listed under CFR 50, Part 10.13, when being free flown. ( )

**03. Raptor Transfers.** Resident falconers/captive breeders shall not transfer any species of wild-caught raptor to a non-resident until the transfer is approved under an Idaho Wildlife Export Permit. ( )

**a.** Idaho Wildlife Export Permits may be purchased at a fee set forth under 36-416, Idaho Code, by submitting an application to the Department Wildlife Health Lab. ( )

**b.** With Department approval, wild-caught raptors, possessed less than two (2) years from date of capture, that have been injured and can no longer be flown for falconry purposes, as determined by a veterinarian or raptor rehabilitator, may be transferred to a Captive Breeding or Propagation Permit. ( )

**04. Release of Birds.** No raptor shall be permanently released into the wild without prior Department approval. ( )

**05. Reporting Requirements.** A Form 3-186A shall be completed and electronically submitted into the United States Fish and Wildlife Service electronic records data base at <http://permits.gov/186A>, or a hard copy thereof, shall be completed and submitted to the appropriate Department Regional Office within five (5) days when any raptor is acquired, captured (including captures of already banded or telemetry equipped birds), re-captured, transferred, lost, escaped, stolen, released, banded, re-banded, micro-chipped or deceased. ( )

**401. -- 499. (RESERVED).**

**500. FALCONRY HUNTING SEASONS, BAG AND POSSESSION LIMITS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, possession limits and restrictions for take by proclamation for upland game birds, upland game animals, migratory game birds, unprotected and predatory wildlife. The proclamations are published in brochures available at Department offices and through license vendors. ( )

**501. -- 599. (RESERVED).**

**600. TRAINING RAPTORS USING ARTIFICIALLY PROPAGATED GAME BIRDS.**

**01. Permit Required.** A valid Idaho Falconry Training Permit is required before any person is authorized to possess, release, or use artificially propagated game birds for purposes of training raptors in the field. Training permits shall be issued at a fee set forth under 36-416, Idaho Code, currently a free permit, and are available to residents, non-residents and visitors, and all hunting license requirements apply. ( )

**02. Permits Valid.** Permits shall be valid two (2) years from date of issuance. ( )

**03. Establishing Limitations and Guidelines.** In addition to the rules set forth, the Director is authorized to establish limitations and guidelines as to dates, locations, and conditions whereupon permits may be issued allowing the party or parties listed thereon to use, release and kill game birds obtained from a private domestic source for the purpose of field training raptors. ( )

**04. Raptor Field Training, Conditions of Use.** Raptor field training with a valid Idaho Falconry Training Permit and the use of artificially propagated game birds is lawful when the following conditions are met: ( )

**a.** The owner of the raptor(s) being trained possesses a valid Idaho Falconry Training Permit, or another state, country, territory or federal Falconry Permit. ( )

**b.** An Idaho Falconry Training Permit and required falconry permit(s) are carried in the field and available for Department inspection at the training site. ( )

**c.** Artificially propagated game birds used for training purposes are certified disease free under the standards set forth by the National Poultry Improvement Program (NPIP). ( )

**d.** Proof of lawful game bird origin is available for inspection. ( )

**e.** Permit holder complies with all additional stipulations outlined on the permit at time of issuance. ( )

**601. -- 699. (RESERVED).**

**700. FALCONRY MEETS, PERMIT REQUIRED, NON-RESIDENTS, NEW U.S. RESIDENTS, AND VISITORS.**

Non-residents, new U.S. residents and visitors shall purchase and possess an Idaho Falconry Meet Permit, at a fee set forth under 36-416, Idaho Code, or an appropriate Non-Resident hunting license to fly or hunt any raptor as a participant in any sponsored falconry meet or contest. ( )

**701. -- 799. (RESERVED).**

**800. PENALTIES.**

**01. Federal Regulations.** All regulations pertaining to raptors as adopted by the U.S. Secretary of the Interior pursuant to the Migratory Bird Treaty Act (50 CFR, Parts 21 & 22) are incorporated herein by reference and shall have full force and effect as state rules, with additional state restrictions and applicability to raptors not listed in 50 CFR Part 10.13, as herein set forth. ( )

**02. Conviction of Violation.** Conviction of a violation of these rules or federal regulations pertaining to falconry may be grounds for revocation of an Idaho falconry permit or denial of any pending applications for an Idaho falconry permit. The revocation of any permit may be appealed within thirty (30) days of such revocation. Said appeal shall be made in writing to the Director of the Idaho Department of Fish and Game. ( )

**801. -- 999. (RESERVED).**

**IDAPA 15 - OFFICE OF THE GOVERNOR  
MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

**15.13.02 - HAZARDOUS SUBSTANCE RESPONSE RULES**

**DOCKET NO. 15-1302-0901 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2010.

**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 39-7100, 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 October 21, 2009.

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:

Section 39-7100, Idaho Code and this rule is, and will be directed at response to hazardous substance incidents, as well as the recovery of funds expended by the response agencies during a hazardous substance event. The purpose is to recover those costs incurred by the responding agencies, for a specific hazardous substance event from the responsible party/ies. There would a positive fiscal effect if funds are recovered and a negative effect if those funds are not recovered.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Thereby allowing the Idaho Bureau of Homeland Security and the various first responders to recover the cost associated with the cleanup of HazMat related events from the spiller.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Bob Wells (208) 422-3041.

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 October 28, 2009.

DATED this 28th day of August, 2009

Robert A. Wells  
Special Assistant to the Director  
Idaho Bureau of Homeland Security

4040 Guard Street, Boise, Idaho 83705  
(208) 422-3041 Fax 422-3044



THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 15-1302-0901

**IDAPA 15  
TITLE 13  
CHAPTER 02**

**MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

**15.13.02 - HAZARDOUS SUBSTANCE RESPONSE RULES**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the authority of Section 39-7101, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** The title of this chapter is the IDAPA 15.13.02, "Hazardous Substance Response Rules." ( )

**02. Scope.** The scope of this chapter is creation of local emergency response authorities and regional response teams; the location and jurisdiction of regional response teams; liability for incident response costs; notification to local and state emergency response authorities of a hazardous substance incident; call-out procedure for emergency response agencies; and cost recovery and cost reimbursement procedures for emergency response agencies. ( )

**002. WRITTEN INTERPRETATIONS (RULE 2).**

The Idaho Hazardous Materials/WMD Incident Command and Response Support Plan, which is prepared and implemented by the Idaho Military Division and approved by the legislature pursuant to Section 39-7104(1)(i), Idaho Code. ( )

**003. ADOPTION OF ATTORNEY GENERAL'S IDAHO RULES OF ADMINISTRATIVE PROCEDURE (RULE 3).**

IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," are adopted for all contested cases before the Military Division and all rulemaking by the Military Division. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this chapter. ( )

**005. OFFICE, OFFICE HOURS, MAILING ADDRESS, TELEPHONE NUMBERS (RULE 5).**

The office of the Idaho Military Division-Bureau of Homeland Security is located at 4040 Guard St., Bldg. 600 Boise, Idaho 83705-5004. Office hours are weekdays, 8:00 a.m. to 4:30 p.m., excluding holidays. The telephone number is (208) 422-3040. The twenty four (24) hour emergency notification number is 800-632-8000 or 208-846-7610. ( )

**006. PUBLIC RECORDS ACT.**

These rules are public records and are available for inspection and copying at the division office. ( )

**007. COMMUNICATION WITH MILITARY DIVISION, BUREAU OF HOMELAND SECURITY (RULE 7).**

**01. Records Custodian.** The Military Division, Bureau of Homeland Security is the custodian of all records and files in all formal proceedings under these rules and is responsible for service of all orders and notices.

Unless otherwise directed by order, the Director, Bureau of Homeland Security issues all official notices. ( )

**02. Filing.** All written communications and documents that are intended to be part of an official Military Division record for a decision in a contested case or a rulemaking must be filed with the Director. Unless otherwise provided by statute, these rules, order or notice, documents are considered filed when received by the Director, not when mailed. ( )

**03. Information.** Information concerning proceedings before the Military Division, or the status of any matter of public record is available from the Director, Bureau of Homeland Security. ( )

**008. -- 009. (RESERVED).**

**010. DEFINITIONS (RULE 10).**

**01. Emergency.** As used in this chapter, “emergency” means a release or threat of release that, in the reasonable judgment of the local emergency response authority in consultation with the bureau, threatens immediate harm to the environment or the health and safety of any individual and that requires immediate action for the containment or control of a hazardous or potentially hazardous substance to prevent, minimize or mitigate harm to the public health, safety or the environment that may result if action is not taken. ( )

**02. Emergency Responder.** Person affiliated with an emergency response agency who is dispatched to the scene upon notification of a hazardous substance incident. Emergency responders may be local, state, federal or industry personnel who have received appropriate hazardous materials training as defined by OSHA and EPA Regulations. ( )

**03. EPCRA.** Emergency Planning and Community Right to Know Act of 1986 (Title III of the Superfund Amendments and Reauthorization Act).. ( )

**04. Hazardous Substance.** ( )

**a.** Any “hazardous substance” within the scope of section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601(14); ( )

**b.** Any hazardous substance within the scope of section 104 of the Federal Hazardous Materials Transportation Act, (HMTA) 49 U.S.C. 1803, and the federal Department of Transportation regulations; ( )

**c.** Any extremely hazardous substance within the scope of section 302 of the federal Emergency Planning and Community Right-to-Know Act, (EPCRA) 42 U.S.C. 11002; and ( )

**d.** Any explosive or weapon of mass destruction utilized or threatened to be utilized in an act of terrorism, crime, or other threat to public safety. ( )

**05. Hazardous Substance Incident.** An emergency circumstance that requires a response by the state emergency response team or the local emergency response agency to monitor, assess and evaluate a release of, or the threat of a release of, a hazardous or potentially hazardous substance. A hazardous substance incident may require containment or confinement, or both, but does not include site cleanup or remediation efforts after the incident commander has determined the emergency has ended. ( )

**06. Hazardous Substance Incident Levels.** ( )

**a.** Regulatory - A release of a ‘reportable quantity’ or less of regulated hazardous substances that does not require any emergency response on the part of public sector responders. This would include a weapons of mass destruction threat or suspicion that is clearly a hoax without requiring additional analysis. ( )

**b.** Level 1 - An incident involving any response, public or private, to an incident involving hazardous substances that can be contained, extinguished, or abated using resources immediately available to the responders having jurisdiction. A weapons of mass destruction threat or suspicion that requires local response to determine

whether or not it is life threatening. A Level 1 incident presents little risk to the environment or public health with containment and clean up. ( )

**c.** Level 2 - An incident involving hazardous substances that is beyond the capabilities of the first responders on the scene, and may be beyond the capabilities of the public sector response agency having jurisdiction. Level 2 incidents may require the services of a state of Idaho Regional Response Team, or other state/federal assistance. This would include a weapons of mass destruction (WMD) threat or incident that involves explosives, release of toxic material, release of radioactive material or release of organisms that can be analyzed and stabilized using resources that exist within the state of Idaho. This level may pose immediate and long-term risk to the environment and public health and could result in a local declaration of disaster. ( )

**d.** Level 3 - An incident involving weapons of mass destruction/hazardous substances that will require multiple state of Idaho Regional Response Teams or other resources that do not exist within the state of Idaho. These incidents may require resources from state and federal agencies and private industry. Level 3 incidents generally pose extreme, immediate and long-term risk to the environment and public health. ( )

**07. Idaho Hazardous Materials/WMD Incident Command and Response Support Plan.** A plan that has the primary purpose of providing effective, coordinated emergency response support to local government by state, federal and private agencies for incidents involving the release of hazardous substances in the state of Idaho. ( )

**a.** This plan may be activated independently of the Idaho Emergency Operations Plan. ( )

**b.** Authority for implementation of this plan is derived from the Idaho Hazardous Substance Emergency Response Act (Section 39-7101, Idaho Code), the Idaho Environmental Protection and Health Act (Section 39-101 et seq., Idaho Code), the Hazardous Waste Management Act (Section 39-4401 et seq., Idaho Code), Protection from Radioactive Materials (Section 39-3005, Idaho Code) and the Idaho Homeland Security Act of 2004 (Section 46-1001 et seq. Idaho Code). ( )

**08. Idaho Regional Response Teams.** Teams authorized by the state of Idaho which are trained and equipped to respond to incidents. These teams are based in local departments and respond outside local jurisdictional boundaries upon approval of the Bureau of Homeland Security. These teams include Regional Hazardous Materials Response Teams (RRT's) as well as Regional Bomb Squads (RBS's). The Idaho Regional Response Teams are responsible to the local Incident Commander. ( )

**09. Incident Command System (ICS)/National Incident Management System (NIMS).** ( )

**a.** The Incident Command System (ICS) is a widely used and understood emergency management tool. It is used by local, state, and federal agencies and the military. Use of the ICS for hazardous substance incidents is required by the Emergency Planning and Community Right to Know Act (EPCRA), Occupational Safety and Health Administration (OSHA) rules, and the National Fire Protection Association (NFPA). It has been adopted by the National Fire Academy as the model system for the fire service. It is also the policy of the state of Idaho that the ICS will be used in response to hazardous substance incidents. ( )

**b.** NIMS is a system mandated by Homeland Security Presidential Directive 5 that provides a consistent nationwide approach for federal, state, local and tribal governments, as well as the private-sector and nongovernmental organizations to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size or complexity. NIMS builds on the ICS and the proven principles of unified command. ( )

**10. Incident Commander.** The designated local emergency response official responding to an incident. This person must be fully trained and knowledgeable in the ICS. Normally, the Incident Commander will be the local fire chief or law enforcement officer. A local jurisdiction, based on its local plan and resource assessment, may request that Idaho State Police assume incident command, particularly for incidents on U.S. Interstates and state-numbered routes, including rights-of-way. The Incident Commander shall be in overall charge of all efforts at the scene. ( )

**11. Local Emergency Planning Committee (LEPC).** A committee made up of local officials, citizens, and industry representatives charged with development and maintenance of emergency response plans for the local emergency planning district as per EPCRA requirements. Planning procedures include hazardous substance inventories, compilation and coordination of fixed facility emergency response plans, hazardous substance response training, and assessment of local response capabilities. ( )

**12. Local Emergency Response Authority (LERA).** Persons or agencies designated under Section 39-7105, Idaho Code, by the city or county to be the local representatives for hazardous substance incidents. The board of county commissioners will designate by ordinance or resolution a LERA. The governing body will notify the military division and the state communications center within sixty (60) calendar days of their designation. If no LERA has been designated, the Idaho State Police shall be the local emergency response authority. ( )

**13. Regional Response Team (RRT).** See Idaho Regional Response Teams. ( )

**14. Reimbursable Costs.** The total eligible expenses arising from response to a hazardous substance incident. Such costs generally include, but are not limited to, all state and local government expenses that result from the assessment and emergency phases of the response activity. Emergency response costs do not include clean-up or disposal costs of hazardous substances, except as may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous substance or in stabilizing the emergency response incident. ( )

**15. Responsible Party.** Any person who owns, controls, transports, or causes the release, or threat of release of a hazardous substance which is involved in a hazardous substance incident shall be strictly liable for the costs arising out of the response. ( )

**16. Spiller.** See Responsible Party. ( )

**17. State Communications.** The communications center for state hazardous substance emergency response. State Communications can be reached by calling 1-800-632-8000 or 208-846-7610. Notification of State Communications is the first step in initiating the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan. ( )

**18. State Emergency Response Teams.** See Idaho Regional Response Teams. ( )

**19. State On-Scene Coordinator (SOSC).** To ensure coordination during a significant incident, the state of Idaho will provide a State On-Scene-Coordinator (SOSC). The SOSC will facilitate the formation of a unified command during a significant incident. Under Unified Command, the Idaho SOSC can assist by acquiring resources, advising on response issues, and coaching the jurisdiction in overall scene management. The SOSC will coordinate with responding state agencies and be the principal state spokesperson in the unified command as an advocate for all state interests. In this role, the SOSC effectively represents the interests of the state of Idaho and its citizens. The Idaho SOSC will be appointed by the Director, Bureau of Homeland Security or his designee. ( )

**011. ABBREVIATIONS (RULE 11).**

**01. A.G.** Office of the State Attorney General. ( )

**02. BHS.** Idaho Bureau of Homeland Security. ( )

**03. CERCLA.** Comprehensive Environmental Response, Compensation, and Liability Act. ( )

**04. CFR.** Code of Federal Regulations. ( )

**05. EPCRA.** Emergency Planning and Community Right-to-Know Act. ( )

**06. HMTA.** Hazardous Materials Transportation Act. ( )

**07. ICS.** Incident Command System. ( )

- 08. LEPC. Local Emergency Planning Committee. ( )
- 09. LERA. Local Emergency Response Authority. ( )
- 10. NIMS. National Incident Management System. ( )
- 11. NFPA. National Fire Protection Act. ( )
- 12. OSHA. Occupational Safety and Health Administration. ( )
- 13. RBS. Idaho Regional Bomb Squads. ( )
- 14. RRT. Idaho Regional Response Teams. ( )
- 15. SOSOC. State On-Scene Coordinator. ( )
- 16. WMD. Weapons of Mass Destruction. ( )

**012. -- 099. (RESERVED).**

**100. REGIONAL RESPONSE TEAMS, DESIGNATION, LOCATION, JURISDICTION, ACTIVATION, LIABILITY (RULE 100).**

**01. Designation of Regional Response Teams.** There shall be Regional Response Teams designated by the state of Idaho, Military Division. Each regional response team shall be capable of responding to hazardous substance emergencies within their jurisdiction or, when approved by the state of Idaho, Military Division, Bureau of Homeland Security, in their region, or other state regions. ( )

**02. Location of Regional Response Teams.**

Area of Idaho	Primary Response Counties	Designation	Team Location – Headquarters
<b>Region 1</b>	Benewah, Bonner, Boundary, Kootenai, Shoshone	Regional Response Team 1(RRT1)	Kootenai County Fire and Rescue
		Spokane Bomb Squad	Spokane Police and Sheriff’s Office
<b>Region 2</b>	Clearwater, Idaho, Latah, Lewis, Nez Perce	Regional Response Team 2 (RRT2)	Lewiston Fire Department
		Explosive response covered by Spokane and RBS3	
<b>Region 3</b>	Adams, Canyon, Gem, Owyhee, Payette, Washington, (Gem response may come from Boise for access time.)	Regional Response Team 3 (RRT3)	Nampa/Caldwell Fire Department
		Regional Bomb Squad 3 (RBS3)	Nampa Police Department
<b>Region 4</b>	Ada, Boise, Camas, Elmore, Valley, (Gem response for access time.)	Regional Response Team 4 (RRT4)	Boise Fire Department
		Regional Bomb Squad 4 (RBS4)	Boise Police Department

Area of Idaho	Primary Response Counties	Designation	Team Location – Headquarters
<b>Region 5</b>	Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls, (Minidoka and Cassia may come from Southeast for access time.)	Regional Response Team 5 (RRT5)	Magic Valley Emergency Response Team (Primary response apparatus housed in Jerome FD)
		Regional Bomb Squad 5 (RBS5)	Twin Falls Police Department
<b>Region 6</b>	Bannock, Bear Lake, Butte, Bingham, Caribou, Franklin, Oneida, Power, (Minidoka and Cassia responses for access time.)	Regional Response Team 6 (RRT6)	Pocatello Fire Department
		Explosive response covered by RBS5 and RBS7	
<b>Region 7</b>	Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton.	Regional Response Team 7 (RRT7)	Idaho Falls Fire Department
		Regional Bomb Squad 7 (RBS7)	Idaho Falls Police Department

( )

**03. Primary Jurisdiction of Regional Response Teams.** See Subsection 100.02 of these rules.

( )

**04. Activation of Regional Response Teams.**

( )

**a.** The party requesting the assistance must:

( )

i. Contact State Communications at 1-800-632-8000, or (208-846-7610).

( )

ii. State their name;

( )

iii. State their location;

( )

iv. Provide a description of the incident; and

( )

v. Provide a description of the type of assistance requested.

( )

**b.** Regional Response Teams must be activated by the Military Division when responding outside their jurisdiction by calling Idaho State Communications Center at 800-632-8000, or (208) 846-7610. This will initiate a conference call, if appropriate, with the appropriate state and local agencies.

( )

**c.** If the request is for assistance with a drug lab response, the requester must call State Communications and provide the following:

( )

i. That the request is for a drug lab response;

( )

ii. The location, which must include, at a minimum, the county and city;

( )

iii. The type of assistance requested; and

( )

iv. The nature of the chemicals released.

( )

**d.** State communications will then page the BHS Haz Mat Duty Officer, provide the information, and request authorization for the RRT to respond. Upon authorization, State Communications will notify the appropriate RRT of the request for assistance and the authorization to respond. ( )

**05. Liability for Response Costs.** ( )

**a.** Liability for costs associated with response to, and recovery of costs of a hazardous substance incident, or threat of an incident, shall be the responsibility of the spiller, shipper, transporter, property owner, owner, occupant or party responsible for the hazardous substance emergency. ( )

**b.** Cost liability may include the time and efforts of local and state personnel to recover the costs of response, which includes, but is not limited to, the expense of processing the cost recovery packets submitted by response agencies. These costs may accrue until full reimbursement is received from the responsible party or their agent. ( )

**c.** There will be no liability if the incident was caused by an act of God, an act of war, or an act or omission of a third party other than an employee. If the substance is determined not to be hazardous and it appears the potentially liable person acted reasonably, there will be no liability. ( )

**d.** The liable party must make payment to the agency from which it receives the request for payment. If payment is made to the state of Idaho, Military Division, the Military Division shall reimburse the departments, agencies, municipalities and counties that responded to the incident upon the request of the incident commander. ( )

**e.** The state of Idaho shall be liable to the responding agency for allowable expenses associated with a hazardous substance emergency response in those cases when a party described in Section 39-7111, Idaho Code, cannot be identified, found, or cannot be collected against. ( )

**06. Reimbursable Costs -- Hazardous Substances.** ( )

**a.** State emergency response teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the Military Division for reimbursement. Eligible documented costs, incurred as a result of their response to a hazardous substance incident, may be submitted. ( )

**b.** State emergency response teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the Military Division for reimbursement. The following documented costs, incurred as a result of their response to a hazardous substance incident may be submitted: ( )

**i.** Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response; ( )

**ii.** Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget, (e.g., overtime pay for permanent fulltime and other than fulltime employees, recalled personnel or responding when out of jurisdiction); ( )

**iii.** Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment); ( )

**iv.** Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self contained breathing apparatus irretrievably contaminated during the response); ( )

**v.** Decontamination of equipment contaminated during the response; ( )

**vi.** Special technical services required for the incident response (e.g., costs associated with the time and efforts of local and state personnel to recover the costs of response, and of technical experts/specialists not

otherwise provided for by the local government); ( )

vii. Medical monitoring, treatment of response personnel, and rehabilitation costs as per 29 CFR 1910, 120; NFPA 1500; and NFPA 1584; and ( )

viii. Laboratory costs for purposes of analyzing samples taken during the response. ( )

c. Reimbursement for costs will not exceed the duration of the response. Reimbursements shall only be paid after the military division finds that the actions by the Regional Response Team, or the emergency response agency were taken in response to a hazardous substance incident as defined in this chapter. ( )

**07. Liability for Response Costs - Non-Hazardous Substances. ( )**

a. Liability for response costs for spills of non-hazardous substances shall be the responsibility of the spiller or transporter of such material when the spiller or transporter failed to comply with laws or regulations of the state or federal government which would have facilitated identification of the product as a non-hazardous substance. ( )

b. Liability for response costs to non-hazardous substances shall be the responsibility of the person or entity requesting assistance in all other instances. ( )

**101. -- 199. (RESERVED).**

**200. LOCAL EMERGENCY RESPONSE AUTHORITIES (RULE 200).**

**01. Responsibility of Local Governments for Establishment of LERA. ( )**

a. Local Emergency Response Authority (LERA) means those persons or agencies designated under Section 39-7105, Idaho Code, by the city, or county to be the first response authority for hazardous substance incidents. ( )

b. Cities and counties shall designate the LERA for hazardous substance incidents that occur within their respective jurisdictions. Each local governing body shall notify the Military Division and State Communications Center of its designation in writing. Thereafter, any changes in designation shall be communicated to the Military Division and the State Communications Center no later than ten (10) working days before the change becomes effective. ( )

c. The governing body of each city shall designate by ordinance or resolution a LERA for hazardous substance incidents occurring within the corporate limits of the city. A city may designate the county as its LERA and participate in the county plan for hazardous substance incident response by notifying the county, the Military Division and the State Communications Center of such designation in writing. ( )

d. The board of county commissioners of each county shall designate by ordinance or resolution a LERA for hazardous substance incidents occurring within the unincorporated areas of the county. ( )

e. If no LERA having the ability to respond to a hazardous substance incident exists within a city or county, or if a political subdivision is unable to obtain the services of a LERA by means of a mutual aid agreement or contract, the Idaho State Police will be the LERA. ( )

**02. LERA Powers and Duties. ( )**

a. Respond: The LERA will provide response to all hazardous substances incidents in their jurisdiction and to any incidents that overlap jurisdictions in a fashion consistent with the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan except as provided in a local emergency response plan. ( )

b. Initiate State Plan: The LERA may request state assistance consistent with the Idaho Hazardous



Materials/WMD Incident Command and Response Support Plan through the State Communications Center. ( )

**c.** Right to Claim Reimbursement: The LERA may claim reimbursement or costs associated with a hazardous substance emergency directly from the spiller, shipper, transporter, property owner, occupant or party responsible for the hazardous substance incident or emergency. The LERA may, in the alternative, if the incident was reported to the State, submit claims to the Military Division within sixty (60) days after the termination of an incident for the reimbursement of documented costs listed in Section 39-7109, Idaho Code, incurred as a result of response to a hazardous substance incident. Reimbursement claims for those costs may not exceed the duration of the response. The LERA must provide a written incident report and any backup documentation to the Military Division containing the following information: ( )

- i. Date and time of incident; ( )
- ii. Type of incident; ( )
- iii. Level of response required; ( )
- iv. Response action taken; ( )
- v. Time the incident commander declared the incident ended; ( )
- vi. Follow-up information; and ( )
- vii. Any other pertinent information such as responsible party etc. ( )

**d.** Local Planning: The LERA, as a member of the LEPC, should be an active participant in their jurisdictions emergency planning process. ( )

**03. Training.** Personnel responding to a hazardous substance emergency shall be trained, at a minimum, to the Hazardous Substance Operations level. In addition, all personnel must have training in the Incident Command System (ICS) and the National Incident Management System (NIMS) set forth in the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan. ( )

**04. LERA Notification.** ( )

**a.** Any spiller, shipper, transporter, property owner, occupant or other person with knowledge of a hazardous substance incident shall notify the LERA of any spill or potential spill. ( )

**b.** Notification of the LERA may be through the local dispatch authorities or through the State Communications Center at 800-632-8000, or (208) 846-7610. The State Communications Center shall notify the Local Authority and the Military Division Haz Mat Duty Officer. ( )

**c.** The spiller, shipper, transporter, property owner, occupant or other person with knowledge of a hazardous substance incident notifying the LERA and State Communications Center shall provide their: ( )

- i. Name; ( )
- ii. Address and telephone number; ( )
- iii. An address and telephone number where they can be reached for the duration of the incident. ( )

**d.** Such person shall remain available to the incident commander throughout the duration of the incident. ( )

**201. -- 299. (RESERVED).**

**300. COST REIMBURSEMENT (RULE 300).**

**01. Submission of Claims and Forms.** State Regional Response Teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the State of Idaho, Military Division for reimbursement of documented and reimbursable costs incurred as a result of their response to a hazardous, or potentially hazardous substance incident. Reimbursable costs are those set forth in Section 39-7109, Idaho Code. ( )

**02. Limitations for Seeking Reimbursement, Acceptance of Claims.** Claims for reimbursement shall be submitted to the Military Division within sixty (60) days after termination of the hazardous substance incident for the State's determination of payment. Termination of the incident occurs when the Incident Commander declares the incident terminated. The Military Division shall review the costs submitted and notify the response agency or agencies as to which costs disqualify for reimbursement within thirty (30) days of receipt. ( )

**03. Claims Against Spiller or Other Responsible Party.** ( )

**a.** Upon receipt and review of claims for reimbursement within sixty (60) calendar days after close of incident, the Military Division will compile a thirty (30) calendar day demand letter to the responsible party to be sent certified mail, as well as standard mail, with a copy of the complete packet. ( )

**b.** If responsible party does not respond, or submit payment within thirty (30) calendar days of first letter, a ten (10) calendar day demand letter will be sent certified mail. ( )

**c.** If the responsible party has not responded to the ten-day letter; within ten (10) calendar days, a packet will be assembled for the A.G. This packet will include the entire file, and a letter to the A.G. explaining the steps taken and requesting their assistance in collecting the costs. ( )

**d.** If the responsible party does not respond to the A.G., upon their recommendation, the packet will be submitted to a Collection Agency. If the incident is submitted to a collection agency, the responsible party will incur additional costs. ( )

**04. Cost Recovery, Deficiency Warrants.** The Military Division shall be responsible for recovering documented and reimbursable costs incurred from the spiller. If a spiller is unknown, cannot be located, or refuses to pay upon demand, the Military Division will make recommendations as to payment to the Board of Examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The Board of Examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken by response agencies. ( )

**05. Civil Actions.** It shall be the duty of the A.G. to commence any civil action brought by the Military Division pursuant to nonpayment from a spiller. At the request of the Military Division, a political subdivision of the state, or a local governmental entity that has responded to or contained a hazardous substance incident, the A.G. may commence a civil action on their behalf. ( )

**301. DUTY TO COOPERATE.**

**01. Responding Agencies.** Local emergency response authorities, first responders, and regional response teams shall cooperate with the Military Division and the A.G. in collecting and securing payment from the spiller or other responsible party. ( )

**02. Cooperation Provided.** Such cooperation includes, but shall not be limited to: ( )

**a.** Allowing lawsuits to be filed in the name of the local jurisdiction, LERA, or regional response team; ( )

**b.** Providing testimony and assistance in preparing for trial; ( )

**c.** Investigation; ( )

- d. The collection of evidence, including securing photographs or videotape of the spill site; and ( )
  - e. Providing relevant test data. ( )
- 302. -- 999. (RESERVED).**

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

**16.02.02 - RULES OF THE EMERGENCY MEDICAL SERVICES (EMS) PHYSICIAN COMMISSION**

**DOCKET NO. 16-0202-0901**

**NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE**

**EFFECTIVE DATE OF RECISSION:** The effective date of the rescission of the temporary rule is October 1, 2009.

**AUTHORITY:** In compliance with Section 67-5203 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rule previously adopted under this docket. The action is authorized pursuant to Sections 56-1013A and 56-1017, Idaho Code, and Senate Bill 1108a, 2009.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule.

The 2009 Idaho Legislature passed Senate Bill 1108a that updated terminology in Idaho statutes related to Emergency Medical Services (e.g., changing “certification” to “licensure”). In order to align this chapter with the changes made in statute that went into effect after the publication of this temporary rule, this temporary rule docket is being rescinded.

The temporary and proposed rulemaking that replaces this rulemaking is being publishing in this edition of the Idaho Administrative Bulletin, Vol. 09-10, under Docket No. 16-0202-0902, immediately following this notice. In addition to alignment with changes in statute, this new docket will preserve the temporary rule changes that had been made to the chapter this year under Docket No. 16-0202-0901.

**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. NA

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

DATED this 14th day of September, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone  
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## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.02 - RULES OF THE EMERGENCY MEDICAL SERVICES (EMS) PHYSICIAN COMMISSION

DOCKET NO. 16-0202-0902

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

**EFFECTIVE DATE:** The effective dates of the temporary rule are July 1, 2009, and October 1, 2009.

**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 56-1013A and 56-1017, Idaho Code, and Senate Bill 1108a, 2009.

**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, October 21, 2009.

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 following changes are being made in this rulemaking:

1. The "Incorporation by Reference" section of these rules was revised with the updated edition number of the EMS Physician Commission Standards Manual. This revision to rule ensures that the most recent edition of the manual has the force and effect of law. To best protect the public's health and safety, the Emergency Medical Services (EMS) Physician Commission has amended their Standards Manual that is incorporated by reference in this chapter of rules. This Standards Manual is a "scope of practice" manual that governs the medications, devices, and clinical interventions that EMS personnel can use to treat patients at emergency scenes and in ambulances.
2. In addition, to keep the rule aligned with changes being made to the incorporated manual and eliminate duplication between the rule and the manual, the text of the rule was amended. The list in rule of required elements for the EMS medical supervision plan was deleted. This list of required elements is found in the Standards Manual. Any updates to the list will be made in the manual.
3. Finally, the chapter was amended to align it with changes related to EMS made to Idaho statute under Senate Bill 1108a (2009).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as it is necessary to protect public health, safety, and welfare, and to comply with amendments made to governing law under Senate Bill 1108a, passed by the 2009 Legislature.

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

**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. NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the content of the proposed updates to the EMS Physician Commission Standards Manual already represents extensive input from stakeholders gathered during 2008 and 2009.

**NOTE:** The EMS Physician Commission is itself a representative body of emergency medicine physicians and citizens with EMS experience from across the state.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dia Gainor at (208) 334-4000.

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, October 28, 2009.

DATED this 14th day of September, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0202-0902**

**000. LEGAL AUTHORITY.**

Under Sections 56-1013A and 56-1017, Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission is authorized to promulgate these rules for the purpose of establishing standards for scope of practice and medical supervision for ~~certified~~ licensed personnel, air medical, ambulance services, and nontransport agencies licensed by the Department of Health and Welfare. ~~(4-2-08)~~(7-1-09)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (4-2-08)

**02. Scope.** The scope of these rules is to define the allowable scope of practice, acts, and duties that can be performed by persons ~~certified~~ licensed as emergency medical services personnel by the Department of Health and Welfare Emergency Medical Services (EMS) Bureau and to define the required level of supervision by a physician. ~~(4-2-08)~~(7-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS AND INVESTIGATIONS.**

**01. Administrative Appeals.** Provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," govern administrative appeals. (4-2-08)

**02. Physician Complaint Investigations.** The provisions of the rules of the Board of Medicine, IDAPA 22.01.14, "Rules Relating to Complaint Investigation," govern investigation of complaints regarding physicians. (4-2-08)

**03. EMS Personnel and EMS Agency Complaint Investigations.** The provisions of IDAPA 16.02.03, "Rules Governing Emergency Medical Services," govern investigation of complaints regarding ~~certified~~ licensed EMS personnel and EMS Agencies. (~~4-2-08~~)(7-1-09)T

**004. INCORPORATION BY REFERENCE.**

The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2007~~9~~-~~13~~, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained from the EMS Bureau located at 590 W. Washington Street, Boise, Idaho, 83702, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. (~~4-2-08~~)(10-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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." (4-2-08)

**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. (4-2-08)

**03. EMS Complaints.** The provisions of IDAPA 16.02.03, "Rules Governing Emergency Medical Services," govern the confidentiality of the investigation of complaints regarding ~~certified~~ licensed EMS personnel. (~~4-2-08~~)(7-1-09)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

In addition to the applicable definitions in Section 56-1012, Idaho Code, and IDAPA 16.02.03, "Rules Governing Emergency Medical Services," the following terms are used in this chapter as defined below: (4-2-08)

**01. ~~Certification~~ License.** A license issued by the EMS Bureau to an individual for a specified period of time indicating that minimum standards corresponding to one (1) of several levels of EMS proficiency have been met. (~~4-2-08~~)(7-1-09)T

**02. ~~Certified~~ Licensed EMS Personnel.** Individuals who possess a valid ~~certification~~ license issued by the EMS Bureau. (~~4-2-08~~)(7-1-09)T

**03. Credentialed EMS Personnel.** Individuals who are authorized to provide medical care by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (4-2-08)

**04. Credentialing.** The local process by which ~~certified~~ licensed EMS personnel are authorized to provide medical care in the out-of-hospital, hospital, and medical clinic setting, including the determination of a local scope of practice. (~~4-2-08~~)(7-1-09)T

**05. Designated Clinician.** A licensed Physician Assistant (PA) or Nurse Practitioner designated by the EMS medical director, hospital supervising physician, or medical clinic supervising physician who is responsible for direct (on-line) medical supervision of ~~certified~~ licensed EMS personnel in the temporary absence of the EMS medical director. (~~4-2-08~~)(7-1-09)T

**06. Direct (On-Line) Supervision.** Contemporaneous instructions and directives about a specific

patient encounter provided by a physician or designated clinician to ~~certified~~ licensed EMS personnel who are providing medical care. ~~(4-2-08)~~(7-1-09)T

**07. Emergency Medical Services (EMS).** The services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury. (4-2-08)

**08. Emergency Medical Services (EMS) Bureau.** The Emergency Medical Services (EMS) Bureau of the Idaho Department of Health and Welfare. (4-2-08)

**09. Emergency Medical Services (EMS) Physician Commission.** The Idaho Emergency Medical Services Physician Commission as created under Section 56-1013A, Idaho Code, hereafter referred to as “the Commission.” (4-2-08)

**10. EMS Agency.** An organization licensed by the EMS Bureau to provide emergency medical services in Idaho. (4-2-08)

**11. EMS Medical Director.** A physician who supervises the medical activities of ~~certified~~ licensed personnel affiliated with an EMS agency. ~~(4-2-08)~~(7-1-09)T

**12. Hospital.** A facility in Idaho licensed under Sections 39-1301 through 39-1314, Idaho Code, and defined in Section 39-1301(a)(1), Idaho Code. (4-2-08)

**13. Hospital Supervising Physician.** A physician who supervises the medical activities of ~~certified~~ licensed EMS personnel while employed or utilized for delivery of services in a hospital. ~~(4-2-08)~~(7-1-09)T

**14. Indirect (Off-Line) Supervision.** The medical supervision, provided by a physician, to ~~certified~~ licensed EMS personnel who are providing medical care including EMS system design, education, quality management, patient care guidelines, medical policies, and compliance. ~~(4-2-08)~~(7-1-09)T

**15. Medical Clinic.** A place devoted primarily to the maintenance and operation of facilities for outpatient medical, surgical, and emergency care of acute and chronic conditions or injury. (4-2-08)

**16. Medical Clinic Supervising Physician.** A physician who supervises the medical activities of ~~certified~~ licensed EMS personnel while employed or utilized for delivery of services in a medical clinic. ~~(4-2-08)~~(7-1-09)T

**17. Medical Supervision.** The advice and direction provided by a physician, or under the direction of a physician, to ~~certified~~ licensed EMS personnel who are providing medical care, including direct and indirect supervision. ~~(4-2-08)~~(7-1-09)T

**18. Medical Supervision Plan.** The written document describing the provisions for medical supervision of ~~certified~~ licensed EMS personnel. ~~(4-2-08)~~(7-1-09)T

**19. Nurse Practitioner.** An Advanced Practice Professional Nurse, licensed in the category of Nurse Practitioner, as defined in IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (4-2-08)

**20. Out-of-Hospital.** Any setting outside of a hospital, including inter-facility transfers, in which the provision of emergency medical services may take place. (4-2-08)

**21. Physician.** In accordance with Section 54-1803, Idaho Code, ~~A~~ a person who holds a current active license issued by the Board of Medicine to practice medicine and surgery, ~~or~~ osteopathic medicine ~~or~~ and surgery, or osteopathic medicine in Idaho and is in good standing with no restriction upon, or actions taken against, his license. ~~(4-2-08)~~(7-1-09)T

**22. Physician Assistant.** A person who meets all the applicable requirements to practice as a licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, “Rules for the Licensure of



Physician Assistants.” (4-2-08)

**011. -- 094. (RESERVED).**

**095. GENERAL PROVISIONS.**

**01. Practice of Medicine.** This chapter does not authorize the practice of medicine or any of its branches by a person not licensed to do so by the Board of Medicine. (4-2-08)

**02. Patient Consent.** The provision or refusal of consent for individuals receiving emergency medical services is governed by Title 39, Chapter 43, Idaho Code. (4-2-08)

**03. System Consistency.** All EMS medical directors, hospital supervising physicians, and medical clinic supervising physicians must collaborate to ensure EMS agencies and ~~certified~~ licensed EMS personnel have protocols, policies, standards of care, and procedures that are consistent and compatible with one another. ~~(4-2-08)~~(7-1-09)T

**096. -- 099. (RESERVED).**

**100. GENERAL DUTIES OF EMS PERSONNEL.**

**01. General Duties.** General duties of EMS personnel include the following: (4-2-08)

**a.** ~~Certified~~ Licensed EMS personnel must possess a valid ~~certification~~ license issued by the EMS Bureau equivalent to or higher than the scope of practice authorized by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. ~~(4-2-08)~~(7-1-09)T

**b.** ~~Certified~~ Licensed EMS personnel must only provide patient care for which they have been trained, based on curricula or specialized training approved according to IDAPA 16.02.03, “Rules Governing Emergency Medical Services,” or additional training approved by the hospital or medical clinic supervising physician. ~~(4-2-08)~~(7-1-09)T

**c.** ~~Certified~~ Licensed EMS personnel must not perform a task or tasks within their scope of practice that have been specifically prohibited by their EMS medical director, hospital supervising physician, or medical clinic supervising physician. ~~(4-2-08)~~(7-1-09)T

**d.** ~~Certified~~ Licensed EMS personnel that possess a valid credential issued by the EMS medical director, hospital supervising physician, or medical clinic supervising physician are authorized to provide services when representing an Idaho EMS agency, hospital, or medical clinic and under any one (1) of the following conditions: ~~(4-2-08)~~(7-1-09)T

**i.** When part of a documented, planned deployment of personnel resources approved by the EMS medical director, hospital supervising physician, or medical clinic supervising physician; or (4-2-08)

**ii.** When, in a manner approved by the EMS medical director, hospital supervising physician, or medical clinic supervising physician, administering first aid or emergency medical attention in accordance with Section 5-330 or 5-331, Idaho Code, without expectation of remuneration; or (4-2-08)

**iii.** When participating in a training program approved by the EMS Bureau, the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (4-2-08)

**02. Scope of Practice.** (4-2-08)

**a.** The Commission maintains an “EMS Physician Commission Standards Manual” that: (4-2-08)

**i.** Establishes the scope of practice of ~~certified~~ licensed EMS personnel; and ~~(4-2-08)~~(7-1-09)T

ii. Specifies the type and degree of medical supervision for specific skills, treatments, and procedures by level of EMS ~~certification~~ licensure. (4-2-08)(7-1-09)T

b. The Commission will consider the United States Department of Transportation's National EMS Scope of Practice Model when preparing or revising the standards manual described in Subsection 100.02.a. of this rule; (4-2-08)

c. The scope of practice established by the EMS Physician Commission determines the objectives of applicable curricula and specialized education of ~~certified~~ licensed EMS personnel. (4-2-08)(7-1-09)T

d. The scope of practice does not define a standard of care, nor does it define what should be done in a given situation; (4-2-08)

e. ~~Certified~~ Licensed EMS personnel must not provide out-of-hospital patient care that exceeds the scope of practice established by the Commission; (4-2-08)(7-1-09)T

f. ~~Certified~~ Licensed EMS personnel must be credentialed by the EMS medical director, hospital supervising physician, or medical clinic supervising physician to be authorized for their scope of practice; (4-2-08)(7-1-09)T

g. The credentialing of ~~certified~~ licensed EMS personnel affiliated with an EMS agency, in accordance with IDAPA 16.02.03, "Rules Governing Emergency Medical Services," must not exceed the licensure level of that EMS agency; and (4-2-08)(7-1-09)T

h. The patient care provided by ~~certified~~ licensed EMS personnel must conform to the Medical Supervision Plan as authorized by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (4-2-08)(7-1-09)T

**101. -- 199. (RESERVED).**

**200. EMS MEDICAL DIRECTOR, HOSPITAL SUPERVISING PHYSICIAN, AND MEDICAL CLINIC SUPERVISING PHYSICIAN QUALIFICATIONS.**

The EMS Medical Director, Hospital Supervising Physician, and Medical Clinic Supervising Physician must: (4-2-08)

**01. Accept Responsibility.** Accept responsibility for the medical direction and medical supervision of the activities provided by ~~certified~~ licensed EMS personnel. (4-2-08)(7-1-09)T

**02. Maintain Knowledge of EMS Systems.** Obtain and maintain knowledge of the contemporary design and operation of EMS systems. (4-2-08)

**03. Maintain Knowledge of Idaho EMS.** Obtain and maintain knowledge of Idaho EMS laws, regulations, and standards manuals. (4-2-08)

**201. -- 299. (RESERVED).**

**300. EMS MEDICAL DIRECTOR, HOSPITAL SUPERVISING PHYSICIAN, AND MEDICAL CLINIC SUPERVISING PHYSICIAN RESPONSIBILITIES AND AUTHORITY.**

**01. Documentation of Written Agreement.** The EMS medical director must document a written agreement with the EMS agency to supervise ~~certified~~ licensed EMS personnel and provide such documentation to the EMS Bureau annually or upon request. (4-2-08)(7-1-09)T

**02. Approval for EMS Personnel to Function.** (4-2-08)

a. The explicit approval of the EMS medical director, hospital supervising physician, or medical clinic supervising physician is required for ~~certified~~ licensed EMS personnel under his supervision to provide medical

care. ~~(4-2-08)~~(7-1-09)T

**b.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician may credential ~~certified~~ licensed EMS personnel under his supervision with a limited scope of practice relative to that allowed by the EMS Physician Commission, or with a limited scope of practice corresponding to a lower level of EMS ~~certification~~ licensure. ~~(4-2-08)~~(7-1-09)T

**03. Restriction or Withdrawal of Approval for EMS Personnel to Function.** (4-2-08)

**a.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician can restrict the scope of practice of ~~certified~~ licensed EMS personnel under his supervision when such personnel fail to meet or maintain proficiencies established by the EMS medical director, hospital supervising physician, or medical clinic supervising physician, or the Idaho EMS Bureau. ~~(4-2-08)~~(7-1-09)T

**b.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician can withdraw approval of ~~certified~~ licensed EMS personnel to provide services, under his supervision, when such personnel fail to meet or maintain proficiencies established by the EMS medical director, hospital supervising physician, or medical clinic supervising physician, or the EMS Bureau. ~~(4-2-08)~~(7-1-09)T

**c.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician must report in writing such restriction or withdrawal of approval within fifteen (15) days of the action to the EMS Bureau in accordance with Section 39-1393, Idaho Code. (4-2-08)

**04. Review Qualifications of EMS Personnel.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician must document the review of the qualification, proficiencies, and all other EMS agency, hospital, and medical clinic affiliations of EMS personnel prior to credentialing the individual. (4-2-08)

**05. Document EMS Personnel Proficiencies.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician must document that the capabilities of ~~certified~~ licensed EMS personnel are maintained on an ongoing basis through education, skill proficiencies, and competency assessment. ~~(4-2-08)~~(7-1-09)T

**06. Develop and Implement a Performance Assessment and Improvement Program.** The EMS medical director must develop and implement a program for continuous assessment and improvement of services provided by ~~certified~~ licensed EMS personnel under their supervision. ~~(4-2-08)~~(7-1-09)T

**07. Review and Update Procedures.** The EMS medical director must review and update protocols, policies, and procedures at least every two (2) years. (4-2-08)

**08. Develop and Implement Plan for Medical Supervision.** The EMS medical director, hospital supervising physician, or medical clinic supervising physician must develop, implement and oversee a plan for supervision of ~~certified~~ licensed EMS personnel as described in Subsection 400.06 of these rules. ~~(4-2-08)~~(7-1-09)T

**09. Access to Records.** The EMS medical director must have access to all relevant agency, hospital, or medical clinic records as permitted or required by statute to ensure responsible medical supervision of ~~certified~~ licensed EMS personnel. ~~(4-2-08)~~(7-1-09)T

**301. -- 399. (RESERVED).**

**400. PHYSICIAN SUPERVISION IN THE OUT-OF-HOSPITAL SETTING.**

**01. Medical Supervision Required.** In accordance with Section 56-1011, Idaho Code, ~~certified~~ licensed EMS personnel must provide emergency medical services under the supervision of a designated EMS medical director. ~~(4-2-08)~~(7-1-09)T

**02. Designation of EMS Medical Director.** The EMS agency must designate a physician for the

medical supervision of ~~certified~~ licensed EMS personnel affiliated with the EMS agency. (4-2-08)(7-1-09)T

**03. Delegated Medical Supervision of EMS Personnel.** The EMS medical director can designate other physicians to supervise the ~~certified~~ licensed EMS personnel in the temporary absence of the EMS medical director. (4-2-08)(7-1-09)T

**04. Direct Medical Supervision by Physician Assistants and Nurse Practitioners.** The EMS medical director can designate Physician Assistants (PA) and Nurse Practitioners for purposes of direct medical supervision of ~~certified~~ licensed EMS personnel under the following conditions: (4-2-08)(7-1-09)T

- a. A designated physician is not present in the anticipated receiving health care facility; and (4-2-08)
- b. The Nurse Practitioner, when designated, must have a preexisting written agreement with the EMS medical director describing the role and responsibilities of the Nurse Practitioner; or (4-2-08)
- c. The physician supervising the PA, as defined in IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants," authorizes the PA to provide direct (on-line) supervision; and (4-2-08)
- d. The PA, when designated, must have a preexisting written agreement with the EMS medical director describing the role and responsibilities of the PA related to supervision of EMS personnel. (4-2-08)
- e. Such designated clinician must possess and be familiar with the medical supervision plan, protocols, standing orders, and standard operating procedures authorized by the EMS medical director. (4-2-08)

**05. Indirect Medical Supervision by Non-Physicians.** Non-physicians can assist the EMS medical director with indirect medical supervision of ~~certified~~ licensed EMS personnel. (4-2-08)(7-1-09)T

**06. Medical Supervision Plan.** The medical supervision of ~~certified~~ licensed EMS personnel must be provided in accordance with a documented medical supervision plan that includes direct, indirect, on-scene, educational, and proficiency standards components. ~~The EMS medical director is responsible for developing, implementing, and overseeing the medical supervision plan that must consist of the following elements: The requirements for the medical supervision plan are found in the Idaho EMS Physician Commission Standards Manual that is incorporated by reference under Section 004 of these rules.~~ (4-2-08)(7-1-09)T

- ~~a. Certified EMS personnel credentialing that includes all of the following: (4-2-08)~~
  - ~~i. EMS Bureau certification; (4-2-08)~~
  - ~~ii. Affiliation to the EMS agency; (4-2-08)~~
  - ~~iii. An EMS agency orientation as prescribed by the EMS agency that includes: (4-2-08)~~
    - ~~(1) EMS agency policies; (4-2-08)~~
    - ~~(2) EMS agency procedures; (4-2-08)~~
    - ~~(3) Medical treatment protocols; (4-2-08)~~
    - ~~(4) Radio communications procedures; (4-2-08)~~
    - ~~(5) Hospital/facility destination policies; (4-2-08)~~
    - ~~(6) Other unique system features; and (4-2-08)~~
  - ~~iv. Successful completion of an EMS agency evaluation. (4-2-08)~~
- ~~b. Indirect (off-line) supervision that includes all of the following: (4-2-08)~~

- ~~i. Written standing orders and treatment protocols including direct (online) supervision criteria; (4-2-08)~~
- ~~ii. Initial and continuing education in addition to those required by the EMS Bureau; (4-2-08)~~
- ~~iii. Methods of assessment and improvement; (4-2-08)~~
- ~~iv. Periodic assessment of psychomotor skill proficiency; (4-2-08)~~
- ~~v. Provisions for medical supervision of and defining the patient care provided by certified EMS personnel who are present for a multiple or mass causality incident, disaster response, or other significant event involving response of certified EMS personnel; (4-2-08)~~
- ~~vi. Defining the response when certified EMS personnel discover a need for EMS while not on duty; (4-2-08)~~
- ~~vii. The credentialing of certified EMS personnel for emergency response; (4-2-08)~~
- ~~viii. The appropriate level of emergency response based upon dispatch information provided by the designated Public Safety Answering Point(s); (4-2-08)~~
- ~~ix. Triage, treatment, and transport guidelines; (4-2-08)~~
- ~~x. Scene management for multiple EMS agencies anticipated to be on scene concurrently; (4-2-08)~~
- ~~xi. Criteria for determination of patient destination; (4-2-08)~~
- ~~xii. Criteria for utilization of air medical services in accordance with IDAPA 16.02.03, "Rules Governing Emergency Medical Services," Section 415; (4-2-08)~~
- ~~xiii. Policies and protocols for patient refusal, "treat and release," Physician Orders for Scope of Treatment (POST) or other valid Do Not Resuscitate (DNR) orders, and determination of death and other predictable patient non-transport scenarios; (4-2-08)~~
- ~~xiv. Criteria for cancellation or modification of EMS response; (4-2-08)~~
- ~~xv. Equipment authorized for patient care; (4-2-08)~~
- ~~xvi. Medical communications guidelines; and (4-2-08)~~
- ~~xvii. Methods and elements of documentation of services provided by certified EMS personnel. (4-2-08)~~
- ~~e. Direct (on-line) supervision: (4-2-08)~~
  - ~~i. Is accomplished by concurrent communication with the EMS medical director, other physicians designated by the EMS medical director, or designated clinicians who must be available twenty four (24) hours a day seven (7) days a week. (4-2-08)~~
  - ~~ii. The EMS medical director will develop and implement procedures in the event of on scene supervision by: (4-2-08)~~
    - ~~(1) The EMS medical director or other physician(s) designated by the EMS medical director; (4-2-08)~~
    - ~~(2) A physician with a pre-existing relationship with the patient; and (4-2-08)~~
    - ~~(3) A physician with no pre-existing relationship with the patient who is present for the duration of~~

~~treatment on scene or transportation.~~ (4-2-08)

~~iii. Direct supervision of certified EMS personnel by other persons is prohibited except in the manner described in the medical supervision plan.~~ (4-2-08)

~~d. The EMS medical director in collaboration with the course medical director or course coordinator, will define standards of supervision and training for students of state approved training programs placed for clinical practice and training.~~ (4-2-08)

**07. Out-of-Hospital Medical Supervision Plan Filed with EMS Bureau.** The agency EMS medical director must file the medical supervision plan, including identification of the EMS medical director and any designated clinicians to the EMS Bureau in a form described in the standards manual. (4-2-08)

**a.** The agency EMS medical director must inform the EMS Bureau of any changes in designated clinicians or the medical supervision plan within thirty (30) days of the change(s). (4-2-08)

**b.** The EMS Bureau must provide the Commission with the medical supervision plans annually and upon request. (4-2-08)

**c.** The EMS Bureau must provide the Commission with the identification of EMS Medical directors and designated clinicians annually and upon request. (4-2-08)

**401. -- 499. (RESERVED).**

**500. PHYSICIAN SUPERVISION IN HOSPITALS AND MEDICAL CLINICS.**

**01. Medical Supervision Required.** In accordance with Section 56-1011, Idaho Code, ~~certified~~ licensed EMS personnel must provide emergency medical services under the supervision of a designated hospital supervising physician or medical clinic supervising physician. (4-2-08)(7-1-09)T

**02. Level of ~~Certification~~ Licensure Identification.** The ~~certified~~ licensed EMS personnel employed or utilized for delivery of services within a hospital or medical clinic, when on duty, must at all times visibly display identification specifying their level of EMS ~~certification~~ licensure. (4-2-08)(7-1-09)T

**03. Credentialing of ~~Certified~~ Licensed EMS Personnel in a Hospital or Medical Clinic.** The hospital or medical clinic must maintain a current written description of acts and duties authorized by the hospital supervising physician or medical clinic supervising physician for credentialed EMS personnel and must submit the descriptions upon request of the Commission or the EMS Bureau. (4-2-08)(7-1-09)T

**04. Notification of Employment or Utilization.** The ~~certified~~ licensed EMS personnel employed or utilized for delivery of services within a hospital or medical clinic must report such employment or utilization to the EMS Bureau within thirty (30) days of engaging such activity. (4-2-08)(7-1-09)T

**05. Designation of Supervising Physician.** The hospital or medical clinic administration must designate a physician for the medical supervision of ~~certified~~ licensed EMS personnel employed or utilized in the hospital or medical clinic. (4-2-08)(7-1-09)T

**06. Delegated Medical Supervision of EMS Personnel.** The hospital supervising physician or medical clinic supervising physician can designate other physicians to supervise the ~~certified~~ licensed EMS personnel during the periodic absence of the hospital supervising physician or medical clinic supervising physician. (4-2-08)(7-1-09)T

**07. Direct Medical Supervision by Physician Assistants and Nurse Practitioners.** The hospital supervising physician, or medical clinic supervising physician can designate Physician Assistants (PA) and Nurse Practitioners for purposes of direct medical supervision of ~~certified~~ licensed EMS personnel under the following conditions: (4-2-08)(7-1-09)T

**a.** The Nurse Practitioner, when designated, must have a preexisting written agreement with the hospital supervising physician or medical clinic supervising physician describing the role and responsibilities of the Nurse Practitioner; or (4-2-08)

**b.** The physician supervising the PA, as defined in IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants," authorizes the PA to provide supervision; and (4-2-08)

**c.** The PA, when designated, must have a preexisting written agreement with the hospital supervising physician or medical clinic supervising physician describing the role and responsibilities of the PA related to supervision of EMS personnel. (4-2-08)

**d.** Such designated clinician must possess and be familiar with the medical supervision plan, protocols, standing orders, and standard operating procedures authorized by the hospital supervising physician or medical clinic supervising physician. (4-2-08)

**08. On-Site Contemporaneous Supervision.** ~~Certified~~ Licensed EMS personnel will only provide patient care with on-site contemporaneous supervision by the hospital supervising physician, medical clinic supervising physician, or designated clinicians. (~~4-2-08~~)(7-1-09)T

**09. Medical Supervision Plan.** The medical supervision of ~~certified~~ licensed EMS personnel must be provided in accordance with a documented medical supervision plan. The hospital supervising physician or medical clinic supervising physician is responsible for developing, implementing, and overseeing the medical supervision plan, and must submit the plan(s) upon request of the Commission or the EMS Bureau. (~~4-2-08~~)(7-1-09)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.02.03 - RULES GOVERNING EMERGENCY MEDICAL SERVICES**  
**DOCKET NO. 16-0203-0901**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2009.

**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 56-1003 and 56-1023, Idaho Code.

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

**MONDAY, OCTOBER 19, 2009 - 9:00 a.m.**

**JRW BUILDING, MAIN FLOOR**  
**East Conference Room**  
**700 W. State Street**  
**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:

Senate Bill 1108aa, passed by the 2009 Legislature, makes changes and additions to Title 56, Chapter 10, Idaho Code, that affects the Idaho Emergency Medical Services (EMS) Bureau administrative rules.

This rule change primarily aligns definitions in rule with changes to Idaho Code and replaces old terminology throughout the rule. The provision for nontransport EMS service minimum standards waiver requests is currently in the EMS chapter of rules but will be removed as the waiver provision is now contained in Idaho Statute. Changes in the national standards for EMS personnel eliminated the need for the Emergency Medical Technician-Intermediate (EMT-I) licensure level prior to the implementation of the Idaho EMT-I program. Senate Bill 1108aa removed all references to the EMT-I from Title 56, Chapter 10. References to the EMT-I will therefore be removed from the temporary rule to create consistency in licensure levels with the new statutes.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a and b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: this rulemaking protects the public health, safety, and welfare and must be implemented by July 1, 2009, to ensure compliance with Senate Bill 1108aa passed by the 2009 Legislature.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

This rulemaking has no fiscal impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2009, Idaho Administrative Bulletin, Vol. 09-5, page 21.



**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Wayne Denny at (208) 334-2085.

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 October 28, 2009.

DATED this 17th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0203-0901**

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under Section 56-101723, Idaho Code, to adopt rules concerning the administration of the Idaho Emergency Medical Services Act. The Director is authorized under Section 56-1003, Idaho Code, to supervise and administer an emergency medical service program. ~~(4-6-05)(7-1-09)T~~

**001. TITLE AND SCOPE.**

**01. Scope.** These rules include criteria for training programs, certification and licensure of personnel, licensure of ambulance services and nontransport services, licensure of ambulances and nontransport vehicles, establishment of fees for training, inspections, ~~and~~ certifications, licensure, and appropriate requirements for ~~recertification~~ license renewal of personnel. ~~(7-1-97)(7-1-09)T~~

**02. Title.** ~~These rules shall be cited in full as~~ The title of these rules is IDAPA 16.02.03, ~~Idaho Department of Health and Welfare, "Rules Governing~~ Emergency Medical Services."~~(7-1-97)(7-1-09)T~~

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this Bureau has an EMS Standards Manual that contains policy and interpretation of these rules ~~of this Chapter, or to~~ and the documentation of compliance with these rules ~~of this Chapter~~. Copies of the Standards Manual may be obtained from the EMS Bureau, 650 W. State Street, Suite B-17, Boise, Idaho 83702, P.O. Box 83720, Boise, Idaho 83720-0036. ~~(3-30-01)(7-1-09)T~~

**003. ADMINISTRATIVE APPEALS.**

All contested cases ~~shall be~~ are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~(7-1-97)(7-1-09)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- 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. (4-6-05)

**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. (4-6-05)

**03. Street Address.** (7-1-09)T

**a.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-6-05)(7-1-09)T

**b.** The EMS Bureau is located at 650 W. State Street, Suite B-17, Boise, Idaho 83702. (7-1-09)T

**04. Telephone.** (7-1-09)T

**a.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-6-05)(7-1-09)T

**b.** The telephone number for the EMS Bureau is (208) 334-4000. The toll-free, phone number is 1-877-554-3367. (7-1-09)T

**05. Internet Websites.** (4-6-05)

**a.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (4-6-05)

**b.** The Emergency Medical Services Bureau's internet website is found at <http://www.idahoems.org>. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. -- 0098. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

Candidates for initial licensure, as described in Section 501 of these rules, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." (7-1-09)T

**010. DEFINITIONS AND ABBREVIATIONS.**

For the purposes of these rules, the following terms and abbreviations will be used, as defined below: (7-1-80)

**01. Advanced Emergency Medical Technician-Ambulance (AEMT-A).** *An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of an advanced EMT training program, examination, subsequent required continuing training, and recertification.* AEMT is a person who: (4-6-05)(7-1-09)T

**a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and these rules; (7-1-09)T

**b.** Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-09)T

**c.** Carries out the practice of emergency care within the scope of practice determined by the Idaho Emergency Medical Services Physicians Commission (EMSPC); and (7-1-09)T

**d.** Practices under the supervision of a physician licensed in Idaho. (7-1-09)T

**02. Advanced Life Support (ALS).** The provision of medical care, medication administration and treatment with medical devices ~~which~~ that correspond to the knowledge and skill objectives in the ~~EMT-Paramedic~~ curriculum currently approved by the State Health Officer in accordance with Subsection 201.04 of these rules and within the scope of practice defined in IDAPA ~~22-01-06, "Rules for EMS Personnel," Subsection 011-05~~ 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," by persons ~~certified~~ licensed as ~~EMT-Paramedics~~ in accordance with these rules. (4-5-00)(7-1-09)T

**03. Advertise.** Communication of information to the public, institutions, or to any person concerned, by any oral, written, or graphic means including handbills, newspapers, television, radio, telephone directories, and billboards. (4-5-00)

**04. Agency.** ~~An applicant for designation or a licensed EMS service seeking designation. Any organization licensed by the EMS Bureau that operates an air medical service, ambulance service, or nontransport service.~~ (4-5-00)(7-1-09)T

**05. Air Ambulance.** Any privately or publicly owned fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. This may include dual or multipurpose vehicles that comply with Sections 56-1011 through 56-1023, Idaho Code. (7-1-09)T

**06. Air Medical Service.** An agency licensed by the EMS Bureau that responds to requests for patient care and transportation from hospitals and EMS agencies using a fixed wing aircraft or rotary wing aircraft. (7-1-09)T

**057. Air Medical Response.** The deployment of an aircraft licensed as an air ambulance to an emergency scene intended for the purpose of patient treatment and transportation. (4-11-06)(7-1-09)T

**068. Ambulance.** Any privately or publicly owned ~~ground~~ motor vehicle, or nautical vessel, ~~fixed wing aircraft or rotary wing aircraft~~ used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles that comply with Sections 56-1011 through 56-1023, Idaho Code. (7-1-97)(7-1-09)T

**079. Ambulance-Based Clinicians.** Licensed Professional Nurses, Advanced Practice Professional Nurses, and Physician Assistants with current licenses from the Board of Nursing or the Board of Medicine, who are personnel provided by licensed EMS services. (4-5-00)

**10. Ambulance Service.** An agency licensed by the EMS Bureau operated with the intent to provide personnel and equipment for medical treatment at an emergency scene, during transportation, or during transfer of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. (7-1-09)T

**11. Applicant.** Any organization that is requesting an agency license under these rules and includes the following: (7-1-09)T

**a.** An organization seeking a new license; (7-1-09)T

**b.** An existing agency that intends to change the level of licensed personnel it utilizes; (7-1-09)T

**c.** An existing agency that intends to change its geographic coverage area, except by agency annexation; (7-1-09)T

**d.** An existing nontransport service that intends to provide ambulance service; and (7-1-09)T

**e.** An existing ambulance service that intends to discontinue transport and become a nontransport service. (7-1-09)T

- ~~0812.~~ **Board.** The ~~Idaho State~~ Board of Health and Welfare. (~~12-31-91~~)(7-1-09)T
- ~~0913.~~ **Certification.** ~~A credential issued to an individual by the EMS Bureau for a specified period of time indicating that minimum standards corresponding to one (1) or several levels of EMS proficiency have been met. External verification that an individual has achieved minimum competency to assure safe and effective patient care.~~ (7-1-97)(7-1-09)T
- ~~10.~~ **Certified Personnel.** ~~Individuals who have completed training and successfully passed examinations for training and skills proficiency in one (1) or several levels of emergency medical services.~~ (7-1-97)
- ~~14.~~ **Critical Care Transfer (CCT).** The transportation of a patient with continuous care, monitoring, medication or procedures requiring knowledge or skills not contained within the *EMT-Paramedic* curriculum approved by the State Health Officer. Interventions provided by *EMT-Paramedics* are governed by the scope of practice defined in IDAPA ~~22.01.06~~ 16.02.02, "~~Rules for EMS Personnel~~ Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (~~4-6-05~~)(7-1-09)T
- ~~15.~~ **Commission.** The Idaho Emergency Medical Services Physician Commission (EMSPC). (7-1-09)T
- ~~16.~~ **Department.** The Idaho Department of Health and Welfare. (7-1-09)T
- ~~127.~~ **Director.** The Director of the Idaho Department of Health and Welfare or ~~designated individual~~ his designee. (~~12-31-91~~)(7-1-09)T
- ~~138.~~ **Division.** The Idaho Division of Public Health, Department of Health and Welfare. (~~11-19-76~~)(7-1-09)T
- ~~149.~~ **Emergency.** A medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (4-5-00)
- ~~20.~~ **Emergency Medical Responder (EMR).** A person who: (7-1-09)T
- ~~a.~~ **Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and these rules:** (7-1-09)T
- ~~b.~~ **Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code;** (7-1-09)T
- ~~c.~~ **Carries out the practice of emergency care within the scope of practice determined by the Idaho Emergency Medical Services Commission (EMSPC); and** (7-1-09)T
- ~~d.~~ **Practices under the supervision of a physician licensed in Idaho.** (7-1-09)T
- ~~1521.~~ **Emergency Medical Services (EMS).** The ~~services system~~ system utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury. (~~11-19-76~~)(7-1-09)T
- ~~1622.~~ **EMS Bureau.** The Emergency Medical Services (EMS) Bureau of the Idaho Department of Health and Welfare. (11-19-76)
- ~~1723.~~ **EMS Standards Manual.** A manual published by the EMS Bureau detailing policy information including EMS education, training, certification, licensure, and data collection. (7-1-97)
- ~~18.~~ **Emergency Medical Technician Ambulance (EMT A).** A designation issued to an *EMT B* by the *EMS Bureau of the Idaho Department of Health and Welfare* on the basis of successful completion of supervised in-

~~field experience.~~ (7-1-97)

~~19. **Emergency Medical Technician Basic (EMT-B).** An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of a basic EMT training program, examination, subsequent required continuing training, and recertification.~~ (4-1-97)

~~20. **Emergency Medical Technician Intermediate (EMT-I).** An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of an intermediate training program, examination, subsequent required continuing training, and recertification.~~ (4-6-05)

~~21. **Emergency Medical Technician Paramedic (EMT-P).** An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of a paramedic training program, examination, subsequent required continuing training, and recertification.~~ (7-1-97)

**24. Emergency Medical Technician (EMT).** A person who: (7-1-09)T

**a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and these rules; (7-1-09)T

**b.** Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-09)T

**c.** Carries out the practice of emergency care within the scope of practice determined by the Commission; and (7-1-09)T

**d.** Practices under the supervision of an physician licensed in Idaho. (7-1-09)T

**225. Emergency Scene.** Any setting (including standbys) outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. (4-11-06)

**236. Glasgow Coma Score (GCS).** A scale used to determine a patient's level of consciousness. It is a rating from three (3) to fifteen (15) of the patient's ability to open his eyes, respond verbally, and move normally. The GCS is used primarily during the examination of patients with trauma or stroke. (4-11-06)

**247. Ground Transport Time.** The total elapsed time calculated from departure of the ambulance from the scene to arrival of the ambulance at the patient destination. (4-11-06)

~~25. **First Responder.** An individual certified by the EMS Bureau of the Idaho Department of Health and Welfare on the basis of successful completion of a first responder training program, examination, subsequent required continuing training, and recertification.~~ (7-1-97)

~~268. **Licensed EMS Services.** Air medical services, A ambulance services and nontransport services licensed by the EMS Bureau to function in Idaho.~~ (7-1-97)(7-1-09)T

**29. Licensed Personnel.** Those individuals who are Emergency Medical Responders, Emergency Medical Technicians, Advanced Emergency Medical Technicians, and Paramedics. (7-1-09)T

~~2730. **Local Incident Management System.** The local system of interagency communications, command, and control established to manage emergencies or demonstrate compliance with the National Incident Management System.~~ (4-11-06)

**31. National Emergency Medical Services Information System (NEMSIS) Technical Assistance Center.** An organization that validates software for compliance with the EMS data set defined by the United States Department of Transportation National Highway Traffic Safety Administration. (7-1-09)T

~~2832. **National Registry of Emergency Medical Technicians (NREMT).** An independent, non-governmental, not for profit organization which prepares validated examinations for the state's use in evaluating candidates for ~~certification~~ licensure.~~ (7-1-97)(7-1-09)T

~~29.~~ **Non-Transport.** ~~A vehicle design or organizational configuration which brings EMS personnel or equipment to a location, but does not move any sick or injured person from that location.~~ (7-1-97)

**33. Nontransport Service.** An agency licensed by the EMS Bureau that is operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but that is not intended to be the service that will actually transport sick or injured persons. (7-1-09)T

**34. Nontransport Vehicle.** Any vehicle that is operated by an agency with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but that is not intended as the vehicle that will actually transport sick or injured persons. (7-1-09)T

~~305.~~ **Out-of-Hospital.** Any setting outside of a hospital, including inter-facility transfers, in which the provision of EMS may take place. (4-5-00)

**36. Paramedic.** A person who: (7-1-09)T

**a.** Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and these rules; (7-1-09)T

**b.** Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-09)T

**c.** Carries out the practice of emergency care within the scope of practice determined by the Commission; and (7-1-09)T

**d.** Practices under the supervision of an physician licensed in Idaho. (7-1-09)T

~~347.~~ **Patient Assessment.** The evaluation of a patient by EMS ~~certified~~ licensed personnel intending to provide treatment or transportation to that patient. (~~4-11-06~~)(7-1-09)T

~~328.~~ **Physician.** In accordance with Section 54-1803, Idaho Code, A person who holds a current active license ~~issued~~ by the State Board of Medicine to practice medicine ~~or~~ and surgery, ~~or~~ osteopathic medicine ~~or~~ and surgery, or osteopathic medicine in Idaho and is in good standing with no restrictions upon, or actions taken against, his license. (~~11-17-96~~)(7-1-09)T

~~339.~~ **Pre-Hospital.** Any setting, ~~(including standbys),~~ outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. (~~4-5-00~~)(7-1-09)T

**340. State Health Officer.** The Administrator of the Division of Public Health. (~~11-19-76~~)(7-1-09)T

**41. Supervision.** The medical direction by a licensed physician of activities provided by licensed personnel affiliated with a licensed ambulance, air medical, or nontransport service, including: (7-1-09)T

**a.** Establishing standing orders and protocols; (7-1-09)T

**b.** Reviewing performance of licensed personnel; (7-1-09)T

**c.** Providing instructions for patient care via radio or telephone; and (7-1-09)T

**d.** Other oversight. (7-1-09)T

~~3542.~~ **Transfer.** The transportation of a patient from one (1) medical care facility to another ~~by ambulance.~~ (~~4-5-00~~)(7-1-09)T

011. -- 099. (RESERVED).

100. STATEWIDE EMS ADVISORY COMMITTEE.

The Director will appoint a Statewide EMS Advisory Committee to provide counsel to the Department in administering the EMS Act. The Committee members will have a normal tenure of three (3) years after which time they may be excused or reappointed. However, in order to afford continuity, initial appointments will be made to one-third (1/3) of the membership for two (2) years, one-third (1/3) for three (3) years, and one-third (1/3) of the membership for four (4) years. The Committee chairman will be selected by the State Health Officer. (7-1-97)

- 01. Committee Membership.** The Statewide EMS Advisory Committee will be constituted as follows: (7-1-80)
- a. One (1) representative recommended by the State Board of Medicine; ~~and~~ (4-8-94)(7-1-09)T
  - b. One (1) representative recommended by the Idaho Chapter of ACEP; ~~and~~ (4-8-94)(7-1-09)T
  - c. One (1) representative recommended by the Committee on Trauma of the Idaho Chapter of the American College of Surgeons; ~~and~~ (4-8-94)(7-1-09)T
  - d. One (1) representative recommended by the State Board of Nursing; ~~and~~ (4-8-94)(7-1-09)T
  - e. One (1) representative recommended by the Idaho Medical Association; ~~and~~ (4-8-94)(7-1-09)T
  - f. One (1) representative recommended by the Idaho Hospital Association; ~~and~~ (4-8-94)(7-1-09)T
  - ~~and~~ g. One (1) representative of local government recommended by the Idaho Association of Counties; (4-8-94)(7-1-09)T
  - h. One (1) representative of a career third service EMS/Ambulance ~~organization~~ service; ~~and~~ (4-8-94)(7-1-09)T
  - i. One (1) representative of a volunteer third service EMS/Ambulance ~~organization~~ service; ~~and~~ (4-8-94)(7-1-09)T
  - j. One (1) representative of a third service nontransport EMS ~~organization~~ service; ~~and~~ (4-8-94)(7-1-09)T
  - k. One (1) representative of a fire department-based EMS/Ambulance service recommended by the Idaho Fire Chiefs Association; ~~and~~ (4-8-94)(7-1-09)T
  - l. One (1) representative of a fire department-based nontransport EMS ~~organization~~ service; ~~and~~ (4-8-94)(7-1-09)T
  - m. One (1) representative of an air medical ~~EMS organization~~ service; ~~and~~ (7-1-97)(7-1-09)T
  - n. One (1) Emergency Medical Technician-~~Basic~~ who represents the interests of Idaho ~~providers certified personnel licensed~~ at that level; ~~and~~ (4-8-94)(7-1-09)T
  - o. One (1) Advanced Emergency Medical Technician-~~Ambulance~~ who represents the interests of Idaho ~~providers certified personnel licensed~~ at that level; ~~and~~ (7-1-97)(7-1-09)T
  - ~~p. One (1) Emergency Medical Technician-Intermediate who represents the interests of Idaho providers certified at that level; and (4-6-05)~~
  - ~~q. One (1) Emergency Medical Technician-Paramedic who represents the interests of Idaho providers certified personnel licensed at that level; and (4-8-94)(7-1-09)T~~
  - r. One (1) representative who is an administrative county EMS director; ~~and~~ (4-8-94)(7-1-09)T
  - s. One (1) EMS instructor who represents the interests of Idaho EMS educators and evaluators; ~~and~~

- ~~(4-8-94)~~(7-1-09)T
- ~~fs.~~ One (1) consumer; ~~and~~ ~~(4-5-00)~~(7-1-09)T
- ~~ft.~~ One (1) representative of a private EMS transport ~~organization~~ service; ~~and~~ ~~(4-5-00)~~(7-1-09)T
- ~~fu.~~ One (1) pediatrician who represents the interests of children in the EMS system recommended by the Idaho Chapter of the American Academy of Pediatrics; and (3-30-01)
- ~~fv.~~ One (1) board certified or equivalent pediatric emergency medicine physician. (3-30-01)
- 02. Responsibilities of Committee.** The EMS Advisory Committee will meet at least annually or as needed for the purposes of: (7-1-80)
- a.** Reviewing policies and procedures for provision of emergency medical services and recommending same to the ~~Division~~ EMS Bureau; ~~(11-19-76)~~(7-1-09)T
- b.** Reviewing EMS training curricula, training standards, and examination processes and recommending same to the ~~Division~~ EMS Bureau; ~~(4-8-94)~~(7-1-09)T
- c.** Reviewing EMS candidate selection policy and candidate performance requirements and recommending to the ~~Division~~ EMS Bureau certification ~~of~~ and standards for EMS personnel; ~~(7-1-97)~~(7-1-09)T
- ~~d.~~ ~~Reviewing and making recommendations for disciplinary action regarding EMS personnel who have not complied with EMS policies;~~ ~~(11-19-76)~~
- ~~ed.~~ Reviewing and making recommendations on the licensing of ambulance services in Idaho. (11-19-76)
- ~~fe.~~ Reviewing and making recommendations on the licensing of nontransport services in Idaho. (7-1-97)

**101. -- 199. (RESERVED).**

**200. EMS TRAINING PROGRAMS.**

EMS training programs must meet all requirements ~~in accordance with~~ under the standards listed in Section 201 of these rules. In order for the EMS Bureau to verify compliance, the course coordinator must submit an application to the EMS Bureau before the course begins. The EMS Training Program may be approved by the EMS Bureau only if all requirements are met. The EMS Training Program must be approved in order for candidates to qualify for access to a certification examination. ~~(7-1-97)~~(7-1-09)T

**201. STANDARDS.**

All initial training programs must be conducted ~~in accordance with~~ per the following criteria: ~~(4-6-05)~~(7-1-09)T

- 01. Course Coordinator.** Each EMS training program must have a designated course coordinator who has overall responsibility for management of the course and specific duties, including: (4-6-05)
- a.** Documentation of candidate qualifications, attendance, skill proficiency, and clinical sessions; (7-1-97)
- b.** Advance scheduling and prior orientation of all other instructors and guest lecturers to the knowledge and skills objectives of the session being taught; (7-1-97)
- c.** Coordination of access for candidates into health care facilities and licensed EMS services ~~in~~ accordance with using the curriculum of the course; ~~(7-1-97)~~(7-1-09)T
- d.** Acquisition of equipment for all skills objectives within the curriculum being taught. (7-1-97)



**02. Instructor Qualifications.** The course instructor(s) conducting EMS training courses must meet the appropriate qualifications established in Sections 225 through 230 of these rules. (4-6-05)

**03. Physician Oversight.** AEMT-A, ~~EMT-I~~, and ~~EMT-Paramedic~~ training courses must be conducted under the direction of a physician. (~~4-6-05~~)(7-1-09)T

**04. Curriculum and Equipment.** Training courses must use course curricula approved by the State Health Officer and have access to equipment related to all skills objectives within the curricula. (7-1-97)

**202. CERTIFICATION EXAMINATIONS.**

Certification examinations ~~shall will~~ be approved by the State Health Officer and conducted by individuals who are certified or licensed at or above the skill level being examined, or by registered nurses, or by licensed physicians. (~~7-1-97~~)(7-1-09)T

**203. MONITORING OF INSTRUCTOR PERFORMANCE.**

The EMS Bureau ~~shall will~~ monitor instructor performance for all EMS training programs, including candidates' performance on National Registry and other standardized examinations, surveys of candidate satisfaction, and results of other evaluation instruments. Summary findings ~~shall will~~ be made available to licensed EMS services and other organizations sponsoring EMS training programs. (~~7-1-97~~)(7-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**205. CONSISTENCY WITH SCOPE OF PRACTICE.**

All curricula approved for use in Idaho or used as the basis for ~~certification licensure~~ by a candidate trained elsewhere must be consistent with the scope of practice established by the ~~Board of Medicine~~ Commission for the level of ~~certification licensure~~ requested by the candidate. (~~7-1-97~~)(7-1-09)T

**206. CONSISTENCY WITH NATIONAL STANDARDS.**

The EMS Bureau considers the National Standard Curriculum and the National EMS Scope of Practice Model as models for design or adaptation of EMS training program content and EMS ~~certification licensure~~ levels. (~~4-6-05~~)(7-1-09)T

**207. -- 224. (RESERVED).**

**225. QUALIFICATIONS OF ~~FIRST~~ EMERGENCY MEDICAL RESPONDER COURSE INSTRUCTORS.**

~~First~~ Emergency Medical Responder Course Instructors must be approved by the EMS Bureau, based on being ~~certified licensed~~ for at least three (3) years at or above the level of the session of the curriculum being taught. (~~7-1-97~~)(7-1-09)T

**226. QUALIFICATIONS OF EMT-~~BASIC~~ COURSE INSTRUCTORS.**

EMT-~~Basic~~ course instructors must be approved by the EMS Bureau, based on the following requirements: (~~7-1-97~~)(7-1-09)T

**01. Application.** Submission of an application to the EMS Bureau; (7-1-97)

**02. Adult Instructional Methodology.** Completion of one (1) or more courses approved by the EMS Bureau based on content that includes the following instructional methodologies: (4-6-05)

**a.** The adult learner; (4-6-05)

**b.** Learning objectives; (4-6-05)

- c. Learning process; (4-6-05)
- d. Lesson plans; (4-6-05)
- e. Course materials; (4-6-05)
- f. Preparation; (4-6-05)
- g. Teaching aids; (4-6-05)
- h. Teaching methods; and (4-6-05)
- i. Evaluations. (4-6-05)

**03. EMS Instructor Orientation.** Completion of the EMS Bureau orientation program for EMS instructors or equivalent; and (4-6-05)

**04. ~~Certification~~ Licensure.** ~~Certification~~ Licensure at or above the level of curriculum being taught, for at least three (3) years. Licensed individuals and other health care providers must also be ~~certified~~ licensed at the EMT level. (7-1-97)(7-1-09)T

**227. PRIMARY OR LEAD EMT-BASIC INSTRUCTORS.**

Primary or lead instructors must be approved as EMT-Basic Course Instructors, personally instruct at least seventy-five percent (75%) of the didactic training of the course, and instruct or oversee the skills training in the curriculum. (4-6-05)(7-1-09)T

**228. EMT-BASIC SKILLS INSTRUCTORS.**

EMT-Basic skills instructors ~~shall~~ must be approved as EMT-Basic Course Instructors and shall personally instruct the psychomotor portions of the curriculum. (7-1-97)(7-1-09)T

**229. ADVANCED EMT AND EMT-PARAMEDIC INSTRUCTORS.**

AEMT-A and EMT-Paramedic Instructors must be approved by the EMS Bureau based on having credentials, education or experience that correspond to the knowledge and skills objectives being taught. (7-1-97)(7-1-09)T

**230. EMT-INTERMEDIATE INSTRUCTORS.**

All EMT-I primary or lead instructors must meet the following criteria: (4-6-05)

**01- Certification.** One (1) of the following must be documented: (4-6-05)

**a-** Three (3) or more years of certification at or above the EMT-I level; (4-6-05)

**b-** Idaho licensure as a physician, licensed professional nurse or other mid-level health care provider, and current certification at any EMS provider level; (4-6-05)

**e-** Employment as an instructor by a college or university and teaching an accredited paramedic program. (4-6-05)

**02- Adult Instructional Methodology.** Completion of one (1) or more courses approved by the EMS Bureau based on content as listed in Subsection 226.02 of these rules. (4-6-05)

**03- EMS Instructor Orientation.** Completion of an EMS Bureau orientation program for EMS instructors, or equivalent, within eighteen (18) months of the proposed course start date or instructor application submission. (4-6-05)

**04- Application.** Submission of an application to the EMS Bureau documenting credentials, education or experience that correspond to the knowledge and skills objectives being taught. (4-6-05)

~~05. **Bureau Approval.** Approval will be verified for every primary or lead EMT Intermediate instructor listed on each EMT Intermediate course application. (4-6-05)~~

~~06. **Primary or Lead Instructors.** Primary or lead instructors must personally instruct or monitor at least ninety percent (90%) of the didactic training of the course, and must instruct or oversee the skills training in the curriculum. (4-6-05)~~

~~2340. -- 299. (RESERVED).~~

**300. AMBULANCE SERVICE STANDARDS.**

To qualify for licensing as an ambulance service under Section 56-1016, Idaho Code, the applicant must demonstrate compliance with the following: (4-6-05)

**01. Ambulance Vehicles.** All ambulance and air ambulance vehicles must meet one (1) of the following conditions to be licensed: ~~(4-6-05)(7-1-09)T~~

**a.** The vehicle meets or exceeds any federal, industry, or trade specifications or standards for ambulance and air ambulance vehicles as identified by the applicant. ~~(7-1-97)(7-1-09)T~~

**b.** The vehicle has been uniquely configured or modified to meet specialized needs and has been inspected and approved by the EMS Bureau. (7-1-97)

**02. Required Ambulance and Air Ambulance Equipment.** Each ambulance must be equipped with the following: ~~(7-1-97)(7-1-09)T~~

**a.** Medical care supplies and devices as specified in the Minimum Equipment Standards for Licensed EMS Services. Exceptions to the minimum equipment requirements may be granted by the EMS Bureau upon inspection, when the circumstances and available alternatives assure that appropriate patient care will be provided for all foreseeable incidents. (7-1-97)

**b.** Mobile radio on 155.340 MHZ and 155.280 MHZ frequencies with encoding capabilities to allow access to the Idaho EMS radio communications system; and (11-19-76)

**c.** Safety equipment and personal protective supplies for ~~certified~~ licensed personnel and other vehicle occupants as specified in the Minimum Equipment Standards, including materials to provide for body substance isolation and protection from exposure to communicable diseases and pathogens under Section 56-1017, Idaho Code. ~~(4-6-05)(7-1-09)T~~

**03. Ambulance Personnel.** The ambulance service must demonstrate that a sufficient number of personnel are affiliated with the service to accomplish a twenty-four (24) hour a day, seven (7) day a week response capability in accordance with Section 56-1016, Idaho Code. The service must describe its anticipated staffing patterns per vehicle and shift on the application supplied by the EMS Bureau. The annual inspection by the EMS Bureau must include a review of the ambulance service personnel staffing configuration. (4-6-05)

**04. Records to be Maintained.** The ambulance service must maintain records of each ambulance and air ambulance response and submit them to the EMS Bureau at least quarterly in a form approved by the EMS Bureau. These records must include at least the following information: ~~(7-1-97)(7-1-09)T~~

**a.** Name of ambulance service; and (11-19-76)

**b.** Date of response; and (7-1-97)

**c.** Time call received; and (11-19-76)

**d.** Time en route to scene; and (7-1-97)

**e.** Time arrival at scene; and (11-19-76)

- f. Time service departed scene; and (7-1-97)
- g. Time arrival at hospital; and (11-19-76)
- h. Location of incident; and (11-19-76)
- i. Description of illness/injury; and (11-19-76)
- j. Description of patient management; and (11-19-76)
- k. Patient destination; and (11-19-76)
- l. Ambulance unit identification; and (11-19-76)
- m. Identification and ~~certification~~ licensure level of each ambulance crew member on the response; and ~~(7-1-97)~~(7-1-09)T
- n. Response outcome. (7-1-97)

**05. Communications.** Ambulance service dispatch must be in accordance with Section 56-1016, Idaho Code. The application for licensure must describe the radio, telephonic, or other electronic means by which patient care instructions from an authorized medical source will be obtained. The annual inspection by the EMS Bureau will include a review of the ambulance service dispatch and communications configuration. (4-6-05)

**06. Medical Control Plan.** The ambulance service must describe the extent and type of supervision by a licensed physician that is available to ~~certified~~ licensed personnel. The annual inspection by the EMS Bureau will include a review of the ambulance service medical control configuration. ~~(4-6-05)~~(7-1-09)T

**07. Medical Treatment Protocols.** The ambulance service must submit a complete copy of the medical treatment protocols and written standing orders under which its ~~certified~~ licensed personnel will function with the application for licensure. ~~(4-6-05)~~(7-1-09)T

**08. Training Facility Access.** The applicant must describe the arrangements which will provide access to clinical and didactic training locations, in the initial application for service licensure. (4-6-05)

**09. Geographic Coverage Description.** Each application for initial licensure must contain a specific description of the Idaho jurisdiction(s) that the ambulance service will serve using known geopolitical boundaries or geographic coordinates. (4-6-05)

**10. Required Application.** The applicant must submit a completed application to the EMS Bureau to be considered for licensure. The most current standardized form will be available from the EMS Bureau. An additional application may be required prior to subsequent annual inspection by the EMS Bureau. (4-6-05)

**11. Inspection.** Representatives of the EMS Bureau are authorized to enter the applicant's facility or other location as designated by the applicant at reasonable times, for the purpose of inspecting the ambulance services' vehicle(s) and equipment, ambulance and air ambulance response records, and other necessary items to determine eligibility for licensing by the state of Idaho in relation to the minimum standards in Section 56-1016, Idaho Code. ~~(4-6-05)~~(7-1-09)T

**12. License.** Ambulance services must be licensed on an annual basis by the EMS Bureau. (7-1-97)

**301. NONTRANSPORT SERVICE STANDARDS.**  
In order to qualify for licensing as a nontransport service under Section 56-1016, Idaho Code, the applicant must demonstrate compliance with the following: (4-6-05)

**01. Vehicles.** All vehicles must meet one (1) of the following conditions to be licensed: (7-1-97)

a. The vehicle meets or exceeds standards for that type vehicle, including federal, industry, or trade specifications, as identified by the applicant and recognized and approved by the EMS Bureau. (7-1-97)

b. The vehicle has been uniquely configured or modified to meet specialized needs and has been inspected and approved by the EMS Bureau. (7-1-97)

**02. Required Equipment for Nontransport Services.** *Certified Licensed* personnel must have access to required equipment. The equipment must be stored on a dedicated response vehicle, or in the possession of *certified licensed* personnel. The application for licensure as a nontransport service must include a description of the following: (4-6-05)(7-1-09)T

a. Medical care supplies and devices as specified in the Minimum Equipment Standards for Licensed EMS Services. Exceptions to the minimum equipment requirements may be granted by the EMS Bureau upon inspection, when the circumstances and available alternatives assure that appropriate patient care will be provided for all foreseeable incidents. (7-1-97)

b. Mobile or portable radio(s) on 155.340 MHZ and 155.280 MHZ frequencies with encoding capabilities to allow access to the Idaho EMS radio communications system; and (7-1-97)

c. Safety equipment and personal protective supplies for *certified licensed* personnel and other vehicle occupants as specified in the Minimum Equipment Standards for Licensed EMS Services, including materials to provide for body substance isolation and protection from exposure to communicable diseases under Section 56-101723, Idaho Code. (4-6-05)(7-1-09)T

**03. Nontransport Service Personnel.** The nontransport service must demonstrate that a sufficient number of *certified licensed* personnel are affiliated with the service to accomplish a twenty-four (24) hour a day, seven (7) day a week response capability. Exceptions to this requirement may be granted by the EMS Bureau when strict compliance with the requirement would cause undue hardship on the community being served, or would result in abandonment of the service. The annual inspection by the EMS Bureau will include a review of the personnel staffing configuration. (4-6-05)(7-1-09)T

**04. Records to Be Maintained.** The nontransport service must maintain records of each EMS response in a form approved by the EMS Bureau. ~~that include at least the following information:~~ All applicant nontransport services who submit an application to the EMS Bureau after July 1, 2009 must submit records of each EMS response to the EMS Bureau at least quarterly in a form approved by the EMS Bureau. These records must include at least the following information: (7-1-97)(7-1-09)T

- a. Identification of nontransport service; *and* (7-1-97)(7-1-09)T
- b. Date of response; *and* (7-1-97)(7-1-09)T
- c. Time call received; *and* (7-1-97)(7-1-09)T
- d. Time en route to scene; *and* (7-1-97)(7-1-09)T
- e. Time arrival at scene; *and* (7-1-97)(7-1-09)T
- f. Time service departed scene; *and* (7-1-97)(7-1-09)T
- g. Location of incident; *and* (7-1-97)(7-1-09)T
- h. Description of illness/injury; *and* (7-1-97)(7-1-09)T
- i. Description of patient management; *and* (7-1-97)(7-1-09)T
- j. Patient destination; *and* (7-1-97)(7-1-09)T

and k. Identification and licensure level of nontransport service personnel on response ~~and certification;~~  
(7-1-97)(7-1-09)T

l. Response outcome. (7-1-97)

**05. Communications.** The application for licensure must describe the radio, telephonic, or other electronic means by which patient care instructions from an authorized medical source will be obtained. The annual inspection by the EMS Bureau will include a review of the nontransport service dispatch and communications configuration. (4-6-05)

**06. Medical Control Plan.** The nontransport service must describe the extent and type of supervision by a licensed physician that is available to ~~certified~~ licensed personnel. The annual inspection by the EMS Bureau will include a review of the nontransport service medical control configuration. (4-6-05)(7-1-09)T

**07. Medical Treatment Protocols.** The nontransport service must submit a complete copy of the medical treatment protocols and written standing orders under which its ~~certified~~ licensed personnel will function with the initial application for licensure. (4-6-05)(7-1-09)T

**08. Training Facility Access.** The applicant must describe the arrangements which will provide access to clinical and didactic training locations in the initial application for service licensure. (4-6-05)

**09. Geographic Coverage Description.** Each application for initial licensure must contain a specific description of the Idaho jurisdiction(s) that the nontransport service will serve using known geopolitical boundaries or geographic coordinates. (4-6-05)

**10. Required Application.** The applicant must submit a completed application to the EMS Bureau to be considered for licensure. The most current standardized form is available from the EMS Bureau. An additional application may be required prior to subsequent annual inspection by the EMS Bureau. (4-6-05)

**11. Inspection.** Representatives of the Department are authorized to enter the applicant's facility or other location as designated by the applicant at reasonable times, for the purpose of inspecting the nontransport services' vehicle(s) and equipment, nontransport response records, and other necessary items to determine eligibility for licensing by the state of Idaho. (7-1-97)

~~**12. Nontransport Service Minimum Standards Waiver.** The controlling authority providing nontransport services may petition the EMS Bureau for waiver of the nontransport service standards of these rules, if compliance with the service standards would cause undue hardship on the community being served. (7-1-97)~~

~~132.~~ **132. License.** Nontransport services must be licensed on an annual basis by the EMS Bureau. (7-1-97)

**302. -- 319. (RESERVED).**

**320. DESIGNATION OF CLINICAL CAPABILITY.**

All ambulance and nontransport licenses issued by the EMS Bureau must indicate the clinical level of service which can be provided by the ambulance or nontransport service after verification of compliance with Section 300 or Section 301 of these rules. Agencies which provide ~~certified~~ licensed personnel at the ~~First Responder, EMR or EMT-B, or EMT-A~~ level will be designated as Basic Life Support services. Agencies which provide ~~certified~~ licensed personnel at the ~~AEMT-A or EMT-Intermediate~~ level will be designated as Intermediate Life Support services. Designation of services which function at or above the ALS level will be issued ~~in accordance with~~ under Section 340 of these rules. Licensed EMS Services may function at one (1) or more ALS levels corresponding to the designation issued by the EMS Bureau as a result of the application and inspection process required in Sections 300 and 301 of these rules. (4-6-05)(7-1-09)T

**321. -- 323. (RESERVED).**

~~**324. STANDARDS FOR AGENCIES UTILIZING EMT INTERMEDIATE PERSONNEL.**~~

~~An agency which has demonstrated compliance with Section 300 or Section 301 of these rules may qualify to utilize EMT Intermediate personnel if the following criteria are met:~~ (4-6-05)

~~**01. Personnel.** The agency must have one (1) or more EMT Intermediates listed on the agency personnel roster. The agency is specifically prohibited from utilizing other licensed health care providers unless they are accompanied by or are cross-trained and certified as an EMS provider.~~ (4-6-05)

~~**a.** EMT Intermediate personnel must hold current certification issued by the EMS Bureau in accordance with Sections 501 and 510 of these rules.~~ (4-6-05)

~~**b.** An agency may use Ambulance Based Clinicians who function with an EMT I or are cross trained and certified as an EMT-I. The agency must verify that all Ambulance Based Clinicians have successfully completed a formal training program of pre-hospital medical care which meets or exceeds the objectives of the curriculum approved by the State Health Officer. The agency must assure that any Ambulance Based Clinicians meet additional requirements of the corresponding licensing board.~~ (4-6-05)

~~**c.** Personnel must initiate intermediate life support as authorized by the physician designated as the medical director of the agency, and other physicians providing on-line medical direction as specified in IDAPA 22.01.06, "Rules for EMS Personnel."~~ (4-6-05)

~~**d.** Personnel must initiate requests for on-line medical direction as dictated by the EMS agency's protocols.~~ (4-6-05)

~~**02. Required Documentation.** The affiliation status and ongoing proficiency maintenance of the certified personnel and Ambulance Based Clinicians associated with the agency must be documented on a periodic basis to the EMS Bureau.~~ (4-6-05)

~~**a.** The agency must submit a roster of all certified personnel and Ambulance Based Clinicians with the initial and renewal application for licensure.~~ (4-6-05)

~~**b.** The agency must maintain documentation of proficiency assurance of all certified personnel and Ambulance Based Clinicians in accordance with the EMS Standards Manual in effect at the time of certification.~~ (4-6-05)

~~**03. Required Equipment.** The agency vehicle(s) must be equipped with the minimum required equipment listed in the EMT Intermediate Services section of the Minimum Equipment Standards incorporated in these rules. The agency must disclose all additional medical equipment routinely carried on the agency vehicle(s) not included in the Minimum Equipment Standards in the application provided by the EMS Bureau.~~ (4-6-05)

### 325. PRE-HOSPITAL ADVANCED LIFE SUPPORT (ALS) STANDARDS.

Pre-hospital ALS designation of an agency by the EMS Bureau is required for any agency which will advertise or supply clinical personnel and equipment capabilities which are within the scope of practice established under IDAPA 22.01.06 16.02.02, "Rules for EMS Personnel," Subsection 011.05, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," for the purposes of responding to emergencies in any 911 service area, standby, or other area on an emergency basis. Designation is for the same duration as the license issued to the EMS agency. An agency which has demonstrated compliance with Section 300 or Section 301 of these rules may qualify for Pre-hospital ALS designation if the following criteria are met: (4-6-05)(7-1-09)T

**01. Personnel.** The agency must have a sufficient number of ~~EMT~~-Paramedics to assure availability of such personnel corresponding to the anticipated call volume of the agency. The agency is specifically prohibited from utilizing other licensed health care providers for pre-hospital and emergency responses to requests for EMS unless they are accompanied by or cross-trained and ~~certified~~ licensed as an ~~EMT~~-Paramedic. (4-5-00)(7-1-09)T

**a.** ~~EMT~~-Paramedic personnel must hold a current ~~certification~~ license issued by the EMS Bureau ~~in accordance with~~ under Sections 501 and 510 of these rules. (4-5-00)(7-1-09)T

**b.** An agency may use Ambulance-Based Clinicians who function with an ~~EMT~~-Paramedic or are

cross-trained and ~~certified~~ licensed as an ~~EMT-Paramedic~~. The agency must verify that all Ambulance-Based Clinicians have successfully completed a formal training program of pre-hospital medical care which meets or exceeds the objectives of the curriculum approved by the State Health Officer. The agency ~~shall~~ must assure that any Ambulance-Based Clinicians meet additional requirements of the corresponding licensing board. ~~(4-6-05)(7-1-09)T~~

c. Personnel must initiate advanced life support as authorized by the physician designated as the Medical Director of the agency, and other physicians providing on-line medical ~~direction~~ supervision as specified in IDAPA ~~22-01-06~~ 16.02.02, "~~Rules for EMS Personnel~~, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," ~~Subsection 011-05~~. ~~(4-6-05)(7-1-09)T~~

**02. Required Documentation.** The employment status and ongoing proficiency maintenance of the ~~certified~~ licensed personnel and Ambulance-Based Clinicians associated with the agency must be documented on a periodic basis to the EMS Bureau. ~~(4-5-00)(7-1-09)T~~

a. The agency must submit a roster of all ~~certified~~ licensed personnel and Ambulance-Based Clinicians with the application for licensure. Any change in the roster due to attrition or hiring must be documented to the EMS Bureau in writing within sixty (60) calendar days of the change. ~~(4-5-00)(7-1-09)T~~

b. The agency must maintain documentation of continuing education, refresher courses, and proficiency assurance of all ~~certified~~ licensed personnel and Ambulance-Based Clinicians in accordance with the EMS Standards Manual in effect at the time of designation and any EMS Standards Manual which takes effect during the designation period. ~~(4-5-00)(7-1-09)T~~

**03. Required Equipment.** The agency vehicle(s) must be equipped with the Minimum Required Equipment listed in the ALS section of the Minimum Equipment Standards incorporated in these rules. The agency must disclose all additional medical equipment routinely carried on the agency vehicle(s) not included in the Minimum Equipment Standards in the application provided by the EMS Bureau. (4-6-05)

**04. Administrative License Action.** A pre-hospital ALS designation may be suspended or revoked in accordance with Section 515 of these rules. The agency is specifically prohibited from advertising as or responding to requests for critical care transfer service unless the agency also holds Critical Care Transfer Service designation ~~in accordance with~~ under Section 335 of these rules. ~~(4-5-00)(7-1-09)T~~

**326. -- 329. (RESERVED).**

**330. ADVANCED LIFE SUPPORT (ALS) TRANSFER STANDARDS.**

ALS Transfer designation of an agency by the EMS Bureau is required for any agency which will advertise or supply clinical personnel and equipment capabilities which are within the scope of practice established under IDAPA ~~22-01-06~~ 16.02.02, "~~Rules for EMS Personnel~~ Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," ~~Subsection 011-05~~, for the purposes of providing medical care and transportation between medical care facilities. Designation is for the same duration as the license issued to the EMS agency. An agency which has demonstrated compliance with Section 300 or Section 301 of these rules may qualify for ALS Transfer designation if the following criteria are met: ~~(4-6-05)(7-1-09)T~~

**01. Personnel.** The agency must have a sufficient number of personnel to assure availability corresponding to the anticipated call volume of the agency. (4-5-00)

a. ~~EMT-Paramedic~~ personnel must hold a current ~~certification~~ license issued by the EMS Bureau ~~in accordance with~~ under Sections 501 and 510 of these rules. ~~(4-5-00)(7-1-09)T~~

b. An agency which will advertise or provide ALS transfer of patients may use Ambulance-Based Clinicians as the medical care provider for those patients. The agency ~~shall~~ must verify that all Ambulance-Based Clinicians have successfully completed a formal training program of out-of-hospital medical care which meets or exceeds the objectives of the curriculum approved by the State Health Officer. The agency ~~shall~~ must assure that any Ambulance-Based Clinicians meet additional requirements of the corresponding licensing board. ~~(4-5-00)(7-1-09)T~~

c. Personnel ~~shall~~ will initiate advanced life support as authorized by the physician designated as the



Medical Director of the agency, and other physicians providing on-line medical ~~direction~~ supervision as specified in IDAPA ~~22.01.06~~ 16.02.02, "~~Rules for EMS Personnel, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission.~~" ~~Subsection 011.05.~~ (4-5-00)(7-1-09)T

**02. Required Documentation.** The employment status and ongoing proficiency maintenance of the ~~certified~~ licensed personnel and Ambulance-Based Clinicians associated with the agency must be documented on a periodic basis to the EMS Bureau. (4-5-00)(7-1-09)T

**a.** The agency must submit a roster of all ~~certified~~ licensed personnel and Ambulance-Based Clinicians with the application for licensure. Any change in the roster due to attrition or hiring must be documented to the EMS Bureau in writing within sixty (60) calendar days of the change. (4-5-00)(7-1-09)T

**b.** The agency must maintain documentation of continuing education, refresher courses, and proficiency assurance of all ~~certified~~ licensed personnel and Ambulance-Based Clinicians in accordance with the EMS Standards Manual in effect at the time of designation and any EMS Standards Manual which takes effect during the designation period. (4-5-00)(7-1-09)T

**03. Required Equipment.** The agency vehicle(s) must be equipped with the Minimum Required Equipment listed in the ALS section of the Minimum Equipment Standards incorporated in these rules. The agency must disclose all additional medical equipment routinely carried on the agency vehicle(s) not included in the Minimum Equipment Standards in the application provided by the EMS Bureau. (4-6-05)

**04. Administrative License Action.** An ALS Transfer designation may be suspended or revoked in accordance with Section 515 of these rules. The agency is specifically prohibited from advertising or responding to pre-hospital and emergency requests for ALS unless the agency also holds pre-hospital ALS designation in accordance with Section 325 of these rules. The agency is specifically prohibited from advertising as or responding to requests for critical care transfer service unless the agency also holds Critical Care Transfer Service designation in accordance with Section 335 of these rules. (4-5-00)

**331. -- 334. (RESERVED).**

**335. CRITICAL CARE TRANSFER SERVICE STANDARDS.**

Critical Care Transfer Service designation of an agency by the EMS Bureau is required for any agency which will advertise or supply clinical personnel and equipment capabilities requiring knowledge or skills not contained within the ~~EMT~~-Paramedic curriculum approved by the State Health Officer. Designation shall be for the same duration as the license issued to the EMS agency. An agency which has demonstrated compliance with Section 300 of these rules may qualify for Critical Care Transfer Service designation if the following criteria are met: (4-5-00)(7-1-09)T

**01. Personnel.** The agency must have a sufficient number of personnel to assure availability corresponding to the anticipated call volume of the agency. (4-5-00)

**a.** ~~EMT~~-Paramedic personnel must hold current ~~certification~~ license issued by the EMS Bureau in accordance with Sections 501 and 510 of these rules. All ~~EMT~~-Paramedics who will be the primary or the only care provider during critical care transfers must have successfully completed a formal training program in critical care transport which meets or exceeds the objectives of the curriculum approved by the State Health Officer. (4-5-00)(7-1-09)T

**b.** An agency which will advertise or provide ALS transfer of patients may use Ambulance-Based Clinicians as the medical care provider for those patients. The agency ~~shall~~ **must** verify that all Ambulance-Based Clinicians have successfully completed a formal training program of out-of-hospital medical care which meets or exceeds the objectives of the curriculum approved by the State Health Officer. The agency ~~shall~~ **must** assure that any Ambulance-Based Clinicians meet additional requirements of the corresponding licensing board. (4-5-00)(7-1-09)T

**c.** Personnel ~~shall~~ **will** initiate critical care as authorized by the physician designated as the Medical Director of the agency, and other physicians providing on-line medical ~~direction~~ supervision as specified in IDAPA ~~22.01.06~~ 16.02.02, "~~Rules for EMS Personnel, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission.~~" ~~Subsection 011.05.~~ (4-5-00)(7-1-09)T

**02. Required Documentation.** The employment status and ongoing proficiency maintenance of the *certified* licensed personnel and Ambulance-Based Clinicians associated with the agency must be documented on a periodic basis to the EMS Bureau. ~~(4-5-00)~~(7-1-09)T

**a.** The agency must submit a roster of all *certified* licensed personnel and Ambulance-Based Clinicians with the application for licensure. Any change in the roster due to attrition or hiring must be documented to the EMS Bureau in writing within sixty (60) calendar days of the change. ~~(4-5-00)~~(7-1-09)T

**b.** The agency must maintain documentation of continuing education, refresher courses, and proficiency assurance of all *certified* licensed personnel and Ambulance-Based Clinicians in accordance with the EMS Standards Manual in effect at the time of designation and any EMS Standards Manual which takes effect during the designation period. ~~(4-5-00)~~(7-1-09)T

**03. Required Equipment.** The agency vehicle(s) must be equipped with the Minimum Required Equipment listed in the ALS section of the Minimum Equipment Standards incorporated in these rules. The agency must disclose all additional medical equipment routinely carried on the agency vehicle(s) not included in the Minimum Equipment Standards in the application provided by the EMS Bureau. (4-6-05)

**04. Administrative License Action.** A Critical Care Transfer Service designation may be suspended or revoked in accordance with Section 515 of these rules. The agency is specifically prohibited from advertising or responding to pre-hospital and emergency requests for ALS unless the agency also holds pre-hospital ALS designation in accordance with Section 325 of these rules. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. ADVANCE DO NOT RESUSCITATE DIRECTIVES.**

**01. Protocols.** (11-10-94)

**a.** The EMS Advisory Committee will establish standard protocols for EMS personnel to respond to advance DNR directives. (11-10-94)

**b.** The protocol will be reviewed at least annually by the EMS Advisory Committee to determine if changes in protocol should be made to reflect technological advances. (11-10-94)

**c.** The Department will notify Idaho EMS *providers* personnel of DNR protocols and any subsequent changes. ~~(11-10-94)~~(7-1-09)T

**02. Do Not Resuscitate Order.** (11-10-94)

**a.** A standard DNR form will be made available to physicians by the Department or its designee. (11-10-94)

**b.** One (1) copy will be maintained in the patient's file and one (1) copy will be kept by the patient. (11-10-94)

**03. Do Not Resuscitate Identification.** (11-10-94)

**a.** Only a physician signed DNR order or a Department approved bracelet or necklace will be honored by EMS personnel. (11-10-94)

**b.** The bracelet or necklace will have an easily identifiable logo that solely represents a DNR code. (11-10-94)

- c. The Department will advise EMS personnel of what constitutes an acceptable identification. (11-10-94)
- d. No DNR identification may be issued without a valid DNR order in place. (11-10-94)
- e. Only vendors authorized by the Department may sell or distribute DNR identifications. (11-10-94)

**401. -- 404. (RESERVED).**

**405. STANDARDS FOR THE APPROPRIATE USE OF AIR MEDICAL AGENCIES BY ~~CERTIFIED~~ LICENSED EMS PERSONNEL AT EMERGENCY SCENES.**

**01. Who Establishes Training Curricula and Continuing Education Requirements for Air Medical Criteria?** The EMS Bureau will incorporate education and training regarding the air medical criteria established in Section 425 of this rule into initial training curricula and required continuing education of ~~certified~~ licensed EMS personnel. (~~4-11-06~~)(7-1-09)T

**02. Who Must Establish Written Criteria Guiding Decisions to Request an Air Medical Response?** Each licensed EMS service must establish written criteria, approved by the EMS service medical director, to guide the decisions of the service's ~~certified~~ licensed EMS personnel to request an air medical response to an emergency scene. The criteria will include patient conditions found in Section 415 of these rules. (~~4-11-06~~)(7-1-09)T

**03. What Written Criteria is Required for EMS Service Licensure?** Written criteria guiding decisions to request an air medical response will be required for all initial and renewal applications for EMS service licensure for licenses effective on November 1, 2006, or later. (4-11-06)

**04. Who Is Responsible for Requesting an Air Medical Response?** ~~Certified~~ Licensed EMS personnel en route to or at the emergency scene have the primary responsibility and authority to request the response of air medical services ~~in accordance with~~ using the local incident management system and licensed EMS service written criteria. (~~4-11-06~~)(7-1-09)T

**05. When Can ~~Certified~~ Licensed EMS Personnel Cancel an Air Medical Response?** ~~Certified~~ Licensed EMS personnel must complete a patient assessment prior to their cancellation of an air medical response. (~~4-11-06~~)(7-1-09)T

**06. Who May Establish Criteria for Simultaneous Dispatch?** The licensed EMS service may establish criteria for simultaneous dispatch for air and ground medical response. Air medical services will not respond to an emergency scene unless requested. (4-11-06)

**07. Who Is Responsible for Selecting an Appropriate Air Medical Service?** Selection of an appropriate air medical service is the responsibility of the licensed EMS service. (4-11-06)

a. The licensed EMS service, through written policy, will establish a process of air medical selection. (4-11-06)

b. The written policy must direct EMS personnel to honor a patient request for a specific air medical service when the circumstances will not jeopardize patient safety or delay patient care. (4-11-06)

**406. -- 414. (RESERVED).**

**415. AIR MEDICAL RESPONSE CRITERIA.**

The need for an air medical request will be determined by the licensed EMS service ~~certified~~ licensed personnel based on their patient assessment and transport time. Each licensed EMS service must develop written criteria based on best medical practice principles. The following conditions must be included in the criteria: (~~4-11-06~~)(7-1-09)T

**01. What Clinical Conditions Require Written Criteria?** The licensed EMS service written criteria

will provide guidance to the ~~certified~~ licensed EMS personnel for the following clinical conditions:

~~(4-11-06)~~(7-1-09)T

- a. The patient has a penetrating or crush injury to head, neck, chest, abdomen, or pelvis; (4-11-06)
- b. Neurological presentation suggestive of spinal cord injury; (4-11-06)
- c. Evidence of a skull fracture (depressed, open, or basilar) as detected visually or by palpation; (4-11-06)
- d. Fracture or dislocation with absent distal pulse; (4-11-06)
- e. A Glasgow Coma Score of ten (10) or less; (4-11-06)
- f. Unstable vital signs with evidence of shock; (4-11-06)
- g. Cardiac arrest; (4-11-06)
- h. Respiratory arrest; (4-11-06)
- i. Respiratory distress; (4-11-06)
- j. Upper airway compromise; (4-11-06)
- k. Anaphylaxis; (4-11-06)
- l. Near drowning; (4-11-06)
- m. Changes in level of consciousness; (4-11-06)
- n. Amputation of an extremity; and (4-11-06)
- o. Burns greater than twenty percent (20%) of body surface or with suspected airway compromise. (4-11-06)

**02. What Complicating Conditions Require Written Criteria?** When associated with clinical conditions in Subsection 415.01 of these rules, the following complicating conditions require written guidance for EMS personnel: (4-11-06)

- a. Extremes of age; (4-11-06)
- b. Pregnancy; and (4-11-06)
- c. Patient “do not resuscitate” status as described in Section 400 of these rules. (4-11-06)

**03. What Operational Conditions Require Written Guidance for an Air Medical Response?** The licensed EMS service written criteria will provide guidance to the ~~certified~~ licensed EMS personnel for the following operational conditions: ~~(4-11-06)~~(7-1-09)T

- a. Availability of local hospitals and regional medical centers; (4-11-06)
- b. Air medical response to the scene and transport to an appropriate hospital will be significantly shorter than ground transport time; (4-11-06)
- c. Access to time sensitive medical interventions such as percutaneous coronary intervention, thrombolytic administration for stroke, or cardiac care; (4-11-06)

- d. When the patient's clinical condition indicates the need for advanced life support and air medical is the most readily available access to advanced life support capabilities; (4-11-06)
- e. As an additional resource for a multiple patient incident; (4-11-06)
- f. Remote location of the patient; and (4-11-06)
- g. Local destination protocols. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**425. LANDING ZONE AND SAFETY.**

**01. Who Is Responsible for Setting Up Landing Zone Procedures?** The licensed EMS service in conjunction with the air medical service(s) must have written procedures for establishment of landing zones. Such procedures will be compatible with the local incident management system. (4-11-06)

**02. What Are the Responsibilities of Landing Zone Officers?** The procedures for establishment of landing zones must include identification of Landing Zone Officers with responsibility for the following: (4-11-06)

- a. Landing zone preparation; (4-11-06)
- b. Landing zone safety; and (4-11-06)
- c. Communication between ground and air agencies. (4-11-06)

**03. What Training Is Required for Landing Zone Officers?** The licensed EMS service will assure that EMS ~~certified~~ licensed personnel, designated as Landing Zone Officers, have completed training in establishing an air medical landing zone based on the following elements: ~~(4-11-06)~~(7-1-09)T

- a. The required size of a landing zone; (4-11-06)
- b. The allowable slope of a landing zone; (4-11-06)
- c. The allowable surface conditions; (4-11-06)
- d. Hazards and obstructions; (4-11-06)
- e. Marking and lighting; (4-11-06)
- f. Landing zone communications; and (4-11-06)
- g. Landing zone safety. (4-11-06)

**04. What Is the Deadline for Obtaining Training as Landing Zone Officers?** Current EMS ~~certified~~ licensed personnel, designated as Landing Zone Officers, must complete the required training described in Subsection 425.03 of these rules by June 30, 2007. ~~(4-11-06)~~(7-1-09)T

**05. What Is the Deadline for Training as a Landing Zone Officer for EMS ~~Recertification~~ License Renewal?** All EMS certified personnel will complete training described in Subsection 425.03 of these rules as a component of required continuing education for ~~recertification~~ license renewal not later than ~~June~~ September 30, 2010. ~~(4-11-06)~~(7-1-09)T

**06. Who Has the Final Decision to Use an Established Landing Zone?** The air medical pilot may

refuse the use of an established landing zone. In the event of pilot refusal, the landing zone officer will initiate communications to identify an alternate landing zone. (4-11-06)

426. -- 429. (RESERVED).

**430. PATIENT DESTINATION.**

The air medical service must have written procedures for determination of patient destination. (4-11-06)

**01. Procedures for Destination Protocol and Medical ~~Direction~~ Supervision.** The air medical service written procedure will consider the licensed EMS service destination protocol and medical ~~direction~~ supervision received. (~~4-11-06~~)(7-1-09)T

**02. Availability of Written Procedures.** The air medical service must make the written procedures available to licensed EMS services that utilize their services. (4-11-06)

**03. Determination of Destination Will Honor Patient Preference.** The air medical procedures for determination of destination will honor patient preference if the requested facility is capable of providing the necessary medical care and if the requested facility is located within a reasonable distance not compromising patient care or the EMS system. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. ~~CERTIFICATION LICENSURE.~~**

In order to practice or represent himself as a ~~First Responder~~ EMR, EMT-B, AEMT-A, ~~EMT-I~~, or EMT-Paramedic, an individual must maintain a current ~~certification~~ license issued by the EMS Bureau. (~~4-6-05~~)(7-1-09)T

**501. INITIAL ~~CERTIFICATION LICENSURE.~~**

Upon successful completion of an EMS training program, a candidate may apply for ~~certification~~ license to the EMS Bureau. In addition, candidates must satisfy the following requirements: (~~4-6-05~~)(7-1-09)T

**01. Affiliation Required.** Candidates for ~~certification~~ license at the EMR, EMT-B, AEMT-A, ~~EMT-I~~, and EMT-Paramedic levels must have current affiliation with a licensed EMS service which functions at, or higher than, the level of ~~certification~~ license being sought by the applicant; (~~4-6-05~~)(7-1-09)T

**02. Required Identification.** Candidates for ~~certification~~ license at any level must have a state driver's license, an Idaho identification card which is issued by a county driver's license examining station, or identification card issued by the Armed Forces of the United States; and (~~7-1-97~~)(7-1-09)T

**03. Criminal Background Check.** A criminal background check must be conducted for all ~~applicants~~ candidates for initial ~~certification~~ license in accordance with the standards and procedures established in IDAPA 16.05.06, "Criminal History and Background Checks." The Division or the EMS Bureau may require an updated or additional criminal background check at any time, without expense to the ~~applicant~~ candidate, if there is cause to believe new or additional information will be disclosed. Denial without the grant of an exemption under IDAPA 16.05.06, will result in denial or revocation of ~~certification~~ license. (~~4-6-05~~)(7-1-09)T

**04. Fee for Initial ~~Certification~~ License.** The fee for initial ~~certification~~ license for AEMT-A, ~~EMT-I~~, and EMT-Paramedic is thirty-five dollars (\$35). (~~4-6-05~~)(7-1-09)T

**05. Required Examination.** Candidates for ~~certification~~ license at any level must obtain a passing score on the standardized examination designated by the EMS Bureau. The examination type must correspond to the level of ~~certification~~ license being sought in accordance with the EMS Standards Manual in effect at the time of application. (~~4-6-05~~)(7-1-09)T

502. -- 509. (RESERVED).

**510. ~~CERTIFICATION LICENSURE DURATION AND RECERTIFICATION LICENSE RENEWAL.~~**

All ~~certification~~ licensure is for the following specified intervals of time, during which time required continuing education, refresher courses and other proficiency assurances must be completed in order to renew the ~~certification~~ license. ~~(4-6-05)(7-1-09)T~~

**01. ~~First Emergency Medical Responder Certification Licensure.~~** A ~~First Emergency Medical Responder~~ will be issued ~~certification~~ a license for three (3) years. The duration of initial ~~certification~~ licensure may be up to forty-two (42) months from the date of examination. Continuing education and refresher course must be conducted ~~in accordance with~~ following the EMS Standards Manual in effect at the beginning of the ~~certification~~ licensure interval. ~~(4-6-05)(7-1-09)T~~

**02. ~~EMT-B Certification Licensure.~~** An ~~EMT-B~~ will be issued ~~certification~~ a license for three (3) years. The duration of initial ~~certification~~ licensure may be up to forty-two (42) months from the date of examination. Continuing education, refresher course, and proficiency assurance documentation must be conducted in accordance with the EMS Standards Manual in effect at the beginning of the ~~certification~~ licensure interval. ~~(4-6-05)(7-1-09)T~~

**03. ~~AEMT-A Certification Licensure.~~** An ~~AEMT-A~~ will be issued ~~certification~~ a license for two (2) years. The duration of initial ~~certification~~ licensure may be up to thirty (30) months from the date of examination. Continuing education, refresher course, and proficiency assurance documentation must be conducted ~~in accordance with~~ following the EMS Standards Manual in effect at the beginning of the ~~certification~~ licensure interval. The fee for ~~recertification~~ license renewal is twenty-five dollars (\$25). ~~(4-6-05)(7-1-09)T~~

**04. ~~EMT-I Certification.~~** An ~~EMT-I~~ will be issued ~~certification~~ a license for two (2) years. The duration of initial ~~certification~~ licensure may be up to thirty (30) months from the date of examination. Continuing education, refresher course, and proficiency assurance documentation must be conducted ~~in accordance with~~ following the EMS Standards Manual in effect at the beginning of the ~~certification~~ licensure interval. The fee for ~~recertification~~ license renewal is twenty-five dollars (\$25). ~~(4-6-05)~~

**054. ~~EMT-P Certification Paramedic Licensure.~~** An ~~EMT-Paramedic~~ will be issued ~~certification~~ a license for two (2) years. The duration of initial ~~certification~~ licensure may be up to thirty (30) months from the date of examination. Continuing education, refresher courses, and proficiency assurance documentation will be conducted ~~in accordance with~~ following the EMS Standards Manual in effect at the beginning of the ~~certification~~ licensure interval. The fee for ~~recertification~~ license renewal is twenty-five dollars (\$25). ~~(4-6-05)(7-1-09)T~~

**065. ~~Required Documentation.~~** Documentation of ~~recertification~~ license renewal requirements is due to the EMS Bureau prior to the ~~certification~~ license expiration date. Failure to submit complete documentation of requirements by the ~~certification~~ license expiration date renders the ~~certification~~ license invalid and the candidate must not practice or represent himself as ~~certified~~ licensed personnel. ~~(4-6-05)(7-1-09)T~~

**076. ~~Affiliation Required.~~** Candidates for ~~recertification~~ license renewal at the ~~EMR, EMT-B, AEMT-A, EMT-I,~~ and ~~EMT-Paramedic~~ levels must have current affiliation with a licensed EMS service. ~~(4-6-05)(7-1-09)T~~

**511. ~~LAPSED CERTIFICATION LICENSE.~~**

After the expiration date of ~~certification~~ a license issued by the EMS Bureau, the ~~certification~~ license will no longer be valid unless required ~~recertification~~ license renewal documentation has been submitted. No grace periods or extensions to an expiration date may be granted. ~~(4-6-05)(7-1-09)T~~

**01. ~~Reinstatement of Certification License.~~** An individual may submit ~~recertification~~ license renewal documentation up to a maximum of two (2) years following the ~~certification~~ license expiration date. In order for ~~certification~~ license to be reinstated individuals must meet the requirements for initial ~~certification~~ license. Continuing education proportionate to the amount of time since the last ~~recertification~~ license renewal must be documented. ~~(7-1-97)(7-1-09)T~~

**02. ~~Re-Entry.~~** An individual whose ~~certification~~ license has been expired for more than two (2) years must attend and successfully complete an initial training program for the level of ~~certification~~ licensure being sought. All other requirements for initial ~~certification~~ licensure must be met. ~~(4-6-05)(7-1-09)T~~

**512. SURRENDER OF A CERTIFICATION OR LICENSE.**

An individual who possesses current certification or license may relinquish that certification or license at any time by submitting a letter of intent to the EMS Bureau. This action may not prevent investigative or disciplinary action against the individual, which may take place thereafter. ~~(7-1-97)~~(7-1-09)T

**513. REVERSION.**

An individual who possesses a current certification or license may relinquish that certification or license and receive a ~~certification~~ license at a lower level with the same expiration date as the original certification or license. The individual must meet all requirements for initial ~~certification~~ licensure. This action may not prevent investigative or disciplinary action against the individual which may take place thereafter. ~~(7-1-97)~~(7-1-09)T

**514. RECIPROCITY.**

An individual who has successfully completed an EMS training program approved by another state, U.S. Territory, or branch of the U.S. Armed Services may apply for EMS ~~certification~~ licensure if the individual satisfies the criteria for initial ~~certification~~ licensure and has current NREMT registration or a state EMS certification or licensure at or above the level of ~~certification~~ licensure being sought. ~~(7-1-97)~~(7-1-09)T

**515. ADMINISTRATIVE LICENSE ACTION.**

Any license or certification may be suspended, revoked, denied, or retained only upon compliance with conditions imposed by the Bureau Chief, for any action, conduct, or failure to act which is inconsistent with the professionalism, ~~and~~ or standards, or both, established by these rules including, but not limited to the following: ~~(7-1-97)~~(7-1-09)T

- 01. Any Violation.** Any violation of these rules. (7-1-97)
- 02. Failure to Maintain Standards of Knowledge, ~~and~~ or Proficiency, or Both.** Failure to maintain standards of knowledge, ~~and~~ or proficiency, or both, required under these rules; ~~(7-1-97)~~(7-1-09)T
- 03. A Lawful Finding.** A lawful finding of mental incompetency. (7-1-97)
- 04. Performance of Duties.** Performance of duties pursuant to said license or certificate while under the influence of alcohol or any illegal substance. (7-1-97)
- 05. Any Conduct, Action, or Conviction.** Any conduct, action, or conviction which does or would result in denial without exemption of a criminal history clearance under IDAPA 16.05.06, "Criminal History and Background Checks." (7-1-97)
- 06. Discipline, Restriction, Suspension or Revocation.** Discipline, restriction, suspension or revocation in any other jurisdiction. (7-1-97)
- 07. Any Conduct, Condition, or Circumstance.** Any conduct, condition, or circumstance determined by the Bureau Chief which constitutes a danger or threat to the health, safety, or well-being of persons or property. (7-1-97)
- 08. Performing Any Medical Procedure or Providing Medication.** Performing any medical procedure or providing medication which deviates from or exceeds the scope of practice for the corresponding level of ~~certification~~ licensure established under IDAPA ~~22.01.06~~ 16.02.02, "~~Rules for EMS Personnel~~ Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." ~~(7-1-97)~~(7-1-09)T
- 09. Providing Any Service Without Licensure or Designation.** Advertising or providing any service which exceeds the level of licensure and ALS designation; responding to any jurisdiction outside of the coverage area declared on the current EMS service application, with the exception of responses to any locally declared disaster when the response is specifically requested by the incident commander or his designee; or responding in a manner which is in violation of the county EMS ordinance in which the call originates. (4-5-00)
- 10. Falsification of Applications or Reports.** The submission of fraudulent or false information in any report, application, or documentation to the EMS Bureau. (4-5-00)



516. -- 599. (RESERVED).

**600. WHO MAY REPORT A DISCIPLINARY VIOLATION.**

Any person who knows of a violation of any law or rule by the holder of an emergency medical services certificate or license issued ~~pursuant to~~ under these rules may report the violation to the EMS Bureau. ~~(7-1-97)~~(7-1-09)T

**601. PRELIMINARY INVESTIGATION.**

The EMS Bureau ~~shall~~ will make a preliminary investigation of all the facts and circumstances surrounding the reported facts and events and ~~shall~~ will make a report of such facts to the ~~Emergency Medical Services Advisory Committee-Disciplinary Subcommittee~~ Commission for a recommendation of appropriate action. The subject of the investigation shall be given an opportunity to respond in writing, or at the option of the EMS Bureau, in person, to the reported violation. ~~(7-1-97)~~(7-1-09)T

**602. CONFIDENTIALITY OF INVESTIGATION.**

Preliminary investigations and papers in connection with them ~~shall~~ will be confidential until a notice of certificate or license action is issued. ~~(7-1-97)~~(7-1-09)T

**603. NOTICE OF ~~CERTIFICATE~~ LICENSURE ACTION.**

The Bureau Chief ~~shall~~ will notify the certificate or license holder of any intended license action, or ~~shall~~ will notify the certificate or license holder that no action will be taken. If the certificate or license holder fails to file an administrative appeal, the intended license action ~~shall~~ will become effective without further notice. ~~(7-1-97)~~(7-1-09)T

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

**16.02.10 - IDAHO REPORTABLE DISEASES**

**DOCKET NO. 16-0210-0902**

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

**EFFECTIVE DATE:** The effective date of this temporary rule is September 1, 2009.

**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. The action is authorized pursuant to Sections 39-605, 39-906, 39-1003 and 39-1603, 54-1119, 56-1003, 56-1005, Idaho Code.

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

These rules are being amended to add novel influenza A virus infection to the list of reportable diseases in order to better protect the citizens of Idaho and to provide guidance to health officials who are required to respond appropriately in case of an outbreak. These changes include reporting requirements, investigation requirements, and restrictions needed to help control the spread of the virus infection.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of this rule is necessary to protect the public health, safety, and 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: None.

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

This rulemaking has no anticipated fiscal impact to state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes are being made to protect the public health, safety, or welfare.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this temporary, contact Kathy Turner at (208) 334-5939.

DATED this 17th day of August, 2009.

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**THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET 16-0210-0902**

**050. REPORTABLE OR RESTRICTABLE DISEASES, CONDITIONS AND REPORTING REQUIREMENTS.**

Reportable diseases and conditions must be reported to the Department or Health District by those required under Section 020 of these rules. The table below identifies the reportable and restrictable diseases and conditions, the timeframe for reporting, and the person or facility required to report.

<b>REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS</b>				
<b>TABLE 050</b>				
<b>Reportable or Restrictable Diseases and Conditions</b>	<b>Section in Rule</b>	<b>Reporting Timeframe</b>	<b>Restrictable for DC = Day Care FS = Food Service HC = Health Care Facility S = School</b>	<b>Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, &amp; Hospital Administrators (Section 020)</b>
Acquired Immune Deficiency Syndrome (AIDS), (including CD-4 lymphocyte counts <200 cells/mm <sup>3</sup> blood or < 14%)	100	Within 3 working days	None	
Amebiasis	110	Within 3 working days	DC, FS, HC	Day Care Facility Food Service Facility
Anthrax ( <i>Bacillus anthracis</i> )	120	Immediately	None	
Biotinidase Deficiency	130	Within 1 working day (in newborn screening)	None	
Botulism	140	Immediately	None	
Brucellosis ( <i>Brucella</i> species)	150	Within 1 working day	None	
Campylobacteriosis ( <i>Campylobacter</i> species)	160	Within 3 working days	DC, FS, HC	Day Care Facility Food Service Facility
Cancer	170	Report to Cancer Data Registry of Idaho within 180 days of diagnosis or recurrence (including suspected cases)	None	
Chancroid	180	Within 3 working days	None	
<i>Chlamydia trachomatis</i> Infections	190	Within 3 working days	HC	
Cholera ( <i>Vibrio cholerae</i> )	200	Within 1 working day	FS, HC, DC	Food Service Facility
Congenital Hypothyroidism	210	Within 1 working day (in newborn screening)	None	
Conjunctivitis	080, 090	No reporting required	DC, S	
Cryptosporidiosis ( <i>Cryptosporidium</i> species)	220	Within 3 working days	FS, HC, DC	
Cutaneous Fungal Infections	080, 090	No reporting required	DC, S	

<b>REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS</b>				
<b>TABLE 050</b>				
<b>Reportable or Restrictable Diseases and Conditions</b>	<b>Section in Rule</b>	<b>Reporting Timeframe</b>	<b>Restrictable for DC = Day Care FS = Food Service HC = Health Care Facility S = School</b>	<b>Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, &amp; Hospital Administrators (Section 020)</b>
Diarrhea (until common communicable diseases have been ruled out)	085	No reporting required	FS	
Diphtheria ( <i>Corynebacterium diphtheriae</i> )	230	Immediately	DC, FS, HC, S	Day Care Facility School
Encephalitis, Viral or Aseptic	240	Within 3 working days	None	
<i>Escherichia coli</i> O157:H7 and other Shiga-Toxin Producing <i>E. coli</i> (STEC)	250	Within 1 working day	DC, FS, HC	Day Care Facility Food Service Facility School
Extraordinary Occurrence of Illness, including Clusters	260	Within 1 working day	None	
Fever	085	No reporting required	FS	
Food Poisoning, Foodborne Illness, and Waterborne Illnesses	270	Within 1 working day	None	
Galactosemia	280	Within 1 working day (in newborn screening)	None	
Giardiasis ( <i>Giardia lamblia</i> )	290	Within 3 working days	DC, FS, HC	Day Care Facility Food Service Facility
<i>Haemophilus influenzae</i> Invasive Disease	300	Within 1 working day	DC, S	Day Care Facility School
Hantavirus Pulmonary Syndrome	310	Within 1 working day	None	
Hemolytic-Uremic Syndrome (HUS)	320	Within 1 working day	None	
Hepatitis A	330	Within 1 working day	DC, FS, HC	Day Care Facility Food Service Facility
Hepatitis B	340	Within 1 working day	None	
Hepatitis C	350	Within 3 working days	None	
Human Immunodeficiency Virus (HIV)	360	Within 3 working days	None	
Human T-Lymphotropic Virus	370	Within 3 working days	None	
Jaundice	085	No reporting required	FS	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS				
TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Day Care FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Lead Levels of Ten Micrograms or more per Deciliter of Whole Blood (ug/dL)	380	Within 3 working days	None	
Legionellosis	390	Within 3 working days	None	
Leprosy (Hansen's Disease)	400	Within 3 working days	None	
Leptospirosis	410	Within 3 working days	None	
Listeriosis ( <i>Listeria</i> species)	420	Within 3 working days	None	
Lyme Disease	430	Within 3 working days	None	
Malaria ( <i>Plasmodium</i> species)	440	Within 3 working days	None	
Maple Syrup Urine Disease	450	Within 1 working day (in newborn screening)	None	
Measles (Rubeola)	460	Within 1 working day	DC, HC, S	Day Care Facility School
Meningitis, Viral or Aseptic	470	Within 3 working days	None	
Methicillin-resistant <i>Staphylococcus aureus</i> (MRSA) Invasive Disease	475	Within 3 working days	None	<b>Note:</b> Only Laboratory Directors need to report.
Methicillin-resistant <i>Staphylococcus aureus</i> (MRSA) Non-Invasive Disease	475, 080, 090	No reporting required	DC, FS, HC, S	
Mumps	480	Within 3 working days	DC, S, HC	Day Care Facility School
Myocarditis, Viral	490	Within 3 working days	None	
<i>Neisseria gonorrhoeae</i> Infections	500	Within 3 working days	None	
<i>Neisseria meningitidis</i> Invasive Disease	510	Within 1 working day	DC, HC, S	Day Care Facility School
Norovirus	520	Within 1 working day	DC, FS, HC, S	
<u>Novel Influenza A Virus</u>	<u>522</u>	<u>Within 1 working day</u>	<u>DC, FS, HC, S</u>	
Pediculosis	080, 090	No reporting required	DC, S	
Pertussis ( <i>Bordetella pertussis</i> )	530	Within 1 working day	DC, HC, S	Day Care Facility School

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Day Care FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Phenylketonuria (PKU)	540	Within 1 working day (in newborn screening)	None	
Plague ( <i>Yersinia pestis</i> )	550	Immediately	HC, S	Day Care Facility School
Pneumococcal Invasive Disease in Children less than Eighteen (18) Years of Age ( <i>Streptococcus pneumoniae</i> )	560	Within 3 working days	DC, S	Day Care Facility School
<i>Pneumocystis</i> Pneumonia (PCP)	570	Within 3 working days	None	
Poliomyelitis	580	Within 1 working day	DC	Day Care Facility School
Psittacosis	590	Within 3 working days	None	
Q Fever	600	Within 1 working day	None	
Rabies - Human and Animal	610	Immediately (human), Within 1 working day (animal)	None	
Relapsing Fever, Tick-borne and Louse-borne	620	Within 3 working days	None	
Respiratory Syncytial Virus (RSV)	630	Within 1 working day	None	<b>Note:</b> Only Laboratory Directors need to report.
Reye Syndrome	640	Within 3 working days	None	
Rocky Mountain Spotted Fever	650	Within 3 working days	None	
Rubella (including Congenital Rubella Syndrome)	660	Within 1 working day	DC, HC, S	Day Care Facility School
Salmonellosis (including Typhoid Fever) ( <i>Salmonella</i> species)	670	Within 1 working day	DC, FS, HC	Day Care Facility Food Service Facility
Scabies	080, 090	No reporting required	DC, S	
Severe Acute Respiratory Syndrome (SARS)	680	Within 1 working day	DC, S	Day Care Facility School
Severe Reaction to Any Immunization	690	Within 1 working day	None	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Day Care FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Shigellosis ( <i>Shigella</i> species)	700	Within 1 working day	DC, FS, HC, S	Day Care Facility Food Service Facility School
Smallpox	710	Immediately	DC, HC, S	Day Care Facility School
Sore Throat with Fever	085	No reporting required	FS	
Staphylococcal Infections other than MRSA	080, 085, 090	No reporting required	DC, FS, S	
Streptococcal Pharyngeal Infections	080, 090	No reporting required	DC, S	
<i>Streptococcus pyogenes</i> (Group A Strep), Invasive or Resulting in Rheumatic Fever	720	Within 3 working days	DC, HC, S	Day Care Facility School
Syphilis	730	Within 3 working days	None	
Taeniasis	085	No reporting required	FS	
Tetanus	740	Within 3 working days	None	
Toxic Shock Syndrome	750	Within 3 working days	None	
Transmissible Spongiform Encephalopathies (TSE), including Creutzfeldt-Jakob Disease (CJD) and Variant CJD (vCJD)	760	Within 3 working days	None	
Trichinosis	770	Within 3 working days	None	
Tuberculosis ( <i>Mycobacterium tuberculosis</i> )	780	Within 3 working days	DC, FS, HC, S	Day Care Facility School Food Service Facility
Tularemia ( <i>Francisella tularensis</i> )	790	Immediately; Identification of <i>Francisella tularensis</i> - within 1 working day	None	
Uncovered and Open or Draining Skin Lesions with Pus, such as a Boil or Open Wound	085	No reporting required	FS	
Varicella (chickenpox)	080, 090	No reporting required	DC, S	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Day Care FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Vomiting (until noninfectious cause is identified)	085	No reporting required	FS	
West Nile Virus (WNV)	800	Within 3 working days	None	
Yersiniosis ( <i>Yersinia enterocolitica</i> and <i>Yersinia pseudotuberculosis</i> )	810	Within 3 working days; Identification of <i>Yersinia pestis</i> - immediately	FS	

(4-2-08)(9-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

~~521. -- 520.~~ (RESERVED).

**522. NOVEL INFLUENZA A VIRUS.**

**01. Reporting Requirements.** (9-1-09)T

**a.** Each detection of a novel influenza A virus must be reported to the Department or Health District within one (1) working day of identification by the laboratory director. (9-1-09)T

**b.** Each probable or confirmed case of novel influenza A infection resulting in hospitalization must be reported to the Department or Health District within one (1) working day of the event. (9-1-09)T

**02. Investigation.** Any case of novel influenza A may be investigated to determine severity and recommend measures to prevent spread. (9-1-09)T

**03. Restrictions.** A person diagnosed with novel influenza A virus infection must be restricted from day care, school, or work for at least twenty-four (24) hours after fever is resolved. Fever must be absent without the aid of fever-reducing medicine. (9-1-09)T

~~523. -- 529.~~ (RESERVED).



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO**  
**DOCKET NO. 16-0304-0904**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2009.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-203, Idaho Code, and 7 CFR 273.10(c)(2) re: determining income.

**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, October 21, 2009.

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 rule is being changed to align it with the method used to calculate income used by the Department's new eligibility system (IBES). The method is described under 7 CFR 273.10(c)(2). Specifically, the rule change clarifies the criteria used to determine a full month of income for food stamp households.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a and c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it both protects public health, safety, or welfare, and it confers a benefit to some food stamp participants.

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

**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 impact to the state general fund as a result of this rulemaking. Food stamp benefits are 100% federally-funded. The necessary programming changes to the new eligibility system (IBES) have already been made and were funded as part of the EPICS Replacement Project.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to align with the Code of Federal Regulations (CFR) and the Department's new eligibility system (IBES).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Darlene Rydalch at (208) 528-5811.

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, October 28, 2009.

DATED this 28th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036

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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0304-0904

**508. PROJECTING MONTHLY INCOME.**

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below: (6-1-94)

**01. Income Already Received.** Count income already received by the household during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. (6-1-94)

**02. Anticipated Income.** Count income the household and the Department believe the household will get during the remainder of the certification period. If the exact income amount is uncertain or unknown, that portion must not be counted. If the date of receipt of income cannot be anticipated for the month of the eligibility determination, that portion must not be counted. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. (6-1-94)

**03. Full Month's Income ~~Not Expected.~~** (~~10-1-94~~)(10-1-09)T

**a.** ~~Ongoing income is income from an ongoing source. Ongoing income has been received in the past and is expected to be received in the future. If a full month's income is not expected from an ongoing source, count the amount of income expected for the month. If income will be received for all regular paydates in the month, it is considered a full month of income and it is converted.~~ (~~10-1-94~~)(10-1-09)T

~~i. If the actual amount of income is known, use the actual income. (10-1-94)~~

~~ii. If the actual amount of income is unknown, project the expected income. (10-1-94)~~

~~iii. Convert the income to a monthly amount. (10-1-94)~~

~~b. If income is from a new source and a full month's income is not expected, count the actual amount of income expected for the month. Do not convert the new source of income to a monthly amount. (10-1-94)~~

~~e. If income is from a terminated source and no additional income is expected in a future month from this source, count the actual income received during the month. Do not convert the terminated source of income. (10-1-94)~~

~~d. If a full month's income is not expected from a new source of income, count the amount of income expected for the month. If income will not be received for all regular paydates in the month, it is not considered a full month of income and it is not converted. (~~4-11-06~~)(10-1-09)T~~

~~i. If the actual amount of income is known, use the actual known income. (10-1-94)~~

~~ii. If the actual amount of income is unknown, project the income. (10-1-94)~~

~~iii. Do not convert the income to a monthly amount if a full month's income from a new source is not expected. (4-11-06)~~

**04. Income Paid on Salary.** Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. (6-1-94)

**05. Income Paid at Hourly Rate.** Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. (6-1-94)

**06. Fluctuating Income.** When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. (6-1-94)

**07. Converting Income to a Monthly Amount.** If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: (6-1-94)

- a.** Multiply weekly amounts by four point three (4.3). (6-1-94)
- b.** Multiplying bi-weekly amounts by two point one five (2.15). (6-1-94)
- c.** Multiplying semi-monthly amounts by two (2). (6-1-94)
- d.** Use the exact monthly income if it is expected for each month of the certification period. (6-1-94)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0804

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; and the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007," Section 70029(b), P.L. 110-28 and P.L. 110-90.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the November 5, 2008, Idaho Administrative Bulletin, Vol. 08-11, pages 56 and 57.

**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. NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jeanne Siroky at (208) 364-1897.

DATED this 29th day of July, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

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#### DOCKET NO. 16-0309-0804 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 08-11, November 5, 2008, pages 56 and 57.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.

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

**16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-0903**

**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 The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 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 October 21, 2009.

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:

Due to a recent court ruling stating that the Idaho Medicaid program cannot limit the "place of service" where medically necessary services can be delivered, revisions are being made to the rules dealing with provider reimbursement. Also, psychosocial rehabilitation rules will be revised to match new rewritten mental health rules. Finally, rules pertaining to paraprofessionals will be revised to align with licensure rules and DDA rules.

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

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done due to a recent court ruling that invalidated Medicaid rules for the billing of services delivered in schools.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lauren Ertz at (208) 287-1169.

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 October 28, 2009.

DATED this 14th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-0903**

**850. SCHOOL-BASED SERVICE: DEFINITIONS.**

**01. Activities of Daily Living (ADL).** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (3-30-07)

**02. Educational Services.** Services that are provided in buildings, rooms, or areas designated or used as a school or as educational facilities, which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students, and which are included in the individual educational plan for the participant ~~or required by federal and state educational statutes or regulations.~~ (3-30-07)(\_\_\_\_)

**03. School-Based Services.** School-based services are health-related and rehabilitative services provided by Idaho public school districts, charter schools, and the Idaho Infant Toddler program under the Individuals with Disabilities Education Act (IDEA). (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**852. SCHOOL-BASED SERVICE - COVERAGE AND LIMITATIONS.**

The Department will pay school districts, charter schools, and the Idaho Infant Toddler Program, for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (3-30-07)

**01. Excluded Services.** The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

**a. Vocational Services.** (3-30-07)

**b. Educational Services.** Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

**c. Recreational Services.** (3-30-07)

**02. Evaluation And Diagnostic Services.** Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

**a. Recommended or Referred by a Physician or Other Practitioner of the Healing Arts.** Be recommended or referred by a physician or other practitioner of the healing arts licensed and approved by the state of Idaho to make such recommendations or referrals; (3-30-07)

**b. Conducted by Qualified Professionals.** Be conducted by qualified professionals for the respective discipline as defined in Section 854 of these rules; (3-30-07)

**c. Directed Toward Diagnosis.** Be directed toward a diagnosis; and (3-30-07)

**d. Recommend Interventions.** Include recommended interventions to address each need. (3-30-07)

**03. Reimbursable Services.** School districts, charter schools, and the Idaho Infant Toddler program can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts licensed and approved by the state of Idaho to make such recommendations or referrals for the Medicaid services for which the school district, charter

school, or Idaho Infant Toddler Program is seeking reimbursement. (3-30-07)

**a.** Collateral Contact. Consultation or treatment direction about the student to a significant other in the student's life may be face-to-face or by telephone contact. Collateral contact for general staff training, regularly scheduled parent-teacher conferences, or general parent education, or for ~~treatment~~ the Individualized Education Program (IEP) development and review team meetings, even when the parent is present, is not reimbursed. The term collateral contact is defined in Subsection 010.16 of these rules. (~~3-30-07~~)(      )

**b.** Developmental Therapy and Evaluation. Developmental therapy may be billed, including evaluation and instruction in daily living skills the student has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy beyond age-appropriate learning situations. Developmental therapy does not include tutorial activities or assistance with educational tasks associated with educational needs that result from the student's disability. (3-30-07)

**c.** Medical Equipment and Supplies. Medical equipment and supplies that are covered by Medicaid must be ordered by a physician and prior authorized, based on medical necessity, in order to be billed. Authorized items must be used at school or for the Idaho Infant Toddler Program at the location where the service is provided. Equipment that is too large or unsanitary to transport from home to school may be covered if prior authorized. The equipment and supplies must be used for the student's exclusive use and transfer with the student if the student changes schools. Equipment no longer usable by the student, may be donated to the school or Idaho Infant Toddler Program by the student. (3-30-07)

**d.** Nursing Services. Skilled nursing services must be provided by a licensed nurse, within the scope of his practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (3-30-07)

**e.** Occupational Therapy and Evaluation. Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

**f.** Personal Care Services. School based personal care services include medically oriented tasks having to do with the student's physical or functional requirements such as basic personal care and grooming; assistance with bladder or bowel requirements; assistance with eating (including feeding), or other tasks delegated by a licensed professional nurse (RN). (3-30-07)

**g.** Physical Therapy and Evaluation. (3-30-07)

**h.** Psychological Evaluation. (3-30-07)

**i.** Psychotherapy. (3-30-07)

**j.** Psychosocial Rehabilitation (PSR) Services and Evaluation. Psychosocial rehabilitation (PSR) services and evaluation services to assist the student in gaining and utilizing skills necessary to participate in school, ~~such as~~ Training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills are types of interventions that may be reimbursed. This service is to prevent placement of the student into a more restrictive educational situation. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 123 for a description of ~~individual and group~~ PSR services. (~~3-30-07~~)(      )

**k.** Intensive Behavioral Intervention (IBI). Intensive behavioral interventions are individualized, comprehensive, proven interventions used on a short term, one-to-one basis that produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. Professionals may provide consultation to parents and to other staff who provide therapy for the child in other disciplines to assure successful integration and transition from IBI to other therapies and environments. (3-30-07)

**l.** Speech/Audiological Therapy and Evaluation. (3-30-07)

- m.** Social History and Evaluation. (3-30-07)
- n.** Transportation Services. School districts, charter schools, and the Idaho Infant Toddler programs can receive reimbursement for mileage for transporting a student to and from home, school, or location of services when: (3-30-07)

  - i. The student requires special transportation assistance such as a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student and ordered by a physician; (3-30-07)
  - ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)
  - iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)
  - iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)
  - v. The mileage, as well as the services performed by the attendant, are documented. See Section 854 of these rules for documentation requirements. (3-30-07)
- o.** Interpretive Services. Interpretive services needed by a student who does not adequately speak or understand English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (3-30-07)

  - i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; (3-30-07)
  - ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)
  - iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**854. SCHOOL-BASED SERVICE - PROVIDER QUALIFICATIONS AND DUTIES.**

In addition to the evaluations and maintenance of the plans, the following documentation must be maintained by the provider and retained for a period of six (6) years: (3-30-07)

- 01. Service Detail Reports.** A service detail report which includes: (3-30-07)

  - a.** Name of student; (3-30-07)
  - b.** Name and title of the person providing the service; (3-30-07)
  - c.** Date, time, and duration of service; (3-30-07)
  - d.** Place of service, if provided in a location other than school; and (3-30-07)
  - e.** Student's response to the service. (3-30-07)
- 02. One Hundred Twenty Day Review.** A documented review of progress toward each service plan goal completed at least every one hundred twenty (120) days from the date of the annual plan. (3-30-07)



- 03. Documentation of Qualifications of Providers.** (3-30-07)
- 04. Copies of Required Referrals and Recommendations.** Copies of required referrals and recommendations. (3-30-07)
- 05. Parental Notification.** School districts, charter schools, and the Idaho Infant Toddler programs must document that parents were notified of the health-related services and equipment for which they will bill Medicaid. Notification must comply with the requirements in Subsection 854.06 of this rule. (3-30-07)
- 06. Requirements for Cooperation with and Notification of Parents and Agencies.** Each school district, charter school, or Idaho Infant Toddler Program billing for Medicaid services must act in cooperation with students' parents and with community and state agencies and professionals who provide like Medicaid services to the student. (3-30-07)
- a. Notification of Parents.** For all students who are receiving Medicaid reimbursed services, school districts, charter schools, and the Idaho Infant Toddler program must ensure that parents are notified of the Medicaid services and equipment for which they will bill Medicaid. Notification must describe the service(s), service provider(s), and state the type, location, frequency, and duration of the service(s). The school district must provide the student's parent or guardian with a current copy of the child's plan and any pertinent addenda; and (3-30-07)
- b. Notification to Primary Care Physician.** School districts, charter schools, and the Idaho Infant Toddler program must request the name of the student's primary care physician from the parent or guardian so the school program can share health-related information with the physician with written consent from the parent or guardian. The following information must be sent to the student's primary care physician: (3-30-07)
- i. Results of evaluations within sixty (60) days of completion; (3-30-07)
- ii. A copy of the cover sheet and services page within thirty (30) days of the plan meeting; and (3-30-07)
- iii. A copy of progress notes, if requested by the physician, within sixty (60) days of completion. (3-30-07)
- c. Other Community and State Agencies.** Upon receiving a request for a copy of the evaluations or the current plan, the school district, charter school, or Idaho Infant Toddler Program must furnish the requesting agency or professional with a copy of the plan or appropriate evaluation after obtaining consent for release of information from the student's parent or guardian. (3-30-07)
- d. Parental Consent to Release Information.** School districts, charter schools, and the Idaho Infant Toddler program: (3-30-07)
- i. Must obtain consent from the parent to release information regarding education-related services, in accordance with Federal Education Rights and Privacy Act (FERPA) regulations; (3-30-07)
- ii. Must document the parent's denial of consent if the parent refuses to consent to the release of information regarding education-related services, including release of the name of the student's primary care physician. (3-30-07)
- 07. Provider Staff Qualifications.** Medicaid will only reimburse for services provided by qualified staff. See Subsection 854.08 of this rule for the limitations and requirements for paraprofessional service providers. The following are the minimum qualifications for professional providers of covered services: (3-30-07)
- a. Collateral Contact.** Contact and direction must be provided by the professional who provides the treatment to the student. (3-30-07)
- b. Developmental Therapy and Evaluation.** Must be provided by or under the direction of a

developmental specialist, as set forth in IDAPA 16.04.11, "Developmental Disabilities Agencies." Certified special education teachers are not required to take the Department-approved course indicated in IDAPA 16.04.11 and be certified as a Developmental Specialist, Child. Only those school personnel who are working under a Letter of Authorization or as a Specialty Consultant must meet the certification requirements in IDAPA 16.04.11. (3-30-07)

- c. Medical Equipment and Supplies. See Subsection 852.03 of these rules. (3-30-07)
- d. Nursing Services. Must be provided by a licensed professional nurse (RN) or licensed practical nurse (LPN) licensed to practice in Idaho. (3-30-07)
- e. Occupational Therapy and Evaluation. Must be provided by or under the supervision of an individual qualified and registered to practice in Idaho. (3-30-07)
- f. Personal Care Services. Must be provided by or under the direction of, a licensed professional nurse (RN) or licensed practical nurse (LPN), licensed by the State of Idaho. When services are provided by a CNA, the CNA must be supervised by an RN. Medically-oriented services having to do with the student's physical or functional requirements, such as basic personal care and grooming, assistance with bladder or bowel requirements, and assistance with eating (including feeding), must be identified on the plan of care and may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07)
- g. Physical Therapy and Evaluation. Must be provided by an individual qualified and licensed as a physical therapist to practice in Idaho. (3-30-07)
- h. Psychological Evaluation. Must be provided by a:
  - i. Licensed psychiatrist; (3-30-07)
  - ii. Licensed physician; (3-30-07)
  - iii. Licensed psychologist; (3-30-07)
  - iv. Psychologist extender registered with the Bureau of Occupational Licenses; or (3-30-07)
  - v. Certified school psychologist. (3-30-07)
- i. Psychotherapy. Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials:
  - i. Psychiatrist, M.D.; (3-30-07)
  - ii. Physician, M.D.; (3-30-07)
  - iii. Licensed psychologist; (3-30-07)
  - iv. Licensed clinical social worker; (3-30-07)
  - v. Licensed clinical professional counselor; (3-30-07)
  - vi. Licensed marriage and family therapist; (3-30-07)
  - vii. Certified psychiatric nurse (R.N.), as described in Subsection 707.013 of these rules; ~~(3-30-07)~~( )
  - viii. Licensed professional counselor whose provision of psychotherapy is supervised ~~by persons qualified under Subsections 854.07.i.i. through 854.07.i.vii. of this rule in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists";~~ ~~(3-30-07)~~( )

- ix. Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; ~~or~~ (3-30-07)( )
- x. ~~Psychologist extender registered with the Bureau of Occupational Licenses.~~ Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or (3-30-07)( )
- xi. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." ( )
- j.** Psychosocial Rehabilitation. Must be provided by a: (3-30-07)
- i. Licensed physician, ~~or~~ licensed practitioner of the healing arts, or licensed psychiatrist; (3-30-07)( )
- ii. Licensed master's level psychiatric nurse; (3-30-07)
- iii. Licensed psychologist; (3-30-07)
- iv. Licensed clinical professional counselor or professional counselor; (3-30-07)
- v. Licensed marriage and family therapist or associate marriage and family therapist; ~~(3-30-07)~~( )
- vi. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (3-30-07)
- vii. Psychologist extender registered with the Bureau of Occupational Licenses; (3-30-07)
- ~~viii. Clinician;~~ (3-30-07)
- ~~ix. Licensed pastoral counselor;~~ (3-30-07)
- ~~xviii.~~ Licensed professional nurse (RN); (3-30-07)
- ~~xix.~~ Psychosocial rehabilitation specialist as defined in ~~Section 456 in these rules~~ IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 131; (3-30-07)( )
- ~~xi.~~ Licensed occupational therapist; (3-30-07)
- ~~xii.~~ Certified school psychologist; or (3-30-07)
- ~~xiv.~~ Certified school social worker. (3-30-07)
- k.** Intensive Behavioral Intervention. Must be provided by or under the direction of a qualified professional who meets the requirements set forth in IDAPA 16.04.11 "Developmental Disabilities Agencies." (3-30-07)
- l.** Speech/Audiological Therapy and Evaluation. Must be provided by or under the direction of a speech pathologist or audiologist who possesses a certificate of clinical competence from the American Speech, Language and Hearing Association (ASHA); or who will be eligible for certification within one (1) year of employment. Personnel records must reflect the expected date of certification. (3-30-07)
- m.** Social History and Evaluation. Must be provided by a licensed professional nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (3-30-07)

n. Transportation. Must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (3-30-07)

**08. Paraprofessionals.** ~~Paraprofessionals, such as aides or therapy technicians, may be used by the school/Infant Toddler program~~ The schools and Infant Toddler Program may use paraprofessionals to provide developmental therapy; occupational therapy; physical therapy; and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be ~~within the scope of practice of an aide or therapy technician~~ delegated and supervised by a professional therapist as defined by the ~~scope of practice of the therapy professional~~ appropriate licensure and certification rules. The portions of the treatment plan which can be delegated to the paraprofessional must be identified in the IEP or IFSP. (3-30-07)(\_\_\_\_)

a. ~~Competency of Paraprofessional. The professional must have assessed the competence of the paraprofessional or aide to perform assigned tasks.~~ Occupational Therapy. Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for supervision and service requirements. (3-30-07)(\_\_\_\_)

b. Physical Therapy. Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy Licensure Board," for supervision and service requirements (\_\_\_\_)

~~bc. Monthly Orientation. The paraprofessional, on a monthly basis, must be given orientation and training on the program and procedures to be followed.~~ Speech-Language Pathology. Refer to IDAPA 24.23.01, "Rule of the Speech and Hearing Services Licensure Board," for supervision and service requirements for speech-language pathology. (3-30-07)(\_\_\_\_)

~~ed. Reevaluation. The professional must reevaluate the student and adjust the treatment plan as their individual practice dictates.~~ Developmental Therapy. Refer to IDAPA 16.04.11, "Developmental Disabilities Agencies," for supervision and service requirements. (3-30-07)(\_\_\_\_)

~~d. Changes in Condition. Any changes in the student's condition not consistent with planned progress or treatment goals necessitates a documented reevaluation by the professional before further treatment is carried out.~~ (3-30-07)

~~e. Review of Independent Paraprofessional. If the paraprofessional works independently there must be a review conducted by the appropriate professional at least once per month. This review will include the dated initials of the professional conducting the review.~~ (3-30-07)

~~f. Utilizing Paraprofessional to Assist in Provision of Physical Therapy. In addition to the above, if a paraprofessional is utilized to assist in the provision of actual physical therapy they may do so only when the following conditions are met:~~ (3-30-07)

~~i. Student reevaluation must be performed and documented by the supervising PT every five (5) visits or once a week if treatment is performed more than once per day.~~ (3-30-07)

~~ii. The number of PTAs utilized in any practice or site, must not exceed twice in number the full time equivalent licensed PTs.~~ (3-30-07)

**855. SCHOOL-BASED SERVICE - PROVIDER REIMBURSEMENT.**

Payment for health-related services provided by school districts, charter schools, and the Idaho Infant Toddler program must be in accordance with rates established by the Department. (3-30-07)

**01. Payment in Full.** Providers of services must accept as payment in full the school district, charter school, or Idaho Infant Toddler Program payment for such services and must not bill Medicaid or Medicaid participants for any portion of any charges. (3-30-07)

**02. Third Party.** For requirements regarding third party billing, see Section 215 of these rules. (3-30-07)

~~**03. Contracted Providers.** When an employee of a school district, charter school, or Idaho Infant Toddler program does not deliver the services identified on the plan, the school district, charter school, or Idaho Infant Toddler Program must contract with a service provider to deliver the services and bill Medicaid for the contracted services. The contracted service provider must not bill Medicaid or the Medicaid participant. (3-30-07)~~

**043. Recoupment of Federal Share.** Failure to provide services for which reimbursement has been received or to comply with these rules will be cause for recoupment of the Federal share of payments for services, sanctions, or both. (3-30-07)

**054. Matching Funds.** Federal funds cannot be used as the State's portion of match for Medicaid service reimbursement. School districts and charter schools must, for their own internal record keeping, calculate and document the non-federal funds (maintenance of effort assurance) that have been designated as their certified match. This documentation needs to include the source of all funds that have been submitted to the State and the original source of those dollars. The appropriate matching funds will be handled in the following manner: (3-30-07)

**a.** Schools will estimate the amount needed to meet match requirements based on their anticipated monthly billings. (3-30-07)

**b.** School districts and charter schools will send the Department the matching funds, either by check or automated clearing house (ACH) electronic funds transfers. (3-30-07)

**c.** The Department will hold matching funds in an interest bearing trust account. The average daily balance during a month must exceed one hundred dollars (\$100) in order to receive interest for that month. (3-30-07)

**d.** The payments to the districts will include both the federal and non-federal share (matching funds). (3-30-07)

**e.** Matching fund payments must be received and posted in advance of the weekly Medicaid payment cycle. (3-30-07)

**f.** If sufficient matching funds are not received in advance, all Medicaid payments to the school district will be suspended and the school district will be notified of the shortage. Once sufficient matching funds are received, suspended payments will be processed and reimbursement will be made during the next payment cycle. (3-30-07)

**g.** The Department will provide the school districts a monthly statement which will show the matching amounts received, interest earned, total claims paid, the matching funds used for the paid claims, and the balance of their funds in the trust account. (3-30-07)

**h.** The school districts will estimate the amount of their next billing and the amount of matching funds needed to pay the Department. (3-30-07)

**i.** The estimated match requirement may be adjusted up or down based on the remaining balance held in the trust account. (3-30-07)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-0904

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency and the Board of Health and Welfare has initiated proposed rulemaking procedures. This 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 October 21, 2009.

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 Preventive Health Assistance (PHA) benefit currently has a cap on how many points a child can earn when the child participates in both the Behavioral PHA and Wellness PHA at the same time. This cap is less than the cap for a child who does not participate in both types of PHA concurrently. The Department is removing the more restrictive cap to allow a participant to earn the maximum number of points for both PHA types. Other changes are being made to align pharmacy provider qualifications, remove references to sporting and fitness programs, remove references to vouchers, require prior authorization for PHA services and products, and to restrict use of Wellness PHA points earned to offsetting premiums.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

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

The anticipated fiscal impact for this rulemaking to the state general funds is minimal.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this is a benefit that is being amended, and is removing a limitation.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Robin Pewtress at (208) 364-1892.

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 October 28, 2009.

DATED this 25th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
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P.O. Box 83720  
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET 16-0309-0904

**622. PREVENTIVE HEALTH ASSISTANCE (PHA): COVERAGE AND LIMITATIONS.**

**01. Point System.** The PHA benefit uses a point system to track points earned and used by a participant. ~~Points earned by a participant can be exchanged for a voucher to purchase products or services as specified in Subsections 622.02 through 622.06 of this rule.~~ Each point equals one (1) dollar. (3-30-07)(\_\_\_\_)

**a.** Maximum Benefit Points. (3-30-07)

**i.** The maximum number of points that can be earned for a Behavioral PHA is two hundred (200) points each benefit year. (3-30-07)

**ii.** The maximum number of points that can be earned for a Wellness PHA benefit is one hundred twenty (120) points each benefit year. (3-30-07)

~~**iii.** The total maximum number of points that can be earned by a participant who has both a Behavioral and a Wellness PHA is two hundred (200) points each benefit year. (3-30-07)~~

**b.** Each participant is limited to one (1) Behavioral PHA benefit at any point in time. (3-30-07)

**c.** Points expire and are removed from a participant's PHA benefit at the end of the participant's benefit year. (3-30-07)

**d.** Points earned for a specific participant's PHA benefit cannot be transferred to or combined with points in another participant's PHA benefit. (3-30-07)

**02. Medications and Pharmaceutical Supplies.** Medications and pharmaceutical supplies must be purchased from a licensed pharmacy. (3-30-07)

**a.** Each medication and pharmaceutical supply must have a primary purpose directly related to weight management or tobacco cessation. (3-30-07)

**b.** Each medication and pharmaceutical supply must be approved by the FDA, or specifically recommended by the participant's PCP, or a referred physician specialist. (3-30-07)

~~**03. Sporting or Fitness Program.** (3-30-07)~~

~~**a.** Each program must emphasize safety and improved physical health. (3-30-07)~~

~~**b.** Each program must be approved by any and all applicable regulatory bodies. (3-30-07)~~

~~**04. Sports Safety Equipment.** Each piece of sports safety equipment must afford protection or otherwise support safe participation in a sport with an expected outcome of improved physical health, and meet any and all established, applicable independent standards related to the product. (3-30-07)~~

**053. Weight Management Program.** Each program must provide weight management services and must include a curriculum that includes at least one (1) of the three (3) following areas: (3-30-07)

**a.** Physical fitness; (3-30-07)

**b.** Balanced diet; or (3-30-07)

**c.** Personal health education. (3-30-07)

**064. Participant Request for Coverage.** A participant can request that a previously unidentified product or service be covered. The Department will approve a request if the product or service meets the requirements described in this section of rule and the vendor meets the requirements in Section 624 of these rules. (3-30-07)

**075. Premiums.** (3-30-07)

**a.** Wellness PHA benefit points must be used to ~~pay~~ offset a participant's ~~delinquent~~ premiums, ~~if any, before a voucher can be issued for products or services.~~ (3-30-07)(\_\_\_\_)

**b.** Only premiums that must be paid to maintain eligibility under IDAPA 16.03.01, "Eligibility for Health Assistance for Families and Children" can be offset by PHA benefit points. (3-30-07)

**086. Hearing Rights.** A participant does not have hearing rights for issues arising between the participant and a chosen vendor. (3-30-07)

**623. PREVENTIVE HEALTH ASSISTANCE (PHA): PROCEDURAL REQUIREMENTS.**

**01. Behavioral PHA.** (3-30-07)

**a.** A PHA benefit will be established for each participant who meets the eligibility criteria for Behavioral PHA. A participant must complete a PHA Benefit Agreement Form prior to earning any points. (3-30-07)

**b.** Each participant who chooses a goal of tobacco cessation must enroll in a tobacco cessation program. (3-30-07)

**c.** Each participant who chooses a goal of weight management must participate in a physician approved or monitored weight management program. (3-30-07)

**d.** An initial one hundred (100) points are earned when the agreement form is received by the Department and the benefit is established. (3-30-07)

**e.** An additional one hundred (100) points can be earned by a participant who completes his program or reaches a chosen, defined goal. The vendor monitoring the participant's progress must verify that the program was completed or the goal was reached. (3-30-07)

**02. Wellness PHA.** (3-30-07)

**a.** A PHA benefit will be established for each participant who meets the eligibility criteria for Wellness PHA. Each participant must demonstrate that he has received recommended wellness visits and immunizations for his age prior to earning any points. (3-30-07)

~~**b.** An initial thirty (30) points are earned when the benefit is established. (3-30-07)~~

~~**eb.** An additional thirty Ten (310) points can be earned each quarter month by a participant who receives all recommended wellness visits and immunizations for his age during the benefit year. (3-30-07)(\_\_\_\_)~~

~~**03. Vouchers.** The participant must contact the Department to request a voucher to purchase selected products or services. The participant must deliver the voucher to the vendor prior to receiving products or services. (3-30-07)~~

**043. Approved Products and Services.** The reimbursable products and services of each vendor must be prior approved by the Department. (3-30-07)

**624. PREVENTIVE HEALTH ASSISTANCE (PHA): PROVIDER QUALIFICATIONS AND DUTIES.**



~~01. **Voucher Acceptance.** Each vendor must be willing to accept PHA vouchers and bill the Department for reimbursement. (3-30-07)~~

~~02. **Voucher Expiration.** The vendor must accept a voucher prior to the expiration date printed on the voucher. (3-30-07)~~

~~031. **Provider Agreement.** A voucher signed by a behavioral PHA vendor and presented to the Department for reimbursement constitutes must have a fully-executed provider agreement on file with the Department prior to providing services or products. (3-30-07)( )~~

~~02. **Prior Authorization.** A behavioral PHA vendor must request prior authorization from the Department for each product or service provided as a PHA benefit. ( )~~

~~043. **Medications and Pharmaceutical Supplies Vendor.** Each vendor must be a licensed pharmacy and must meet the criteria in Section 664 of these rules for prescription drug provider qualifications and duties. (3-30-07)( )~~

~~05. **Sporting or Fitness Program Vendor.** Each vendor must be able to provide a sporting or fitness program as described in Section 622 of these rules. (3-30-07)~~

~~06. **Sports Safety Equipment Vendor.** (3-30-07)~~

~~a. Each vendor must be established as a business serving the general public that provides sports safety equipment. (3-30-07)~~

~~b. Each vendor must meet all state, county, and local business licensing requirements. (3-30-07)~~

~~c. Each vendor must be able to provide sports safety equipment as described in Section 622 of these rules. (3-30-07)~~

~~074. **Weight Management Program Vendor.** (3-30-07)~~

~~a. Each vendor must be established as a business that serves the general public. (3-30-07)~~

~~b. Each vendor must meet all state, county, and local business licensing requirements. (3-30-07)~~

~~c. Each vendor must be able to provide a weight management program as described in Section 622 of these rules. (3-30-07)~~

**625. PREVENTIVE HEALTH ASSISTANCE (PHA): PROVIDER REIMBURSEMENT.**

With the prior agreement of the participant, the vendor may bill the participant for the difference between the Department's reimbursement and the vendor's usual and customary charge for Behavioral PHA products or services provided. ( )

~~01. **Voucher Must Be Signed.** The Department, the participant, and the vendor must sign each PHA voucher for which a vendor requests reimbursement. (3-30-07)~~

~~02. **Voucher Amount.** The vendor must agree to accept the amount stated on each PHA voucher as full or partial payment of approved products and services. (3-30-07)~~

~~03. **Voucher Redemption.** Each voucher must be redeemed by the vendor within ninety (90) days of providing the product or service to the participant. (3-30-07)~~

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0905

### 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 56-202(b), 56-203(g), 56-203(i), 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, October 21, 2009.

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 amended in response to the federal audit conducted by Centers for Medicare and Medicaid Services (CMS) for the period of July 1, 2006, through June 30, 2007, on the Personal Care Services (PCS) program. In order to comply with the recommendations from CMS, the Department is changing the payment methodology for children receiving PCS in a PCS home and establishing rules specific to PCS for children.

The following is the summary of the proposed changes:

1. Update the current rules for Personal Care Services (PCS) to reflect changes in the payment methodology for PCS homes;
2. Separate, align, clarify, and augment the rules that govern adult PCS and children's PCS; and
3. Clarify PCS medication rules.

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

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

The projected fiscal impact is a total savings of \$445,700; this includes state funds and federal matching funds. The projected savings to the state general fund is approximately \$84,922.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking was not conducted because these rule changes are being made in response to a federal audit.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 28, 2009.

DATED this 2nd day of September, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-0905**

**301. ~~(RESERVED)~~ PERSONAL CARE SERVICES - DEFINITIONS.**

**01. Children's PCS Assessment.** A set of standardized criteria adopted by the Department to assess functional and cognitive abilities of children to determine eligibility for children's personal care services. ( )

**02. Natural Supports.** Personal associations and relationships that enhance the quality and security of life for people, such as family, friends, neighbors, volunteers, church, or others. ( )

**03. Personal Care Services (PCS).** A range of medically-oriented care services related to a participant's physical or functional requirements. These services are provided in the participant's home or personal residence, but do not include housekeeping or skilled nursing care. ( )

**04. PCS Family Alternate Care Home.** The private home of an individual licensed by the Department to provide personal care services to one (1) or two (2) children, who are unable to reside in their own home and require assistance with medically-oriented tasks related to the child's physical or functional needs. ( )

**302. PERSONAL CARE SERVICES - ELIGIBILITY.**

**01. Financial Eligibility.** The participant must be financially eligible for medical assistance under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-19-07)

**02. Other Eligibility Requirements.** Regional Medicaid Services (RMS) will prior authorize payment for the amount and duration of all services when all of the following conditions are met: (3-19-07)

**a.** The RMS finds that the participant is capable of being maintained safely and effectively in his own home or personal residence using PCS. (3-19-07)

**b.** The participant is an adult for whom a Uniform Assessment Instrument (UAI) has been completed; ~~A UAI is not to be completed for a child participant~~ or a child for whom a children's PCS assessment has been completed; (3-19-07)( )

**c.** The RMS reviews the documentation for medical necessity; and (4-2-08)

**d.** The participant has a plan of care. (4-2-08)

**03. State Plan Option.** A participant who receives medical assistance is eligible for PCS under the State Medicaid Plan option if the Department finds he requires PCS due to a medical condition that impairs his physical or mental function or independence. (3-19-07)

**04. Annual Eligibility Redetermination.** The participant's eligibility for PCS must be redetermined at least annually under Subsections 302.01. through 302.03 of these rules. (3-19-07)

**a.** The annual financial eligibility redetermination must be conducted under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," or 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." RMS must make the medical eligibility redetermination. The redetermination can be completed more often than once each year at the request of the participant, the Self-Reliance Specialist, the Personal Assistance Agency, the personal assistant, the supervising RN, the QMRP, or the physician. (4-2-08)

**b.** The medical redetermination must assess the following factors: (3-19-07)

**i.** The participant's continued need for PCS; (3-19-07)

**ii.** Discharge from PCS; and (3-19-07)

**iii.** Referral of the participant from PCS to a nursing facility. (3-19-07)

**303. PERSONAL CARE SERVICES (~~PCS~~) - COVERAGE AND LIMITATIONS.**

**01. Medical Care and Services.** PCS services include medically-oriented tasks related to a participant's physical or functional requirements, as opposed to housekeeping or skilled nursing care, provided in the participant's home or personal residence. The provider must deliver at least one (1) of the following services: (3-19-07)

**a.** Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (3-19-07)

**b.** Assistance with bladder or bowel requirements that may include helping the participant to and from the bathroom or assisting the participant with bedpan routines; (3-19-07)

**c.** ~~Assisting the participant with physician ordered medications that are ordinarily self administered, such as opening the packaging or reminding the participant to take medications~~ Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; (~~3-19-07~~)( )

**d.** ~~Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need~~ The continuation of active treatment training programs in the home setting to increase or maintain participant independence for the participant with developmental disabilities; (~~3-19-07~~)( )

**e.** ~~The continuation of active treatment training programs in the home setting to increase or maintain participant independence for the developmentally disabled participant~~ Assisting the participant with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (~~3-19-07~~)( )

**f.** Non-nasogastric gastrostomy tube feedings if authorized by RMS prior to implementation and if the following requirements are met: (3-19-07)

**i.** The task is not complex and can be safely performed in the given participant care situation; (3-19-07)

**ii.** A Licensed Professional Nurse (RN) has assessed the participant's nursing care needs and has developed a written standardized procedure for gastrostomy tube feedings, individualized for the participant's characteristics and needs; (3-19-07)

**iii.** Individuals to whom the procedure can be delegated are identified by name. The RN must provide proper instruction in the performance of the procedure, supervise a return demonstration of safe performance of the procedure, state in writing the strengths and weaknesses of the individual performing the procedure, and evaluate the

performance of the procedure at least monthly; (3-19-07)

iv. Any change in the participant's status or problem related to the procedure must be reported immediately to the RN; (3-19-07)

v. The individualized procedure, the supervised performance of the procedure, and follow-up evaluation of the performance of the procedure must be documented in writing by the supervising RN and must be readily available for review, preferably with the participant's record; and (3-19-07)

vi. Routine medication may be given by the personal assistant through the non-nasogastric tube if authorized by the supervising RN. (3-19-07)

**02. Non-Medical Care and Services.** PCS services may also include non-medical tasks. In addition to performing at least one (1) of the services listed in Subsections 303.01.a. through 303.01.f. of this rule, the provider may also perform the following services, if no natural supports are available: ~~(3-19-07)~~( )

a. Incidental housekeeping services essential to the participant's comfort and health, including changing bed linens, rearranging furniture to enable the participant to move around more easily, laundry, and room cleaning incidental to the participant's treatment. Cleaning and laundry for any other occupant of the participant's residence are excluded. (3-19-07)

b. Accompanying the participant to clinics, physicians' office visits or other trips that are reasonable for the purpose of medical diagnosis or treatment. (3-19-07)

c. Shopping for groceries or other household items specifically required for the health and maintenance of the participant. (3-19-07)

**03. Place of Service Delivery.** PCS may be provided only in the participant's own home or personal residence. The participant's personal residence may be a Certified Family Home or a Residential Care or Assisted Living Facility, or a PCS Family Alternate Care Home. The following living situations are specifically excluded as a personal residence: ~~(3-19-07)~~( )

a. Certified nursing facilities or hospitals. (3-19-07)

b. Licensed Intermediate Care Facilities for the Mentally Retarded (ICFs/MR). (3-19-07)

c. A home that receives payment for specialized foster care, professional foster care or group foster care, as described in IDAPA 16.06.01, "Child and Family Services." (3-19-07)

**04. Type of Service Limitations.** The provider is excluded from delivering the following services: (3-19-07)

a. Irrigation or suctioning of any body cavities that require sterile procedures or the application of dressings involving prescription medication and aseptic techniques; (3-19-07)

b. Insertion or sterile irrigation of catheters; (3-19-07)

c. Injecting fluids into the veins, muscles or skin; and (3-19-07)

d. Administering medication. (3-19-07)

**05. Participant Service Limitations.** (3-19-07)

a. Adults who receive PCS under the State Medicaid Plan option are limited to a maximum of sixteen (16) hours per week per participant. (3-19-07)

b. Children who meet the necessity criteria for EPSDT services under IDAPA 16.03.09 "Medicaid

Basic Plan Benefits,” Section 882, may receive up to twenty-four (24) hours per day of PCS per child through the month of their twenty-first birthday. (3-19-07)

**06. Provider Coverage Limitations.** (3-19-07)

**a.** The provider must not bill for more time than was actually spent in service delivery. (3-19-07)

**b.** No provider home, regardless of the number of providers in the home, may serve more than two (2) children who are authorized for eight (8) or more hours of PCS per day. (3-19-07)

**304. PERSONAL CARE SERVICES - PROCEDURAL REQUIREMENTS.**

**01. Service Delivery Based on Plan of Care or NSA.** All PCS services are provided based on a written plan of care or a negotiated service agreement (NSA). The requirements for the NSA for participants in Residential Care or Assisted Living Facilities are described in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” The requirements for the NSA for participants in Certified Family Homes are described in IDAPA 16.03.19, “Rules Governing Certified Family Homes.” The Personal Assistance Agency and the participant who lives in his own home are responsible to prepare the plan of care. (3-19-07)

**a.** The plan of care for participants who live in their own homes or in a PCS Family Alternate Care Home is based on: ~~(3-19-07)~~( )

**i.** The physician's or authorized provider's information if applicable; (4-2-08)

**ii.** The results of the UAI for adults, the ~~Personal Assistance Agency's assessment for~~ children's PCS assessment and, if applicable, the QMRP's assessment and observations of the participant; and ~~(3-19-07)~~( )

**iii.** Information obtained from the participant. (3-19-07)

**b.** The plan of care must include all aspects of medical and non-medical care that the provider needs to perform, including the amount, type and frequency of necessary services. (3-19-07)

**c.** The plan of care must be revised and updated based upon treatment results or a change(s) in the participant's needs, or both, but at least annually. (3-19-07)

**02. Service Supervision.** The delivery of PCS may be overseen by a licensed professional nurse (RN) or Qualified Mental Retardation Provider (QMRP). The RMS must identify the need for supervision. (3-19-07)

**a.** Oversight must include all of the following: (3-19-07)

**i.** Assistance in the development of the written plan of care; (3-19-07)

**ii.** Review of the treatment given by the personal assistant through a review of the participant's PCS record as maintained by the provider; (3-19-07)

**iii.** Reevaluation of the plan of care as necessary; and (3-19-07)

**iv.** Immediate notification of the guardian, emergency contact, or family members of any significant changes in the participant's physical condition or response to the services delivered. (3-19-07)

**b.** All participants who are developmentally disabled, other than those with only a physical disability as determined by the RMS, may receive oversight by a QMRP as defined in 42 CFR 483.430. Oversight must include: (3-19-07)

**i.** Assistance in the development of the plan of care for those aspects of active treatment which are provided in the participant's personal residence by the personal assistant; (3-19-07)

- ii. Review of the care or training programs given by the personal assistant through a review of the participant's PCS record as maintained by the provider and through on-site interviews with the participant; (3-19-07)
- iii. Reevaluation of the plan of care as necessary, but at least annually; and (3-19-07)
- iv. An on-site visit to the participant to evaluate any change of condition when requested by the personal assistant, the Personal Assistance Agency, the nurse supervisor, the service coordinator or the participant. (3-19-07)

**03. Prior Authorization Requirements.** All PCS services must be prior authorized by the Department. Authorizations will be based on the information from: ( )

- a.** The children's PCS assessment or Uniform Assessment Instrument (UAI) for adults; ( )
- b.** The individual service plan developed by the Personal Assistance Agency; and ( )
- c.** Any other medical information that supports the medical need. ( )

**034. PCS Record Requirements for a Participant in His Own Home.** The PCS records must be maintained on all participants who receive PCS in their own homes or in a PCS Family Alternate Care Home. (3-19-07)( )

**a.** Written Requirements. The PCS provider must maintain written documentation of every visit made to the participant's home and must record the following minimum information: (3-19-07)

- i. Date and time of visit; (3-19-07)
- ii. Length of visit; (3-19-07)
- iii. Services provided during the visit; and (3-19-07)
- iv. Documentation of any changes noted in the participant's condition or any deviations from the plan of care. (3-19-07)

**b.** Participant's Signature. The participant must sign the record of service delivery verifying that the services were delivered. The RMS may waive this requirement if it determines the participant is not able to verify the service delivery. (3-19-07)

**c.** A copy of the information required in Subsection 304.03 of these rules must be maintained in the participant's home unless the RMS authorizes the information to be kept elsewhere. Failure to maintain this information may result in recovery of funds paid for undocumented services. (3-19-07)

**d.** Telephone Tracking System. Agencies may employ a software system that allows personal assistants to register their start and stop times and a list of services by placing a telephone call to the agency system from the participant's home. This system will not take the place of documentation requirements of Subsection 304.03 of these rules. (3-19-07)

**e.** Participant in a Residential or Assisted Living Facility. The PCS record requirements for participants in Residential Care or Assisted Living Facilities are described in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (3-19-07)

**f.** Participant in a Certified Family Home. The PCS record requirements for participants in Certified Family Homes are described in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (3-19-07)

**045. Provider Responsibility for Notification.** The Personal Assistance Agency is responsible to notify the RMS and physician or authorized provider when any significant changes in the participant's condition are noted during service delivery. This notification must be documented in the Personal Assistance Agency record.

(3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**307. PERSONAL CARE SERVICES - PROVIDER REIMBURSEMENT.**

**01. Reimbursement Rate.** Personal assistance providers will be paid a uniform reimbursement rate for service as established by the Department on an annual basis according to Section 39-5606, Idaho Code. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-19-07)

**02. Calculated Fee.** The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for non-medical transportation, unless approved by the RMS under a Home and Community-Based Services (HCBS) waiver, or provider transportation to and from the participant's home. Fees will be calculated as provided in Subsections 307.03 through 307.07 of these rules. (3-19-07)

**03. Weighted Average Hourly Rates.** Annually Medicaid will conduct a poll of all Idaho nursing facilities and ICFs/MR, and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, certified and non-certified nurse's aides) in Idaho to be used ~~for~~ in calculating the reimbursement rate to be effective on July 1st of that year. (3-19-07)( )

**04. Payment Levels for ~~PAA~~ Personal Assistance Agency.** ~~Medicaid~~ The Department will ~~then~~ establish ~~payment levels for~~ Personal Assistance ~~Agencies~~ Agency rates for personal assistance services ~~as follows:~~ (3-19-07)

~~a. Weekly service needs of zero to sixteen (0-16) hours under the State Medicaid Plan, or a HCBS waiver based on the WAHR, plus the WAHR times a fifty-five percent (55%) supplemental component to cover travel, administration, training, and all payroll taxes and fringe benefits, as follows:~~

Personal Assistance Agencies	WAHR x 1.55	=	\$ amount/hour
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(3-19-07)( )

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

<del>Personal Assistance Agencies</del>	<del>(WAHR x actual hours of care up to 5 hours x 1.55) plus (\$.65 x 1.55 hours on site on call)</del>	=	<del>\$ amount/hour</del>
<del>Licensed Child Foster Homes</del>	<del>(WAHR x actual hours of care up to 5 hours x 1.22) plus (\$.65 x 1.22 x actual hours on site on call)</del>	=	<del>\$ amount/hour</del>

(3-19-07)

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

<del>Personal Assistance Agencies</del>	<del>(WAHR x actual hours of care up to 4 hours) x (1.55 plus \$.65 x 1.55 x hours on site on call)</del>	=	<del>\$ amount/hour</del>
<del>Licensed Child Foster Homes</del>	<del>(WAHR x hours actual care up to 4 hours x 1.22) plus (\$.65 x 1.22 x hours on site on call)</del>	=	<del>\$ amount/hour</del>

(3-19-07)



**05. Payment Levels for Adults in Residential Care or Assisted Living Facilities or Certified Family Homes.** Adult participants living in Residential Care or Assisted Living Facilities (RCALF) or Certified Family Homes will receive personal care services at a rate based on their care level. Each level will convert to a specific number of hours of personal care services. (3-19-07)

**a.** Reimbursement Level I -- One point twenty-five (1.25) hours of personal care services per day or eight point seventy-five (8.75) hours per week. (3-19-07)

**b.** Reimbursement Level II -- One point five (1.5) hours of personal care services per day or ten point five (10.5) hours per week. (3-19-07)

**c.** Reimbursement Level III -- Two point twenty-five (2.25) hours of personal care services per day or fifteen point seventy-five (15.75) hours per week. (3-19-07)

**d.** Reimbursement Level IV - One point seventy-nine (1.79) hours of personal care services per day or twelve point five (12.5) hours per week. This level will be assigned based on a documented diagnosis of mental illness, mental retardation, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, mental retardation, or Alzheimer's disease the provider reimbursement rate will be the higher amount as described in Subsection 307.05.c of these rules. (3-19-07)

**06. Attending Physician Reimbursement Level.** The attending physician or authorized provider will be reimbursed for services provided using current payment levels and methodologies for other services provided to eligible participants. (3-19-07)

**07. Supervisory RN and QMRP Reimbursement Level.** The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Participant evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the RMS. (3-19-07)

**a.** The number of supervisory visits by the RN or QMRP to be conducted per calendar quarter will be approved as part of the PCS care plan by the RMS. (3-19-07)

**b.** Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the RMS. (3-19-07)

**08. Payment for PCS Family Alternate Care Home.** The Department will establish PCS Family Alternate Care Home rates for personal assistance services based on the WAHR, plus the product of the WAHR times fifty-five percent (55%) less the current payroll tax and fringe benefit rate to cover travel, administration, and training, as follows:

<u>PCS Family Alternate Care Home</u>	<u>Children's PCS Assessment Weekly Hours x (WAHR x (1.55 minus payroll taxes and fringe benefits cost percentage)</u>	=	<u>\$ amount/week</u>
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# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0906

### 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 The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 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 October 21, 2009.

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:

Due to a recent court ruling stating that the Idaho Medicaid program cannot limit the "place of service" where medically necessary services can be delivered, the requirement that developmental disability and psychosocial rehabilitation providers must contract with the school to provide services is being removed from this rule. Also, since the Idaho State School and Hospital (ISSH) Waiver expired June 30, 2009, references to the ISSH Waiver are being removed from the rules. Finally, as of July 1, 2009, the Independent Assessor Provider no longer reviews individual support plans, therefore, revisions will be made to the rule dealing with the negotiations for the plan of service.

**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 Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done due to a recent court ruling that invalidated Medicaid rules for the billing of services delivered in schools.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Lauren Ertz at (208) 287-1169.

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 October 28, 2009.

DATED this 14th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-0906**

**124. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - COVERAGE AND LIMITATIONS.**

The following service limitations apply to PSR agency services, unless otherwise authorized by the Department.

(5-8-09)

**01. Assessment.** Assessment services must not exceed six (6) hours per participant annually. The following assessments are included in this limitation: (5-8-09)

**a.** Intake Assessment; (5-8-09)

**b.** Comprehensive Diagnostic Assessment. This assessment must be completed for each participant at least once annually; (5-8-09)

**c.** Functional Assessment. (5-8-09)

**d.** Psychological and Neuropsychological Assessments. The duration of this type of assessment is determined by the participant's benefits and the presenting reason for such an assessment. (5-8-09)

**e.** Occupational Therapy Assessment. The duration of this type of assessment is determined by the participant's benefits and the presenting reason for such an assessment. (5-8-09)

**02. Individualized Treatment Plan.** Two (2) hours per year per participant per provider agency are available for treatment plan development. (3-19-07)

**03. Psychotherapy.** Individual, family and group psychotherapy services are limited to a maximum of twenty-four (24) hours annually. Services beyond six (6) hours weekly must be prior-authorized. (5-8-09)

**04. Crisis Intervention Service.** A maximum of ten (10) hours of crisis support in a community may be authorized per crisis per seven (7) day period. Authorization must follow procedure described above at Subsection 123.04 of these rules. This limitation is in addition to any other PSR service hours within that same time frame. (5-8-09)

**05. Skill Training and Community Reintegration.** Services are limited to five (5) hours weekly in any combination of individual or group skill training and community reintegration. Up to five (5) additional weekly hours are available with prior authorization. (5-8-09)

**06. Pharmacological Management.** Pharmacological management services beyond twenty-four (24) encounters per calendar year must be prior authorized by the Department. (5-8-09)

**07. Collateral Contact.** Collateral contact services beyond six (6) hours per calendar year must be prior authorized by the Department. (5-8-09)

**08. Occupational Therapy.** Occupational therapy services must be prior authorized by the Department, based on the results of an occupational therapy evaluation completed by an Occupational Therapist licensed in accordance with IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." (5-8-09)

**09. Place of Service.** PSR agency services are to be home and community-based. (5-8-09)

**a.** PSR agency services must be provided to the participant in his home and community whenever possible. Any other location, including a provider's office or clinic, may be used if the specific place of service is stated in the individualized treatment plan and is necessary to maximize the impact of the service. (5-8-09)

**b.** PSR agency services may be provided to a participant living in a residential or assisted living

facility if the PSR services are determined by the Department to be appropriate, desired by the resident, and are not the responsibility of the facility or another agency under the Negotiated Service Agreement for residential or assisted living facilities. (5-8-09)

~~e. Prior to delivering any services in a school based setting, the PSR agency must have a contract with the school or the Infant Toddler program. The PSR agency must not bill Medicaid or the Medicaid participant for these contracted services. Only the school district, charter school, or the Idaho Infant Toddler program may bill Medicaid for these contracted services when provided in accordance with IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 850 through 856. (3-19-07)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - PROVIDER REIMBURSEMENT.**

Payment for PSR agency services must be in accordance with rates established by the Department. The rate paid for services includes documentation. (5-8-09)

**01. Duplication.** Payment for services must not duplicate payment made to public or private entities under other program authorities for the same purpose. (3-19-07)

**02. Number of Staff Able to Bill.** Only one (1) staff member may bill for an assessment, individualized treatment plan, or case review when multiple agency staff are present. (5-8-09)

**03. Medication Prescription and Administration.** Medication prescription and administration may be billed only by physicians and other medical staff qualified under Title 54, Chapter 18, Idaho Code. (3-19-07)

**04. Recoupment.** Billing for services and receiving reimbursement for services that were not rendered or failure to comply with these rules must be cause for recoupment of payments for services, sanctions, or both. (3-19-07)

**05. Access to Information.** Upon request, the provider must provide the Department with access to all information required to review compliance with these rules. Failure by the provider to comply with such a request must result in termination of the Medicaid PSR Provider Agreement. (3-19-07)

**06. Evaluations and Tests.** Evaluations and tests are a reimbursable service if provided in accordance with the requirements in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (5-8-09)

**07. Psychiatric or Medical Inpatient Stays.** Community reintegration services may be provided during the last thirty (30) days of inpatient stay or if the inpatient stay is not expected to last longer than thirty (30) days, when not duplicating those services included in the responsibilities of the inpatient facility. Treatment services are the responsibility of the facility. (5-8-09)

~~**08. Reimbursement for Services Provided in a School.** PSR Services provided by a PSR agency in a school based setting, must be billed by the school district, charter school, or the Idaho Infant Toddler program. (3-19-07)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**508. BEHAVIORAL HEALTH PRIOR AUTHORIZATIONS - DEFINITIONS.**

For the purposes of these rules the following terms are used as defined below. (3-19-07)

**01. Adult.** A person who is eighteen (18) years of age or older ~~or an ISSH Waiver participant.~~ (3-19-07)(\_\_\_\_)

- 02. Assessment.** A process that is described in Section 509 of these rules for program eligibility and in Section 512 of these rules for plan of service. (3-19-07)
- 03. Clinical Review.** A process of professional review that validates the need for continued services. (3-19-07)
- 04. Community Crisis Support.** Intervention for participants who are at risk of losing housing, employment or income, or who are at risk of incarceration, physical harm, family altercations or other emergencies. (3-19-07)
- 05. Concurrent Review.** A clinical review to determine the need for continued prior authorization of services. (3-19-07)
- 06. Exception Review.** A clinical review of a plan that falls outside the established standards. (3-19-07)
- 07. Interdisciplinary Team.** For purposes of these rules, the interdisciplinary team is a team of professionals, determined by the Department, that reviews requests for reconsideration. (3-19-07)
- 08. Level of Support.** An assessment score derived from the SIB-R that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. (3-19-07)
- 09. Person-Centered Planning Process.** A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (3-19-07)
- 10. Person-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (3-19-07)
- 11. Plan Developer.** A paid or non-paid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (3-19-07)
- 12. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. (3-19-07)
- 13. Plan Monitor Summary.** A summary that provides information to evaluate plans and initiate action to resolve any concerns. The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status reviews referred to in Subsection 513.06 of these rules. The plan monitor will use the provider information to evaluate plans and initiate action to resolve any concerns. (3-19-07)
- 14. Plan of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (3-19-07)
- 15. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (3-19-07)
- 16. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (3-19-07)
- 17. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (3-19-07)

**18. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (3-19-07)

**19. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (3-19-07)

**20. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (3-19-07)

**21. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (3-19-07)

**22. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under Sections 729 through 732 of these rules. (3-19-07)

**23. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (3-19-07)

**24. SIB-R.** The Scales of Independent Behavior - Revised (SIB-R) is a standardized assessment tool evaluating functional skill levels and evaluating maladaptive behavior. The SIB-R is used by the Department to determine developmental disability eligibility, waiver eligibility, skill level to identify the participant's needs for the plan of service, and for determining the participant budget. (3-19-07)

**25. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**511. INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY - COVERAGE AND LIMITATIONS.**  
The scope of these rules defines prior authorization for the following Medicaid behavioral health services for adults: (3-19-07)

**01. DD/~~ISSH~~ Waiver Services.** DD/~~ISSH~~ Waiver services as described in Sections 700 through 719 of these rules; and (~~3-19-07~~)(      )

**02. Developmental Disability Agency Services.** Developmental Disability Agency services as described in Sections 650 through 660 of these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies"; and (3-19-07)

**03. Service Coordination.** Service Coordination for persons with developmental disabilities as described in Sections 720 through 779 of these rules. (3-19-07)

**512. BEHAVIOR HEALTH PRIOR AUTHORIZATION - PROCEDURAL REQUIREMENTS.**

**01. Assessment for Plan of Service.** The assessment for a plan of service is required for all participants prior to the development of the plan of service. This assessment must include the following in Subsections 512.02 through 512.06 of these rules. (3-19-07)

**02. Physician's History and Physical.** The history and physical must include a physician's referral for nursing services under the DD ~~and~~ ~~ISSH~~ waivers and for developmental disabilities agencies' services, if they are anticipated to be part of the plan of service. A physician's history and physical is required within the year prior to the

initiation of service and thereafter on a frequency determined by the physician. For participants in Healthy Connections: ~~(3-19-07)~~(\_\_\_\_)

**a.** The Healthy Connections physician may delegate to the Department the authority to approve developmental disability services. (3-19-07)

**b.** The Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. (3-19-07)

**03. Medical, Social, and Developmental History.** (3-19-07)

**04. SIB-R.** The results of the SIB-R are used to determine the level of support for the participant. A current SIB-R assessment must be evaluated prior to the initiation of service and must be reviewed annually to assure it continues to reflect the functional status of the participant. (3-19-07)

**05. Medical Condition.** The participant's medical conditions, risk of deterioration, living conditions, and individual goals. (3-19-07)

**06. Behavioral or Psychiatric Needs.** Behavioral or psychiatric needs that require special consideration. (3-19-07))

**513. BEHAVIOR HEALTH PRIOR AUTHORIZATION - PLAN OF SERVICE.**

In collaboration with the participant, the Department must assure that the participant has one (1) plan of service. This plan of service is based on the individualized participant budget referred to in Section 514 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (3-19-07)

**01. Qualifications of a Paid Plan Developer.** Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in Sections 729 through 732 of these rules. (3-19-07)

**02. Plan Development.** The plan must be developed with the participant. With the participant's consent, the person-centered planning team may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. The plan of service must be submitted within forty-five (45) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (3-19-07)

**03. Prior Authorization Outside of These Rules.** The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (3-19-07)

**a.** Durable Medical Equipment (DME); (3-19-07)

**b.** Transportation; and (3-19-07)

**c.** Physical therapy, occupational therapy, and speech-language pathology services provided outside of a Development Disabilities Agency (DDA). (4-2-08)

**04. No Duplication of Services.** The plan developer will ensure that there is no duplication of services if there are multiple plans of service. Duplicate services will not be authorized. (3-19-07)

**05. Plan Monitoring.** The participant, service coordinator or plan monitor must monitor the plan. The

plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (3-19-07)

- a. Review of the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (3-19-07)
- b. Contact with service providers to identify barriers to service provision; (3-19-07)
- c. Discuss with participant satisfaction regarding quality and quantity of services; and (3-19-07)
- d. Review of provider status reviews and complete a plan monitor summary after the six (6) month review and for annual plan development. (3-19-07)
- e. Immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the agency administrator, the Regional Medicaid Services (RMS), the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law. (3-19-07)

**06. Provider Status Reviews.** Service providers, with exceptions identified in Subsection 513.11 of these rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: (3-19-07)

- a. The status of supports and services to identify progress; (3-19-07)
- b. Maintenance; or (3-19-07)
- c. Delay or prevention of regression. (3-19-07)

**07. Plan Monitor Summary.** The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status review. (3-19-07)

**08. Content of the Plan of Service.** The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (3-19-07)

**09. Negotiation for the Plan of Service.** ~~If the services requested on the plan of service must be individualized with the participant if the requested services fall outside the individualized budget or do not reflect the assessed needs of the participant, the plan developer and the participant will have the opportunity to negotiate the plan of service with the Department's care manager. When the plan of service cannot be negotiated by the assessor, the plan developer, and the participant, it will be referred by the assessor to the Department's care manager for additional evaluation.~~ Services will not be paid for unless they are authorized on the plan of service. (3-19-07)( )

**10. Informed Consent.** Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (3-19-07)

**11. Provider Implementation Plan.** Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (3-19-07)



- a.** Exceptions. An implementation plan is not required for waiver providers of: (3-19-07)

    - i. Specialized medical equipment; (3-19-07)
    - ii. Home delivered meals; (3-19-07)
    - iii. Environmental modifications; (3-19-07)
    - iv. Non-medical transportation; (3-19-07)
    - v. Personal emergency response systems (PERS); (3-19-07)
    - vi. Respite care; and (3-19-07)
    - vii. Chore services. (3-19-07)
  - b.** Time for Completion. The implementation plan must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change. (3-19-07)
  - c.** Documentation of Changes. Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, the signature of the person making the change complete with the date and title. (3-19-07)
- 12. Addendum to the Plan of Service.** A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department. (3-19-07)
- 13. Community Crisis Supports.** Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (3-19-07)
- a.** Emergency Room. Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (3-19-07)
  - b.** Before Plan Development. Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (3-19-07)
  - c.** Crisis Resolution Plan. After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days. (3-19-07)
- 14. Annual Reauthorization of Services.** A participant's plan of service must be reauthorized annually. The Department must review and authorize the new plan of service prior to the expiration of the current plan. (3-19-07)
- a.** Plan Developer Responsibilities for Annual Reauthorization. A new plan of service must be provided to the Department by the plan developer at least forty-five (45) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (3-19-07)

- i. Notify the providers who appear on the plan of service of the annual review date. (3-19-07)
- ii. Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 513.14.d of these rules. (3-19-07)
- iii. Convene the person-centered planning team to develop a new plan of service. (3-19-07)
- b.** Evaluation and Prior Authorization of the Plan of Service. The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 507 and 513 of these rules. (3-19-07)
- c.** Adjustments to the Annual Budget and Services. The annual budget and services may be adjusted based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (3-19-07)
- d.** Annual Status Reviews Requirement. If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Subsection 513.12 of these rules. (3-19-07)
- e.** Reapplication After a Lapse in Service. For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (3-19-07)
- f.** Annual Assessment Results. An annual assessment must be completed in accordance with Section 512 of these rules. (3-19-07)

**15. Reconsiderations, Complaints, and Administrative Appeals.** (3-19-07)

- a.** Reconsideration. Participants with developmental disabilities who are adversely affected by a Department decision regarding program eligibility and authorization of services under these rules may request a reconsideration within twenty-eight (28) days from the date the decision was mailed. The reconsideration must be performed by an interdisciplinary team as determined by the Department with at least one (1) individual who was not involved in the original decision. The reviewers must consider all information and must issue a written decision within fifteen (15) days of receipt of the request. (3-19-07)
- b.** Complaints. Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid, Bureau of Care Management. (3-19-07)
- c.** Administrative Appeals. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-19-07)

**514. BEHAVIORAL HEALTH PRIOR AUTHORIZATION - PROVIDER REIMBURSEMENT.**  
Providers are reimbursed on a fee for service basis based on a participant budget. (3-19-07)

**01. Methodology for Developing Participant Budget Prior to October 1, 2006.** The participant budget is developed using the following methodology: (3-19-07)

- a.** Evaluate the past three (3) years of Medicaid expenditures from the participant's profile, excluding physician, pharmacy, and institutional services; (3-19-07)
- b.** Review all assessment information identified in Section 512 of these rules; (3-19-07)
- c.** Identify the level of support derived from the most current SIB-R. The level of support is a combination of the individual's functional abilities and maladaptive behavior as determined by the SIB-R. Six (6) broad levels of support have been identified on a scale from zero to one hundred (0 - 100) (see Table 514.01.c.). There

are six (6) levels of support, each corresponding to a support score range.

TABLE 514.01.c. - LEVEL OF SUPPORT	
Support Score Range	Level of Support
1-24	Pervasive
25-39	Extensive
40-54	Frequent
55-69	Limited
70-84	Intermittent
85-100	Infrequent

(3-19-07)

d. Correlate the level of support identified by the SIB-R to a budget range derived from the expenditures of individuals at the same level of support across the adult DD population. This correlation will occur annually prior to the development to the plan of service; (3-19-07)

**02. Negotiating an Appropriate Participant Budget Prior to October 1, 2006.** The assessor, the participant, and the plan developer must use all the information from Subsections 514.01.a. through 514.01.d. of these rules to negotiate an appropriate budget that will support the participant's identified needs. (3-19-07)

**03. Individualized Budget Beginning on October 1, 2006.** Beginning October 1, 2006, for DD ~~and~~ *ISSH* waiver participants, and beginning January 1, 2007, for all other adult DD participants, the Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's disability. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. ~~(3-19-07)(\_\_\_\_\_)~~

a. During the implementation phase of using the new individualized budget-setting methodology, the budget calculation will include reviewing the participant's previous year's budget. When the calculated budget is less than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the calculated budget amount. When the calculated budget is greater than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the previous year's budget amount. The Department will collect information on discrepancies between the calculated budget and the previous year's budget as part of the ongoing assessment and improvement process of the budget-setting methodology. (3-19-07)

b. The Department notifies each participant of his set budget amount. The notification will include how the participant may request reconsideration of the set budget amount (3-19-07).

c. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget. (3-19-07)

**04. Residential Habilitation - Supported Living Acuity-Based Levels of Support.** Reimbursement for residential habilitation - supported living is based on the participant's assessed level of support need. All plans of service that include supported living must include community integration goals that provide for maintained or enhanced independence, quality of life, and self-determination. As a participant's independence increases and he is less dependent on supports, he must transition to less intense supports. (3-19-07)

a. High support is for those participants who require twenty-four (24) hour per day supports and

supervision and have an SIB-R Support Level of Pervasive, Extensive, or Frequent. High support allows for a blend of one-to-one and group staffing. Participants authorized at the high support daily rate will not be authorized to receive developmental therapy services, adult day care, or non-medical transportation. These services are included in the high support daily rate. (3-19-07)

**b.** Intense support is for those exceptional participants who require intense, twenty-four (24) hour per day supports and supervision. This support level typically requires one-on-one staffing, but requests for a blend of one-on-one and group staffing will be reviewed on a case-by-case basis. Participants authorized at the intense support daily rate will not be authorized to receive developmental therapy services, adult day care, or non-medical transportation. These services are included in the intense support daily rate. To qualify for this level of support, participants must be evaluated to meet one or more of the following criteria: (3-19-07)

**i.** Recent felony convictions or charges for offenses related to the serious injury or harm of another person. These participants must have been placed in a supported living setting directly from incarceration or directly after being diverted from incarceration. (3-19-07)

**ii.** History of predatory sexual offenses and are at high risk to re-offend based on a sexual offender risk assessment completed by an appropriate professional. (3-19-07)

**iii.** Documented, sustained history of serious aggressive behavior showing a pattern of causing harm to themselves or others. The serious aggressive behavior must be such that the threat or use of force on another person makes that person reasonably fear bodily harm. The participant must also have the capability to carry out such a threat. The frequency and intensity of this type of aggressive behavior must require continuous monitoring to prevent injury to themselves or others. (3-19-07)

**iv.** Chronic or acute medical conditions that are so complex or unstable that one-to-one staffing is required to provide frequent interventions and constant monitoring. Without this intervention and monitoring the participant would require placement in a nursing facility, hospital, or ICF/MR with twenty-four (24) hour on-site nursing. Verification of the complex medical condition and the need for this level of service requires medical documentation. (3-19-07)

**c.** Hourly support is for those individuals that do not meet criteria for either high or intense supports or those individuals who qualify for a daily rate but whose needs can be met with less than twenty-four (24) per day support. The combination of hourly supported living, developmental therapy, community supported employment, and adult day care will not be authorized to exceed the maximum set daily amount established by the Department except when all of the following conditions are met: (3-19-07)

**i.** The participant is eligible to receive the high support daily rate; (3-19-07)

**ii.** Community supported employment is included in the plan and is causing the combination to exceed the daily limit; (3-19-07)

**iii.** There is documentation that the Person-Centered Planning team has explored other options including using lower cost services and natural supports; and (3-19-07)

**iv.** The participant's health and safety needs will be met using hourly services despite having been assessed to qualify for twenty-four (24) hour care. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**653. DDA SERVICES - COVERAGE REQUIREMENTS AND LIMITATIONS.**

**01. Requirement for Plan of Service and Prior Authorization.** (3-19-07)

**a.** All therapy services for children must be identified on the Individual Program Plan developed by the developmental disabilities agency (DDA) as described in IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

**b.** All therapy services for adults with developmental disabilities ~~and ISSH waiver participants~~ must be identified on the plan of service and prior authorized as described in Sections 507 through 520 of these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies." (~~3-19-07~~)(    )

**02. Assessment and Diagnostic Services.** Twelve (12) hours is the maximum Medicaid reimbursable time allowed for the combination of all assessment, evaluation or diagnostic services provided in any calendar year. Additional hours may be approved for a child through the month of his twenty-first birthday with approval from EPSDT staff in the Division of Medicaid. The following assessment and diagnostic services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies": (3-19-07)

**a.** Comprehensive Developmental Assessment; (3-19-07)

**b.** Comprehensive Intensive Behavioral Intervention (IBI) Assessment. Before conducting the comprehensive IBI assessment, the DDA must receive prior authorization from the Department. The time required to complete this assessment is included in the thirty-six (36) month IBI limitation but does not count against the twelve (12) hour limitation described in this subsection; (3-19-07)

**c.** Occupational Therapy Assessment (3-19-07)

**d.** Physical Therapy Assessment; (3-19-07)

**e.** Speech and Language Assessment; (3-19-07)

**f.** Medical/Social History; and (3-19-07)

**g.** Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview. (3-19-07)

**03. Therapy Services.** Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts and provided in accordance with objectives as specified in IDAPA 16.04.11, "Developmental Disabilities Agencies." The following therapy services are reimbursable when provided in accordance with these rules and IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

**a.** Developmental Therapy. Developmental therapy may be delivered in a developmental disabilities agency center-based program, the community, or the home of the participant. Participants living in a certified family home must not receive home-based developmental therapy in a certified family home. Developmental therapy includes individual developmental therapy and group developmental therapy. (3-19-07)

**b.** Psychotherapy Services. Psychotherapy services, alone or in combination with supportive counseling, are limited to a maximum of forty-five (45) hours in a calendar year, and include: (3-19-07)

**i.** Individual psychotherapy; (3-19-07)

**ii.** Group psychotherapy; and (3-19-07)

**iii.** Family-centered psychotherapy which must include the participant and one (1) other family member at any given time. (3-19-07)

**c.** Supportive Counseling. Supportive counseling must only be delivered on an individualized, one-to-one basis. Supportive counseling, alone or in combination with psychotherapy services, is limited to a maximum of forty-five (45) hours in a calendar year. (3-19-07)

**d.** Speech-Language Pathology Services. Speech-language pathology services include individual or

group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)

**e.** Physical Therapy Services. Physical therapy services include individual or group therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)

**f.** Occupational Therapy Services. Occupational therapy services include individual occupational therapy and group occupational therapy. These services are limited in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 730 through 739. (4-2-08)

**g.** Intensive Behavioral Intervention (IBI). IBI is limited to a lifetime limit of thirty six (36) months. (3-19-07)

**i.** The DDA must receive prior authorization from the Department prior to delivering IBI services. (3-19-07)

**ii.** IBI must only be delivered on an individualized, one-to-one basis. (3-19-07)

**h.** Intensive Behavioral Intervention (IBI) Consultation. IBI consultation is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. (3-19-07)

**i.** Collateral Contact. Collateral contact is consultation or treatment direction about the participant to a significant other in the participant's life and may be conducted face-to-face or by telephone contact. Collateral contact for general staff training, regularly scheduled parent-teacher conferences, general parent education, or for treatment team meetings, even when the parent is present, is not reimbursable. (3-19-07)

**j.** Pharmacological Management. Pharmacological management is consultation for the purpose of prescribing, monitoring, or administering medications. These consultations must be provided by a physician or other practitioner of the healing arts in direct face-to-face contact with the participant and be provided in accordance with the plan of service with the type, amount, frequency and duration of the service specified. The telephoning of prescriptions to the pharmacy is not a billable service. (3-19-07)

**04. Excluded Services.** The following services are excluded for Medicaid payments: (3-19-07)

**a.** Vocational services; (3-19-07)

**b.** Educational services; and (3-19-07)

**c.** Recreational services. (3-19-07)

**05. Limitations on DDA Services.** Therapy services may not exceed the limitations as specified below. (3-19-07)

**a.** The combination of therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules must not exceed twenty-two (22) hours per week. (1-1-09)T

**b.** Therapy services listed in Subsections 653.03.a. through 653.03.g. of these rules provided in combination with Community Supported Employment services under Subsection 703.04 of these rules must not exceed forty (40) hours per week. (3-19-07)

**c.** When a HCBS waiver participant under Sections 700 through 719 of these rules receives Adult Day Care as provided in Subsection 703.12 of these rules, the combination of Adult Day Care, Developmental Therapy and Occupational therapy must not exceed thirty (30) hours per week. (3-19-07)

**d.** Only one (1) type of therapy service will be reimbursed during a single time period by the Medicaid

program. No therapy services will be reimbursed during periods when the participant is being transported to and from the agency. (3-19-07)

~~e. Prior to delivering any services in a school-based setting, the DDA must have a contract with the school or the Infant Toddler program. The DDA must not bill Medicaid or the Medicaid participant for these contracted services. Only the school district, charter school, or the Idaho Infant Toddler program may bill Medicaid for these contracted services when provided in accordance with IDAPA 16.03.09 "Medicaid Basic Plan Benefits," Sections 850 through 856. (3-19-07)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES ~~ISSH~~ WAIVER SERVICES.**

Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible participants to prevent unnecessary institutional placement, provide for the greatest degree of independence possible, enhance the quality of life, encourage individual choice, and achieve and maintain community integration. For a participant to be eligible the Department must find that the participant requires services due to a developmental disability that impairs his mental or physical function or independence, is capable of being maintained safely and effectively in a non-institutional setting, and would, in the absence of such services, need to reside in an ICF/MR. (3-19-07)(\_\_\_\_)

**701. (RESERVED).**

**702. DD ~~ISSH~~ WAIVER SERVICES - ELIGIBILITY.**

Waiver eligibility will be determined by the Department as described in Section 509 of these rules. The participant must be financially eligible for Medical Assistance as described in IDAPA 16.03.05, "Rules Governing Eligibility for Aid for the Aged, Blind, and Disabled (AABD)," Section 787. The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan. In addition, waiver participants must meet the following requirements: (3-19-07)(\_\_\_\_)

**01. Age of Participants.** DD waiver participants must be eighteen (18) years of age or older. ~~ISSH~~ ~~waiver participants must be fifteen (15) years of age through the month of their eighteenth birthday.~~ (3-19-07)(\_\_\_\_)

**02. Eligibility Determinations.** The Department must determine that: (3-19-07)

**a.** The participant would qualify for ICF/MR level of care as set forth in Section 584 of these rules, if the waiver services listed in Section 703 of these rules were not made available; and (3-19-07)

**b.** The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must: be made by a team of individuals with input from the person-centered planning team; and prior to any denial of services on this basis, be determined by the plan developer that services to correct the concerns of the team are not available. (3-19-07)

**c.** The average annual cost of waiver services and other medical services to the participant would not exceed the average annual cost to Medicaid of ICF/MR care and other medical costs. (7-1-06)

**d.** Following the approval by the Department for services under the waiver, the participant must receive and continue to receive a waiver service as described in these rules. A participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. (3-19-07)

**03. Home and Community Based Services Waiver Eligible Participants.** A participant who is determined by the Department to be eligible for services under the Home and Community Based Services Waivers for ~~ISSH and~~ DD may elect to not utilize waiver services but may choose admission to an ICF/MR. (3-19-07)(\_\_\_\_)

**04. Processing Applications.** The participant's self-reliance staff will process the application in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," as if the application was for admission to an ICF/MR, except that the self-reliance staff will forward potentially eligible applications immediately to the Department for review. The Medicaid application process cited above conforms to all statutory and regulatory requirements relating to the Medicaid application process. (3-19-07)

**05. Transmitted Decisions to Self-Reliance Staff.** The decisions of the Department regarding the acceptance of the participants into the waiver program will be transmitted to the self-reliance staff. (3-19-07)

**06. Case Redetermination.** (3-19-07)

**a.** Financial redetermination will be conducted pursuant to IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." Medical redetermination will be made at least annually by the Department, or sooner at the request of the participant, the self-reliance staff, provider agency or physician. The sections cited implement and are in accordance with Idaho's approved State Plan with the exception of deeming of income provisions. (3-19-07)

**b.** The redetermination process will assess the following factors: (3-19-07)

**i.** The participant's continued need and eligibility for waiver services; and (3-19-07)

**ii.** Discharge from the waiver services program. (3-19-07)

**07. Home and Community-Based Waiver Participant Limitations.** The number of Medicaid participants to receive waiver services under the home and community based waiver for developmentally disabled participants will be limited to the projected number of users contained in the Department's approved waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after September 30th for the DD waiver ~~and after June 30th for the ISSH waiver~~ of each new waiver year. (3-19-07)(\_\_\_\_)

**703. ~~DD/ISSH~~ WAIVER SERVICES - COVERAGE AND LIMITATIONS.**

**01. Residential Habilitation.** Residential habilitation services which consist of an integrated array of individually-tailored services and supports furnished to eligible participants which are designed to assist them to reside successfully in their own homes, with their families, or alternate family homes. The services and supports that may be furnished consist of the following: (3-19-07)

**a.** Habilitation services aimed at assisting the individual to acquire, retain or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-19-07)

**i.** Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-19-07)

**ii.** Money management including training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-19-07)

**iii.** Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (3-19-07)

**iv.** Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. (Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities



necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in non-therapeutic activities which are merely diversional or recreational in nature); (3-19-07)

v. Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (3-19-07)

vi. Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (3-19-07)

b. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the participant or the participant's primary caregiver(s) are unable to accomplish on his own behalf. (3-19-07)

c. Skills training to teach waiver participants, family members, alternative family caregiver(s), or a participant's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self direction, money management, socialization, mobility and other therapeutic programs. (3-19-07)

**02. Chore Services.** Chore services which are heavy household maintenance and minor home repairs necessary to maintain the functional use of the home and to provide a clean, sanitary and safe environment. Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the participant's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payer is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)

**03. Respite.** Respite care services are those services provided on a short term basis because of the absence of persons normally providing non-paid care. Respite care services provided under this waiver will not include room and board payments. Respite care services are limited to participants who reside with non-paid caregivers. (3-19-07)

**04. Supported Employment.** Supported employment which is competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. (3-19-07)

a. Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation will be maintained in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973 as amended, or IDEA. (3-19-07)

b. Federal Financial Participation (FFP) will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-19-07)

**05. Transportation.** Transportation services which are services offered in order to enable waiver participants to gain access to waiver and other community services and resources required by the plan of service. This service is offered in addition to medical transportation required under 42 CFR 440.431.53 and transportation services

offered under the State Plan, defined at 42 CFR 440.170(a), and must not replace them. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge or public transit providers will be utilized. (3-19-07)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations which are those interior or exterior physical adaptations to the home, required by the waiver participant's plan of service, which are necessary to ensure the health, welfare, safety of the individual, or which enable the individual to function with greater independence in the home and without which, the waiver participant would require institutionalization. Such adaptations may include the installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but must exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. All services must be provided in accordance with applicable State or local building codes. Permanent environmental modifications are limited to modifications to a home rented or owned by the participant or the participant's family when the home is the participant's principal residence. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

**07. Specialized Equipment and Supplies.** Specialized medical equipment and supplies which include devices, controls, or appliances, specified in the plan of service which enable participants to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. They also include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan. Items reimbursed with waiver funds must be in addition to any medical equipment and supplies furnished under the State Plan and must exclude those items which are not of direct medical or remedial benefit to the participant. All items must meet applicable standards of manufacture, design and installation. (3-19-07)

**08. Personal Emergency Response System.** Personal Emergency Response Systems (PERS) which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who rent or own their home, who are alone for significant parts of the day, have no regular caretaker for extended periods of time and who would otherwise require extensive routine supervision. (3-19-07)

**09. Home Delivered Meals.** Home delivered meals which are designed to promote adequate waiver participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to participants who rent or own their own home, who are alone for significant parts of the day and have no regular caretaker for extended periods of time. (3-19-07)

**10. Skilled Nursing.** Nursing services are those intermittent nursing services or private duty nursing services which provide individual and continuous care listed in the plan of service which are within the scope of the Nurse Practice Act and are provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (3-19-07)

**11. Behavior Consultation/Crisis Management.** Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also provide emergency back-up involving the direct support of the participant in crisis. (3-19-07)

**12. Adult Day Care.** Adult Day Care is a supervised, structured day program, outside the home of the participant that offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. These activities need to be identified on the plan of service. Adult Day Care can not exceed thirty (30) hours per week either alone or in combination with developmental therapy, occupational therapy, or IBI. (3-19-07)

**a.** Services provided in a facility must meet the building and health standards identified in IDAPA

16.04.11, "Developmental Disabilities Agencies." (3-19-07)

**b.** Services provided in a home must meet the standards of home certification identified in IDAPA 16.03.19, "Rules Governing Certified Family Home," and health standards identified in IDAPA 16.04.11, "Developmental Disabilities Agencies." (3-19-07)

**13. Self Directed Community Supports.** Participants eligible for the DD Waiver may choose to self-direct their individualized budget rather than receive the traditional waiver services described in this section of rule. The requirements for this option are outlined in IDAPA 16.03.13, "Consumer Directed Services." (3-19-07)

**14. Place of Service Delivery.** Waiver services may be provided in the participant's personal residence, a certified family home, day habilitation/supported employment program, or community. The following living situations are specifically excluded as a place of service for waiver services: (3-19-07)

- a.** Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (3-19-07)
- b.** Licensed Intermediate Care Facility for persons with Mental Retardation (ICF/MR); and (3-19-07)
- c.** Residential Care or Assisted Living Facility. (3-19-07)
- d.** Additional limitations to specific services are listed under that service definition. (3-19-07)

**704. ~~DD/SSH~~ WAIVER SERVICES - PROCEDURAL REQUIREMENTS.**

**01. Authorization of Services on a Written Plan.** All waiver services must be identified on the plan of service and authorized by the process described in Sections 507 through 520 of these rules. The plan of service must be reviewed by a plan monitor or targeted service coordinator at a frequency determined by the person-centered planning team, but at least every ninety (90) days. (3-19-07)

**02. Provider Records.** Three (3) types of record information will be maintained on all participants receiving waiver services: (3-19-07)

- a.** Direct Service Provider Information which includes written documentation of each visit made or service provided to the participant, and will record at a minimum the following information: (3-19-07)
  - i.** Date and time of visit; and (3-19-07)
  - ii.** Services provided during the visit; and (3-19-07)
  - iii.** A statement of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-19-07)
  - iv.** Length of visit, including time in and time out, if appropriate to the service provided. Unless the participant is determined by the Service Coordinator to be unable to do so, the delivery will be verified by the participant as evidenced by their signature on the service record. (3-19-07)
  - v.** A copy of the above information will be maintained in the participant's home unless authorized to be kept elsewhere by the Department. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (3-19-07)

**b.** The plan of service developed by the plan developer and the person-centered planning team must specify which services are required by the participant. The plan of service must contain all elements required by Subsection 704.01 of these rules and a copy of the most current plan of service must be maintained in the participant's home and must be available to all service providers and the Department. (3-19-07)

**c.** In addition to the plan of service, all providers, with the exception of chore, non-medical

transportation, and enrolled Medicaid vendors, must submit a provider status review six (6) months after the start date of the plan of service and annually to the plan monitor as described in Sections 507 through 520 of these rules. (3-19-07)

**03. Provider Responsibility for Notification.** It is the responsibility of the service provider to notify the service coordinator or plan developer when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. (3-19-07)

**04. Records Maintenance.** In order to provide continuity of services, when a participant changes service providers, plan developers, or service coordinators, all of the foregoing participant records will be delivered to and held by the Department until a replacement service provider, plan developer, or service coordinator is selected by the participant. When a participant leaves the waiver services program, the records will be retained by the Department as part of the participant's closed case record. Provider agencies will be responsible to retain their participant's records for five (5) years following the date of service. (3-19-07)

**705. ~~DD/SSH~~ WAIVER SERVICES - PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of waiver services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. (3-19-07)

**01. Residential Habilitation.** Residential habilitation services must be provided by an agency that is certified by the Department as a Residential Habilitation Agency under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies," and is capable of supervising the direct services provided. Individuals who provide residential habilitation services in their own home must be certified by the Department as a certified family home and must be affiliated with a Residential Habilitation Agency. The Residential Habilitation Agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide residential habilitation services in the home of the participant (supported living), must be employed by a Residential Habilitation Agency. Providers of residential habilitation services must meet the following requirements: (3-19-07)

- a. Direct service staff must meet the following minimum qualifications: (3-19-07)
  - i. Be at least eighteen (18) years of age; (3-19-07)
  - ii. Be a high school graduate or have a GED or demonstrate the ability to provide services according to an plan of service; (3-19-07)
  - iii. Have current CPR and First Aid certifications; (3-19-07)
  - iv. Be free from communicable diseases; (3-19-07)
  - v. Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. Staff previously trained on assistance with medications by a licensed nurse but who have not completed this course must meet this requirement by July 1, 2007. (3-19-07)
  - vi. Residential habilitation service providers who provide direct care or services must satisfactorily complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
  - vii. Have appropriate certification or licensure if required to perform tasks which require certification or licensure. (3-19-07)
- b. All skill training for direct service staff must be provided by a Qualified Mental Retardation Professional (QMRP) who has demonstrated experience in writing skill training programs. (3-19-07)
- c. Prior to delivering services to a participant, direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-19-07)

- i. Purpose and philosophy of services; (3-19-07)
- ii. Service rules; (3-19-07)
- iii. Policies and procedures; (3-19-07)
- iv. Proper conduct in relating to waiver participants; (3-19-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-19-07)
- vi. Participant rights; (3-19-07)
- vii. Methods of supervising participants; (3-19-07)
- viii. Working with individuals with developmental disabilities; and (3-19-07)
- ix. Training specific to the needs of the participant. (3-19-07)
- d.** Additional training requirements must be completed within six (6) months of employment or affiliation with the residential habilitation agency and include at a minimum: (3-19-07)
  - i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-19-07)
  - ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-19-07)
  - iii. Feeding; (3-19-07)
  - iv. Communication; (3-19-07)
  - v. Mobility; (3-19-07)
  - vi. Activities of daily living; (3-19-07)
  - vii. Body mechanics and lifting techniques; (3-19-07)
  - viii. Housekeeping techniques; and (3-19-07)
  - ix. Maintenance of a clean, safe, and healthy environment. (3-19-07)
- e.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed. (3-19-07)
- f.** When residential habilitation services are provided in the provider's home, the provider's home must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes." Non-compliance with the certification process is cause for termination of the provider's provider agreement. (3-19-07)
- 02. Chore Services.** Providers of chore services must meet the following minimum qualifications: (3-19-07)
  - a.** Be skilled in the type of service to be provided; and (3-19-07)
  - b.** Demonstrate the ability to provide services according to a plan of service. (3-19-07)
  - c.** Chore service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background

Checks.” (4-2-08)

**03. Respite.** Providers of respite care services must meet the following minimum qualifications: (3-19-07)

**a.** Meet the qualifications prescribed for the type of services to be rendered or must be an individual selected by the waiver participant, the family or his guardian; (3-19-07)

**b.** Have received care giving instructions in the needs of the person who will be provided the service; (3-19-07)

**c.** Demonstrate the ability to provide services according to an plan of service; (3-19-07)

**d.** Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; (3-19-07)

**e.** Be willing to accept training and supervision by a provider agency or the primary caregiver of services; and (3-19-07)

**f.** Be free of communicable diseases. (3-19-07)

**g.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” (4-2-08)

**04. Supported Employment.** Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State approved provider. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, “Criminal History and Background Checks.” (4-2-08)

**05. Transportation.** Providers of transportation services must: (3-19-07)

**a.** Possess a valid driver's license; and (3-19-07)

**b.** Possess valid vehicle insurance. (3-19-07)

**06. Environmental Accessibility Adaptations.** Environmental accessibility adaptations services must: (3-19-07)

**a.** Be done under a permit, if required; and (3-19-07)

**b.** Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (3-19-07)

**07. Specialized Equipment and Supplies.** Specialized Equipment and Supplies purchased under this service must: (3-19-07)

**a.** Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (3-19-07)

**b.** Be obtained or provided by authorized dealers of the specific product where applicable. This may include medical supply businesses or organizations that specialize in the design of the equipment. (3-19-07)

**08. Personal Emergency Response System.** Personal Emergency Response Systems (PERS) must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. (3-19-07)

**09. Home Delivered Meals.** Services of Home Delivered Meals under this section may only be provided by an agency capable of supervising the direct service and must: (3-19-07)

**a.** Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; (3-19-07)

**b.** Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; (3-19-07)

**c.** Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; (3-19-07)

**d.** Provide documentation of current driver's license for each driver; and (3-19-07)

**e.** Must be inspected and licensed as a food establishment by the District Health Department. (3-19-07)

**10. Skilled Nursing.** Nursing service providers must provide documentation of current Idaho licensure as a licensed professional nurse (RN) or licensed practical nurse (LPN) in good standing. (3-19-07)

**11. Behavior Consultation or Crisis Management.** Behavior Consultation or Crisis Management Providers must meet the following: (3-19-07)

**a.** Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (3-19-07)

**b.** Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (3-19-07)

**c.** Be a licensed pharmacist; or (3-19-07)

**d.** Be a Qualified Mental Retardation Professional (QMRP). (3-19-07)

**e.** Emergency back-up providers must meet the minimum residential habilitation provider qualifications described under IDAPA 16.04.17, "Rules Governing Residential Habilitation Agencies." (3-19-07)

**f.** Behavior consultation or crisis management providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**12. Adult Day Care.** Providers of adult day care services must be employed by or be affiliated with the residential habilitation agency that provides program coordination for the participant if the service is provided in a certified family home other than the participant's primary residence, be capable of supervising direct services, provide services as identified on the plan of service, provide care and supervision identified on the participant's residential habilitation plan, and must meet the following minimum qualifications: (3-19-07)

**a.** Demonstrate the ability to communicate and deal effectively, assertively, and cooperatively with a variety of people; (3-19-07)

**b.** Be a high school graduate, or have a GED or demonstrate the ability to provide services according to the plan of service; (3-19-07)

**c.** Be free from communicable disease; (3-19-07)

- d.** Adult day care providers who provide direct care or services must satisfactorily complete a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; (4-2-08)
  - e.** Demonstrate knowledge of infection control methods; and (3-19-07)
  - f.** Agree to practice confidentiality in handling situations that involve waiver participants. (3-19-07)
- 13. Service Supervision.** The plan of service which includes all waiver services is monitored by the plan monitor or targeted service coordinator. (3-19-07)

**706. ~~DD/SSH~~ WAIVER SERVICES - PROVIDER REIMBURSEMENT.**

- 01. Fee for Service.** Waiver service providers will be paid on a fee for service basis based on the type of service provided as established by the Department. (3-19-07)
- 02. Claim Forms.** Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (3-19-07)
- 03. Rates.** The reimbursement rates calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided transportation. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**723. SERVICE COORDINATION -- ELIGIBILITY -- INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY.**

An individual is eligible to receive service coordination if he meets the following requirements in Subsection 723.01 through 723.03 of this rule. (5-8-09)

- 01. Age.** An adult eighteen (18) years of age or older, ~~or adolescent fifteen to eighteen (15-18) years of age who is authorized to receive services through the Idaho State School and Hospital (ISSH) waiver.~~ (5-8-09) ( )
- 02. Diagnosis.** Is diagnosed with a developmental disability, defined in Section 66-402, Idaho Code and Section 500 through 506 of these rules, that:
  - a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; (5-8-09)
  - b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (3-19-07)
  - c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (5-8-09)
- 03. Need Assistance.** Requires and chooses assistance to access services and supports necessary to maintain his independence in the community. (5-8-09)



# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0907

### 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 56-202(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, October 21, 2009.

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 Division of Medicaid is proposing to change these rules to allow for the development of a uniform, state-wide consumer-directed services model for all Medicaid programs. This will allow Medicaid's consumer-directed programs to use the same service model. The rule changes proposed in this chapter regarding the removal of references to the fiscal intermediary services under the Home and Community Based Services Waiver for the Aged and Disabled (HCBS A&D) will align with changes being proposed under companion Docket No. 16-0313-0901.

The following is a summary of the proposed changes:

1. The current fiscal intermediary (FI) rules for the HCBS A&D waiver are being removed and replaced with a reference to the self-direction rules found in IDAPA 16.03.13, "Consumer-Directed Services." FI is a service option available under the A&D waiver and allows participant direction of personal care services.
2. References to requirements for providers of FI services (e.g., criminal history and agency training) are being removed. The agency training and criminal history requirements that pertain to personal assistance agencies are being clarified.

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

**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. NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. The negotiated rulemaking was informal. No notice of Intent to Promulgate Rules was published.

**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, October 28, 2009.

DATED this 2nd day of September, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036

(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0310-0907**

**011. DEFINITIONS E THROUGH K.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Educational Services.** Services which are provided in buildings, rooms or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the participant or required by federal and state educational statutes or regulations; are not related services; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. (3-19-07)

**02. Eligibility Rules.** IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," and IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." (3-19-07)

**03. Emergency Medical Condition.** A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following: (3-19-07)

**a.** Placing the health of the individual, or, with respect to a pregnant woman, the health of the woman or unborn child, in serious jeopardy. (3-19-07)

**b.** Serious impairment to bodily functions. (3-19-07)

**c.** Serious dysfunction of any bodily organ or part. (3-19-07)

**04. Enhanced Plan.** The medical assistance benefits included under this chapter of rules. (3-19-07)

**05. EPSDT.** Early and Periodic Screening Diagnosis and Treatment. (3-19-07)

**06. Equity.** The net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles. (3-19-07)

**07. Facility.** Facility refers to a hospital, nursing facility, or an intermediate care facility for persons with mental retardation. (3-19-07)

**a.** "Free-standing Nursing Facility" means a nursing facility that is not owned, managed, or operated by, nor is otherwise a part of a licensed hospital. (3-19-07)

**b.** "Intermediate Care Facility for Persons with Mental Retardation (ICF/MR)" means an entity as defined in Subsection 011.29 in this rule. (3-19-07)

**c.** "Nursing Facility (NF)" means a facility licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare patients. (3-19-07)

**d.** "Skilled Nursing Facility" means a nursing facility licensed by the Department to provide twenty-four (24) hour skilled nursing services and federally certified as a "Nursing Facility" under Title XVIII. (3-19-07)

**e.** "Urban Hospital-Based Nursing Facilities" means hospital-based nursing facilities located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (3-19-07)

**08. Fiscal Intermediary Agency.** *An entity that provides services that allow the participant receiving*

~~personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training, and dismissing his personal assistant regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered.~~ (5-8-09)

- ~~098.~~ **Fiscal Year.** An accounting period that consists of twelve (12) consecutive months. (3-19-07)
- ~~109.~~ **Forced Sale.** A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (3-19-07)
- ~~110.~~ **Funded Depreciation.** Amounts deposited or held which represent recognized depreciation. (3-19-07)
- ~~121.~~ **Generally Accepted Accounting Principles (GAAP).** A widely accepted set of rules, conventions, standards, and procedures for reporting financial information as established by the Financial Standards Accounting Board. (3-19-07)
- ~~132.~~ **Goodwill.** The amount paid by the purchaser that exceeds the value of the net tangible assets. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is a nonallowable, nonreimbursable expense. (3-19-07)
- ~~143.~~ **Healthy Connections.** The primary care case management model of managed care under Idaho Medicaid. (3-19-07)
- ~~154.~~ **Historical Cost.** The actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies. (3-19-07)
- ~~165.~~ **ICF/MR Living Unit.** The physical structure that an ICF/MR uses to house patients. (3-19-07)
- ~~176.~~ **Improvements.** Improvements to assets which increase their utility or alter their use. (3-19-07)
- ~~187.~~ **Indirect Care Costs.** The following costs either directly coded to the nursing facility or allocated to the nursing facility through the Medicare step-down process described in the PRM: (3-19-07)
- a. Activities; (3-19-07)
  - b. Administrative and general care costs; (3-19-07)
  - c. Central service and supplies; (3-19-07)
  - d. Dietary (non-"raw food" costs); (3-19-07)
  - e. Employee benefits associated with the indirect salaries; (3-19-07)
  - f. Housekeeping; (3-19-07)
  - g. Laundry and linen; (3-19-07)
  - h. Medical records; (3-19-07)
  - i. Other costs not included in direct care costs, or costs exempt from cost limits; and (3-19-07)

- j. Plant operations and maintenance (excluding utilities). (3-19-07)
- 198. Inflation Adjustment.** The cost used in establishing a nursing facility's prospective reimbursement rate is indexed forward from the midpoint of the cost report period to the midpoint of the rate year using the inflation factor plus one percent (+1%) per annum. (3-19-07)
- 209. Inflation Factor.** For use in establishing nursing facility prospective rates, the inflation factor is the Skilled Nursing Facility Market Basket as established by Data Resources, Inc. (DRI), or its successor. If subsequent to the effective date of these rules, Data Resources, Inc., or its successor develops an Idaho-specific nursing facility index, it will be used. The Department is under no obligation to enter into an agreement with DRI or its successor to have an Idaho-specific index established. The national index is used when there is no state or regional index. (3-19-07)
- 240. In-State Care.** Medical services provided within the Idaho border or in counties bordering Idaho are considered to be in-state, excluding long term care. (3-19-07)
- 221. Inspection of Care Team (IOCT).** An interdisciplinary team which provides inspection of care in intermediate care facilities for the mentally retarded approved by the Department as providers of care for eligible medical assistance participants. Such a team is composed of: (3-19-07)
- a. At least one (1) registered nurse; and (3-19-07)
- b. One (1) qualified mental retardation professional; and when required, one (1) of the following: (3-19-07)
- i. A consultant physician; or (3-19-07)
- ii. A consultant social worker; or (3-19-07)
- iii. When appropriate, other health and human services personnel responsible to the Department as employees or consultants. (3-19-07)
- 232. Instrumental Activities of Daily Living (IADL).** Those activities performed in supporting the activities of daily living, including, but not limited, to managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community. (3-19-07)
- 243. Interest.** The cost incurred for the use of borrowed funds. (3-19-07)
- 254. Interest on Capital Indebtedness.** The cost incurred for borrowing funds used for acquisitions of capital assets, improvements, etc. These costs are reported under property costs. (3-19-07)
- 265. Interest on Working Capital.** The costs incurred for borrowing funds which will be used for "working capital" purposes. These costs are reported under administrative costs. (3-19-07)
- 276. Interest Rate Limitation.** The interest rate allowed for working capital loans and for loans for major movable equipment for ICF/MR facilities is the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent (+1%) at the date the loan is made. (3-19-07)
- 287. Interim Reimbursement Rate (IRR).** A rate paid for each Medicaid patient day which is intended to result in total Medicaid payments approximating the amount paid at audit settlement. The interim reimbursement rate is intended to include any payments allowed in excess of the percentile cap. (3-19-07)
- 298. Intermediary.** Any organization that administers the Title XIX and Title XXI program; in this case the Department of Health and Welfare. (3-19-07)
- 3029. Intermediate Care Facility for Persons with Mental Retardation (ICF/MR).** An entity licensed as an ICF/MR and federally certified to provide care to Medicaid and Medicare participants with developmental

disabilities. (3-19-07)

**340. Keyman Insurance.** Insurance on owners or employees with extraordinary talents in which the direct or indirect beneficiary is the facility or its owners. Premiums related to keyman insurance are not allowable. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**306. PERSONAL ASSISTANCE AGENCY (PAA) - QUALIFICATIONS AND DUTIES.**

**01. Provider Agreement Required.** A Personal Assistance Agency is an organization that has signed the Medicaid Provider General Agreement and the Additional Terms-Personal Assistance Agencies, Aged and Disabled Waiver Provider Agreement with the Department. The PAA agrees to comply with all conditions within the agreements. A Personal Assistance Agency may also provide ~~fiscal intermediary~~ financial management services in accordance with ~~Section 329 of these rules~~ IDAPA 16.03.13, "Consumer-Directed Services." Each Personal Assistance Agency must direct, control, and monitor the work of each of its personal assistants. (~~5-8-09~~)( )

**02. Responsibilities of a Personal Assistance Agency.** A Personal Assistance Agency must be capable of and is responsible for all of the following, no matter how the PAA is organized or the form of the business entity it has chosen: (3-19-07)

**a.** Recruitment, hiring, firing, training, supervision, scheduling and payroll for personal assistants and the assurance that all providers are qualified to provide quality service; (3-19-07)

**b.** Participation in the provision of worker's compensation, unemployment compensation and all other state and federal tax withholdings; (3-19-07)

**c.** Maintenance of liability insurance coverage. Termination of either worker's compensation or professional liability insurance by the provider is cause for termination of the provider's provider agreement; (3-19-07)

**d.** Provision of a licensed professional nurse (RN) or, where applicable, a QMRP supervisor to develop and complete plans of care and provide ongoing supervision of a participant's care; (3-19-07)

**e.** Assignment of qualified personal assistants to eligible participants after consultation with and approval by the participants; (3-19-07)

**f.** Assuring that all personal assistants meet the qualifications in Subsection 305.01 of these rules; (3-19-07)

**g.** Billing Medicaid for services approved and authorized by the RMS; (3-19-07)

**h.** Collecting any participant contribution due; (5-8-09)

**i.** Conducting, at least annually, participant satisfaction or quality control reviews which are available to the Department and the general public; and (5-8-09)

**j.** Making referrals for PCS-eligible participants for service coordination as described in Sections 720 through 779 of these rules when a need for the service is identified. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**321. AGED OR DISABLED WAIVER SERVICES - DEFINITIONS.**

The following definitions apply to Sections 320 through 330 of these rules: (3-19-07)

**01. Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department to assess functional and cognitive abilities. (3-19-07)

**02. Individual Service Plan.** A document which outlines all services including, but not limited to, personal assistance services and instrumental activities of daily living (IADL), required to maintain the individual in his home and community. The plan is initially developed by the RMS or its contractor for services provided under the Home and Community-Based Services Waiver. This plan must be approved by the RMS and all Medicaid reimbursable services must be contained in the plan. (3-19-07)

**03. Personal Assistance Agency or Agency.** An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for the care given, and provides payroll, including all required withholding for federal and state tax purposes, and benefits for care providers working for them. They also bill Medicaid for services provided by employees, and collect participant contribution. (3-19-07)

~~**04. Employer of Record.** An entity which bills for services, withholds required taxes, and conducts other administrative activities for a waiver program participant. Such an entity is also called a personal assistance agency functioning as a fiscal intermediary agency. (5-8-09)~~

~~**05. Employer of Fact.** A participant or representative of a participant who hires, fires, and directs the services delivered by a waiver program provider. This individual may be a family member. (3-19-07)~~

**064. Participant.** An aged or disabled individual who requires and receives services under the Home and Community-based Waiver program. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**323. AGED OR DISABLED WAIVER SERVICES - PARTICIPANT ELIGIBILITY DETERMINATION.**

Waiver eligibility will be determined by the RMS. The participant must be eligible for Medicaid as described in IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)." In addition, waiver participants must meet the following requirements. (3-19-07)

**01. Requirements for Determining Participant Eligibility.** The RMS must determine that: (3-19-07)

**a.** The participant would qualify for nursing facility level of care under Sections ~~222 and 223~~ 322 of these rules, if the waiver services listed in Section 326 of these rules were not made available; and ~~(3-19-07)~~ ( )

**b.** The participant could be safely and effectively maintained in the requested or chosen community residence with appropriate waiver services. This determination must be made by the RMS. Prior to any denial of services on this basis, the Department must verify that services to correct the concerns of the team are not available. (3-19-07)

**c.** The average daily cost of waiver services and other medical services to the participant would not exceed the average daily cost to Medicaid of nursing facility care. (3-19-07)

**d.** Following the approval by the RMS for services under the waiver, the participant must receive and continue to receive a waiver service as described in these rules. A participant who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. (3-19-07)

**02. Admission to a Nursing Facility.** A participant who is determined by the RMS to be eligible for services under the waiver may elect to not utilize waiver services and may choose admission to a nursing facility.

(3-19-07)

**03. Redetermination Process.** Case Redetermination will be conducted by the RMS or its contractor. The redetermination process will verify that the participant continues to meet nursing facility level of care and the participant's continued need for waiver services. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**326. AGED OR DISABLED WAIVER SERVICES - COVERAGE AND LIMITATIONS.**

**01. Adult Day Care.** Adult day care is a supervised, structured day program, outside the home of the participant, that may offer one (1) or more of a variety of social, recreational, health activities, supervision for safety, and assistance with activities of daily living. (3-19-07)

**02. Adult Residential Care Services.** Services are those that consist of a range of services provided in a congregate setting licensed in accordance with IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," that includes: (3-19-07)

- a. Medication management; (3-19-07)
- b. Assistance with activities of daily living; (3-19-07)
- c. Meals, including special diets; (3-19-07)
- d. Housekeeping; (3-19-07)
- e. Laundry; (3-19-07)
- f. Transportation; (3-19-07)
- g. Opportunities for socialization; (3-19-07)
- h. Recreation; and (3-19-07)
- i. Assistance with personal finances. (3-19-07)
- j. Administrative oversight must be provided for all services provided or available in this setting. (3-19-07)

**k.** A written individual service plan must be negotiated between the participant or his legal representative, and a facility representative. (3-19-07)

**03. Assistive Technology.** Assistive technology is any item, piece of equipment, or product system beyond the scope of the Medicaid State Plan, whether acquired off the shelf or customized, that is used to increase, maintain, or improve the functional capability of the participant. Assistive technology also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment. (3-19-07)

**04. Assisted Transportation.** Individual assistance with non-medical transportation services, including escort to a person who has difficulties (physical or cognitive) using regular vehicular transportation. Such services are specified in the plan for services in order to enable waiver participants to gain access to waiver and other community services and resources. (3-19-07)

- a. Assisted transportation service is offered in addition to medical transportation required in IDAPA

16.03.09, "Medicaid Basic Plan Benefits," Sections 860 through 876, and will not replace it. (3-19-07)

**b.** Whenever possible, family, neighbors, friends, or community agencies who can provide this service without charge or public transit providers will be utilized. (3-19-07)

**05. Attendant Care.** ( )

**a.** Attendant care services are those services that involve personal and medically oriented tasks dealing with the functional needs of the participant. These services may include personal care and medical tasks that can be done by unlicensed persons, or delegated to an unlicensed person by a licensed health care professional. Services may occur in the participant's home, community, work, or school, or in recreational settings. ~~(3-30-07)~~( )

~~**a.** To utilize the services of a Personal Assistance Agency acting as a fiscal intermediary, the participant family, or legal representative must be able and willing to assume responsibility for the direction of the participant's care and for personnel activities such as provider selection and supervision. If the participant, family, or legal representative is unable or unwilling to assume such responsibility, then an agency employee must be utilized. (3-19-07)~~

**b.** The Department may require supervision by a health care professional if the required care is so complex that such supervision is necessary for health and safety. (3-19-07)

**06. Chore Services.** Chore services include the services provided in Subsection 326.06.a. and 326.06.b. of this rule: (3-19-07)

**a.** Intermittent Assistance may include the following. (3-19-07)

i. Yard maintenance; (3-19-07)

ii. Minor home repair; (3-19-07)

iii. Heavy housework; (3-19-07)

iv. Sidewalk maintenance; and (3-19-07)

v. Trash removal to assist the participant to remain in their home. (3-19-07)

**b.** Chore activities may include the following: (3-19-07)

i. Washing windows; (3-19-07)

ii. Moving heavy furniture; (3-19-07)

iii. Shoveling snow to provide safe access inside and outside the home; (3-19-07)

iv. Chopping wood when wood is the participant's primary source of heat; and (3-19-07)

v. Tacking down loose rugs and flooring. (3-19-07)

**c.** These services are only available when neither the participant, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer, agency, or third party payer is willing to or is responsible for their provision. (3-19-07)

**d.** In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home rented or owned by the participant. (3-19-07)

**07. Adult Companion.** In-home services to insure the safety and well-being of a person who cannot be



left alone because of frail health, a tendency to wander, inability to respond to emergency situations, or other conditions that would require a person on-site. The service provider may provide voice cuing and occasional assistance with toileting, personal hygiene, dressing, and other activities of daily living. However, the major responsibility is to provide companionship and be there in case they are needed. (3-19-07)

**08. Consultation.** Consultation services are services to a participant or family member. Services provided by a PAA to a participant or family member to increase their skills as an employer or manager of their own care. Such services are directed at achieving the highest level of independence and self reliance possible for the participant/family. Services to the provider are for the purpose of understanding the special needs of the participant and the role of the care giver. (3-19-07)

**09. Home Delivered Meals.** Meals which are designed to promote adequate participant nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to participants who: (3-19-07)

- a. Rent or own their own home; (3-19-07)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no regular caretaker for extended periods of time; and (3-19-07)
- d. Are unable to prepare a balanced meal. (3-19-07)

**10. Homemaker Services.** Assistance to the participant with light housekeeping, laundry, assistance with essential errands, meal preparation, and other light housekeeping duties if there is no one else in the household capable of performing these tasks. (3-19-07)

**11. Home Modifications.** Minor housing adaptations that are necessary to enable the participant to function with greater independence in the home, or without which, the participant would require institutionalization. Such adaptations may include: (3-19-07)

a. The installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver participant, but will exclude those adaptations or improvements to the home which are not of direct medical or remedial benefit to the participant, such as carpeting, roof repair, or central air conditioning. (3-19-07)

b. Permanent environmental modifications are limited to modifications to a home owned by the participant or the participant's family and the home is the participant's principal residence. (3-19-07)

c. Portable or Non-Stationary Modifications. Portable or non-stationary modifications may be made when such modifications can follow the participant to his next place of residence or be returned to the Department. (3-19-07)

**12. Personal Emergency Response System.** A system which may be provided to monitor waiver participant safety or provide access to emergency crisis intervention for emotional, medical, or environmental emergencies through the provision of communication connection systems. PERS are limited to participants who: (3-19-07)

- a. Rent or own their home, or live with unpaid relatives; (3-19-07)
- b. Are alone for significant parts of the day; (3-19-07)
- c. Have no caretaker for extended periods of time; and (3-19-07)
- d. Would otherwise require extensive routine supervision. (3-19-07)

**13. Psychiatric Consultation.** Psychiatric Consultation is direct consultation and clinical evaluation of participants, who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. This service may provide training to the direct service provider or participant's family related to the needs of a participant. These services also provide emergency intervention involving the direct support of the participant in crisis. (3-19-07)

**14. Respite Care.** Occasional breaks from care giving responsibilities to non-paid care givers. The care giver or participant is responsible for selecting, training, and directing the provider. While receiving respite care services, the waiver participant cannot receive other waiver services which are duplicative in nature. Respite care services provided under this waiver will not include room and board payments. (3-19-07)

**15. Service Coordination.** Service coordination includes all of the activities contained in Section 727 of these rules. Such services are designed to foster independence of the participant, and will be time limited. (3-19-07)

**a.** All services will be provided in accordance with an individual service plan. All services will be incorporated into the Individual Service plan and authorized by the RMS. (3-19-07)

**b.** The service coordinator must notify the RMS, the Personal Assistance Agency, as well as the medical professionals involved with the participant of any significant change in the participant's situation or condition. (3-19-07)

**16. Skilled Nursing Services.** Intermittent or continuous oversight, training, or skilled care which is within the scope of the Nurse Practice Act and as such care must be provided by a licensed registered nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in Idaho. These services are not appropriate if they are less cost effective than a Home Health visit. Nursing services may include but are not limited to: (3-19-07)

**a.** The insertion and maintenance of nasogastric tubes and the monitoring or installation of feeding material; (3-19-07)

**b.** The maintenance of volume ventilators including associated tracheotomy care, tracheotomy, and oral pharyngeal suctioning. (3-19-07)

**c.** Maintenance and monitoring of IV fluids or nutritional supplements which are to be administered on a continuous or daily basis; (3-19-07)

**d.** Injections; (3-19-07)

**e.** Blood glucose monitoring; and (3-19-07)

**f.** Blood pressure monitoring. (3-19-07)

**17. Habilitation.** Habilitation services consist of an integrated array of individually-tailored services and supports furnished to eligible participants. These services and supports are designed to assist the participants to reside successfully in their own homes, with their families, or in alternate family homes. (3-30-07)

**a.** Residential habilitation services assist the individual to acquire, retain, or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: (3-30-07)

**i.** Self-direction consists of identifying and responding to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (3-30-07)

**ii.** Money management consists of training or assistance in handling personal finances, making purchases, and meeting personal financial obligations; (3-30-07)

iii. Daily living skills consist of training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, as well as following home safety, first aid, and emergency procedures; (3-30-07)

iv. Socialization consists of training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the participant to his community. Socialization training associated with participation in community activities includes assisting the participant to identify activities of interest, working out arrangements to participate in such activities, and identifying specific training activities necessary to assist the participant to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities that are merely diversional or recreational in nature; (3-30-07)

v. Mobility consists of training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; or (3-30-07)

vi. Behavior shaping and management consist of training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors, or extension of therapeutic services that consist of reinforcing physical, occupational, speech, and other therapeutic programs. (3-30-07)

b. Day rehabilitation consists of assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that take place in a non-residential setting, separate from the home or facility in which the participant resides. Services will normally be furnished four (4) or more hours per day on a regularly scheduled basis, for one (1) or more days per week, unless provided as an adjunct to other day activities included in a participant's plan of care. Day rehabilitation services will focus on enabling the participant to attain or maintain his or her maximum functional level and will be coordinated with any physical therapy, occupational therapy, or speech-language pathology services listed in the plan of care. In addition, day rehabilitation services may serve to reinforce skills or lessons taught in school, therapy, or other settings. (4-2-08)

**18. Supported Employment.** Supported employment consists of competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disability, these individuals need intensive supported employment services or extended services in order to perform such work. (3-30-07)

a. Supported employment services rendered under this waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation must be maintained by RMS in the file of each individual receiving this service verifying that the service is not otherwise available or funded under the Rehabilitation Act of 1973, as amended, or the IDEA. (3-30-07)

b. Federal Financial Participation (FFP) can not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver participants to encourage or subsidize the employer's participation in a supported employment programs, payments that are passed through to beneficiaries of supported employment programs, or payments for vocational training that is not directly related to a waiver participant's supported employment program. (3-30-07)

**19. Behavior Consultation or Crisis Management.** Behavior consultation or crisis management consists of services that provide direct consultation and clinical evaluation of participants who are currently experiencing, or are expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a participant. These services also include emergency back-up that provides direct support and services to a participant in crisis. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**328. AGED OR DISABLED WAIVER SERVICES - PROCEDURAL REQUIREMENTS.**

**01. Role of the Regional Medicaid Services.** The RMS will provide for the administration of the UAI, and the development of the initial individual service plan. This will be done either by RMS staff or a contractor. The RMS will review and approve all individual service plans, and will authorize Medicaid payment by type, scope, and amount. (3-30-07)

**a.** Services which are not in the individual service plan approved by the RMS are not eligible for Medicaid payment. (3-19-07)

**b.** Services in excess of those in the approved individual service plan are not eligible for Medicaid payment. (3-19-07)

**c.** The earliest date that services may be approved by the RMS for Medicaid payment is the date that the participant's individual service plan is signed by the participant or his designee. (3-19-07)

**02. Pre-Authorization Requirements.** All waiver services must be pre-authorized by the Department. Authorization will be based on the information from: (3-19-07)

**a.** The UAI; (3-19-07)

**b.** The individual service plan developed by the Department or its contractor; and (3-19-07)

**c.** Any other medical information which verifies the need for nursing facility services in the absence of the waiver services. (3-19-07)

**03. UAI Administration.** The UAI will be administered, and the initial individual service plan developed, by the RMS or its contractor. (3-19-07)

**04. Individual Service Plan.** All waiver services must be authorized by the RMS in the Region where the participant will be residing and services provided based on a written individual service plan. (3-30-07)

**a.** The initial individual service plan is developed by the RMS or its contractor, based on the UAI, in conjunction with: (3-19-07)

**i.** The waiver participant (with efforts made by the RMS to maximize the participant's involvement in the planning process by providing him with information and education regarding his rights); (3-30-07)

**ii.** The guardian, when appropriate; (3-30-07)

**iii.** The supervising nurse or case manager, when appropriate; and (3-19-07)

**iv.** Others identified by the waiver participant. (3-19-07)

**b.** The individual service plan must include the following: (3-19-07)

**i.** The specific type, amount, frequency, and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)

**ii.** Supports and service needs that are to be met by the participant's family, friends, neighbors, volunteers, church, and other community services; (3-30-07)

**iii.** The providers of waiver services when known; (3-30-07)

**iv.** Documentation that the participant has been given a choice between waiver services and institutional placement; and (3-19-07)

- v. The signature of the participant or his legal representative, agreeing to the plan. (3-19-07)
- c. The individual service plan must be revised and updated at least annually, based upon treatment results or a change in the participant's needs. (3-19-07)
- d. All services reimbursed under the Aged or Disabled Waiver must be authorized by the RMS prior to the payment of services. (3-19-07)
- e. The individual service plan, which includes all waiver services, is monitored by the Personal Assistance Agency, participant, family, and the RMS or its contractor. (3-19-07)
- 05. Service Delivered Following a Written Plan of Care.** All services that are provided must be based on a written plan of care. (3-30-07)
  - a. The plan of care is developed by the plan of care team which includes: (3-30-07)
    - i. The waiver participant with efforts made to maximize his participation on the team by providing him with information and education regarding his rights; (3-30-07)
    - ii. The Department's administrative case manager; (3-30-07)
    - iii. The guardian when appropriate; (3-30-07)
    - iv. Service provider identified by the participant or guardian; and (3-30-07)
    - v. May include others identified by the waiver participant. (3-30-07)
  - b. The plan of care must be based on an assessment process approved by the Department. (3-30-07)
  - c. The plan of care must include the following: (3-30-07)
    - i. The specific types, amounts, frequency and duration of Medicaid reimbursed waiver services to be provided; (3-30-07)
    - ii. Supports and service needs that are to be met by the participant's family, friends and other community services; (3-30-07)
    - iii. The providers of waiver services; (3-30-07)
    - iv. Goals to be addressed within the plan year; (3-30-07)
    - v. Activities to promote progress, maintain functional skills, or delay or prevent regression; and (3-30-07)
    - vi. The signature of the participant or his legal representative. (3-30-07)
  - d. The plan must be revised and updated by the plan of care team based upon treatment results or a change in the participant's needs. A new plan must be developed and approved annually. (3-30-07)
  - e. The Department's case manager monitors the plan of care and all waiver services. (3-30-07)
  - f. The plan of care may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of care is subject to prior authorization by the Department. (3-30-07)

- 06. Provider Records.** Records will be maintained on each waiver participant. (3-19-07)
- a.** Each service provider must document each visit made or service provided to the participant, and will record at a minimum the following information: (3-19-07)
- i. Date and time of visit; (3-19-07)
- ii. Services provided during the visit; (3-19-07)
- iii. Provider observation of the participant's response to the service, if appropriate to the service provided, including any changes in the participant's condition; and (3-19-07)
- iv. Length of visit, including time in and time out, if appropriate to the service provided. Unless the RMS or its contractor determines that the participant is unable to do so, the service delivery will be verified by the participant as evidenced by their signature on the service record. (3-19-07)
- b.** The provider is required to keep the original service delivery record. A copy of the service delivery record will be maintained in the participant's living arrangement unless authorized to be kept elsewhere by the RMS. Failure to maintain documentation according to these rules will result in the recoupment of funds paid for undocumented services. (3-19-07)
- c.** The individual service plan initiated by the RMS or its contractor must specify which waiver services are required by the participant. The plan will contain all elements required by Subsection 328.04.a of these rules and a copy of the most current individual service plan will be maintained in the participant's home and will be available to all service providers and the Department. A copy of the current individual service plan and UAI will be available from the RMS to each individual service provider with a release of information signed by the participant or legal representative. (3-19-07)

**07. Provider Responsibility for Notification.** The service provider is responsible to notify the RMS, physician or authorized provider, or case manager, and family if applicable, when any significant changes in the participant's condition are noted during service delivery. Such notification will be documented in the service record. (3-19-07)

**08. Records Retention.** Personal Assistance Agencies, and other providers are responsible to retain their records for five (5) years following the date of service. (3-19-07)

~~**09. Requirements for an Fiscal Intermediary (FI).** Participants of PCS will have one (1) year from the date which services begin in their geographic region to obtain the services of an FI and become an employee in fact or to use the services of an agency. Provider qualifications are in accordance with Section 329 of these rules. (3-19-07)~~

**329. AGED OR DISABLED WAIVER SERVICES - PROVIDER QUALIFICATIONS AND DUTIES.** Each provider must have a signed provider agreement with the Department for each of the services it provides. (3-19-07)

~~**01. Employment Status.** Unless otherwise specified by the Department, each individual service provider must be an employee of record or fact of an agency. The Department may enter into provider agreements with individuals in situations in which no agency exists, or no fiscal intermediary agency is willing to provide services. Such agreements will be reviewed annually to verify whether coverage by a personal assistance agency or fiscal intermediary agency is still not available. (5-8-09)~~

~~**021. Fiscal Intermediary Services.** An agency that has responsibility for the following: **Financial Management Co-Employer** The definition, criminal history requirements, provider responsibilities, and provider requirements for a financial management co-employer are found in IDAPA 16.03.13, "Consumer-Directed Services." (5-8-09)( )~~

~~**a.** To directly assure compliance with legal requirements related to employment of waiver service~~

- ~~providers;~~ (3-19-07)
- ~~b. To offer supportive services to enable participants or families consumers to perform the required employer tasks themselves;~~ (3-19-07)
- ~~c. To bill the Medicaid program for services approved and authorized by the Department;~~ (3-19-07)
- ~~d. To collect any participant participation due;~~ (3-19-07)
- ~~e. To pay personal assistants and other waiver service providers for service;~~ (3-19-07)
- ~~f. To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations;~~ (3-19-07)
- ~~g. To assure that personal assistants providing services meet the standards and qualifications under in this rule;~~ (5-8-09)
- ~~h. To maintain liability insurance coverage;~~ (5-8-09)
- ~~i. To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public;~~ (5-8-09)
- ~~j. To make referrals for service coordination for a PCS eligible participant when a need for such services is identified; and~~ (5-8-09)
- ~~k. To obtain such criminal background checks and health screens on new and existing employees of record and fact as required.~~ (5-8-09)

**032. Provider Qualifications.** All personal assistance providers of homemaker, respite care, adult day health, transportation, chore companion, attendant adult residential care, home delivered meals, and behavior consultants must meet, either by formal training or demonstrated competency, the training requirements contained in the provider training matrix and the standards for direct care staff and allowable tasks or activities in the Department's approved Aged and Disabled waiver as approved by CMS. (3-19-07)(\_\_\_\_)

- a.** A waiver provider can not be a relative of any participant to whom the provider is supplying services. (3-19-07)
- b.** For the purposes of ~~Section 329 of these~~ this rules, a relative is defined as a spouse or parent of a minor child. (3-19-07)(\_\_\_\_)
- c.** Individuals who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," including: (4-2-08)
- i.** Companion services; (4-2-08)
  - ii.** Chore services; and (4-2-08)
  - iii.** Respite care services. (4-2-08)

**043. Specialized Medical Equipment Provider Qualifications.** Providers of specialized medical equipment and supplies must be enrolled in the Medicaid program as participating medical vendor providers. (3-19-07)

**054. Nursing Service Provider Qualifications.** Nursing Service Providers must be licensed as an R.N. or L.P.N. in Idaho or be practicing on a federal reservation and be licensed in another state. (3-19-07)

- 065. Psychiatric Consultation Provider Qualifications.** Psychiatric Consultation Providers must have: (3-19-07)
- a.** A master's degree in a behavioral science; (3-19-07)
  - b.** Be licensed in accordance with state law and regulations; or (3-19-07)
  - c.** A bachelor's degree and work for an agency with direct supervision from a licensed or Ph.D. psychologist and have one (1) year's experience in treating severe behavior problems. (4-2-08)
  - d.** Psychiatric consultation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)
- 076. Service Coordination.** Service coordinators and service coordination agencies must meet the requirements specified in Section 729 of these rules unless specifically modified by another section of these rules. (3-19-07)
- 087. Consultation Services.** Services must be provided through a Personal Assistance Agency by a person who has demonstrated skills in training participants/family members in hiring, firing, training, and supervising their own care providers. (3-19-07)
- 098. Adult Residential Care Providers.** Adult Residential Care providers will meet all applicable state laws and regulations. In addition, the provider must ensure that adequate staff are provided to meet the needs of the participants accepted for admission. Adult residential care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.03.19, "Rules Governing Certified Family Homes," and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho." (4-2-08)
- 109. Home Delivered Meals.** Providers must be a public agency or private business and must be capable of: (3-19-07)
- a.** Supervising the direct service; (3-19-07)
  - b.** Providing assurance that each meal meets one-third (1/3) of the recommended daily allowance, as defined by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; (3-19-07)
  - c.** Delivering the meals in accordance with the plan for care, in a sanitary manner and at the correct temperature for the specific type of food; (3-19-07)
  - d.** Maintaining documentation that the meals served are made from the highest USDA grade for each specific food served; and (3-19-07)
  - e.** Being inspected and licensed as a food establishment by the district health department. (3-19-07)
- 110. Personal Emergency Response Systems.** Providers must demonstrate that the devices installed in waiver participant's homes meet Federal Communications Standards, Underwriter's Laboratory Standards, or equivalent standards. (3-19-07)
- 121. Adult Day Care.** Facilities that provide adult day care must be maintained in safe and sanitary manner. (3-30-07)
- a.** Facilities will provide the necessary space and staff to meet the needs of the participants accepted by the provider. Supervision must be provided by the facility as necessary, to assure the safety and comfort of participants served. (3-19-07)



**b.** Providers who accept participants into their homes for services must maintain the homes in a safe and sanitary manner. Supervision must be provided by the provider as necessary to assure the safety and comfort of participants served. (3-30-07)

**c.** Adult day care providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**132. Assistive Technology.** All items must meet applicable standards of manufacture, design and installation. The equipment must be the most cost effective to meet the participant's need. (3-19-07)

**143. Assisted Transportation Services.** See Subsection 329.032 of this rule for provider qualifications. (~~3-19-07~~)(\_\_\_\_)

**154. Attendant Care.** See Subsection 329.032 of this rule for provider qualifications. Attendant care providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (~~4-2-08~~)(\_\_\_\_)

**165. Homemaker Services.** The homemaker must be an employee of record or fact of an agency. Homemaker service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**176. Home Modifications.** All services must be provided in accordance with applicable state or local building codes and meet state or local building, plumbing, and electrical requirements for certification. (3-19-07)

**187. Residential Habilitation Provider Qualifications.** Residential habilitation services must be provided by an agency that is capable of supervising the direct services provided. Individuals who provide residential habilitation services in their own home must be certified by the Department as a certified family home and must be affiliated with a residential habilitation agency. The residential habilitation agency provides oversight, training, and quality assurance to the certified family home provider. Individuals who provide residential habilitation services in the home of the participant (supported living), must be employed by a residential habilitation agency. Providers of residential habilitation services must meet the following requirements: (3-30-07)

- a.** Direct service staff must meet the following minimum qualifications: (3-30-07)
  - i.** Be at least eighteen (18) years of age; (3-30-07)
  - ii.** Be a high school graduate or have a GED or demonstrate the ability to provide services according to a plan of care; (3-30-07)
  - iii.** Have current CPR and First Aid certifications; (3-30-07)
  - iv.** Be free from communicable diseases; (3-30-07)
  - v.** Each staff person assisting with participant medications must successfully complete and follow the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing or other Department-approved training. (3-30-07)
  - vi.** Residential habilitation providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks;" (4-2-08)
  - vii.** Have appropriate certification or licensure if required to perform tasks which require certification or licensure. Direct service staff must also have taken a traumatic brain injury training course approved by the Department. (3-30-07)
- b.** The provider agency is responsible for providing direct service staff with a traumatic brain injury

training course approved by the Department, and training specific to the needs of the participant. Skill training may be provided by a Program Coordinator who has demonstrated experience in writing skill training programs, if no agency is available in their geographic area as outlined in Subsection 329.187.c. of this rule. ~~(3-30-07)~~(\_\_\_\_)

**c.** Residential habilitation providers who are unable to be employed by an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services by a program coordinator who has a valid service coordination provider agreement with the Department and who has taken a traumatic brain injury training course approved by the Department. (3-30-07)

**d.** Prior to delivering services to a participant, direct service staff must complete an orientation program. The orientation program must include the following subjects: (3-30-07)

- i. Purpose and philosophy of services; (3-30-07)
- ii. Service rules; (3-30-07)
- iii. Policies and procedures; (3-30-07)
- iv. Proper conduct in relating to waiver participants; (3-30-07)
- v. Handling of confidential and emergency situations that involve the waiver participant; (3-30-07)
- vi. Participant rights; (3-30-07)
- vii. Methods of supervising participants; (3-30-07)
- viii. Working with individuals with traumatic brain injuries; and (3-30-07)
- ix. Training specific to the needs of the participant. (3-30-07)

**e.** Additional training requirements must be completed within six (6) months of employment or affiliation with the residential habilitation agency and include at a minimum: (3-30-07)

- i. Instructional techniques: Methodologies for training in a systematic and effective manner; (3-30-07)
- ii. Managing behaviors: Techniques and strategies for teaching adaptive behaviors; (3-30-07)
- iii. Feeding; (3-30-07)
- iv. Communication; (3-30-07)
- v. Mobility; (3-30-07)
- vi. Activities of daily living; (3-30-07)
- vii. Body mechanics and lifting techniques; (3-30-07)
- viii. Housekeeping techniques; and (3-30-07)
- ix. Maintenance of a clean, safe, and healthy environment. (3-30-07)

**f.** The provider agency will be responsible for providing on-going training specific to the needs of the participant as needed; and (3-30-07)

**g.** When residential habilitation services are provided in the provider's home, the provider must meet the requirements in IDAPA 16.03.19, "Rules Governing Certified Family Homes." Non-compliance with the

certification process is cause for termination of the provider agreement or contract. (3-30-07)

**198. Day Rehabilitation Provider Qualifications.** Providers of day rehabilitation services must have a minimum of two (2) years of experience working directly with persons with a traumatic brain injury, must provide documentation of standard licensing specific to their discipline, and must have taken a traumatic brain injury course approved by the Department. Day rehabilitation providers who provide direct care and services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**209. Supported Employment Service Providers.** Supported employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State-approved provider, and have taken a traumatic brain injury training course approved by the Department. Supported employment service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

**210. Behavior Consultation or Crisis Management Service Providers.** Behavior consultation or crisis management providers must meet the following: (3-30-07)

**a.** Have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, or a closely related course of study; (3-30-07)

**b.** Be a licensed pharmacist; or (3-30-07)

**c.** Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D., with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (3-30-07)

**d.** Take a traumatic brain injury training course approved by the Department. (3-30-07)

**e.** Emergency back-up providers must also meet the minimum provider qualifications under residential habilitation services. (3-30-07)

**f.** Behavior consultation or crisis management service providers who provide direct care or services must satisfactorily complete a criminal history and background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (4-2-08)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-0901

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2010.

**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, 56-203, and 56-250 through 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, October 21, 2009.

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 changing these rules to allow for the development of a uniform, state-wide financial management model for all Medicaid programs. This will allow all fiscal services provided to Medicaid participants, that are self-directing, to operate under the administrative rules. Current rules are written only for Home and Community-Based Services waiver services for individuals with developmental disabilities (HCBS DD).

The following is a summary of the proposed changes under this docket:

1. Align, clarify, and augment the rules that govern self-direction programs to include self-direction services under the Home and Community-Based Services waiver for the Aged and Disabled (HCBS A&D).
2. Replace the requirement for a contract with the fiscal employer agent with the requirement to use a provider agreement.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate as it is necessary to protect the public health, safety, or welfare.

**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 as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. The negotiated rulemaking was informal. No "Notice of Intent to Promulgate Rules" was published.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and 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, October 28, 2009.

DATED this 2nd day of September, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0313-0901

**001. TITLE AND SCOPE.**

**01. Title.** ~~These title of these rules will be cited as is~~ IDAPA 16.03.13, "Consumer-Directed Services." (3-30-07)(1-1-10)T

**02. Scope.** ~~Self-Directed Community Supports (SDCS) is a flexible program option for participants eligible for the Home and Community Based Services – Developmental Disabilities (HCBS-DD) waiver. The SDCS option allows the eligible participant to: choose the type and frequency of supports he wants, negotiate the rate of payment, and hire the person or agency he prefers to provide those supports. These rules cover benefit options for participants who are eligible for consumer-directed services in Idaho.~~ (3-30-07)(1-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Criminal History Check Requirements for Self-Directed Community Supports.** (1-1-10)T

~~01a.~~ Compliance with Department Criminal History Check. The fiscal ~~support broker and~~ ~~employer~~ agent must verify that each ~~support broker and~~ community support worker, whose criminal history check has not been waived by the participant, has complied with IDAPA 16.05.06, "Criminal History and Background Checks." When a participant chooses to waive the criminal history check requirement for a community support worker, the waiver must be completed in accordance with Section 150 of these rules. (3-30-07)(1-1-10)T

~~02b.~~ Availability to Work or Provide Service. Participants, at their discretion, may review the completed application and allow the community support worker to provide services on a provisional basis if no disqualifying offenses listed in IDAPA 16.05.06, "Criminal History and Background Checks," are disclosed. (3-30-07)

~~03c.~~ Additional Criminal Convictions. Once criminal history clearances have been received, any additional criminal convictions must be immediately reported by the community support worker to the participant and by the participant to the Department. (3-30-07)(1-1-10)T

~~04d.~~ Notice of Pending Investigations or Charges. Once criminal history clearances have been received, any charges or investigations for abuse, neglect or exploitation of any vulnerable adult or child, criminal charges, or substantiated adult protection or child protection complaints, must be immediately reported by the community support worker to the participant and by the participant to the Department. (3-30-07)(1-1-10)T

~~05e.~~ Providers Subject to Criminal History Check Requirements. A Each community support worker;

who has not had the requirement waived by the participant, and ~~each~~ support broker as defined in Section 010 of these rules, must participate in a criminal history check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-30-07)~~(1-1-10)T

**02. Criminal History Check Requirements for Financial Management Co-Employer.** Each financial management co-employer must participate in a criminal history check as required by Section 39-5604, Idaho Code. The criminal history check must be conducted in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (1-1-10)T

**010. DEFINITIONS.**

**01. Circle of Supports.** People who encourage and care about the participant and provide unpaid supports. (3-30-07)

**02. Community Support Worker.** An individual, agency, or vendor selected and paid by the participant to provide community support worker services. (3-30-07)

**03. Community Support Worker Services.** Community support worker services are those identified supports listed in Section 110 of these rules. (3-30-07)

**04. Employer of Record.** The entity on record with the IRS and Idaho State Tax Commission that is responsible for paying employees and for withholding required taxes for its employees. (1-1-10)T

**05. Employment Agreement.** An employment agreement is a signed agreement between an employer and that employer's employee that defines the goods and services that are to be provided by the employee for the employer. (1-1-10)T

**046. Financial Management Services (FMS).** Services provided by a fiscal ~~employer~~ agent that include: ~~(3-30-07)~~(1-1-10)T

**a.** Financial guidance and support to the participant by tracking individual expenditures and monitoring overall budgets; (3-30-07)

**b.** Performing payroll services; and (3-30-07)

**c.** Handling billing and employment related documentation responsibilities. (3-30-07)

**07. Fiscal Agent.** An agency that provides financial management services to participants. (1-1-10)T

**058. Fiscal Employer Agent (FEA).** ~~An agency~~ fiscal agent that provides ~~financial management~~ services to participants who have chosen the SDCS option. The fiscal employer agent (FEA) is appointed by the participant and their duties are defined under Section 3504 of the Internal Revenue Code (26 USC 3504). ~~(3-30-07)~~(1-1-10)T

**09. Financial Management Co-Employer.** A fiscal agent that provides financial management services to participants and acts as a co-employer with the participant, that allows the participant receiving personal assistance services from a community services worker, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training, and dismissing his personal assistant, regardless of who the employer of record is, and control over the manner in which services are delivered. (1-1-10)T

**10. Financial Management Co-Employer Services (FMCS).** Financial Management Co-Employer Services is the name of the program option for participants eligible for the Home and Community-Based Services waiver for the Aged and Disabled (HCBS A&D), who choose to utilize the services of a financial management co-employer. (1-1-10)T

**0611. Goods.** Tangible products or merchandise that are authorized on the support and spending plan. (3-30-07)

**0712. Guiding Principles for the SDCS Option.** Self-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles: (3-30-07)

- a. Freedom for the participant to make choices and plan his own life; (3-30-07)
- b. Authority for the participant to control resources allocated to him to acquire needed supports; (3-30-07)
- c. Opportunity for the participant to choose his own supports; (3-30-07)
- d. Responsibility for the participant to make choices and take responsibility for the result of those choices; and (3-30-07)
- e. Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community. (3-30-07)

**13. HCBS A&D Waiver.** Home and Community-Based Services waiver for the Aged and Disabled. (1-1-10)T

**14. HCBS DD Waiver.** Home and Community-Based Services waiver for individuals with developmental disabilities. (1-1-10)T

**15. Personal Assistance Services.** In accordance with Section 39-5602, Idaho Code, personal assistance services include both attendant care services and personal care services and means services that involve personal and medically-oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care or IADLs. These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services must be based on the participant's abilities and limitations, regardless of age, medical diagnosis or other category of disability. (1-1-10)T

**16. Readiness Review.** A review conducted by the Department used to ensure that each fiscal employer agent and financial management co-employer is prepared to enter into and comply with the requirements of the provider agreement and this chapter of rules. (1-1-10)T

**17. Self-Directed Community Supports (SDCS).** Self-Directed Community Supports (SDCS) is a flexible program option for participants eligible for the Home and Community-Based Services Developmental Disabilities (HCBS DD) or Aged and Disabled (HCBS A&D) waivers. Under the SDCS option, the participant acts as the employer of record. This option allows the eligible participant to choose the type and frequency of supports he wants, negotiate the rate of payment, and hire the person or agency he prefers to provide those supports. (1-1-10)T

**18. Support and Spending Plan.** A support and spending plan is a document that functions as a participant's plan of care when the participant is eligible for and has chosen a self-directed service option. This document identifies the goods or services, or both, selected by a participant and the cost of each of the identified goods and services. The participant uses this document to manage his individualized budget. (1-1-10)T

**0819. Supports.** Services provided for a participant, or a person who provides a support service. A support service may be a paid service provided by a community support worker, or an unpaid service provided by a natural support, such as a family member, a friend, neighbor, or other volunteer. A person who provides a support service for pay is a paid support. A person who provides a volunteer support service is a natural support. (3-30-07)

**0920. Support Broker.** An individual who advocates on behalf of the participant and who is hired by the participant to provide support broker services. (3-30-07)

**1021. Support Broker Services.** Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (3-30-07)

22. Waiver Services. A collective term that refers to services provided under either the HCBS DD or A&D waivers. (1-1-10)T

011. -- 049. (RESERVED).

**050. ELIGIBILITY DETERMINATION FOR CONSUMER-DIRECTED SERVICES.**

**01. Eligibility for SDCS Option.** (1-1-10)T

**a.** Determination of Medicaid and Home and Community-Based Services - DD or A&D Waiver Requirements. In order to choose the SDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing (HCBS-DD) or (HCBS A&D) waiver program requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (1-1-10)T

**b.** Participant Agreement Form. The participant and his legal representative, if one exists, must agree in writing to the following, using a Department-approved form: (1-1-10)T

i. Accept the guiding principles for the SDCS option, as defined under Section 010 of these rules; (1-1-10)T

ii. Agree to meet the participant responsibilities outlined in Section 120 of these rules; (1-1-10)T

iii. Take responsibility for and accept potential risks, and any resulting consequences, for their support choices. (1-1-10)T

**c.** Power of Attorney. If the participant has granted power of attorney to another individual, the participant must provide a copy of Idaho State Tax Commission Power of Attorney (Form TC00110). The individual with power of attorney for the participant must agree in writing to honor the choices of the participant. (1-1-10)T

**02. Eligibility for FMCS Option.** (1-1-10)T

**a.** Determination of Medicaid Home and Community-Based Services A&D Waiver Requirements. In order to choose the FMCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing HCBS A&D waiver program requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (1-1-10)T

**b.** Power of Attorney. If the participant has granted power of attorney to another individual, the participant must provide a copy of Idaho State Tax Commission Power of Attorney (Form TC00110). The individual with power of attorney for the participant must agree in writing to honor the choices of the participant. (1-1-10)T

050. -- 099. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~101. ELIGIBILITY.~~**

~~**01.** Determination of Medicaid and Home and Community Based Services — DD Requirements. In order to choose the SDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing (HCBS-DD) waiver program requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits."~~ (3-30-07)

~~**02.** Participant Agreement Form. The participant, and his legal representative, if one exists, must agree in writing using a Department approved form to the following:~~ (3-30-07)



- ~~a-~~ Accept the guiding principles for the SDCS option, as defined in Section 010 of these rules; (3-30-07)
- ~~b-~~ Agree to meet the participant responsibilities outlined in Section 120 of these rules; (3-30-07)
- ~~c-~~ Take responsibility for and accept potential risks, and any resulting consequences, for their support choices. (3-30-07)
- ~~03-~~ **Legal Representative Agreement.** The participant's legal representative, if one exists, must agree in writing to honor the choices of the participant as required by the guiding principles for the SDCS option. (3-30-07)

1021. -- 109. (RESERVED).

**110. PAID SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - COVERAGE AND LIMITATIONS.**  
The participant must purchase financial management services and support broker services to participate in the SDCS option. The participant must purchase goods and hire community support workers through the fiscal employer agent. (3-30-07)(1-1-10)T

**01. Fiscal Financial Management Services.** The Department will ~~contract with a~~ enter into a provider agreement with a qualified fiscal employer agent, as defined in Section 010 of these rules, to provide financial management services to a participant who chooses ~~the self-directed~~ the SDCS option. (3-30-07)(1-1-10)T

**02. Support Broker.** Support broker services are provided by a qualified support broker. (3-30-07)

**03. HCBS DD Waiver Community Support Worker.** The community support worker provides identified supports to the participant. If the identified support requires specific licensing or certification within the state of Idaho, the identified community support worker must obtain the applicable license or certification. Identified supports include activities that address the HCBS DD waiver participant's preference for: (3-30-07)(1-1-10)T

- a. Job support to help the participant secure and maintain employment or attain job advancement; (3-30-07)
- b. Personal support to help the participant maintain health, safety, and basic quality of life; (3-30-07)
- c. Relationship support to help the participant establish and maintain positive relationships with immediate family members, friends, spouse, or others in order to build a natural support network and community; (3-30-07)
- d. Emotional support to help the participant learn and practice behaviors consistent with his goals and wishes while minimizing interfering behaviors; (3-30-07)
- e. Learning support to help the participant learn new skills or improve existing skills that relate to his identified goals; (3-30-07)
- f. Transportation support to help the participant accomplish his identified goals; (3-30-07)
- g. Adaptive equipment identified in the participant's plan that meets a medical or accessibility need and promotes his increased independence; and (3-30-07)
- h. Skilled nursing support identified in the participant's plan that is within the scope of the Nurse Practice Act and is provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (3-30-07)

**04. HCBS A&D Waiver Community Support Worker.** The community support worker provides identified supports to the participant. Identified community support worker activities for HCBS A&D participants are: (1-1-10)T

a. Provision of identified supports to the participant. If the identified support requires specific licensing or certification within the state of Idaho, the identified community support worker must obtain the applicable license or certification; and (1-1-10)T

b. Attendant care and homemaker services as described under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 326 and 329. (1-1-10)T

111. -- 119. (RESERVED).

**120. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - PARTICIPANT RESPONSIBILITIES.**

With the assistance of the support broker and the legal representative, if one exists, the participant is responsible for the following: (~~3-30-07~~)(1-1-10)T

**01. Guiding Principles.** Accepting and honoring the guiding principles for the SDCS option found in Section 010 of these rules. (3-30-07)

**02. Person-Centered Planning.** Participating in the person-centered planning process in order to identify and document support and service needs, wants, and preferences. (3-30-07)

**03. Rates for HCBS DD Waiver Services.** Negotiating payment rates for all paid community support worker services he wants to purchase, ensuring rates negotiated for supports and services do not exceed the prevailing market rate, and including the details in the employment agreements. (~~3-30-07~~)(1-1-10)T

**04. Rates for HCBS A&D Waiver Services.** Negotiating payment rates for Department-approved community support worker services he wants to purchase, ensuring rates negotiated for services do not exceed the prevailing market rate, and including the details in the employment agreements. (1-1-10)T

**045. Agreements.** Completing and implementing agreements for the fiscal employer agent, the support broker and community support workers and submitting the agreements to the fiscal employer agent. These agreements must be submitted on Department-approved forms. (3-30-07)

**056. Agreement Detail.** Ensuring that employment agreements specifically identify the type of support being purchased, the rate negotiated for the support, and the frequency and duration of the scheduled support or service. The participant is responsible for ensuring that each employment agreement: clearly identifies the qualifications needed to provide the support or service; includes a statement signed by the hired worker that he possesses the needed skills; and the signature of the participant that verifies the same. Additionally, each employment agreement will include statements that: the participant is the employer even though payment comes from a third party; employees are under the direction and control of the participant; and no employer-related claims will be filed against the Department. (3-30-07)

**067. Plan.** Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (3-30-07)

**078. Time Sheets and Invoices.** Reviewing and verifying that supports being billed were provided and indicating that he approves of the bill by signing the time sheet or invoice. (~~3-30-07~~)(1-1-10)T

**089. Quality Assurance and Improvement.** Providing feedback to the best of his ability regarding his satisfaction with the supports he receives and the performance of his community support workers. (~~3-30-07~~)(1-1-10)T

121. -- 129. (RESERVED).

**130. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - FISCAL EMPLOYER AGENT REQUIREMENTS AND LIMITATIONS.**

**01. Requirements.** The fiscal employer agent must meet the requirements outlined in its *contract*

provider agreement with the Department, and Section 3504 of the Internal Revenue Code (26 USC 3504).

~~(3-30-07)~~(1-1-10)T

- 02. Limitations.** The fiscal employer agent must not: (3-30-07)
- a.** Provide any other direct services to the participant, to ensure there is no conflict of interest; or (3-30-07)
- b.** Employ the guardian, parent, spouse, payee, or conservator of the participant, or have direct control over the participant's choice. (3-30-07)

**131. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES.**

The fiscal employer agent performs financial management services for each participant. Prior to providing financial management services the participant and the fiscal employer agent must enter into a written agreement. Financial management services include: ~~(3-30-07)~~(1-1-10)T

- 01. Payroll and Accounting.** Providing payroll and accounting supports to participants that have chosen the Self-Directed Community Supports option; (3-30-07)
- 02. Financial Reporting.** Performing financial reporting for employees of each participant. (3-30-07)
- 03. Information Packet.** Preparing and distributing a packet of information, including Department-approved forms for agreements, for the participant hiring his own staff. (3-30-07)
- 04. Time Sheets and Invoices.** Processing and paying time sheets for community support workers and support brokers, as authorized by the participant, according to the participant's Department-authorized support and spending plan; (3-30-07)
- 05. Taxes.** Managing and processing payment of required state and federal employment taxes for the participant's community support worker and support broker. (3-30-07)
- 06. Payments for Goods and Services.** Processing and paying invoices for goods and services, as authorized by the participant, according to the participant's support and spending plan. (3-30-07)
- 07. Spending Information.** Providing each participant with reporting information that will assist the participant with managing the individualized budget. (3-30-07)
- 08. Quality Assurance and Improvement.** Participating in Department quality assurance activities. (3-30-07)

**132. -- 134. (RESERVED).**

**135. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - SUPPORT BROKER REQUIREMENTS AND LIMITATIONS.**

**01. Initial Application to Become a Support Broker for HCBS DD or A&D Waiver Participants.**  
An individual interested in becoming a support broker for HCBS DD or A&D waiver participants must complete the Department-approved application to document that he: ~~(3-30-07)~~(1-1-10)T

- a.** Is eighteen (18) years of age or older; (3-30-07)
- b.** Has skills and knowledge typically gained by completing college courses or community classes or workshops that count toward a degree in the human services field; and (3-30-07)
- c.** ~~Has~~ When the HCBS DD or A&D waiver participant has been diagnosed with a developmental delay, the support broker must have at least two (2) years verifiable experience ~~with the target population~~ working

with individuals with developmental disabilities and knowledge of services and resources in the developmental disabilities field. ~~(3-30-07)~~(1-1-10)T

**02. Application Exam.** Applicants that meet the minimum requirements outlined in this section will receive training materials and resources to prepare for the application exam. Applicants must earn a score of seventy percent (70%) or higher to pass. Applicants may take the exam up to three (3) times. After the third time, the applicant will not be allowed to retest for twelve (12) months from the date of the last exam. Applicants who pass the exam, and meet all other requirements outlined in these rules, will be eligible to enter into an provider employment agreement with the Department participant. ~~(3-30-07)~~(1-1-10)T

**03. Required Ongoing Training.** All support brokers must document a minimum of twelve (12) hours per year of ongoing, relevant training in the provision of support broker services. Up to six (6) hours of the required twelve (12) hours may be obtained through independent self-study. The remaining hours must consist of classroom training. (3-30-07)

**04. Termination.** The Department participant may terminate the provider employment agreement when the support broker: ~~(3-30-07)~~(1-1-10)T

- a. Is no longer able to pass a criminal history background check as outlined in Section 009 of these rules. (3-30-07)
- b. Puts the health or safety of the participant at risk by failing to perform job duties as outlined in the employment agreement. (3-30-07)
- c. Does not receive and document the required ongoing training. (3-30-07)

**05. Limitations.** The support broker must not: (3-30-07)

- a. Provide or be employed by an agency that provides paid community supports worker services under Section 150 of these rules to the same participant; and ~~(3-30-07)~~(1-1-10)T
- b. Be the guardian, parent, spouse, payee, or conservator of the participant, or have direct control over the participant's choices. Additionally, the support broker must not be in a position to both influence a participant's decision making and receive undue financial benefit from the participant's decisions. (3-30-07)

**136. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - SUPPORT BROKER DUTIES AND RESPONSIBILITIES.**

**01. Support Broker Initial Documentation.** Prior to beginning employment for the participant, the support broker must complete the packet of information provided by the fiscal employer agent and submit it to the fiscal employer agent. This packet must include documentation of: (3-30-07)

- a. Support broker application approval by the Department; (3-30-07)
- ~~b. A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Criminal History and Background Checks"; and (3-30-07)~~

**eb.** A completed employment agreement with the participant that identifies the specific tasks and services that are required of the support broker. The employment agreement must include the negotiated hourly rate for the support broker, and the type, frequency, and duration of services. The negotiated rate must not exceed the maximum hourly rate for support broker services established by the Department. (3-30-07)

**02. Required Support Broker Duties.** Support broker services may include only a few required tasks or may be provided as a comprehensive service package depending on the participant's needs and preferences. At a minimum, the support broker must: (3-30-07)

- a. Participate in the person-centered planning process; (3-30-07)

**b.** Develop a written support and spending plan with the participant that includes the supports that the participant needs and wants, related risks identified with the participant's wants and preferences, and a comprehensive risk plan for each potential risk that includes at least three (3) backup plans should a support fail. This plan must be authorized by the Department; (3-30-07)

**c.** Assist the participant to monitor and review his budget; (3-30-07)

**d.** Submit documentation regarding the participant's satisfaction with identified supports as requested by the Department; (3-30-07)

**e.** Participate with Department quality assurance measures, as requested; (3-30-07)

**f.** Assist the participant to complete the annual re-determination process as needed, including updating the support and spending plan and submitting it to the Department for authorization; (3-30-07)

**g.** Assist the participant, as needed, to meet the participant responsibilities outlined in Section 120 of these rules and assist the participant, as needed, to protect his own health and safety; and (3-30-07)

**h.** Complete the Department-approved criminal history check waiver form when a participant chooses to waive the criminal history check requirement for a community support worker. Completion of this form requires that the support broker provide education and counseling to the participant and his circle of support regarding the risks of waiving a criminal history check and assist with detailing the rationale for waiving the criminal history check and how health and safety will be protected. (3-30-07)

**03. Additional Support Broker Duties.** In addition to the required support broker duties, each support broker must be able to provide the following services when requested by the participant: (3-30-07)

**a.** Assist the participant to develop and maintain a circle of support; (3-30-07)

**b.** Help the participant learn and implement the skills needed to recruit, hire, and monitor community support workers; ~~(3-30-07)~~(1-1-10)T

**c.** Assist the participant to negotiate rates for paid community support workers; (3-30-07)

**d.** Maintain documentation of supports provided by each community support worker and participant's satisfaction with these supports; (3-30-07)

**e.** Assist the participant to monitor community support worker services; ~~(3-30-07)~~(1-1-10)T

**f.** Assist the participant to resolve employment-related problems; and (3-30-07)

**g.** Assist the participant to identify and develop community resources to meet specific needs. (3-30-07)

**04. Termination of Support Broker Services.** If a support broker decides to end services with a participant, he must give the participant at least thirty (30) days' written notice prior to terminating services. The support broker must assist the participant to identify a new support broker and provide the participant and new support broker with a written service transition plan by the date of termination. The transition plan must include an updated support and spending plan that reflects current supports being received, details about the existing community support workers, and unmet needs. (3-30-07)

**137. -- 139. (RESERVED).**

**140. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - COMMUNITY SUPPORT WORKER LIMITATIONS.**

A paid community support worker must not be the spouse of the participant and must not have direct control over the

participant's choices, must avoid any conflict of interest, and must not receive undue financial benefit from the participant's choices. A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following: ~~(3-30-07)~~(1-1-10)T

**01. Participant Responsibilities.** The legal guardian must not be paid to perform or to assist the participant in meeting the participant responsibilities outlined in Section 120 of these rules. (3-30-07)

**02. Legal Guardian Obligations.** The legal guardian must not be paid to fulfill any obligations he is legally responsible to fulfill as outlined in the guardianship or conservator order from the court. (3-30-07)

**141. -- 149. (RESERVED).**

**150. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - PAID COMMUNITY SUPPORT WORKER DUTIES AND RESPONSIBILITIES.**

**01. Initial Documentation.** Prior to providing goods or services to the participant, the community support worker must complete the packet of information provided by the fiscal employer agent and submit it to the fiscal employer agent. When the community support worker will be providing services, this packet must include documentation of: (3-30-07)

**a.** A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Criminal History and Background Checks," or documentation that this requirement has been waived by the participant. This documentation must be provided on a Department-approved form and must include the rationale for waiving the criminal history check and describe how health and safety will be assured in lieu of a completed criminal history check. Individuals listed on a state or federal provider exclusion list must not provide paid supports; (3-30-07)

**b.** A completed employment agreement with the participant that specifically defines the type of support being purchased, the negotiated rate, and the frequency and duration of the support to be provided. If the community support worker is provided through an agency, the employment agreement must include the specific individual who will provide the support and the agency's responsibility for tax-related obligations; (3-30-07)

**c.** Current state licensure or certification if identified support requires certification or licensure; and (3-30-07)

**d.** A statement of qualifications to provide supports identified in the employment agreement. (3-30-07)

**02. Employment Agreement.** The community support worker must deliver supports as defined in the employment agreement. (3-30-07)

**03. Documentation of Supports.** The community support worker must track and document the time required to perform the identified supports and accurately report the time on the time sheets provided by the participant's fiscal employer agent or complete an invoice that reflects the type of support provided, the date the support was provided, and the negotiated rate for the support provided, for submission to the participant's fiscal employer agent. (3-30-07)

**04. Time sheets and Invoices.** The community support worker must obtain the signature of the participant or his legal representative on each completed time sheet or invoice prior to submitting the document to the fiscal employer agent for payment. Time sheets or invoices that are not signed by the community support worker and the participant or his legal representative will not be paid. ~~(3-30-07)~~(1-1-10)T

**151. -- 159. (RESERVED).**

**160. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) - SUPPORT AND SPENDING PLAN DEVELOPMENT.**

**01. Support and Spending Plan Requirements.** The participant, with the help of his support broker, must develop a comprehensive support and spending plan based on the information gathered during the person-centered planning. The support and spending plan is not valid until authorized by the Department, *and must include the following:* ~~(3-30-07)~~(1-1-10)T

**02. Support and Spending Plan Requirements for HCBS DD Waiver Participants.** The support and spending plan requirements for HCBS DD waiver participants must include the following: (1-1-10)T

**a.** The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (3-30-07)

**b.** Paid or non-paid self-directed community supports\* worker services that focus on the participant's wants, needs, and goals in the following areas: ~~(3-30-07)~~(1-1-10)T

i. Personal health and safety including quality of life preferences; (3-30-07)

ii. Securing and maintaining employment; (3-30-07)

iii. Establishing and maintaining relationships with family, friends and others to build the participant's circle of supports; (3-30-07)

iv. Learning and practicing ways to recognize and minimize interfering behaviors; and (3-30-07)

v. Learning new skills or improving existing ones to accomplish set goals. (3-30-07)

**c.** Support needs such as: (3-30-07)

i. Medical care and medicine; (3-30-07)

ii. Skilled care including therapies or nursing needs; (3-30-07)

iii. Community involvement; (3-30-07)

iv. Preferred living arrangements including possible roommate(s); and (3-30-07)

v. Response to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (3-30-07)

**d.** Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (3-30-07)

**e.** Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; and (3-30-07)

**f.** The budgeted amounts planned in relation to the participant's needed supports. Community support worker employment agreements submitted to the fiscal employer agent must identify the negotiated rates agreed upon with each community support worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The fiscal employer agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment. (3-30-07)

**03. Support and Spending Plan Requirements for HCBS A&D Waiver Participants.** The support and spending plan requirements for HCBS A&D waiver participants must include the following: (1-1-10)T

**a.** The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community; (1-1-10)T

b. Paid or non-paid self-directed community support worker services that focus on the participant's wants, needs, and goals; (1-1-10)T

c. Responds to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any; (1-1-10)T

d. Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (1-1-10)T

e. Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; and (1-1-10)T

f. The budgeted amounts planned in relation to the participant's needed supports. Community support worker employment agreements submitted to the fiscal employer agent must identify the negotiated rates agreed upon with each community support worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The fiscal employer agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment. (1-1-10)T

**024.** **Support and Spending Plan Limitations.** Support and spending plan limitations include: (3-30-07)

a. ~~Traditional~~ Only consumer-directed Medicaid waiver services and ~~traditional~~ consumer-directed rehabilitative or habilitative services ~~must not~~ can be purchased under the SDCS option for HCBS DD waiver participants. ~~Because~~ Since an HCBS DD waiver participant ~~cannot~~ only receive ~~these traditional services and self~~ consumer-directed services ~~at the same time~~, the participant, the support broker, and the Department must all work together to assure that there is no interruption of required services when ~~moving between traditional~~ transitioning participants from waiver services ~~and~~ covered under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," to the SDCS option; (~~3-30-07~~)(1-1-10)T

b. Paid community support~~s~~ worker services must not be provided in a group setting with recipients of ~~traditional~~ nonconsumer-directed Medicaid waiver, rehabilitative or habilitative services. This limitation does not preclude a participant who has selected the self-directed option from choosing to live with recipients of ~~traditional~~ nonconsumer-directed Medicaid services; (~~3-30-07~~)(1-1-10)T

c. All paid community support~~s~~ worker services must fit into one (1) or more types of community support~~s~~ worker services categories described in Section 110 of these rules. Community support~~s~~ worker services that are not medically necessary or that do not minimize the participant's need for institutionalization must only be listed as non-paid supports. Additionally, the support and spending plan must not include supports or services that are illegal, that adversely affect the health and safety of the participant, that do harm, or that violate or infringe on the rights of others; (~~3-30-07~~)(1-1-10)T

d. Support and spending plans that exceed the approved budget amount will not be authorized; and (3-30-07)

e. Time sheets or invoices that are submitted to the fiscal employer agent for payment that exceed the authorized support and spending plan amount will not be paid by the fiscal employer agent. (3-30-07)

**161. -- 1694.** (RESERVED).

**165. FINANCIAL MANAGEMENT CO-EMPLOYER SERVICES (FMCS) - COVERAGE REQUIREMENTS AND LIMITATIONS.**

The participant must purchase financial management co-employer services to participate in the FMCS option. The participant must hire community support workers through the financial management co-employer. (1-1-10)T



**01. Financial Management Co-Employer Services.** The Department will enter into a provider agreement with a qualified financial management co-employer, as defined in Section 010 of these rules, to provide financial management co-employer services to a participant who chooses the FMCS option. (1-1-10)T

**02. HCBS A&D Waiver Community Support Worker.** (1-1-10)T

**a.** The community support worker provides identified supports to the participant. If the identified support requires specific licensing or certification within the state of Idaho, the identified community support worker must obtain the applicable license or certification. (1-1-10)T

**b.** The available activities for community support workers for A&D waiver participants are attendant care and homemaker services as described under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 326 and 329. (1-1-10)T

**03. Responsible Parties for Fiscal Management Co-Employer Services.** To utilize the services of a fiscal management co-employer, the participant, participant's family, or the individual with power of attorney for the participant, must be able and willing to assume responsibility for the direction of the participant's care and for personnel activities such as provider selection and supervision. (1-1-10)T

**166. FINANCIAL MANAGEMENT CO-EMPLOYER SERVICES (FMCS) - SUPPORT AND SPENDING PLAN REQUIREMENTS.**

The support and spending plan requirements for HCBS A&D waiver participants must include the following: (1-1-10)T

**01. The Participant's Preferences and Interests.** The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (1-1-10)T

**02. Self-Directed Community Support Worker Services.** Paid or non-paid self-directed community support worker services that focus on the participant's wants, needs, and goals. (1-1-10)T

**03. Responses to Emergencies.** Responses to emergencies, including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (1-1-10)T

**04. Risks or Safety Concerns.** Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises. (1-1-10)T

**05. Sources of Payment for the Listed Supports and Services.** Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services. (1-1-10)T

**06. Participant's Needed Supports.** The budgeted amounts planned in relation to the participant's needed supports. The support and spending plan submitted to the financial management co-employer must identify the amount of attendant care and homemaker services being purchased, the frequency and duration of the services to be provided. The financial management co-employer will compare and match the support and spending plan to the time sheets or invoices prior to payment. (1-1-10)T

**167. FINANCIAL MANAGEMENT CO-EMPLOYER SERVICES (FMCS) - PROCEDURAL REQUIREMENTS.**

The participant as employer and the financial management co-employer as employer are both responsible for oversight to ensure that the services provided under the HCBS A&D waiver are provided in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Services," Sections 320 through 330. (1-1-10)T

**168. FINANCIAL MANAGEMENT CO-EMPLOYER SERVICES (FMCS) - PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Employment Status.** Unless otherwise specified by the Department, a financial management co-employer agency must be the employer of record of each community support worker. (1-1-10)T

**02. Exclusion of Spouses.** A financial management co-employer agent can not be a spouse of any participant to whom the provider is supplying services. (1-1-10)T

**03. Provider Qualifications.** Each financial management co-employer must have a signed provider agreement with the Department. Each financial management co-employer must meet the qualifications outlined in its provider agreement with the Department and the qualifications under this rule. (1-1-10)T

**04. Duties of the Financial Management Co-Employer.** Each financial management co-employer is responsible for the following duties: (1-1-10)T

**a.** To offer supportive services to enable participants or their families to hire, fire, and train community support workers; (1-1-10)T

**b.** To bill the Medicaid program for services approved and authorized by the Department; (1-1-10)T

**c.** To pay community support workers; (1-1-10)T

**d.** To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations. This must assure compliance with payroll requirements including payment of all FICA taxes, and state and federal tax withholding for community support workers; (1-1-10)T

**e.** To assure that community support workers providing services meet the standards and qualifications under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 329; (1-1-10)T

**f.** To maintain liability insurance coverage; (1-1-10)T

**g.** To conduct, at least annually, participant satisfaction or quality control reviews that are available to the Department and the general public; (1-1-10)T

**h.** To make referrals for service coordination when a need for such service is identified and the participant is eligible; and (1-1-10)T

**05. Criminal History Check.** All financial management co-employer providers must participate in a criminal history check as required by Section 39-5604, Idaho Code. The criminal history check must be conducted in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." (1-1-10)T

**169. FINANCIAL MANAGEMENT CO-EMPLOYER SERVICES (FMCS) - PROVIDER REIMBURSEMENT.**

The following criteria are used in determining reimbursement for providers of HCBS A&D waiver services under the FMCS option. (1-1-10)T

**01. Fee for Services.** HCBS A&D waiver service providers will be paid on a fee-for-service basis as established by the Department depending on the type of service provided. (1-1-10)T

**02. Calculation of Fees.** The fees calculated for HCBS A&D waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the participant's home or other service delivery location when the participant is not being provided waiver or state plan transportation. (1-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. CIRCLE OF SUPPORTS.**

The circle of support is a means of natural supports for the participant and consists of people who encourage and care about the participant. Work or duties the circle of supports perform on behalf of the participant are not paid.

(3-30-07)

**01. Focus of the Circle of Support.** The participant's circle of support should be built and operate with the primary goal of working in the interest of the participant. The group's role is to give and get support for the participant and to develop a plan of action, along with and on behalf of the participant, to help the participant accomplish his personal goals.

(3-30-07)

**02. Members of the Circle of Support.** A circle of support may include family members, friends, neighbors, co-workers, and other community members. When the participant's legal guardian is selected as a community support worker, the circle of support must include at least one (1) non-family member that is not the support broker. For the purposes of this chapter a family member is anyone related by blood or marriage to the participant or to the legal guardian.

(3-30-07)

**03. Selection and Duties of the Circle of Support.** Members of the circle of support are selected by the participant and commit to work within the group to:

(3-30-07)

**a.** Help promote and improve the life of the participant in accordance with the participant's choices and preferences; and

(3-30-07)

**b.** Meet on a regular basis to assist the participant to accomplish his expressed goals.

(3-30-07)

**04. Natural Supports.** A natural support may perform any duty of the support broker as long as the support broker still completes the required responsibilities listed in Subsection 136.02 of these rules. Additionally, any community support worker task may be performed by a qualified natural support person. Supports provided by a natural support person must be identified on the participant's support plan, but time worked does not need to be recorded or reported to the fiscal *employer* agent.

~~(3-30-07)~~(1-1-10)T

**181. -- 189. (RESERVED).**

#### **190. INDIVIDUALIZED BUDGET.**

The Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's *disability assessed needs*. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. The participant must work within the identified budget and acknowledge that he understands the budget figure is a fixed amount.

~~(3-30-07)~~(1-1-10)T

~~**01. Implementation of Budget Setting Methodology.** During the implementation phase of using the new individualized budget setting methodology, the budget calculation will include reviewing the participant's previous year's budget. When the calculated budget is less than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the calculated budget amount. When the calculated budget is greater than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the previous year's budget amount. The Department will collect information on discrepancies between the calculated budget and the previous year's budget as part of the ongoing assessment and improvement process of the budget setting methodology.~~

~~(3-30-07)~~

**021. Budget Amount Notification and Request for Reconsideration.** The Department notifies each participant of his set budget amount. The notification will include how the participant may request reconsideration of the set budget amount.

(3-30-07)

**032. Annual Re-Evaluation of Individualized Budgets.** Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget.

(3-30-07)

191. -- 199. (RESERVED).

**200. QUALITY ASSURANCE.**

The Department will implement quality assurance processes to assure: access to self-directed services, participant direction of plans and services, participant choice and direction of providers, safe and effective environments, and participant satisfaction with services and outcomes. (3-30-07)

**01. Participant Experience Survey (PES).** Each participant will have the opportunity to provide feedback to the Department about his satisfaction with self-directed services utilizing the PES. (3-30-07)

**02. HCBS DD Waiver Participant Experience Outcomes.** Participant experience information will be gathered at least annually in an interview by the Department, and will address the following participant outcomes: ~~(3-30-07)~~(1-1-10)T

- a. Access to care; (3-30-07)
- b. Choice and control; (3-30-07)
- c. Respect and dignity; (3-30-07)
- d. Community integration; and (3-30-07)
- e. Inclusion. (3-30-07)

**03. Fiscal ~~Employer~~ Agent Quality Assurance Activities.** The fiscal ~~employer~~ agent must participate in quality assurance activities identified by the Department such as readiness reviews, periodic audits, maintaining a list of criminal history check waivers, and timely reporting of accounting and satisfaction data. ~~(3-30-07)~~(1-1-10)T

**04. Community Support Workers and Support Brokers Quality Assurance Activities.** Community support workers and support brokers must participate and comply with quality assurance activities identified by the Department including performance evaluations, satisfaction surveys, quarterly review of services provided by a legal guardian, if applicable, and spot audits of time sheets and billing records. (3-30-07)

**05. Participant Choice of Paid Community Support Worker.** Paid community support workers must be selected by the participant, or his chosen representative, and must meet the qualifications identified in Section 150 of this rule. (3-30-07)

**06. Complaint Reporting and Tracking Process.** The Department will maintain a complaint reporting and tracking process to ensure participants, ~~workers~~ employees, and other supports have the opportunity to readily report instances of abuse, neglect, exploitation, or other complaints regarding the HCBS program. ~~(3-30-07)~~(1-1-10)T

**07. Quality Oversight Committee.** A Quality Oversight Committee consisting of participants, family members, community providers, and Department designees will review information and data collected from the quality assurance processes to formulate recommendations for program improvement. (3-30-07)

**08. Quarterly Quality Assurance Reviews.** On a quarterly basis, the Department will perform an enhanced review of services for those participants who have waived the criminal history check requirement for a community support worker or who have their legal guardian providing paid services. These reviews will assess ongoing participant health and safety and compliance with the approved support and spending plan. (3-30-07)

201. -- 209. (RESERVED).

**210. DISCONTINUATION OF ~~THE SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) OPTION~~ CONSUMER-DIRECTED SERVICES.**

The following requirements must be met or the Department may require the participant to discontinue ~~the SDCS option~~ consumer-directed services: ~~(3-30-07)~~(1-1-10)T

- 01. Required Supports.** (1-1-10)T
- a.** The SDCS participant is willing to work with a support broker and a fiscal employer agent. (~~3-30-07~~)(1-1-10)T
- b.** The FMCS participant is willing to work with a financial management co-employer. (1-1-10)T
- 02. Support and Spending Plan.** The participant's support and spending plan is being followed. (3-30-07)
- 03. Risk and Safety Back-Up Plans.** Back-up plans to manage risks and safety are being followed. (3-30-07)
- 04. Health and Safety Choices.** The participant's choices do not directly endanger his health, welfare and safety or endanger or harm others. (3-30-07)
- 211. -- 299. (RESERVED).**

**FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES**  
**(Sections 300-399)**

**300. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - DEFINITIONS.**  
For purposes of Sections 300 through 399, the following definitions apply: (1-1-10)T

- 01. Employee.** A community support worker employed by a participant receiving services under the SDCS option. (1-1-10)T
- 02. Employer.** A participant receiving services under the SDCS option. (1-1-10)T
- 03. Provider.** The term "provider" specifically refers to the fiscal employer agent providing financial management services to individuals participating in self-direction. (1-1-10)T
- 04. SFTP.** Secure file transfer protocol. A secure means of transferring data that allows certain Department staff to access information regarding self-direction participants. (1-1-10)T
- 05. Vendor.** Provides goods and services rendered by agencies and independent contractors in accord with a participant's support and spending plan. (1-1-10)T
- 06. Waiver 372 Report.** A report generated every payroll period by the provider; it provides a list and count of unduplicated recipients and payroll expenditures by service code, based on the date of service time frame specified by the user. (1-1-10)T

**301. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - SELF-DIRECTED COMMUNITY SUPPORTS.**

- 01. Federal Tax ID Requirement.** The fiscal employer agent will obtain a separate Federal Employer Identification Number (FEIN) specifically to file tax forms and to make tax payments on behalf of program participants under Section 3504 of the Internal Revenue Code (26 USC 3504). In addition, the provider must: (1-1-10)T
- a.** Maintain copies of the participant's FEIN, IRS FEIN notification letter, and Form SS-4 Request for FEIN in the participant's file. (1-1-10)T
- b.** Retire participant's FEIN when the participant is no longer an employer under the consumer-

directed program. (1-1-10)T

**02. Requirement to Report Irregular Activities or Practices.** The provider must report to the Department any facts regarding irregular activities or practices that may conflict with federal or state rules and regulations discovered during the performance of activities; (1-1-10)T

**03. Restriction from Providing Fiscal Employer Agent and Fiscal Management Services to the Same Participant.** The provider must not act as a fiscal employer agent and provide fiscal management services to a participant for whom it also provides any other services funded by the Department. (1-1-10)T

**04. Policies and Procedures.** The provider must maintain a current manual containing comprehensive policies and procedures. The provider must submit the manual and any updates to the Department for approval. (1-1-10)T

**05. Key Contact Person.** The provider must provide a key contact person and at least (2) two other people for backup who are responsible for answering calls and responding to e-mails from Department staff and ensure these individuals respond to the Department within one (1) business day. (1-1-10)T

**06. Face-to-Face Transitional Participant Enrollment.** The provider must conduct face-to-face transitional participant enrollment sessions in group settings and with individual participants in their homes or other designated locations. The provider will work with the regional Department staff to coordinate and conduct enrollment sessions. (1-1-10)T

**07. SFTP Site.** The provider must provide a SFTP site for the Department to access. The site will have the capability of allowing participants and their employees to access individual specific information such as time cards and account statements. The site must be user name and password protected. The provider must have the site accessible to the Department upon commencement of the readiness review. (1-1-10)T

**08. Required IRS Forms.** The provider must prepare, submit, and revoke the following IRS forms in accordance with IRS requirements and must maintain relevant documentation in each participant's file including: (1-1-10)T

**a.** IRS Form 2678; (1-1-10)T

**b.** IRS Approval Letter; (1-1-10)T

**c.** IRS Form 2678 revocation process; (1-1-10)T

**d.** Initial IRS Form 2848; and (1-1-10)T

**e.** Renewal IRS Form 2848. (1-1-10)T

**09. Requirement to Obtain Power of Attorney.** The provider must obtain an Idaho State Tax Commission Power of Attorney (Form TC00110) from each participant it represents and must maintain the relevant documentation in each participant's file. (1-1-10)T

**10. Requirement to Revoke Power of Attorney.** The provider must revoke the Idaho State Tax Commission Power of Attorney (Form TC00110) when the provider no longer represents the participant and must maintain the relevant documentation in the participant's file. (1-1-10)T

**302. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - CUSTOMER SERVICE.**

**01. Customer Service System.** The provider must provide a customer service system to respond to all inquiries from participants, employees, agencies, and vendors. The provider must: (1-1-10)T

**a.** Provide staff with customer service training with an emphasis on self-direction. (1-1-10)T

**b.** Ensure staff are trained and have the skills to assist participants with enrollment and to help them understand their account statements. (1-1-10)T

**c.** Ensure that fiscal employer agent personnel are available during regular business hours, 8:00 AM to 5:00 PM Mountain Time, Monday through Friday, excluding weekends and state holidays. (1-1-10)T

**d.** Provide translation and interpreter services (i.e., American Sign Language and services for persons with limited English proficiency). (1-1-10)T

**e.** Provide prompt and consistent response to verbal and written communication. Specifically: (1-1-10)T

**i.** All voice mail messages must be responded to within one (1) business day; and (1-1-10)T

**ii.** All written and electronic correspondence must be responded to within five (5) business days. (1-1-10)T

**f.** Maintain a toll-free phone line where callers speak to a live person during business hours and are provided the option to leave voice mail at any time, all day, every day. (1-1-10)T

**g.** Maintain a toll-free fax line that is available all day, every day, exclusively for participants and their employees. (1-1-10)T

**02. Complaint Resolution and Tracking System.** The provider is responsible for receiving, responding to, and tracking all complaints from any source under this agreement. A complaint is defined as a verbal or written expression of dissatisfaction about fiscal employer agent services. The provider must: (1-1-10)T

**a.** Respond to all written and electronic correspondence within five (5) days. (1-1-10)T

**b.** Respond to verbal complaints within one (1) business day. (1-1-10)T

**c.** Maintain an electronic tracking system and log of complaints and resolutions. The electronic log of complaints and resolutions must be accessible for Department review through the SFTP site. (1-1-10)T

**d.** Log and track complaints received from the Department pertaining to fiscal employer agent services. (1-1-10)T

**e.** Compile a summary report and analyze complaints received on a quarterly basis to determine the quality of services to participants and to identify any corrective action necessary. (1-1-10)T

**f.** Any day a complaint is received (Monday through Friday), the complaint must be posted to the SFTP site within twenty-four (24) hours. Saturday and Sunday complaints must be posted to the SFTP site by close of business the following Monday. Failure to comply will result in a \$50.00 penalty fee payable to Medicaid within ninety (90) days of incident. (1-1-10)T

**303. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - PERSONAL AND CONFIDENTIAL INFORMATION.**

The provider must implement and enforce policies and procedures regarding documents that are mailed, faxed, or e-mailed to and from the provider to ensure documents are tracked and that confidential information is not compromised, is stored appropriately and not lost, and is traceable for historical research purposes. (1-1-10)T

**304. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - ENROLLMENT PROCESS.**

**01. Submission of Participant Enrollment and Employee Packets for Department Approval.** The provider must submit the following for participant enrollment and employee packets to the Department for approval. (1-1-10)T

- a.** The participant enrollment packet must include: (1-1-10)T
    - i. Fiscal employer agent authorization form; (1-1-10)T
    - ii. Employer Appointment of Agent - IRS Form; (1-1-10)T
    - iii. Tax Information Form; and (1-1-10)T
    - iv. Employer information. The employer information must include: (1-1-10)T
      - (1) Instructions for completing forms; (1-1-10)T
      - (2) Payroll schedule, including deadlines for submission of time cards; (1-1-10)T
      - (3) Sample employment agreements; (1-1-10)T
      - (4) Sample Request for Vendor Payment form; (1-1-10)T
      - (5) Sample independent provider agreement; and (1-1-10)T
      - (6) Other sample employment agreements as needed. (1-1-10)T
  - b.** The employee enrollment packet must contain: (1-1-10)T
    - i. Employee Information Form; (1-1-10)T
    - ii. I-9 Employment Eligibility Form; (1-1-10)T
    - iii. W-4 Employee Withholding Allowance Certificate; (1-1-10)T
    - iv. Pay selection agreement; (1-1-10)T
    - v. Direct deposit authorization (optional); (1-1-10)T
    - vi. Sample time sheets and instructions for completion; and (1-1-10)T
    - vii. IRS Form W-5. (1-1-10)T
- 02. Distribution of Participant Enrollment and Employee Packets to Participant after Department Approval.** The provider must distribute Department-approved participant enrollment packets and employment packets to the participant within two (2) business days after the participant requests the packets. (1-1-10)T
- a.** To enroll a participant, the provider must: (1-1-10)T
    - i. Enroll the participant within two (2) business days of receipt of completed paperwork; and (1-1-10)T
    - ii. Log and maintain an electronic record of all enrollment paperwork, which includes participant support and spending plan cost and authorization sheets. (1-1-10)T
  - b.** To enroll an employee, the provider must: (1-1-10)T
    - i. Enroll the employee within two (2) business days of receipt of completed paperwork; and (1-1-10)T
    - ii. Log and maintain an electronic record of all the employee's paperwork that includes the



employment agreements. (1-1-10)T

**305. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - PAYMENT PROCESS.**

**01. Process Payroll.** The provider must process payroll, including time sheets and taxes, in accordance with the participant's support and spending plan. The payroll process must include: (1-1-10)T

**a.** Payment of employer and withholding taxes to State Tax Commission and Internal Revenue Service. (1-1-10)T

**b.** Payment of invoices to vendors. (1-1-10)T

**c.** Management of participant budget funds as per authorized support and spending plan. (1-1-10)T

**d.** Garnishment of wages as per court orders. (1-1-10)T

**e.** Preparation of year-end federal and state tax forms. (1-1-10)T

**f.** Payment of worker's compensation insurance premiums. (1-1-10)T

**02. Requirement to Track and Log Time Sheet Billing Errors.** The provider must track and log time sheet billing errors or time sheets that cannot be paid due to late arrival, missing, or erroneous information. The provider must notify the employee and participant within one (1) business day of when errors are identified on the time sheets. (1-1-10)T

**03. Requirement to Track and Log Improperly Cashed or Improperly Issued Checks.** The provider must track and log occurrences of improperly cashed or improperly issued checks and must stop payment on checks when necessary. The provider must reissue lost, stolen, or improperly issued checks at no expense to the participant or the Department within two (2) weeks of when the error occurred. (1-1-10)T

**04. Process Employee Payments.** The provider must verify employees' documentation and process employees' payments via check, direct deposit, or pay cards as per preference of employees. The employee payment process includes: (1-1-10)T

**a.** Receipt of time cards from employees via mail, fax, or website by specified due dates. (1-1-10)T

**b.** Review time cards for accuracy and verify that timecards contain the following information: (1-1-10)T

**i.** Employer name and ID number. (1-1-10)T

**ii.** Employee name and ID number. (1-1-10)T

**iii.** Hours of work. (1-1-10)T

**iv.** Code for service. (1-1-10)T

**c.** Match codes to employment agreement to verify rate of pay. (1-1-10)T

**d.** Verify that rate of pay multiplied by the hours worked per each pay period is equal to the gross pay. (1-1-10)T

**e.** Calculate all taxes and other withholding. (1-1-10)T

**f.** Pay employees every two (2) weeks or semi-monthly. (1-1-10)T

**g.** Contact participant and representative if there are problems with timecards or other documents in

order to resolve issues prior to pay-date, if possible. (1-1-10)T

**h.** Maintain an electronic complaint log of payroll issues and resolutions. (1-1-10)T

**i.** The provider must verify there is money remaining in each participant's account and specific service category prior to issuing a check. (1-1-10)T

**j.** The provider must issue final paycheck within forty-eight (48) business hours to employees who have been terminated, upon receipt of written request, even if this is an out-of-cycle paycheck. (1-1-10)T

**05. Process Vendor Payments.** When participants submit requests for payment to vendors, the provider must: (1-1-10)T

**a.** Review, and maintain on file, the vendor payment request with attached voided vendor receipt submitted by the participant. (1-1-10)T

**b.** Ensure item or payment is authorized on the participant's support and spending plan. (1-1-10)T

**c.** Issue a check made out to the vendor and mail to participant for distribution. Vendor payments are made on the same schedule as payroll. (1-1-10)T

**06. Process Independent Contractor or Outside Agency Payments.** When the participant hires an independent contractor or outside agency, in accordance with the support and spending plan, the provider must: (1-1-10)T

**a.** Obtain a W-9 from the contractor or agency. (1-1-10)T

**b.** Review, and maintain on file, the independent contractor or agency agreement submitted by the participant. (1-1-10)T

**c.** Review, and maintain on file, the independent contractor or agency invoice for services submitted by the participant. (1-1-10)T

**d.** Ensure service or payment is authorized on the support and spending plan. (1-1-10)T

**e.** Issue payment directly to the independent contractor or agency. (1-1-10)T

**07. End-of-Year Processing.** For purposes of end-of-year processing, the provider must maintain relevant documentation and must: (1-1-10)T

**a.** Refund over-collected FICA to applicable employees, or to state government; (1-1-10)T

**b.** Prepare, file, and distribute IRS Form W-2 for each employee; (1-1-10)T

**c.** Prepare and file IRS Form W-3 for each participant represented; (1-1-10)T

**d.** Prepare and file State Form 957 for state income taxes for each employer; (1-1-10)T

**e.** Report and pay any Unclaimed Property per Idaho State Tax Commission rules; and (1-1-10)T

**f.** Report and pay all state and federal unemployment insurance premiums. (1-1-10)T

**306. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - ANNUAL PARTICIPANT SURVEY.**

**01. Requirement to Conduct Annual Participant Satisfaction Survey.** Starting October 1 of each calendar year, each provider who has been providing services for at least six (6) months must conduct an annual

participant satisfaction survey. (1-1-10)T

**a.** Three (3) weeks prior to the survey launch, the provider must present the questions to the Department staff for approval. (1-1-10)T

**b.** Once the questions are approved by the Department, the provider can send out the survey. (1-1-10)T

**c.** The provider must survey its participants who receive services under consumer-directed services, such as participants with disabilities, family members of participants, and participants whose primary language is other than English. (1-1-10)T

**d.** The provider must provide options for participants to respond to the surveys, other than by mail, for those participants who may not be able to respond by that method. (1-1-10)T

**02.** **Requirement to Provide Results of Annual Participant Satisfaction Survey.** The provider must provide the results of the surveys to the Department in a comprehensive report, along with the completed surveys, by the 15th of December of each calendar year. (1-1-10)T

**307. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - QUALITY ASSURANCE.**

**01.** **Required Elements of Quality Insurance Process.** The provider must provide a quality assurance process that includes: (1-1-10)T

**a.** Implementation of a quality management plan; (1-1-10)T

**b.** Preparation of a quarterly, quality management analysis report; (1-1-10)T

**c.** Distribution, collection, and analysis of an annual participant satisfaction survey; and (1-1-10)T

**d.** A review of the monthly complaint summary and resolutions, monitoring of standards, and implementation of program improvements as needed. (1-1-10)T

**02.** **Requirement for Formal Quality Assurance Review.** Every two (2) years, the provider must participate in a formal quality assurance review conducted in collaboration with the Department. (1-1-10)T

**308. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - DISASTER RECOVERY PLAN.**

**01.** **Disaster Recovery Plan.** The provider must develop and maintain a Disaster Recovery Plan for electronic and hard copy files that includes restoring software and data files, and hardware backup if management information systems are disabled or servers are inoperative. The results of the Disaster Recovery Plan will ensure the continuation of payroll and invoice payment systems. The provider must submit the Disaster Recovery Plan for Department approval during the readiness review. (1-1-10)T

**02.** **Requirement to Report a Disaster.** The provider must report to the Department if management information systems are disabled or servers are inoperative within twenty-four (24) hours of the event. (1-1-10)T

**309. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - TRANSITION PLAN.**

**01.** **Transition Plan Objectives.** The provider must provide a transition plan to the Department within ninety (90) days after successful completion of the readiness review. The objectives of the transition plan are to minimize the disruption of services and provide an orderly and controlled transition of the provider's responsibilities to a successor at the conclusion of the agreement period or for any other reason the provider cannot complete responsibilities described in this chapter of rules. (1-1-10)T

**02.** **Transition Plan Requirements.** The transition plan must: (1-1-10)T

- a.** Be updated at least ninety (90) days prior to termination of the provider agreement. (1-1-10)T
- b.** Include tasks, and subtasks for transition, a schedule for transition, operational resource requirements, and training to be provided. (1-1-10)T
- c.** Provide for transfer of data, documentation, files, and other records relevant to the agreement in an electronic format accepted by the Department. (1-1-10)T
- d.** Provide for the transfer of any current, Idaho-specific policy and procedure manuals, brochures, pamphlets, and all other written materials developed in support of agreement activity to the Department. (1-1-10)T
- e.** Provide for the transfer, to the Department, of any software licenses deemed reasonably necessary by the Department for the orderly and controlled transition of the provider's responsibilities. (1-1-10)T

**310. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - PERFORMANCE METRICS.**

**01. Readiness Review.** The provider must complete a readiness review conducted by the Department with the provider prior to providing fiscal employer agent services. (1-1-10)T

- a.** Required Level of Expectation: The provider must complete one hundred percent (100%) of the readiness review. (1-1-10)T
- b.** Method of Monitoring: The Department will access SFTP site for review of provider documents and conduct an onsite review. (1-1-10)T

**02. Compliance with Tax Regulations and Labor Laws.** The provider must ensure each participant's compliance with regulations for both federal taxes and state taxes, as well as all applicable labor laws. (1-1-10)T

- a.** Required Level of Expectation: The provider must collect, submit, and file one hundred percent (100%) of the required federal and state employer forms. (1-1-10)T
- b.** Method of Monitoring: The Department will review forms submitted to the SFTP site. (1-1-10)T
- c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in not meeting a timeline required under these rules. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to submit any of the deliverables for the readiness review within the timelines required under these rules and in the readiness review, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**03. Fiscal Support and Consultation.** The provider must provide each participant with fiscal support and consultation. (1-1-10)T

- a.** Required Level of Expectation: The provider must respond to ninety-five percent (95%) of participant calls within two (2) business days and to e-mails within five (5) days. (1-1-10)T
- b.** Method of Monitoring: The Department will review input from participants, families, and Department staff, customer satisfaction surveys, and review of complaint documents, log and quarterly complaint summary report placed on the SFTP site. (1-1-10)T
- c.** Strategy for Correcting Noncompliance: The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to comply within two (2) business days, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**04. Federal and State Forms Submitted.** The provider must ensure each participant's compliance

with regulations for both federal taxes and state taxes, including preparation and submission of all federal and state forms for each participant and his employees. (1-1-10)T

**a.** Required Level of Expectation: The provider must submit one hundred percent (100%) of the required state and federal forms without errors. (1-1-10)T

**b.** Method of Monitoring: The Department will conduct onsite visits, and review participant and employees files placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in the failure to submit state and federal forms as required. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to submit any of the forms within two (2) business days, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**05. Mandatory Reporting, Withholding, and Payment.** The provider must perform all mandatory reporting, withholding, and payment actions according to the compliance requirements of the state and federal agencies. (1-1-10)T

**a.** Required Level of Expectation: The provider must complete one hundred percent (100%) of all mandatory reporting, withholding, and payment actions within thirty (30) days of quarter end. (1-1-10)T

**b.** Method of Monitoring: The Department will conduct onsite visits, and review participant and employees files placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in the provider not performing all mandatory reporting, withholding, and payment actions within thirty (30) days of quarter end. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to submit any of the deliverables within thirty (30) days of quarter end, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**06. Payroll Checks.** The provider must issue payroll checks within the two (2) week or semi-monthly payroll cycle, after receipt of completed, approved time sheets. (1-1-10)T

**a.** Required Level of Expectation: The provider must have less than two percent (2%) errors per quarter for all time sheets submitted within payroll cycle. (1-1-10)T

**b.** Method of Monitoring: The Department will review online reports, payroll documentation, input from participants, employees, and Department staff, and complaint documentation placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in not meeting a required payroll cycle. The Department will also notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to issue payroll checks as agreed in the readiness review, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**07. Adherence to Support and Spending Plan.** The provider must distribute payments to each participant employee in accordance with participant's support and spending plan. (1-1-10)T

**a.** Required Level of Expectation: The provider must have ninety-nine percent (99%) accuracy in distributing payments in accordance with participant's support and spending plan. (1-1-10)T

**b.** Method of Monitoring: The Department will review a participant's support and spending plan, and review online reports placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in the provider's failure to distribute payments in accordance with participant's support and spending plan. The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to adhere to the support and spending plan, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**08. Record Activities.** The provider must record all activities in an individual file for each participant and his employees. (1-1-10)T

**a.** Required Level of Expectation: The provide must complete ninety-eight percent (98%) of the enrollment checklist, payroll inquiry, and contact note or materials distribution log. (1-1-10)T

**b.** Method of Monitoring: The Department will conduct onsite visits, and review participant and participant employee files and reports placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**09. Records in Participant File.** The provider must maintain complete records in each participant's file. (1-1-10)T

**a.** Required Level of Expectation: The provider must have a one hundred percent (100%) complete record of each participant's file when audited by the Department. (1-1-10)T

**b.** Method of Monitoring: The Department will conduct onsite visits, and review participant files and online reports placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to maintain complete records in each participant's file, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**10. Manage Phone, Fax, and E-mail for Fiscal and Financial Questions.** The provider must manage toll-free telephone line, fax, and e-mail related to participant fiscal and financial questions. (1-1-10)T

**a.** Required Level of Expectation: The provider must respond to ninety-five percent (95%) of participant queries within two (2) business days. (1-1-10)T

**b.** Method of Monitoring: The Department will conduct random testing of systems, review input from participants, employees, and Department staff, and review complaints and customer satisfaction surveys placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**11. Tracking of Complaints and Complaint Resolution.** The provider must maintain a register of complaints from participants, participant employees, and others, with corrective action implemented by the provider within one (1) day of the complaint. (1-1-10)T

**a.** Required Level of Expectation: The provider must respond to ninety-five percent (95%) of complaints within one (1) business day. (1-1-10)T

**b.** Method of Monitoring: The Department will review the online complaint log, quarterly summary report, and input from employees, participants, and Department staff placed on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in the provider's failure to maintain the register of complaints from participants, participant employees, and other stakeholders. The Department will also notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**12. Web Access to Electronic Time Sheet Entry.** The provider must maintain web access to electronic time sheet entry for participants. (1-1-10)T

**a.** Required Level of Expectation: The provider must have web access to electronic time sheet entry available ninety percent (90%) of the time during a given payroll cycle. (1-1-10)T

**b.** Method of Monitoring: The Department will conduct random testing of web access and review complaint logs regarding web access to electronic time sheet entry on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**13. Participant Enrollment Packets and Employment Packets.** The provider must prepare and distribute participant enrollment packets and employment packets to each participant. (1-1-10)T

**a.** Required Level of Expectation: One hundred percent (100%) of the enrollment and employment packets must be signed by the active participants and active participant employees. (1-1-10)T

**b.** Method of Monitoring: The Department will verify enrollment of current participants and participants' employees by review the files on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in not meeting the required level of expectation. The Department will also notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**14. Payroll Spending Summaries.** The provider must provide each participant with payroll spending summaries and information about how to read the payroll spending summary each time payroll is executed. (1-1-10)T

**a.** Required Level of Expectation: For each payroll cycle, the provider must distribute payroll spending summaries to at least ninety-five percent (95%) of the participants involved in self-direction. (1-1-10)T

**b.** Method of Monitoring: At least quarterly, the Department will review each participant's online payroll spending summary on the SFTP site. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider will notify the Department immediately if an issue is identified that may result in the provider not meeting the required level of expectation. The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed.(1-1-10)T

**15. Quarterly Reconciliation.** Each fiscal quarter after initiating service, the provider must reconcile

its Waiver 372 Report to a zero dollar (\$0) balance with the Medicaid Bureau of Financial Operations. The provider has ninety (90) days to comply with reconciling each participant's spending plan balance to a zero dollar (\$0) balance with Medicaid's reimbursements. (1-1-10)T

**a.** Required Level of Expectation: The provider must have one hundred percent (100%) compliance with the required quarterly reconciliation of the Waiver 372 Report. (1-1-10)T

**b.** Method of Monitoring: The Department will review each provider's Waiver 372 Reports to demonstrate accurate billing with the provider's Medicaid Billing Report and compare it with the prior authorization balances in Medicaid's automated billing system. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider will notify the Department immediately if an issue is identified that may result in the provider not reconciling the Waiver 372 Report. The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to reconcile within ninety (90) days after the end of each quarter, the provider will be penalized \$50.00 each week until the provider has reconciled with Medicaid to a zero dollar (\$0) balance. (1-1-10)T

**16.** **Cash Reserve.** Each provider's cash reserve must equal one point five (1.5) times the monthly payroll cycle amount. For example, in the case that the a provider's current payroll minimum has averaged one hundred thousand dollars (\$100,000) per payroll cycle, the provider would be required to have two hundred fifty-thousand dollars (\$250,000) in reserve. The cash reserve must ensure all participants will have the funds accessible prior to the provider billing the Department. This must maintain a consistency for the participants in the situation of any payroll errors or inaccurate invoicing to the Department. (1-1-10)T

**a.** Required Level of Expectation: The provider must have one hundred percent (100%) compliance with the requirement to maintain a cash reserve equal to one point five (1.5) times the monthly payroll cycle amount. (1-1-10)T

**b.** Method of Monitoring: The Department will review the provider's quarterly financial statements, and income statements demonstrating funds available. The provider must post these reports to the SFTP site quarterly in a folder accessible only to Medicaid Bureau of Financial Operations staff. (1-1-10)T

**c.** Strategy for Correcting Noncompliance: The provider must notify the Department immediately if an issue is identified that may result in not meeting the required level of expectation. The Department will notify the provider when a performance issue is identified. The Department may require the provider to submit a written corrective action plan for Department approval within two (2) business days after notification. If the provider fails to meet the required level of expectation, the remedies in Section 314 of these rules may be imposed. (1-1-10)T

**311. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - REPORTS.**

**01.** **Account Summary Statements.** This report provides an overview of each participant account and includes the services accessed and the remaining dollar amount in the budget. In addition to the provider providing this report each month, a participant may request this report for a specified timeframe. Each month, the provider must mail a hard copy of the report to each participant and must also make the report available on a secure website for those who prefer to access the information electronically. The provider must generate the report after every payroll and post it on a secure SFTP site for the Department to access. This SFTP site must have a user name and password protection. (1-1-10)T

**a.** Report Format: The provider must provide the account summary statement in Microsoft Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the account summary statement by the 10th day of each month. (1-1-10)T

**02.** **Medicaid Billing Report.** This report provides a detailed breakdown of services rendered by service date per employee, per employer. Each line on this report must provide, at a minimum, the following



information: employee name, employee ID number, hours worked, period start, period end, pay rate, service date, check number, check date, participant's name, participant's date of birth, participant's ID number, service code, taxes, and billing amount. This report collects information based on the timeframe specified by the user. The provider must generate the report after every payroll and post it on a secure SFTP site for the Department to access. This SFTP site must have a user name and password protection. (1-1-10)T

**a.** Report Format: The provider must provide the Medicaid billing report in Microsoft Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the Medicaid billing report by the 10th day of each month. (1-1-10)T

**03. Demographic Report.** This report provides general client demographics in the region and the employee count per participant for each participant in the database. The provider must generate the report after every payroll and post it on a secure SFTP site for the Department to access. This SFTP site will have a user name and password protection. (1-1-10)T

**a.** Report Format: The provider must provide the demographic report in Microsoft Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the demographic report by the 10th day of each month. (1-1-10)T

**04. Criminal History Check Report.** This report provides a breakdown, by participant, of which employees the participant waived the background check, which employees passed or failed the background check, the criminal history reference number, and the date the background check was submitted. This report does not include support brokers. The provider must generate the report after every payroll and post it on a secure SFTP site for the Department to access. This SFTP site will have a user name and password protection. (1-1-10)T

**a.** Report Format: The provider must provide the criminal history report in Microsoft Word or Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the criminal history report by the 10th day of each month. (1-1-10)T

**05. Waiver 372 Report.** This report provides a list and count of the unduplicated participants and expenditures by services code based on the time frame specified by the user. The provider must generate the report after every payroll and post it on a SFTP site. Additionally, the provider must provide a quarterly Waiver 372 Report that can be reconciled quarterly and must work with the Department to reconcile the annual report. (1-1-10)T

**a.** Report Format: The provider must provide the Waiver 372 Report in Microsoft Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the Waiver 372 Report by 10th day of each month. (1-1-10)T

**06. Complaint and Resolution Summary Report.** The provider must analyze complaints received on a quarterly basis to determine the quality of services to participants and must identify any corrective actions and program improvements needed and implemented. The provider must post the report on a secure SFTP site for Department review. (1-1-10)T

**a.** Report Format: The provider must provide the complaint and resolution summary report in Microsoft Word or Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the complaint and resolution summary report by the 10th day of the month following the end of each annual quarter. (1-1-10)T

**07. Customer Satisfaction Survey Report.** The provider must provide a comprehensive report summarizing the results of the customer satisfaction survey completed by each participant. (1-1-10)T

**a.** Report Format: The provider must provide the customer satisfaction survey report in Microsoft Word or Excel. (1-1-10)T

**b.** Report Due Date: The provider must post the customer satisfaction survey report by December 1 of each year. (1-1-10)T

**08.** **Quarterly Financial Statements.** The provider must provide the Department a quarterly balance sheet and income statement that shows the provider's quarterly cash reserve. (1-1-10)T

**a.** Report Format: The provider must provide the quarterly balance sheet and income statement in Microsoft Word or Excel. (1-1-10)T

**b.** Report Due Date: The provider must provide the quarterly balance sheet and income statement on the 25th day of the month following the end of each annual quarter. (1-1-10)T

**312. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES - PAYMENT REQUIREMENTS.**

**01.** **Requirement to Accept a Per Member Per Month (PMPM) Payment.** The Department will pay, and the provider must accept a per member per month (PMPM) payment that covers a comprehensive set of fiscal employer agent services. The provider can only bill the PMPM rate for the months services are actually provided for participants. The provider must provide transition, training, and closeout services during the active agreement, at no additional cost to the Department. (1-1-10)T

**02.** **PMPM Payment Process Requirements.** The payment (PMPM) will include all administrative costs, travel, transition, training, and closeout services. The Department will not pay for participants who do not have a support and spending plan. For the purposes of PMPM payment, one (1) month will include all payroll batch dates within that specific calendar month. The compensation for each month is calculated by multiplying the number of unduplicated participants by the PMPM rate. (1-1-10)T

**03.** **Requirement to Complete a Readiness Review.** The provider must complete a readiness review prior to billing for services. (1-1-10)T

**313. TERMINATION OF FISCAL EMPLOYER AGENT SERVICES PROVIDERS.**

In the event of termination of the provider agreement, the provider must ensure continuation of services to participants for the period in which a Per Member per Month (PMPM) payment has been made, and must submit the information, reports and records, including the Waiver 372 Report (reconciliation) as specified in Section 310 of these rules. (1-1-10)T

**314. REMEDIES TO NONPERFORMANCE OF A FISCAL EMPLOYER AGENT SERVICE PROVIDER.**

**01.** **Remedial Action.** If any of the services do not comply with the performance metrics under Section 310 of these rules, the Department will consult with the provider and may, at its sole discretion, require any of the following remedial actions, taking into account the scope and severity of the noncompliance, compliance history, the number of noncompliances, the integrity of the program, and the potential risk to participants. (1-1-10)T

**a.** Require the provider to take corrective action to ensure that performance meets the performance metrics under Section 310 of these rules; (1-1-10)T

**b.** Reduce payment to reflect the reduced value of services received; (1-1-10)T

**c.** Require the provider to subcontract all or part of the service at no additional cost to the Department; (1-1-10)T  
or

**d.** Terminate the provider agreement with notice. (1-1-10)T

**02. Direct Monetary Action.** If any of the performance metrics under Section 310 of these rules are not met, the Department will enforce a fifty dollar (\$50) a week penalty for each performance metric not met. The penalty will be captured prior to any payment from the Department to the provider. (1-1-10)T

**315. -- 999. (RESERVED).**

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

### **16.04.10 - RULES GOVERNING THE COMMUNITY SERVICES BLOCK GRANT PROGRAM**

**DOCKET NO. 16-0410-0901**

#### **NOTICE OF RULEMAKING**

#### **RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING**

**EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE:** The effective date of the rescission of the temporary rule is September 1, 2009.

**AUTHORITY:** In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rules previously adopted and is vacating the proposed rulemaking initiated under this docket. The action is authorized pursuant to Sections 39-304, 39-305, 39-311 and 56-1003, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking.

The temporary rules for the Community Services Block Grant (CSBG) are being rescinded and the proposed rulemaking is being vacated for this docket. The Department determined it would be less confusing and easier to read for the temporary rule to be rescinded and the proposed rules to be vacated in the same notice.

The Temporary and Proposed rulemaking that replaces this one is being published under Docket No. 16-0410-0902 in this Idaho Administrative Bulletin, October 7, 2009, Vol. 09-10.

**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 due to either the rescission of the temporary rule or the vacation of the proposed rulemaking for this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Chris Baylis at (208) 334-5742.

DATED this 19th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.10 - RULES GOVERNING THE COMMUNITY SERVICES BLOCK GRANT PROGRAM

DOCKET NO. 16-0410-0902

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2009.

**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 and 56-203, Idaho Code; the Community Services Block Grant Act, 42 USC 9901, et seq.; and the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, Title VIII (3).

**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, October 21, 2009.

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 Community Services Block Grant (CSBG) is a federal grant that is administered by the Department; its funds are managed under contracts with local Community Action Agencies. Block grant funds are used for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient.

Since federal statute allows states to set some of the parameters of income eligibility for the CSBG Program, the Department is changing the rule to exclude child support income from being counted when determining program eligibility. This change will align CSBG Program income eligibility with that of similar programs (e.g., the U.S. Department of Energy's Weatherization Assistance Program) since many of the same families who are eligible for the Weatherization Program would benefit from programs offered under the Community Services Block Grant. This alignment of income eligibility criteria reduces administrative overhead, reduces error, and better serves those most in need in our communities.

This rulemaking also increases the income limit for CSBG Program eligibility from 125% to 200% of the federal poverty guidelines, as provided under the American Recovery and Reinvestment Act of 2009 (ARRA). This increase in the income limit will allow the program to reach many more Idaho families with help urgently needed in this recession.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it confers a benefit.

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

**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 the rulemaking. Community Services Block Grant (CSBG) Program monies are 100% federal.

The increase in eligibility to 200% of the Federal Poverty Guideline will allow the Department to fully obligate and spend the Community Services Block Grant economic stimulus award made available under the American Reinvestment and Recovery Act (ARRA). The spending authority for this award was provided to the Department by the 2009 Legislature.

Excluding child support income in eligibility determination would increase the number of eligible families by approximately 23% to the equivalent of 170% of Federal Poverty Limits. This change would not have an effect on the program but would make all the programs have the same child support income guidelines.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to implement provisions of the ARRA.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Chris Baylis at (208) 334-5742.

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, October 28, 2009.

DATED this 19th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0410-0902**

**000. LEGAL AUTHORITY.**

Sections 56-202 and 56-203, Idaho Code, authorize the Idaho Department of Health and Welfare to enter into contracts with the federal government to carry out the purposes of the Community Services Block Grant Act, 42 USC 9901, et seq. ~~(3-30-01)(9-1-09)T~~

**001. TITLE AND SCOPE.**

**01. Title.** ~~These~~ title of these rules ~~are cited as Idaho Department of Health and Welfare, is~~ IDAPA 16.04.10, "Rules Governing the Community Services Block Grant Program." ~~(3-30-01)(9-1-09)T~~

**02. Scope.** These rules provide standards for the administration of the Community Services Block Grant Program, as authorized by the Community Services Block Grant Act, as amended under 42 USC 9901, et seq. ~~(3-30-01)(9-1-09)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS.**

~~Administrative Appeals~~ are governed by ~~Idaho Department of Health and Welfare Rules, the provisions of~~ IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ~~(3-30-01)(9-1-09)T~~

**004. INCORPORATION BY REFERENCE.**

*There are none in this chapter* No documents have been incorporated by reference into these rules.  
(~~3-30-01~~)(9-1-09)T

**Existing Section 005 has been moved to Section 010.**

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- 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. (9-1-09)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. (9-1-09)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. (9-1-09)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (9-1-09)T

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (9-1-09)T

**006. ABBREVIATIONS.**

~~01. CSBG. Community Services Block Grant. (3-30-01)~~

~~02. HHS. The United States Department of Health and Human Services. (3-30-01)~~

~~03. SEOG. Supplemental Education Opportunity Grants. (3-30-01)~~

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Disclosure of 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." (9-1-09)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. (9-1-09)T

**007. -- 009. (RESERVED).**

**0105. DEFINITIONS.**

**01. CSBG.** Community Services Block Grant. (9-1-09)T

~~02. Community Action Agency.~~ A private, non-profit organization serving the low-income population in specified counties of the state with which the Idaho Department of Health and Welfare has contracted for the provision of CSBG services. (3-30-01)

~~023. Department.~~ The Idaho Department of Health and Welfare. (3-30-01)

~~034. Earned Income.~~ Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit, or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (3-30-01)

~~045. Eligible Entity.~~ A private, non-profit organization which is a community action agency or a

migrant or seasonal farm worker organization receiving CSBG funding before October 27, 1998, or designated by the Department as an eligible entity for an unserved area after October 27, 1998, and which is governed by a tripartite board, as defined in ~~Subsection 005.06~~ this rule. ~~(3-30-01)~~(9-1-09)T

**06. Federal Poverty Guidelines (FPG).** The poverty guidelines issued annually by the Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty/index.shtml>. (9-1-09)T

**07. HHS.** The United States Department of Health and Human Services. (9-1-09)T

**058. Low-Income and Poor Participants.** Those persons receiving or eligible to receive CSBG services who live in households having an income at or below ~~one~~ two hundred ~~twenty-five~~ percent (~~125~~ 200%) of the federal poverty guidelines. ~~(3-30-01)~~(9-1-09)T

**069. Tripartite Board.** A board, selected by an eligible entity, which participates in the development, planning, implementation, and evaluation of the community services block grant program, composed as follows: (3-30-01)

**a.** One-third (1/3) of the board members are elected public officials, currently holding office, or their representatives. Appointed public officials or their representatives will meet this requirement if the number of elected officials available and willing to serve is less than one-third (1/3) of the board membership. (3-30-01)

**b.** At least one-third (1/3) of the board members are representatives of low-income individuals and families, living in the neighborhoods they serve, chosen by democratic selection procedures. (3-30-01)

**c.** The remaining board members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served. (3-30-01)

**0710. Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (3-30-01)

~~00711.~~ -- 126. (RESERVED).

**127. INCOME ELIGIBILITY REQUIREMENTS.**

Assistance under this program is limited to participant households with countable income at or below ~~one~~ two hundred ~~twenty-five~~ percent (~~125~~ 200%) of the federal poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(~~s2~~), ~~effective thirty (30) days after publication.~~ ~~(3-30-01)~~(9-1-09)T

**01. Countable Income.** All earned and unearned income is counted in determining eligibility, unless specifically excluded by rule. (3-30-01)

**02. Income Not Counted.** For eligibility purposes, the following types of income are not counted. (3-30-01)

**a.** Benefit payments from Medicare Insurance. (3-30-01)

**b.** State cash assistance payments. (3-30-01)

**c.** Child care subsidy payments. (3-30-01)

**d.** Private loans made to the participant or the household. (3-30-01)

**e.** Assets withdrawn from a personal bank account. (3-30-01)

**f.** Sale of real property if reinvested within three (3) calendar months. (3-30-01)



- g.** Lump sum payments from an IRA. (3-30-01)
- h.** Income tax refunds. (3-30-01)
- i.** Income from capital gains. (3-30-01)
- j.** Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than one hundred dollars (\$100). (3-30-01)
- k.** Wages or allowances paid to a live-in attendant for care of a disabled person. (3-30-01)
- l.** Interest posted to a bank account. (3-30-01)
- m.** Monies for educational purposes from ~~ASDL~~ the federal Perkins/National Direct Student Loan program, college work-study programs, state student incentive grants, ~~SEOG~~ Supplemental Education Opportunity Grants, Pell, guaranteed student loans, and supplemental grants funded under Title IV, A-2. ~~(3-30-01)~~(9-1-09)T
- n.** Monies from the VA-GI Bill for Education. (3-30-01)
- o.** Department of Health and Welfare adoption subsidies. (3-30-01)
- p.** Compensation to volunteers under the Older Americans Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, and the Title V Senior Employment Program. (3-30-01)
- q.** Payments made by a third party, non-household member for the household, such as for child care, energy assistance, shelter, food and clothing assistance. (3-30-01)
- r.** Value of food stamps or donated food. (3-30-01)
- s.** Utility allowance. (3-30-01)
- t.** Child support income. (9-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**203. DESIGNATION AND REDESIGNATION OF ELIGIBLE ENTITIES IN UNSERVED AREAS.**

**01. Qualified Organization in or near Area.** The following organizations may apply for and be designated as eligible entities to provide services in any geographic area which stops being served by an eligible entity. (3-30-01)

**a.** An eligible entity or other private, nonprofit organization in the unserved area, capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this program. (3-30-01)

**b.** A private, nonprofit eligible entity located adjacent to or near the unserved area that is already providing related services in the unserved area. If designated, such entity would have to add additional board members to ensure adequate representation of the unserved area. (3-30-01)

**02. Special Consideration.** An organization with demonstrated effectiveness in meeting the goals and purposes of this program will receive the designation. Eligible entities providing related services in the unserved area, consistent with the needs identified by a community-needs assessment, may be given priority. (3-30-01)

**03. No Qualified Organization in or near Area.** A political subdivision of the State may serve as an

eligible entity for the area if no qualified private, nonprofit organization is available. The entity must administer the program through a tripartite board, as defined in ~~Subsection 004.06~~ 010 of these rules, or through another approved mechanism to assure decision making and participation by low-income individuals in the development, planning, implementation, and evaluation of this program. ~~(3-30-01)(9-1-09)T~~

**204. -- 299. (RESERVED).**

**300. APPLICATION PROCESS.**

Applications ~~will~~ must be received by the Department of Health and Welfare, Division of Welfare, P.O. Box 83720, 450 W. State Street, Boise, ID 83720-0036, no later than 5 p.m., ninety (90) days before the beginning of the federal fiscal year. Projects ~~shall~~ must be designed and funded to operate for one (1) twelve-month period.

~~(3-30-01)(9-1-09)T~~

**301. -- 374. (RESERVED).**

**375. APPLICATION.**

An original and one (1) copy of an application ~~shall~~ must be submitted to the Department's Division of Welfare and ~~shall~~ must include the following items: ~~(3-30-01)(9-1-09)T~~

- 01. Face Sheet.** CSBG Application Face Sheet, describing general information about the entity and the application. (3-30-01)
- 02. Budget.** A budget for the period of the grant, on forms provided by the Department. (3-30-01)
- 03. Causes of Poverty.** The results of the most recent community-needs assessment. (3-30-01)
- 04. Service Plan.** A description of how the agency will carry out the program. (3-30-01)
- 05. Work Program.** Services to be performed and estimated number of participants. (3-30-01)
- 06. Client Characteristics Report.** Demographic data on participants. (3-30-01)
- 07. Outcome Measures.** How the entity will determine the success of services. (3-30-01)
- 08. Assurances and Certifications.** Pledge by the entity to meet program requirements. (3-30-01)

**376. -- 399. (RESERVED).**

**400. AUDIT.**

Projects funded by CSBG ~~shall be~~ are subject to an annual audit of a scope and depth defined by the Department. The Department may join with other interested parties to obtain a single audit of the eligible entity. ~~(3-30-01)(9-1-09)T~~

**401. -- 599. (RESERVED).**

**600. CORRECTIVE ACTION, TERMINATION, OR REDUCTION OF FUNDING.**

**01. Determination.** If an eligible entity fails to comply with the terms of an agreement, or the State ~~Plan~~, to provide services; or to meet appropriate standards, goals, and other requirements, including performance objectives, the Department ~~shall~~ must inform the entity of the deficiency to be corrected and may take one (1) or more of the following steps. ~~(3-30-01)(9-1-09)T~~

- a.** Require the entity to correct the deficiency. (3-30-01)
- b.** Offer training and technical assistance, if appropriate, to help correct the deficiency, and submit a report to HHS describing the training and technical assistance offered, or stating the reasons why it was not offered. (3-30-01)

**c.** If feasible, allow the entity sixty (60) days to develop and implement a quality improvement plan to correct the deficiency within a reasonable period of time. (3-30-01)

**d.** After providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce the funding of the eligible entity unless the entity corrects the deficiency. (3-30-01)

**02. Review.** The Secretary of HHS may review any decision to terminate the designation or reduce the funding of an eligible entity. (3-30-01)

**601. -- 699. (RESERVED).**

**700. COMMUNITY FOOD AND NUTRITION PROGRAM.**

Funds may be used to coordinate private and public food assistance resources, where such coordination is inadequate, to better serve low-income populations; to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and to develop innovative approaches to meet the nutrition needs of low-income individuals. ~~(3-30-01)~~(9-1-09)T

**701. -- 996. (RESERVED).**

**~~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." (3-30-01)~~

**~~998. -- 999. (RESERVED).~~**

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

**16.04.14 - RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

**DOCKET NO. 16-0414-0801**

**NOTICE OF RULEMAKING**

**RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING**

**EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE:** The effective date of the rescission of the temporary rule is September 1, 2009.

**AUTHORITY:** In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rules previously adopted and is vacating the proposed rulemaking initiated under this docket. The action is authorized pursuant to Section 56-202, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking:

These temporary rules are being rescinded and the proposed rulemaking is being vacated for this docket in order to change requirements in this section of rule. The Department determined it would be less confusing and easier to read for the temporary rule to be rescinded and the proposed rule to be vacated in the same notice. The replacement docket is published in this October 7, 2009, Idaho Administrative Bulletin (Vol. 09-10), under Docket No. 16-0414-0901.

**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 due to either the rescission of the temporary rule or the vacation of the proposed rulemaking for this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Chris Baylis at (208) 334-5742.

DATED this 14th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
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## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.04.14 - RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-0901

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2009.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and 42 U.S.C. Sections 8621 to 8629, also known as the Low Income Home Energy Assistance Act of 1981.

**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 October 21, 2009.

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:

Last year federal statute mandated that states use 160% of the 2009 Federal Poverty Guidelines (FPG) for the Low Income Home Energy Assistance Program (LIHEAP) income eligibility determination. States were also mandated to return to 150% of FPG for federal fiscal year 2010 or to use 60% of the federally-established Idaho State Median Income. This rule change will use 60% of State Median Income.

This rule change will also exclude child support income as countable income. This aligns the LIHEAP program with the Community Services Block Grant Program and the U.S. Department of Energy's Weatherization Assistance Program. Many of the same families who apply and are eligible for the LIHEAP program would benefit from the programs offered by the Community Services Block Grant program and Weatherization. Aligning income eligibility criteria across these programs reduces administrative overhead, reduces error, and better serves those most in need in our communities.

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

With the increased funds for this program, more low-income families will benefit from this safety net by creating more economic stability through subsidizing their home heating costs.

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

This rulemaking increases the LIHEAP eligibility income limits to 60% of the 2009 Idaho State Median Income and adds child support income to the list of income not counted. This will result in approximately 6,460 more families being eligible for LIHEAP, an increase of approximately 20%. Last year, approximately 45,000 families received LIHEAP benefits, with the average benefit for each family being \$386 annually. To accommodate the increased number of eligible families, the benefit amount for each case will be decreased by approximately \$50, to about \$336 annually. The LIHEAP program is 100% federally-funded and does not spend any state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Chris Baylis at (208) 334-5742.

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 October 28, 2009.

DATED this 14th day of August, 2009.

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT OF DOCKET NO. 16-0414-0901**

**151. INCOME ELIGIBILITY REQUIREMENTS.**

Under 42 U.S.C. 8624(b)(2)(B)(ii), Assistance under this program is limited to participant households with countable income at or below *one hundred fifty percent (150%) of the Poverty Guidelines updated annually in the Federal Register by the US Department of Health and Human Services under the authority of 42 U.S.C. 9902(s), effective at the beginning of each program year sixty percent (60%) of Idaho's "State Median Income Estimate."* State median income is defined in 42 USC 8622(11). The federal "State Median Income Estimate" for Idaho is found at [http://www.acf.hhs.gov/programs/ocs/liheap/guidance/information\\_memoranda/im09-05.html](http://www.acf.hhs.gov/programs/ocs/liheap/guidance/information_memoranda/im09-05.html). Participant households must provide proof of income for all members during the application process. ~~(3-15-02)~~(9-1-09)T

**01. Income Not Counted.** Income listed in Subsections 151.01.a. through 151.01.v. is not counted in determining LIHEAP eligibility or benefit level. All other income is counted in determining LIHEAP eligibility and benefit level. (3-15-02)

- a.** Benefit payments from Medicare Insurance. (4-5-00)
- b.** Private loans made to the participant or the household. (4-5-00)
- c.** Assets withdrawn from a personal bank account. (4-5-00)
- d.** Sale of real property, if the funds are reinvested within three (3) calendar months. (3-15-02)
- e.** Income tax refunds. (4-5-00)
- f.** Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than thirty dollars (\$30) during the three (3) month period before application for LIHEAP. (4-5-00)
- g.** Wages or allowances for attendant care when the attendant resides in the household of the disabled member. (4-5-00)
- h.** Interest income of thirty dollars (\$30) or less received during the three (3) month period before application for LIHEAP. (4-5-00)
- i.** Legal fees or settlements from Workman's Compensation paid in a lump sum. (4-5-00)

- j.** Monies received for educational purposes from NSDL, College work-study programs, State Student Incentive grants, SEOG, Pell, Guaranteed Student Loans and Supplemental grants funded under Title IV, A-2. (3-15-02)
- k.** Monies from VA-GI Bill for Education. (4-5-00)
- l.** Department of Health and Welfare Adoption subsidies. (4-5-00)
- m.** Compensation provided volunteers in the Older American Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, Title V Senior Employment Program. (4-5-00)
- n.** Third party payments made by a non-household member on behalf of the household. Third party payments include child care, energy assistance funds, shelter, food and clothing assistance. (4-5-00)
- o.** Value of food stamps or donated food to household. (4-5-00)
- p.** Utility allowance. (4-5-00)
- q.** TAFI lump sum payments. (3-15-02)
- r.** Tribal crop or land payments. (3-15-02)
- s.** AmeriCorps stipend. (3-15-02)
- t.** Child support income. (9-1-09)T
- 02. Income Received Monthly.** To determine LIHEAP eligibility and benefit amount, when participant household income is received at least monthly, use the three (3) month's income prior to the date of application. (4-5-00)
- 03. Income Received Less Often Than Monthly.** For household income received less often than monthly convert the income into a three (3) month amount: (4-5-00)
- a.** Multiply income received weekly by twelve and nine tenths (12.9). (4-5-00)
- b.** Multiply income received every two (2) weeks by six and forty-five hundredths (6.45). (4-5-00)
- c.** Multiply income received twice each month by six (6). (4-5-00)
- 04. Seasonal and Self-Employment Income.** For households with seasonal or self-employment income divide the annual income by four (4). (4-5-00)
- 05. Treatment of Undocumented Resident Income.** If a household includes eligible and ineligible undocumented resident participants, and one (1) or more of the ineligible participants had income during the reporting period, count the ineligible participants' income and exclude the undocumented resident from the household count. (3-15-02)

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

**16.06.03 - RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG ABUSE  
PREVENTION AND TREATMENT PROGRAMS**

**DOCKET NO. 16-0603-0902**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2009.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 39-305, 39-306, 39-307, 39-311, 56-1003, and 56-1007, Idaho Code.

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

Licensing requirements, that were removed from the rules that licensed residential treatment programs for children, are being added to this chapter of rules. Also, to ensure that children and adolescents being treated in state approved alcohol/drug abuse treatment programs are safe, the requirement to separate adults from children and adolescents is being added to this rule.

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

Requirements pertaining to alcohol/drug abuse treatment for children and adolescents were removed from IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing" effective July 1, 2009. The requirements intended to protect the safety of children and adolescents must be added to IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs" in order to ensure there is no lapse in licensing requirements and the protection of children and adolescents.

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

**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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Sherry L. Johnson at (208) 334-5934.

DATED this 17th day of August, 2009.

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**THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET NO. 16-0603-0902**



**010. DEFINITIONS.**

The following terms are defined as they are used in these rules. Nothing in any of these definitions shall be read as being in conflict with definitions stated in Section 39-302, Idaho Code. (4-26-95)

**01. Active Client.** A client who receives services from an alcohol/drug abuse treatment program, who has had face to face contact with a qualified professional of the program within the preceding thirty (30) days. (3-20-04)

**02. Adolescent.** An individual between the ages of fourteen (14) and eighteen (18). (7-1-09)T

**023. Aftercare.** Services to provide support to an individual who is in a recovery program. (4-26-95)

**034. Alternative Activities.** Prevention services that provide opportunities for persons at risk for substance abuse to participate in activities that exclude alcohol, tobacco, and other drugs. (4-5-00)

**045. Applicant.** A person, agency, or organization who has filed an application to become an approved alcohol/drug treatment program under these rules. (4-26-95)

**056. Appropriate.** A term used to indicate that a particular procedure, treatment, test or service is effective, is clearly indicated, is adequate in quantity and is provided in the best setting to meet the client's needs. (4-26-95)

**067. Approved Alcohol/Drug Abuse Treatment Program.** An alcohol/drug abuse treatment program which provides activities to treat problems related to alcohol and drug use, which is approved in accordance with Section 39-305, Idaho Code, and these rules and minimum standards. Approved alcohol/drug abuse treatment programs in Idaho may be private for profit, private nonprofit, or operated by a governmental unit. (4-26-95)

**078. Assessment.** The collection of data necessary to develop an individualized treatment strategy aimed at eliminating or reducing alcohol/drug consumption by a thorough evaluation of the person's physical, psychological, and social status, a determination of the environmental forces that contribute to the alcohol/drug using behavior, and examination of the person's support system and resources. (4-26-95)

**089. CARE.** The Commission on Accreditation of Rehabilitation Facilities. (3-20-04)

**0910. Certificate of Approval.** A certificate issued by the Department of Health and Welfare to an alcohol/drug abuse treatment program and facilities which it deems to be in compliance with these rules and minimum standards. (4-5-00)

**101. Certified, Credentialed or Licensed Alcohol/Drug Counselor.** A counselor possessing voluntary certification or licensure by a recognized state or national alcohol/drug abuse/addiction counselor credentialing or certifying organization. Knowledge and skills may be acquired through a combination of specialized training, education and experience. (4-26-95)

**112. Certified Prevention Specialist.** A person recognized by the Idaho Board of Alcohol/Drug Counselor's Certification as a specialist in substance abuse education and the prevention of alcohol/drug abuse. This level of certification does not give authority to provide any form of counseling. (4-5-00)

**13. Child.** An individual under the age of fourteen (14). (7-1-09)T

**124. Clinical Director.** The program staff member responsible for oversight of all clinical aspects of the treatment services provided. (4-26-95)

**15. Clinically Managed Medium-Intensity Residential Treatment.** A program that offers structured residential treatment services, staffed twenty-four (24) hours per day, seven (7) days a week, which provides intensive residential program for clients who require treatment services in a highly-structured setting. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence. Community

reintegration of residents in this level of care requires case management activities directed toward networking clients into community-based recovery support services such as housing, vocational services, or transportation assistance so that the client is able to attend mutual self-help meetings or vocational activities after discharge. This level of care is also known as residential care. (7-1-09)T

**136. Client.** A person receiving treatment for alcohol/drug use, abuse, or addiction. The term is synonymous with patient, resident, consumer or recipient of treatment. (4-26-95)

**147. Community-Based Process.** Prevention services to involve and assist communities and social institutions to incorporate prevention into their existing services/work and to transfer the knowledge and skills required for them to deliver prevention services. (4-5-00)

**158. Competencies.** Competencies are the knowledge, skills and attitudes required for the members of the substance abuse clinical staff as a prerequisite to proficiency in the professional treatment of substance abuse. The model of competencies is determined by the Department. (3-20-04)

**169. Contract.** A formal agreement with any organization, agency or individual specifying the services, personnel, products or space to be provided by, to or on behalf of the program and the consideration to be expended in exchange. (4-26-95)

**170. Counselor.** A licensed professional counselor under Title 54, Chapter 34, Idaho Code, or an individual holding a masters degree in counseling from an approved college or university and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, or experience in the treatment of persons with problems related to alcohol/drug use. (4-26-95)

**1821. Criminogenic Need.** A client attribute shown by research to be correlated with criminal behavior and to be an appropriate target for treatment intervention. (3-20-04)

**1922. Current.** Any license, permit, certificate or other documentation of review or inspection of the program, its staff or facility sites which is dated within the preceding twenty-four (24) months. (4-5-00)

**203. Department.** The Idaho Department of Health and Welfare. (4-26-95)

**214. Detoxification Services.** Services necessary to monitor individuals who are undergoing the systematic reduction of a toxic agent from the body during withdrawal. (4-26-95)

**225. Director.** The Director of the Department of Health and Welfare. (4-26-95)

**236. Discharge.** The point at which the client's active involvement in treatment is terminated, and the program no longer maintains active responsibility for the care of the client. (4-26-95)

**247. Drug Court Outpatient Treatment Facility.** A Department approved setting for the treatment of alcohol and drug problems for individuals under the jurisdiction of a local drug court. (3-20-04)

**258. Drug Court Team.** Individuals who collectively plan and evaluate services to drug court participants and determine participant compliance, progress, sanctions, movement from one treatment phase to another, and continuation or termination from drug court treatment. (3-20-04)

**269. Early Intervention Prevention Services.** Organized activities that are designed for individuals within indicated populations who are experimenting with alcohol, tobacco, or other drugs or exhibit other risk related behaviors. The goal of services for these populations is to modify the risk behavior to prevent the need for substance abuse treatment. (4-5-00)

**2730. Early Intervention Treatment Services.** Services which may be delivered in a treatment setting and are designed to explore and address problems or risk factors that appear to be related to an individual's substance use. The goal of the service is to assist the individual in recognizing the harmful consequences of inappropriate substance use. (4-5-00)

**2831. Education.** Strategies that teach people critical information about alcohol and other drugs and the physical, emotional and social consequences of their use. (4-26-95)

**2932. Emergency Treatment.** The immediate resolution of an acute physical, social, or psychological emergency caused by excessive or chronic alcohol/drug use. (4-26-95)

**303. Environmental Activities.** Services that focus on institutional and community change to prevent or reduce substance abuse within given geographical areas. (4-5-00)

**344. Executive Director.** The individual appointed by the governing body to act on its behalf in the overall management of the program. Other job titles may include administrator, director, superintendent, program administrator, president, vice-president and executive vice-president. (4-26-95)

**325. Facility.** The building(s) including furnishings and fixtures, where persons with alcohol or drug problems receive services. This is synonymous with offices, clinic, or physical plant. (4-26-95)

**336. Governing Body.** The individual(s), board of directors, group or agency that has ultimate authority and responsibility for the overall operation of an alcohol/drug abuse treatment program. (4-26-95)

**347. Guardian.** A parent, trustee, conservator, committee or other individual or agency empowered by law to act on behalf of, or have responsibility for, a client or applicant for treatment services. (4-26-95)

**358. Halfway House Facility.** A setting for services provided to persons who need the support of an alcohol/drug-free environment to maintain recovery. (4-26-95)

**369. Incapacitated.** As a result of alcohol or drug use, a person is unconscious or his judgment is otherwise so impaired that he is incapable of making a rational decision with respect to his need for treatment, or is incompetent to consent to treatment. (4-26-95)

**3740. Incompetent Person.** A person who has been adjudged incompetent by a court of law having jurisdiction in the state of Idaho. (4-26-95)

**3841. Indirect Provision of Services.** Services provided to clients through agreements a program has made with self-employed individuals or outside agencies/organizations. These agreements may be verbal commitments, contractual arrangements, letters of agreement, or memorandum of understanding. The services may be provided at the program's facility or at another location. (4-26-95)

**3942. Individualized Treatment Plan.** A written action plan, based on assessment data, that identifies the client's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (4-26-95)

**403. Information Dissemination.** Prevention services that inform the general public and others about the nature and extent of alcohol and other drug use, abuse and addiction, its effect on individuals, families and communities, and available prevention and treatment programs and other resources. (4-5-00)

**444. Inpatient Treatment Facility.** A setting for the treatment of alcohol/drug problems that is also a licensed hospital as defined by Title 39, Chapter 13, Idaho Code. (4-26-95)

**425. Intoxicated Person.** A person whose mental or physical functioning is impaired as a result of alcohol or drug use, including the inappropriate use of prescription drugs. (4-26-95)

**436. Inventory of Services.** The various program activities intended to cause or support the reduction or elimination of alcohol or drug use. These activities may include, but are not limited to, education, individual, group or family counseling, vocational rehabilitation services, medical and psychological services, and self-help groups. These services may include activities provided by the program through contractual arrangement with an outside organization. (4-26-95)

- 447. Level of Service Inventory -- Revised (LSI-R).** An assessment tool used to assess criminal offenders for their risk to commit further offenses and their service needs. (3-20-04)
- 458. JCAHO.** The Joint Commission on Accreditation of Healthcare Organizations. (3-20-04)
- 469. Medically Trained Personnel.** A licensed nurse, nurse practitioner, physician's assistant or licensed physician. (4-26-95)
- 4750. Medical Screening.** An examination done by a licensed nurse, nurse practitioner, physician's assistant or a licensed physician. (4-26-95)
- 4851. Medical Supervision.** Care provided under the direction of a licensed physician. (4-26-95)
- 4952. NFPA.** The National Fire Protection Association. (3-20-04)
- 503. Nurse.** A licensed professional nurse (R.N.), licensed practical nurse (L.P.N.) or nurse practitioner as defined by Title 54, Chapter 14, Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience treating persons with problems related to alcohol/drug use or abuse. (4-26-95)
- 514. Outpatient Treatment Facility.** A setting for treatment activities of alcohol/drug problems that does not provide twenty-four (24) hour per daycare. (4-26-95)
- 525. Person.** Any individual, firm, partnership, corporation, company, association, joint stock association, governmental unit or legal successor thereof. (4-26-95)
- 536. Pharmacist.** An individual licensed under Title 54, Chapter 17, Idaho Code, to prepare, preserve, compound and dispense drugs and chemicals. (4-26-95)
- 547. Physician.** A person who is licensed to practice medicine in the state of Idaho in accordance with the provisions of the Medical Practice Act, Section 54-1801, et seq., Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)
- 558. Physician Assistant.** A person who is licensed to render patient services under the direction of a physician in the state of Idaho in accordance with the provisions of the Medical Practice Act, Section 54-1801, et seq., Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)
- 569. Policies.** The rules adopted by the alcohol/drug abuse treatment program for the regulation of its internal affairs and its dealings with others. (4-26-95)
- 5760. Prevention Services.** Activities through programs to inform, educate, impart skills, and provide appropriate referrals. The prevention strategies used include information dissemination, education, alternatives, problem identification and referral, community-based process, and environmental. (4-5-00)
- 5861. Problem Identification and Referral.** Prevention services to identify and assess those who are engaging in age inappropriate alcohol and tobacco use or the use of illicit drugs for the first time. The purpose of the services is to determine if their behavior can be reversed through education. This strategy does not include a determination of the need for treatment. (4-5-00)
- 5962. Program.** Refers to the organization offering alcohol/drug treatment services. It includes the organization's facilities, management, staffing pattern, and activities. A program receives a certificate of approval from the Department of Health and Welfare. (4-26-95)
- 603. Program Evaluation.** Processes primarily used by the program's administration to assess and

monitor, on a regular or continuous basis, program operation, service delivery, quality assurance, and client outcome. (4-26-95)

**644. Provisional Approval.** A temporary certificate of approval issued to a alcohol/drug abuse treatment program in operation at the time of promulgation of new rules, in order to afford reasonable time to comply with the new rules and to obtain approval, or which, while not in full compliance with rules, has no deficiencies which would endanger the health, safety and welfare of clients and is in the process of making the necessary changes to comply fully. (4-26-95)

**625. Psychologist.** A person who is licensed in accordance with Title 54, Chapter 23, Idaho Code, to practice psychology and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

**636. Qualified Professional.** A member of one (1) of the following professional disciplines, as defined herein: certified, credentialed or licensed alcohol and drug counselor, licensed professional counselor, licensed nurse, licensed physician, psychologist, counselor holding a master's degree in a related field from an approved college or university, licensed, licensed clinical or licensed masters social worker, a person holding a bachelor's degree in a related field, or a person holding an associate degree in chemical dependency counseling who has applied for the Certified Alcohol/Drug Counselor (CADC), pending successful completion of the next testing cycle. A qualified professional must have one thousand forty (1,040) hours of supervised experience providing substance abuse treatment. (3-20-04)

**647. Quality Assurance.** An ongoing evaluative process that not only ensures compliance with minimum standards but provides for continuous improvements in the quality of services. (4-26-95)

**658. Residential Treatment Facility.** A setting for the treatment of alcohol/drug problems that provides twenty-four (24) hour per day living accommodations for clients. (4-26-95)

**669. Retrospective Care Review.** Evaluative activities of the client file conducted when the individual is no longer an active client. (4-26-95)

**670. Screening.** A brief process conducted prior to admission to the drug/alcohol treatment program to determine if the individual meets the program's admission criteria. (4-26-95)

**6871. Service.** The activities of a treatment program grouped according to a common goal or purpose. Examples of services are Treatment Services, Food Services, Social Services, Nursing Services, and Vocational Rehabilitation Services. (4-26-95)

**6972. Social Worker.** A person who is licensed to practice social work under the Social Work Licensing Act, Title 54, Chapter 32, Idaho Code, and who, for the purposes of these rules and minimum standards also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

**703. Staff Member.** A person who is directly employed by or assigned to the program on either a full-time or part-time basis. (4-26-95)

**714. State Alcohol/Drug Authority.** The Idaho Department of Health and Welfare is designated as the State Alcohol/Drug Authority in Section 39-303, Idaho Code. (4-26-95)

**725. Treatment.** Provision of individual therapy, group therapy, assessment, education, and other appropriate services. (4-26-95)

**736. Treatments.** The activities of a program that have as a desired outcomes the elimination or reduction of alcohol and drug use and arresting, reversing, or retarding of problems associated with alcohol or drug abuse, or both. (4-26-95)

**747. Treatment Supervisor.** The person responsible for the overall management of all aspects of the provision of a treatment service or multiple treatment services. Examples of this are: adolescent treatment supervisor,

adult treatment supervisor, residential treatment supervisor. (4-26-95)

~~758.~~ **Uniform Fire Code.** Refers to the latest edition of the Uniform Fire Code, according to Sections 41-253 and 41-254, Idaho Code, as minimum standards for the protection of life and property from fire and explosions. (4-26-95)

**011. -- 019. (RESERVED).**

**020. GENERAL REQUIREMENTS.**

**01. Certificate of Approval Required.** A certificate of approval is required for an alcohol/drug abuse treatment program to directly or indirectly provide alcohol/drug treatment in the state of Idaho. A director or owner of a program must submit a completed application to the Department on forms provided by the Department along with an application fee prior to the date of the initial operation or expiration of the certificate of approval. Approval is required for an alcohol/drug abuse treatment program to be included on the Department's list of programs which meet the standards specified in these rules. Programs must be on the list in order to receive referrals from the Department or any law enforcement officer and to receive any kind of state or federal reimbursement. (4-26-95)

**02. Approved Alcohol/Drug Abuse Treatment Facilities.** Pursuant to these rules, the Department may approve facilities that provide substance abuse treatment. These shall not be interpreted as being in conflict with Section 39-304, Idaho Code. These facilities include: (3-20-04)

- a. Inpatient Facility; (4-26-95)
- b. Residential Facility; (4-26-95)
- c. Outpatient Facility; (4-26-95)
- d. Halfway House Facility; (4-26-95)
- e. Detoxification Facility. (4-26-95)
- f. Drug Court Outpatient Facility. (3-20-04)

**03. Approval for a Program with Multiple Facilities.** An alcohol/drug treatment program may be approved for more than one (1) facility type when that program complies with the specific requirements of each. Failure of any one (1) facility type to receive approval shall not affect the approval of other facility types. (4-26-95)

**04. Approval for Multiple Facilities Attached to One Program.** An alcohol/drug abuse treatment program with more than one (1) facility type may submit one (1) application for all facilities located in the same Department region. (4-26-95)

- a. The application shall list each facility by type. (4-5-00)
- b. A certificate of approval will be issued for each facility site. (4-26-95)
- c. Failure of any one facility to receive approval shall not affect the approval of other facilities listed in the application. (4-26-95)

~~05- **Programs Serving Adolescents.** Any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18) shall meet the following standards: (4-26-95)~~

~~a. Any alcohol/drug abuse treatment program which provides services to adolescents shall require all staff members having contact with adolescents to submit to a criminal history check in accordance with the provisions of the Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, Section 611, "Rules Governing Standards for Child Care Licensing." (4-26-95)~~

- ~~*b. Shall provide separate treatment activities for adults and adolescents. (4-26-95)*~~
- ~~*e. Any alcohol/drug abuse treatment program which provides twenty-four (24) hour per day residential care as an alternative to parental care and outpatient treatment for persons under the age of eighteen (18) shall also be licensed under the Child Care Licensing Reform Act, Title 39, Chapter 12, Idaho Code. (3-20-04)*~~
- ~~*i. Application for child care licensure is made to the Department of Health and Welfare. (4-26-95)*~~
- ~~*ii. Facilities licensed as hospitals under Title 39, Chapter 13, Idaho Code, are exempt from this requirement. (4-26-95)*~~

**05. Services for Children and Adolescents.** Each alcohol/drug abuse treatment program seeking approval to provide services to children or adolescents must meet the following requirements: (7-1-09)T

**a. Separate Services from Adults.** Provide children and adolescent services separate from adult services except for “continued care” described in Subsection 020.05.c. of this rule. (7-1-09)T

**b. Residential Care as an Alternative to Parental Care.** Any program that provides care, control, supervision, or maintenance of children or adolescents for twenty-four (24) hour per day as an alternative to parental care must meet the following criteria: (7-1-09)T

**i.** Be licensed under the “Child Care Licensing Act,” Title 39, Chapter 12, Idaho Code according to IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing”; or (7-1-09)T

**ii.** Be certified by the Department of Juvenile Corrections according to IDAPA 05.01.02, “Rules and Standards for Secure Juvenile Detention Centers”; and (7-1-09)T

**iii.** Be approved under IDAPA 16.06.03, “Rules And Minimum Standards Governing Alcohol/Drug Abuse Prevention And Treatment Program.” (7-1-09)T

**c. Continued Care of an Eighteen (18) Year Old Individual.** An individual, who is in a state approved outpatient or intensive outpatient treatment program and reaches the age of eighteen (18), may remain in the program in continued care for up to ninety (90) days after his eighteenth birthday, or, until the close of the current school year for an individual attending school. Prior to accepting an individual into continued care, the following are required to be presented to the Department’s Management Service Contractor: (7-1-09)T

**i.** A signed voluntary agreement to remain in the program or a copy of a court order authorizing continued placement after the individual’s eighteenth birthday. (7-1-09)T

**ii.** A written assessment to assure that an individual in continued care does not jeopardize the health, safety, and well being of other children and adolescents in the program. (7-1-09)T

**iii.** Written documentation verifying the individual in continued care was in the care of the program prior to his eighteenth birthday. (7-1-09)T

**iv.** Written documentation verifying the individual needs to remain in continued care in order to complete treatment, education, or other similar needs. (7-1-09)T

**d. Care Provided to Children, Adolescents, and Adults in Residential Treatment.** Residential treatment facilities providing care to children, adolescents, and adults must ensure the separation of child and adolescent clients from adult clients. This includes not sharing the same wing, or the same floor for recreation, living, sleeping, and restroom facilities. Children and adolescents must not dine together with adult residents. Children and adolescents must not share treatment groups, recreation, counseling sessions, educational programs, or treatment programs with adults except through utilization of continued care in compliance with IDAPA, “Rules Governing Standards for Child Care Licensing,” Sections 530 through 532 (7-1-09)T

**e. Licensed Hospital Facilities.** Facilities licensed as hospitals under Title 39, Chapter 13, Idaho Code,

are exempt from the requirements in Subsections 020.05.a. through 020.05.d. of this rule. (7-1-09)T

**06. Out-of-State Program and Facilities Approval.** The Department will accept the approval and certification by the state in which a treatment program and facilities are located and utilized by Idaho clients. Programs operated within the state of Idaho, irrespective of the program headquarters, must meet the Department's approval and certification requirements. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~147.--149:~~ (RESERVED).

**148. LEVEL III.5 - CLINICALLY MANAGED MEDIUM INTENSITY RESIDENTIAL TREATMENT FACILITY FOR CHILDREN AND ADOLESCENTS.**

Each alcohol/drug abuse treatment program seeking approval as a Level III.5 - Clinically Managed Medium Intensity Residential Treatment Facility (Level III.5) for children and adolescents, must meet the requirements in Section 148 of this rule, in addition to all rules and minimum standards of these rules. Each treatment program must also be licensed annually under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (7-1-09)T

**01. Admission Criteria for Child and Adolescent Level III.5.** A Level III.5 treatment facility will only admit children and adolescents with a primary diagnosis of alcohol, substance, or alcohol and substance abuse or dependency. (7-1-09)T

**02. Treatment Focus of Child and Adolescent Level III.5.** A Level III.5 treatment facility must focus primarily on alcohol/drug abuse diagnosed problems. A child or adolescent who is likely to have a withdrawal reaction will be admitted only after stabilization of withdrawal unless the Level III.5 treatment facility has a medically supervised program specifically designed for dealing with withdrawal. A Level III.5 treatment facility must provide individual and group counseling sessions, family treatment services, and alcohol/drug abuse education sessions. Care must include at least twenty-one (21) hours a week of treatment program hours specific to alcohol/drug abuse treatment by clinical staff, including planned and structured education, individual and group counseling, family counseling and motivational counseling. (7-1-09)T

**03. Required Staff Ratios in Child and Adolescent Level III.5.** There must be written staff ratios for direct care staff to children and adolescents and service workers to children and adolescents. Unless otherwise specified in these rules, staff ratios must be: (7-1-09)T

**a. Supervisor to Staff Ratio.** At least one (1) staff supervisor for every twenty (20) direct care staff or fraction thereof. (7-1-09)T

**b. Staff to Child or Adolescent Ratio-Daytime.** At least one (1) direct care staff to every eight (8) children or adolescents when the children or adolescents are awake and present, unless the presenting problems of the children or adolescents in care are such that a ratio of one to eight (1:8) is not sufficient to provide for the safety and treatment needs of the children or adolescents. In that case, the ratio of direct care staff to children or adolescents ratio must be increased to ensure the safety and treatment needs of the children are met. (7-1-09)T

**c. Staff to Children or Adolescents' Ratio-Sleeping Hours.** At least one (1) awake direct care staff to twenty (20) children or adolescents or fraction thereof during the children or adolescent's normal sleeping hours in buildings housing children or adolescent's sleeping quarters. If the presenting problems of the children or adolescents in care are such that a ratio of one to twenty (1:20) is not sufficient to provide for the safety and treatment needs of the children or adolescents, then the ratio of direct care staff to children or adolescents ratio must be increased to ensure the safety and treatment needs of the children or adolescents are met. (7-1-09)T

**d. Medical Emergency.** At least two (2) staff persons on duty during waking hours in a children or adolescent's residential care facility must be certified to provide cardiopulmonary resuscitation (CPR) and first aid for the age of the children or adolescents in care. During sleeping hours, only one (1) staff person on duty must be



certified to provide CPR and first aid for the age of the children or adolescents in care. (7-1-09)T

**e.** Emergency Staff Access. When only one (1) direct care worker is on duty, an additional staff person must be available within ten (10) minutes; or, if assistance from law enforcement is available within ten (10) minutes, an additional staff person must be available within thirty (30) minutes to assist with an emergency. (7-1-09)T

**f.** Service Worker Ratios. Except for non-accredited children or adolescent's residential schools, at least one (1) service worker needs to be available for every twenty (20) children or adolescents in care or fraction thereof. (7-1-09)T

**04. Staff Training in Child and Adolescent Level III.5.** Unless otherwise specified in these rules, an employee or volunteer whose primary job function requires interaction with children or adolescents and who works twenty-four (24) or more hours a week must receive at least twenty (20) hours of training annually. An employee or volunteer whose primary job function requires interaction with children or adolescents and who works less than twenty-four (24) hours a week must receive at least ten (10) hours of training annually. The training must include cultural sensitivity and diversity, behavior management, and child and adolescent development issues appropriate to the population served. Training for direct client care staff must also include instruction in administering cardiopulmonary resuscitation (CPR) and administering first aid appropriate to the age of the children or adolescents in care within ninety (90) days after employment. (7-1-09)T

**05. Care Provided to Children, Adolescents, and Adults in Level III.5.** Level III.5 treatment facilities providing care to children, adolescents, and adults must ensure the separation of child and adolescent clients from adult clients. This includes not sharing the same wing, or the same floor for recreation, living, sleeping, and restroom facilities. Children and adolescents must not dine together with adult residents. Children and adolescents must not share treatment groups, recreation, counseling sessions, educational programs, or treatment programs with adults except through utilization of continued care in compliance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Sections 530 through 532. (7-1-09)T

**06. After Care Plan for Child and Adolescent Level III.5.** A children or adolescent's residential care facility that provides alcohol/drug abuse treatment must develop a written plan of aftercare services for each child or adolescent that includes procedures for reintegrating the child or adolescent into the family and community as appropriate, and outpatient and other continued care services recommended. (7-1-09)T

**07. Alcohol-Drug Testing for Child and Adolescent Level III.5.** A Level III.5 treatment facility must establish and follow written policies and procedures for drug testing of children and adolescents as described in Subsection 163.02 of these rules. (7-1-09)T

**149. CHILD AND ADOLESCENT TRANSITIONAL RESIDENTIAL TREATMENT FACILITY.** Each alcohol/drug abuse treatment program seeking approval as a Child and Adolescent Transitional Residential Treatment Facility must meet the requirements in Section 149 of this rule, in addition to all rules and minimum standards contained in these rules. (7-1-09)T

**01. Licensing of a Child and Adolescent Residential Transitional Facility.** A Child and Adolescent Residential Transitional Facility must meet the requirements in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing" and be licensed annually as a Children's Residential Care Facility. (7-1-09)T

**02. Treatment Services in a Child and Adolescent Residential Transitional Facility.** (7-1-09)T

**a.** Child and Adolescent Transitional Residential Treatment will be provided as a Level III.1 - Clinically Managed Low-Intensity Residential Service, which includes outpatient for clients who have completed Level III.5, Section 148, and lack supportive recovery environments. (7-1-09)T

**c.** A Level III.1 facility provides living accommodations in a structured environment that encourages each child and adolescent client to assume responsibility for their own rehabilitation. (7-1-09)T

**d.** Treatment and adjunct services must not be provided but can be arranged for by the program.

(7-1-09)T

**e.** A Level III.1 treatment facility must encourage use of community resources by persons recovering from alcohol/drug abuse. (7-1-09)T

**f.** Treatment under Level III.1 is directed toward applying recovery skills, preventing relapse, improving social functioning and ability for self-care, promoting personal responsibility, developing a social network supportive of recovery, and reintegrating the individual into the worlds of school, work, and family life. (7-1-09)T

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

### **16.07.50 - RULES AND MINIMUM STANDARDS GOVERNING NON-HOSPITAL, MEDICALLY-MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS**

**DOCKET NO. 16-0750-0901**

#### **NOTICE OF RULEMAKING**

#### **RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING**

**EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE:** The effective date of the rescission of the temporary rule is March 30, 2009.

**AUTHORITY:** In compliance with Section 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has rescinded the temporary rules previously adopted and is vacating the proposed rulemaking initiated under this docket. The action is authorized pursuant to Sections 39-304, 39-305, 39-311 and 56-1003, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking:

These temporary rules are being rescinded and the proposed rulemaking is being vacated for this docket in order to add additional requirements for standards of care and services for nonhospital, medically-monitored detoxification/mental health diversion units. The Department determined it would be less confusing and easier to read for the temporary rule to be rescinded and the proposed rules to be vacated in the same notice. The replacement chapter for IDAPA 16.07.50. "Rules and Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units," is being published under Docket 16-0750-0902 in this October Idaho Administrative Bulletin, Vol. 09-10.

**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 due to either the rescission of the temporary rule or the vacation of the proposed rulemaking for this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Scott Tiffany at (208) 332-7243.

DATED this 17th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.07.50 - RULES AND MINIMUM STANDARDS GOVERNING NONHOSPITAL, MEDICALLY-MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS

#### DOCKET NO. 16-0750-0902 (FEE RULE)

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

**EFFECTIVE DATE:** The effective date of these temporary rules is March 30, 2009.

**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 39-304, 39-305, 39-311, 56-1003, 56-1004A, 56-1007, and 56-1009 Idaho Code.

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

**Wednesday, October 14, 2009 -- 3:00 p.m.**

**DEPARTMENT OF HEALTH AND WELFARE  
Pete T. Cenarrusa Bldg  
3rd Floor, Room 3A  
450 West State Street, Boise, ID**

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

**DESCRIPTIVE SUMMARY:** The 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:

A need has been identified for a nonhospital, medically-monitored detoxification/mental health diversion unit facility in Idaho. Currently, no standards exist for licensing or regulating these proposed facilities. This rule chapter provides the minimum standards, licensing, and regulations for a certificate of approval to operate a nonhospital, medically-monitored detoxification/mental health diversion unit in Idaho. These rules also provide requirements for:

1. Application for a certificate of approval, renewal, and fee requirements;
2. Investigations, complaints, enforcement remedies, enforcement actions, and penalties, including denial, suspension, or revocation of the certificate of approval;
3. Standards that include policies and procedures on: client rights, medical care, services, and treatment;
4. Requirements for specific types of services in each detoxification unit, mental health diversion unit, and sobering station;
5. Staff qualifications, staffing hours, and work responsibilities; and
6. Minimum design and construction requirements for facilities.

**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:

These rules are needed to ensure that benefits and services provided to clients in a nonhospital, medically-monitored detoxification/mental health diversion unit are regulated to protect the health, safety, and welfare of the public.

**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 fees being imposed in this rule are necessary to avoid immediate danger to those individuals being served in a nonhospital, medically-monitored detoxification/mental health diversion unit.

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

The fiscal impact to the state general fund due to this rulemaking is \$4500 for an architectural review of building plans and on-site inspection once construction is completed on the facility.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, informal negotiated rulemaking was conducted. Department staff met with interested stakeholders to discuss the changes proposed in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Scott Tiffany at (208) 332-7243.

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 October 28, 2009.

DATED this 17th day of August, 2009.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
dhwrules@dhw.idaho.gov e-mail

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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET 16-0750-0902**

**IDAPA 16  
TITLE 07  
CHAPTER 50**

**16.07.50 - RULES AND MINIMUM STANDARDS GOVERNING NONHOSPITAL, MEDICALLY-MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS**

**000. LEGAL AUTHORITY.**

Under Title 39, Chapter 3, Idaho Code, the Board of Health and Welfare has authority to adopt minimum standards, rules, and regulations for the development, construction, and operation of nonhospital, medically-monitored detoxification/mental health diversion units in Idaho. The Idaho Legislature has designated the Department of Health and Welfare as the State Mental Health Authority and the State Substance Abuse Authority. The Department's responsibility is to assure that mental health and substance use disorders treatment and services are available throughout the state to individuals who need such care and who meet the eligibility criteria under the Regional Mental Health Services Act and the Alcoholism and Intoxication Treatment Act. Sections 56-1003, 56-1004, 56-1004A, 56-

1007, and 56-1009, Idaho Code, authorize the Director of the Department to adopt and enforce rules to promote safe and adequate services and treatment of individuals within nonhospital, medically-monitored detoxification/mental health diversion units. (3-30-09)T

**001. TITLE, SCOPE, AND RESPONSIBILITIES.**

**01. Title.** The title of this chapter is IDAPA 16.07.50, “Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units,” and may also be known as “Detox/Mental Health Diversion Units.” (3-30-09)T

**02. Scope.** These rules and minimum standards apply to all detox/mental health diversion units in Idaho that provide: evaluation; observation; monitoring; care; and treatment; twenty-four (24) hours per day, seven (7) days per week, to individuals suffering from a subacute psychiatric or alcohol/drug crisis. These services are offered in a residential setting under the supervision of a physician. A detox/mental health diversion unit is designed to withdraw an individual from alcohol or other drugs and to prepare him to enter a more extensive treatment and rehabilitation program. These facilities are not intended to serve as a secure holding facility for the detention of any individual or to provide care and treatment to any individual who is the subject of involuntary commitment proceedings or detention without a hearing as provided in Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code. The purpose of this chapter is to provide rules for: (3-30-09)T

**a.** The approval, denial, suspension, or revocation of certification or approval of detox/mental health diversion units; (3-30-09)T

**b.** To provide rules for the admittance of clients by detox/mental health diversion units; (3-30-09)T

**c.** To establish minimum standards of health, safety and quality for detox/mental health diversion units; and (3-30-09)T

**d.** To establish minimum standards for the development, construction, and operation of nonhospital, medically-monitored detoxification/mental health diversion units. (3-30-09)T

**03. General Facility Responsibilities.** A detox/mental health diversion unit provides services and treatment to adults who are suffering from a subacute psychiatric or alcohol/drug crisis, twenty-four (24) hours per day, seven (7) days per week, in a nonhospital, medically supervised residential setting. A detox/mental health diversion unit must assure quality services and dignity in a structured regime through an administrator and staff who have the knowledge and experience required to provide safe and appropriate services to each client. A detox/mental health diversion unit must be constructed and operated consistent with these rules and applicable statutes. (3-30-09)T

**04. Exception for Law Enforcement Facilities.** These rules and minimum standards do not apply to a facility owned, operated, or under the custody, control, or jurisdiction of the Department of Correction, Department of Juvenile Corrections, or state, city, or county law enforcement, whether the facility is utilized for the detention of any individual or for any other purpose. (3-30-09)T

**05. General Department Responsibilities.** The Department is responsible for monitoring and enforcing the provisions in these rules and protecting clients by evaluating detox/mental health diversion units to assure compliance with statutes and these rules. This responsibility includes: approving facilities, monitoring services provided, and inspecting and evaluating conditions in the facilities. (3-30-09)T

**002. WRITTEN INTERPRETATIONS.**

Under Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to interpretations of these rules. These documents are available for public inspection as described in Sections 005 and 006 of these rules. (3-30-09)T

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals and all contested cases are governed by IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (3-30-09)T

**004. INCORPORATION BY REFERENCE.**

The Department has incorporated by reference the following documents in these rules. (3-30-09)T

**01. AIA Guidelines for Design and Construction of Health Care Facilities, (AII) 2006.** AIA Guidelines for Design and Construction of Health Care Facilities, (AII) 2006, are applicable to airborne infection isolation rooms for facilities operating a sobering station. The guidelines are available online at <http://www.aia.org/>. (3-30-09)T

**02. American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI/ICC A117.1-2003).** These standards are available online at <http://www.ansi.org/>. (3-30-09)T

**03. Americans with Disabilities Act Accessibility Guidelines.** 28 CFR Part 36, Appendix A. This code is available online at <http://www.ada.gov/publicat.htm>. Contact phone number is (800) 514-0301. (3-30-09)T

**04. ASAM PPC-2R.** American Society of Addiction Medicine (ASAM) Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition - Revised (ASAM PPC-2R). A copy of this manual is available by mail at the American Society of Addiction Medicine, 4601 North Park Ave., Suite 101, Chevy Chase, MD 20815; by telephone and fax, (301) 656-3920 and (301) 656-3815 (fax); or on the internet at <http://www.asam.org>. (3-30-09)T

**05. DSM-IV-TR.** American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83702. (3-30-09)T

**06. Idaho Board of Nursing Rules.** IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." These rules are available online at <http://adm.idaho.gov/adminrules/idapa27/0101.pdf>. (3-30-09)T

**07. Idaho Diet Manual.** The Idaho Diet Manual, Ninth Edition, 2005, is available from the Idaho Dietetic Association, online at <http://eatrightidaho.org>. (3-30-09)T

**08. Idaho Food Code.** IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." These rules are available online at <http://adm.idaho.gov/adminrules/rules/idapa16/0219.pdf>. (3-30-09)T

**09. International Building Code, Edition 2003.** This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: (888) 422-7233, and online at <http://www.iccsafe.org>. (3-30-09)T

**10. Life Safety Code.** National Fire Protection Association Standard 101, the Life Safety Code, 2000 Edition, including mandatory references. A copy of the code is available at 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471. The telephone contact number is (800) 344-3555. The code is available online at <http://www.nfpa.org/catalog/product.asp?pid=10100>. (3-30-09)T

**11. National Electric Code.** National Electric Code AKA: NFPA Standard 70, the National Electric Code, 2000 Edition. A copy of the code is available online at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=70>. (3-30-09)T

**12. National Fire Protection Association (NFPA) Documents.** The NFPA documents referenced in this chapter of rules are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908, (800) 344-3555, and online at <http://www.nfpa.org>. (3-30-09)T

**13. National Sanitation Federation.** The National Sanitation Federation Standards. These standards may be found online at [http://www.nsf.org/business/about\\_NSF/](http://www.nsf.org/business/about_NSF/). (3-30-09)T

**14. Occupational Safety and Health Act of 1970 (OSHA).** The OSHA Construction Standards may be obtained by contacting OSHA at 200 Constitution Avenue, NW, Washington, DC 20210. The internet website is <http://www.osha.gov/doc/index.html>. (3-30-09)T

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- AND INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (3-30-09)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. (3-30-09)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83702. (3-30-09)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (3-30-09)T

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (3-30-09)T

**06. Substance Abuse Services Website.** The Substance Abuse Services internet website is found at <http://www.healthandwelfare.idaho.gov/Medical/SubstanceUseDisorders/tabid/105/Default.aspx>. (3-30-09)T

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.**

**01. Confidential Records.** The use and disclosure of any information about a detox/mental health diversion unit covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (3-30-09)T

**02. Licensure, Certification, or Approval.** In compliance with Section 9-340C(9), Idaho Code and IDAPA 16.05.01, "Use and Disclosure of Department Records," records will be released if they are part of an inquiry into a detox/mental health diversion unit facility's fitness to be granted or retain a license, certificate, permit, privilege, commission, or position. These records will otherwise be provided in redacted form as required by law or rule. (3-30-09)T

**007. -- 008. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Criminal History and Background Check.** Each detox/mental health diversion unit must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Criminal history and background checks must be completed on the owner, employees, applicants, transfers, reinstated former employees, student interns, contractors, and volunteers who provide care or services, or have access to clients in a detox/mental health diversion unit. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. (3-30-09)T

**02. Availability to Work.** Any individual hired or contracted with, who has direct client access, must self-disclose all arrests and convictions before having access to clients. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any client. An individual is allowed to work only under supervision until the criminal history and background check is completed. (3-30-09)T

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH K.**  
For the purposes of this chapter of rules, the following definitions apply. (3-30-09)T



- 01. Administrator.** The person delegated the responsibility for the day-to-day operation and management of a detox/mental health diversion unit by the governing body. The administrator, owner, medical director, director of nursing, or mental health program director may be the same individual. The term “administrator” is synonymous with the term “chief executive officer (CEO).” (3-30-09)T
- 02. Adult.** An individual eighteen (18) years of age, or older. (3-30-09)T
- 03. Applicant.** An individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, who is planning to operate or maintain a detox/mental health diversion unit in Idaho. (3-30-09)T
- 04. ASAM.** The American Society of Addiction Medicine. (3-30-09)T
- 05. Board.** The Idaho State Board of Health and Welfare. (3-30-09)T
- 06. Change of Ownership.** The sale, purchase, exchange, or lease of an existing facility by the present owner to a new owner. (3-30-09)T
- 07. Chemical Dependency Counselor.** A professional counselor licensed by the Idaho State Licensing Board of Professional Counselors and Marriage and Family Therapists under Title 54, Chapter 34, Idaho Code, who: (3-30-09)T
- a.** Has specialized training, education, and experience in the treatment of persons with problems related to alcohol and drug use; and (3-30-09)T
- b.** Meets the requirements for certification as a alcohol and drug counselor under IDAPA 16.06.03, “Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs,” or IDAPA 16.07.20, “Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs.” (3-30-09)T
- 08. Chemical Restraint.** The use of drugs that prevents a client from doing what he might do voluntarily on his own. (3-30-09)T
- 09. Chief Executive Officer (CEO).** The individual delegated the responsibility for the day-to-day operation and management of a detox/mental health diversion unit by the governing body. The chief executive officer, owner, medical director, director of nursing, or mental health program director may be the same individual. The term “chief executive officer (CEO)” is synonymous with the term “administrator.” (3-30-09)T
- 10. Client.** An adult, who is not the subject of involuntary commitment proceedings or detention without a hearing, as provided in Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code, and who receives services at a detox/mental health diversion unit. The term “client” is synonymous with the terms: patient, participant, resident, consumer, or recipient of treatment. (3-30-09)T
- 11. Department.** The Idaho Department of Health and Welfare. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code, and as the State Substance Abuse Authority under Section 39-304, Idaho Code. (3-30-09)T
- 12. Director.** The Director of the Department of Health and Welfare, or his designee. (3-30-09)T
- 13. Director of Nursing Services.** A qualified professional nurse (R.N.), licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing,” who is so designated by the governing body. The director of nursing, administrator, or mental health program director may be the same individual. The director of nursing is responsible for nursing care provided to clients and for supervising the nursing care and services provided by staff. (3-30-09)T
- 14. Full Accreditation Certificate of Approval.** A certificate of approval issued for a period of one

(1) year to a facility that is in substantial compliance with these rules and minimum standards. (3-30-09)T

**15. Governing Body.** The individual or individuals, board of directors, group, agency, or entity that has ultimate authority and responsibility for the overall conduct and operation of the facility, and for full compliance with these rules and minimum standards. (3-30-09)T

**16. Governmental Unit.** The state of Idaho, any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. (3-30-09)T

**011. DEFINITIONS AND ABBREVIATIONS L THROUGH Z.**  
For the purposes of this chapter of rules, the following definitions apply. (3-30-09)T

**01. Level of Care Utilization System (“LOCUS”).** A clinical level of care placement tool for psychiatric and addictions services, developed by the American Association of Community Psychiatrists. (3-30-09)T

**02. Licensed Clinical Social Worker (LCSW).** A clinical social worker licensed by the Idaho State Board of Social Work Examiners under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Board of Social Work Examiners.” (3-30-09)T

**03. Licensed Marriage and Family Therapist (LMFT).** A person licensed to practice marriage and family therapy by the Idaho State Board of Professional Counselors and Marriage and Family Therapists, under Title 54, Chapter 34, Idaho Code, and IDAPA 24.14.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” (3-30-09)T

**04. Licensed Master’s Level Social Worker (LMSW).** A master’s level social worker licensed by the Idaho State Board of Social Work Examiners under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Board of Social Work Examiners.” (3-30-09)T

**05. Licensed Practical Nurse (L.P.N.).** A practical nurse licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (3-30-09)T

**06. Licensed Professional Counselor (LPC).** A professional counselor licensed by the Idaho State Board of Professional Counselors and Marriage and Family Therapists, under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.” (3-30-09)T

**07. Licensed Professional Nurse (R.N. or Registered Nurse).** A professional nurse licensed by the Idaho State Board of Nursing under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing.” (3-30-09)T

**08. Mechanical Restraint.** Any apparatus that physically prevents a client from doing what he might do voluntarily on his own, including “safety belts.” The term “mechanical restraint” is synonymous with the term “physical restraint.” (3-30-09)T

**09. Medical Director.** A qualified physician licensed by the Idaho State Board of Medicine in accordance with Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, “Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho,” who is so designated by the governing body. The medical director is responsible for providing medical care to clients and for supervising all of the medical care, services, and treatment provided by the medical staff. (3-30-09)T

**10. Medical Staff.** Professional medical personnel employed, full-time or part-time, who are licensed under Title 54 or Title 56, Idaho Code, to provide medical care and services to clients in a Detox/Mental Health Diversion Unit. (3-30-09)T

**11. Mental Health Clinical Staff.** Professional mental health personnel employed, full-time or part-time, who are licensed under Title 54, Idaho Code, to provide mental health counseling, treatment, and services to clients in a Detox/Mental Health Diversion Unit. (3-30-09)T

**12. Mental Health Program Director.** A qualified psychiatrist, psychologist, licensed professional nurse, licensed clinical professional counselor, licensed clinical social worker, licensed professional counselor, licensed master's level social worker, or licensed marriage and family therapist, who is so designated by the governing body. The mental health program director is responsible for providing mental health counseling, treatment, and services provided to clients and for supervising mental health counseling, treatment, and services provided by mental health clinical staff. The mental health program director, administrator, director of nursing, and medical director may be the same individual. (3-30-09)T

**13. MIS.** The Department's computerized management information system designed to collect individual demographics and service information on persons who are suffering from a subacute psychiatric or alcohol/drug crisis. (3-30-09)T

**14. Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Unit.** A facility referred to in this rule as a "detox/mental health diversion unit," means a freestanding residential treatment facility, approved by the Department of Health and Welfare under these rules and minimum standards. Facilities owned, operated, or under the custody, control, or jurisdiction of the Department of Correction, Department of Juvenile Corrections, or state, city, or county law enforcement are excluded from this definition and are not required to meet these rules and minimum standards. (3-30-09)T

**15. On-Call.** The scheduled state of availability to return to duty, work ready, within a specified period of time. (3-30-09)T

**16. On-Duty.** Being awake, and actively carrying out assigned duties in the facility. (3-30-09)T

**17. Owner.** An individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, having legal ownership of the facility as an operating business, regardless of who owns the real property. (3-30-09)T

**18. Physical Restraint.** An apparatus that physically prevents a client from doing what he might do voluntarily on his own including "safety belts." The term "physical restraint" is synonymous with the term "mechanical restraint." (3-30-09)T

**19. Physician.** An individual who holds a license issued by the Idaho State Board of Medicine under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho." (3-30-09)T

**20. Provisional Certificate of Approval.** Pending satisfactory correction of all deficiencies, a certificate of approval issued for a period not to exceed six (6) months to a facility that is not in substantial compliance with these rules and minimum standards. A facility will not be issued more than one (1) provisional certificate of approval in any two (2) year period. (3-30-09)T

**21. Psychiatrist.** An individual licensed by the Idaho State Board of Medicine to practice medicine under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery," who is certified by the American Board of Psychiatry and Neurology in psychiatry. (3-30-09)T

**22. Psychologist.** An individual licensed by the Idaho State Board of Psychology to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-30-09)T

**23. Serious Mental Illness (SMI).** Means any of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Text Revision (DSM-IV-TR): (3-30-09)T

**a. Schizophrenia.** (3-30-09)T

- b.** Paranoia and other psychotic disorders. (3-30-09)T
- c.** Bipolar disorders (mixed, manic and depressive). (3-30-09)T
- d.** Major depressive disorders (single episode or recurrent). (3-30-09)T
- e.** Schizoaffective disorders. (3-30-09)T
- f.** Obsessive-compulsive disorders. (3-30-09)T

**24. Serious and Persistent Mental Illness (SPMI).** A primary diagnosis under DSM-IV-TR of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Psychotic Disorder Not Otherwise Specified (NOS) for a maximum of one hundred twenty (120) days without a conclusive diagnosis. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following functional areas in the last six (6) months: (3-30-09)T

- a.** Vocational or education, or both. (3-30-09)T
- b.** Financial. (3-30-09)T
- c.** Social relationships or support, or both. (3-30-09)T
- d.** Family. (3-30-09)T
- e.** Basic daily living skills. (3-30-09)T
- f.** Housing. (3-30-09)T
- g.** Community or legal, or both. (3-30-09)T
- h.** Health or medical, or both. (3-30-09)T

**25. Social Worker.** An individual licensed by the Idaho State Board of Social Work Examiners to practice social work in Idaho under Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, "Rules of the Idaho State Board of Social Worker Examiners." (3-30-09)T

**26. Substantial Compliance.** Substantial compliance means complying with the minimum standards and requirements of these rules, and the absence of any state or condition that could endanger the health, safety, or welfare of any client, employee, contractor, occupant, or volunteer. (3-30-09)T

**012.--099. (RESERVED).**

## **CERTIFICATE OF APPROVAL REQUIREMENTS**

**(Section 100 through 199)**

### **100. CERTIFICATE OF APPROVAL.**

**01. Purpose.** The purpose of a certificate of approval issued by the Department is to assure, insofar as is reasonably practicable, that the care, services, treatment, and physical surroundings of each detox/mental health diversion unit are in substantial compliance with this chapter. The issuance of a certificate of approval does not guarantee adequacy of individual care, treatment, personal safety, fire safety, or the well-being of any client, employee, contractor, volunteer, or occupant of a facility. (3-30-09)T

**02. Valid Certificate of Approval.** Under Sections 39-304, 39-305, 39-311, 39-3133, and 56-1003,

Idaho Code, no individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, can operate, establish, manage, conduct, or maintain, directly or indirectly, a detox/mental health diversion unit without a valid certificate of approval issued by the Department. (3-30-09)T

**a.** No client may be admitted to, or cared for in, a detox/mental health diversion unit until a certificate of approval is issued by the Department. (3-30-09)T

**b.** The application must include, at a minimum, all of the information, items, documents, and materials identified in Section 110 of these rules. (3-30-09)T

**03. Maximum Allowable Number of Beds.** A certificate of approval will specify the maximum allowable number of beds for detoxification, sobering, and mental health. Facilities are prohibited from exceeding the maximum allowable number of beds for detoxification, sobering, and mental health as stated on the certificate of approval. (3-30-09)T

**04. Apply for Certificate of Approval.** In addition to obtaining prior written approval of actual construction drawings, plans, and specifications in accordance with Section 600 through 699 of these rules, each individual, firm, partnership, association, corporation, or governmental unit, acting separately or jointly, planning to operate or maintain a detox/mental health diversion unit must apply for a certificate of approval on forms provided by the Department. (3-30-09)T

**a.** The application and application fee must be submitted to the Department at least ninety (90) days prior to the planned opening date. The application must contain information required by the Department which includes affirmative evidence of the facility's ability to comply with these rules. (3-30-09)T

**b.** Upon receipt of a completed application, the Department has up to sixty (60) days to notify the applicant of its determination. (3-30-09)T

**101. -- 104. (RESERVED).**

**105. AGREEMENTS REQUIRED FOR CERTIFICATE OF APPROVAL FOR A DETOX/MENTAL HEALTH DIVERSION UNIT FACILITY.**

Each detox/mental health diversion unit must have and maintain at all times formal written agreements as provided in Subsections 105.01 through 105.05 of this rule before a certificate of approval can be issued. An individual filling more than one (1) of the following positions, must meet the qualifications under these rules for each position being filled by the individual. (3-30-09)T

**01. Agreement with Licensed Hospital Required.** A formal written agreement must be maintained at all times for the provision of emergency medical services and ambulatory medical services with one (1) or more licensed hospitals serving the area in which the facility is located. The agreement must provide, at a minimum, for: (3-30-09)T

**a.** Laboratory, x-ray, and other diagnostic services not otherwise available at the facility; (3-30-09)T

**b.** Hospitalization for acutely ill clients; (3-30-09)T

**c.** Specify hospital consents to accept all transfers for prompt medical evaluation, treatment, and admission; and (3-30-09)T

**d.** Assurances for the exchange of information for clients. (3-30-09)T

**02. Agreement with CEO or Administrator.** A formal written agreement must be maintained at all times with a qualified professional who is employed or contracted to serve as the CEO or administrator. The CEO or administrator is responsible for the day-to-day operations of the facility. (3-30-09)T

**03. Agreement with Medical Director.** A formal written agreement must be maintained at all times with a qualified physician licensed in Idaho, who is employed or contracted to serve as the medical director. The

medical director is responsible for the medical care provided to clients and for supervising all medical care, services, and treatment provided by the medical staff. (3-30-09)T

**04. Agreement with Director of Nursing Services.** A formal written agreement must be maintained at all times with a qualified R.N. licensed in Idaho, who is employed or contracted to serve as the director of nursing. The director of nursing is responsible for nursing care provided to clients and for supervising the nursing care, and services provided by staff. (3-30-09)T

**05. Agreement with Mental Health Program Director.** A formal written agreement must be maintained at all times with a qualified professional licensed in Idaho, who is employed or contracted to serve as the Mental Health Program Director. The Mental Health Program Director is responsible for providing mental health counseling, treatment, and services to clients and for supervising mental health counseling, treatment and services provided by the mental health staff. (3-30-09)T

**06. Agreement with Chemical Dependency Counselor.** A formal written agreement must be maintained at all times with a qualified professional counselor licensed in Idaho who is employed or contracted as a chemical dependency counselor. The chemical dependency counselor is responsible for developing an individualized treatment plan based on the treatment needs assessment for each client admitted to the detoxification unit or mental health unit, and for supervising all chemical dependency counseling provided by staff. (3-30-09)T

**106. -- 109. (RESERVED).**

**110. APPLICATION FOR CERTIFICATE OF APPROVAL.**

**01. Completed and Signed Application.** The applicant must apply for a certificate of approval on forms provided by the Department, and must provide all of the information requested by the Department. Forms for a certificate of approval are available upon written request, or online at <http://www.healthandwelfare.idaho.gov>. (3-30-09)T

**02. Initial Application and Building Evaluation Fee.** The applicant must make a request in writing for a certificate of approval and evaluation of existing buildings. The request must include: (3-30-09)T

- a.** The physical address of the buildings that are to be evaluated; (3-30-09)T
- b.** The name, address, and telephone number of the individual who is to receive the Department's determination and evaluation report; and (3-30-09)T
- c.** A nonrefundable five hundred (\$500) dollar application and building evaluation fee. No application will be processed until the application fee is paid. (3-30-09)T

**03. Statement to Comply.** The applicant must provide a written statement that the applicant, owner, operator, proposed CEO or administrator, proposed medical director, proposed director of nursing services, and proposed mental health program director have thoroughly read, reviewed, and are prepared to comply with the provisions in IDAPA 16.07.50, "Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units." (3-30-09)T

**04. Statement Disclosing Revocation or Disciplinary Actions.** The applicant must provide a written statement regarding the applicant, owner, proposed CEO or administrator, proposed medical director, proposed director of nursing services, and proposed mental health program director that either: (3-30-09)T

- a.** Discloses any revocation or other disciplinary action taken against, or in the process of being taken against any of them, in Idaho or any other jurisdiction; or (3-30-09)T
- b.** Affirms that no revocation or other disciplinary action has been taken against, or is in the process of being taken against any of them, in Idaho or any other jurisdiction. (3-30-09)T

**05. Criminal History and Background Clearance.** The applicant must provide satisfactory evidence

that the owner, applicant, all employees, transfers, reinstated former employees, student interns, contractors, volunteers, and any other individuals who provide care or services, or have access to clients, have successfully completed and received a clearance for a criminal history and background check that complies with Section 009 of these rules. (3-30-09)T

**06. Electrical Inspection.** The applicant must provide a written statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical code as incorporated by reference in Section 004 of these rules. (3-30-09)T

**07. Public Health District.** The applicant must provide a current written statement from the local health district that confirms the facility meets the local health codes for occupancy, and if the facility is not on a municipal water supply or sewage disposal system, that the water supply and sewage disposal system comply with these rules and are in good working order. (3-30-09)T

**08. Certificate of Occupancy, Fire Codes, and Building Codes.** The applicant must provide a written statement from the local zoning official, local building official, and local fire official, that confirms the facility complies with local zoning, local building codes, and local fire codes for occupancy. (3-30-09)T

**09. Operational Policies and Procedures.** The applicant must provide a complete set of operational policies and procedures as required under these rules. (3-30-09)T

**10. Proof of Insurance.** The applicant must provide proof of insurance. Each facility must maintain medical liability insurance at a minimum of one million dollars/three million dollars (\$1,000,000/\$3,000,000), and general liability insurance at a minimum of one million/three million dollars (\$1,000,000/\$3,000,000). Copies of the declarations policy face-sheet must be included with the application. (3-30-09)T

**11. Floor Plan.** The applicant must provide a detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings. (3-30-09)T

**12. Purchase Agreement, Lease, or Deed.** The applicant must provide a copy of the purchase agreement, lease, or deed. (3-30-09)T

**13. Identification of CEO or Administrator, Medical Director, Director of Nursing Services, and Mental Health Program Director.** The applicant must provide a written statement that identifies the CEO or administrator, medical director, director of nursing services, and mental health program director along with documentation that establishes compliance with Sections 271 through 273, and 275 of these rules. (3-30-09)T

**14. Other Information as Requested.** The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of these rules. (3-30-09)T

**111. -- 114. (RESERVED).**

**115. FAILURE TO COMPLETE APPLICATION PROCESS.**

Failure of the applicant to cooperate with the Department or complete the application process within six (6) months of the original date of application will result in a denial of the application. If the application is denied, the applicant is barred from submitting, seeking, or obtaining another application for a certificate of approval for a period of three (3) years of the original date of application. (3-30-09)T

**116. EXPIRATION AND RENEWAL OF CERTIFICATE OF APPROVAL.**

**01. Existing Certificate of Approval.** Each certificate of approval to operate a detox/mental health diversion unit will expire on the date designated on the certificate of approval, unless suspended or revoked prior to the certificate's expiration date. (3-30-09)T

**02. Renewal of Certificate of Approval.** To renew a certificate of approval, the individual or governmental unit named on the certificate must submit a written request for renewal on a form approved by the Department at least ninety (90) days prior to the expiration of the certificate. The Department has up to thirty (30)

days after receiving a completed renewal application to notify the applicant of its determination. (3-30-09)T

**03. Annual Renewal Fee.** An annual nonrefundable fee of ninety-six (\$96) dollars per bed must be submitted with the renewal application for certificate of approval. This per bed annual renewal fee will be adjusted from time-to-time to cover the cost of licensing, enforcing, and regulating in accordance with these rules and minimum standards. (3-30-09)T

**117. -- 119. (RESERVED).**

**120. ISSUANCE OF CERTIFICATE OF APPROVAL BY DEPARTMENT.**

Upon completion of the application process, the Department may take any of the following actions in Subsections 120.01 through 120.03 of this rule. (3-30-09)T

**01. Issue Full Accreditation Certificate.** Issue a full accreditation certificate of approval for a period of one (1) year if a facility is in substantial compliance with these rules and minimum standards. (3-30-09)T

**02. Issue Provisional Certificate.** Issue a provisional certificate of approval for a period of six (6) months when a facility is not in substantial compliance with these rules and minimum standards. This provisional certificate is contingent on an approved plan to correct all deficiencies prior to the expiration of the provisional certificate being provided to the Department by the facility. A facility will not be issued more than one (1) provisional certificate of approval in any two-year period. (3-30-09)T

**03. Deny Certificate.** Deny a certificate of approval. (3-30-09)T

**121. DISPLAY CERTIFICATE OF APPROVAL.**

The facility must display the current certificate of approval in the facility. The certificate must be clearly visible to the general public. (3-30-09)T

**122. -- 124. (RESERVED).**

**125. NONTRANSFER OF CERTIFICATE OF APPROVAL.**

**01. Issued Certificate.** A certificate of approval is issued in the name of the individual, firm, partnership, association, corporation, or governmental unit identified on the application and only to a specified address of the facility stated in the application for the period and services specified. (3-30-09)T

**02. Nontransferable.** A certificate of approval is nontransferable or assignable from one (1) individual to another, from one (1) business entity or governmental unit to another or from one (1) location to another. (3-30-09)T

**03. Change in Ownership, Operator, or Location.** When there is a change in ownership, operator, or a change in location occurs, the detox/mental health diversion unit must reapply for a certificate of approval as required in Section 130 of these rules. The new owner or operator must obtain a certificate of approval before starting operations as a detox/mental health diversion unit. (3-30-09)T

**126. -- 129. (RESERVED).**

**130. CHANGES REQUIRING NOTIFICATION TO THE DEPARTMENT.**

A detox/mental health diversion unit must notify the Department if any of the following changes in Subsections 130.01 through 130.05 of this rule occurs. (3-30-09)T

**01. Change of Ownership, Operator, or Location.** The owner must notify the Department when there is a change of ownership, operator, or location. A new application for a certificate of approval must be submitted to the Department at least ninety (90) days prior to the proposed date of the change. (3-30-09)T

**02. Change of Ownership, Operator, or Location Due to Facility in Litigation.** An application for a certificate of approval that is being suspended or revoked and a change of ownership, operator, or location due to a



facility in litigation for failure to comply with these rules, must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. An entity purchasing a facility with an enforcement action acquires the enforcement action. (3-30-09)T

**03. Change of CEO or Administrator, Medical Director, or Director of Nursing Services.** Any facility issued a certificate of approval must notify the Department in writing as soon as practicable prior to any the following changes in Subsections 130.03.a. through 130.03.c of this rule, to permit the Department to determine whether any changes in certification status are necessary: (3-30-09)T

- a. Change in CEO or administrator; (3-30-09)T
- b. Change in medical director; (3-30-09)T
- c. Change in director of nursing services; or (3-30-09)T
- d. Change in mental health program director. (3-30-09)T

**04. Change in Services or Closure of Facility.** A facility issued a certificate of approval must notify the Department in writing at least thirty (30) days prior to any of the following changes to permit the Department to determine whether any changes in certification status are necessary: (3-30-09)T

- a. Material change in services or program classifications provided by the facility; or (3-30-09)T
- b. Closure of the facility. (3-30-09)T

**05. Change in Maximum Allowable Number of Beds.** A facility issued a certificate of approval must notify the Department in writing at least thirty (30) days prior to any proposed increase in the maximum allowable number of beds for detoxification, sobering, or mental health. (3-30-09)T

**131. NOTIFICATION BY THE DEPARTMENT FOR PROPOSED CHANGES SUBMITTED BY THE FACILITY.**

**01. Notification on Submitted Applications for Proposed Changes.** The Department will notify the owner or operator of its determination with respect to a proposed change in ownership, operators, or location, within sixty (60) days of the submission of the application for the change as provided in Section 130 of these rules. (3-30-09)T

**02. Notification of Changes in Maximum Number of Beds.** The Department will notify the owner or operator within thirty (30) days of its determination with respect to the proposed changes in the maximum allowable number of beds for detoxification, sobering, and mental health for the facility. (3-30-09)T

**03. Notification of Changes in Operations.** The Department will notify the owner or operator within thirty (30) days of its determination with respect to any of the following proposed changes: (3-30-09)T

- a. Change of CEO or administrator; (3-30-09)T
- b. Change of medical director; (3-30-09)T
- c. Change of director of nursing services; (3-30-09)T
- d. Change of mental health program director; and (3-30-09)T
- e. Material change in services or program classifications. (3-30-09)T

**132. -- 149. (RESERVED).**

**150. DENIAL OF CERTIFICATE OF APPROVAL.**

**01. Denial of a Certificate of Approval for Lack of Substantial Compliance.** The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that the facility is not in substantial compliance with these rules and minimum standards. (3-30-09)T

**02. Denial of a Certificate of Approval Related to Key Individuals.** The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that any of the following individuals: applicant, owner, operator, CEO or administrator, medical director, director of nursing services, or mental health program director has: (3-30-09)T

- a.** Violated any conditions of a certificate of approval; (3-30-09)T
- b.** Willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval; (3-30-09)T
- c.** Been found guilty of fraud, gross negligence, abuse assault, battery, or exploitation of children or vulnerable adults; (3-30-09)T
- d.** Been denied or has had revoked any license or certificate issued by the Department or under Title 54, Idaho Code; (3-30-09)T
- e.** Been convicted of operating any facility without a certificate of approval; (3-30-09)T
- f.** Been enjoined from operating any facility; (3-30-09)T
- g.** Been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or infraction; or (3-30-09)T
- h.** Directly been under the control or influence of any person who is described in Subsections 150.02.a. through 150.02.g. of this rule. (3-30-09)T

**03. Denial of a Certificate of Approval for an Act Adversely Affecting Welfare of Client, Employee, Contractor, or Volunteer.** The Department may deny a certificate of approval when persuaded by a preponderance of the evidence that any act or omission adversely affecting the welfare of any client, employee, contractor, or volunteer is being permitted, aided, performed, or abetted by the facility, applicant, owner, operator, CEO or administrator, medical director, director of nursing services, or mental health program director. Such acts or omissions include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights or exploitation of vulnerable adults. (3-30-09)T

**151. -- 154. (RESERVED).**

**155. ENFORCEMENT ACTION FOR IMMEDIATE REVOCATION, SUSPENSION, AND TRANSFER OF CLIENTS WITHOUT NOTICE.**

The Department will, without prior notice, prior warning, notice of hearing, or hearing, revoke or suspend a certificate of approval of any facility, program or service and immediately transfer clients, when persuaded by a preponderance of the evidence that states or conditions exist as to endanger the health or safety of any client, employee, contractor or volunteer. (3-30-09)T

**156. -- 159. (RESERVED).**

**160. ENFORCEMENT ACTION FOR SUSPENSION OR REVOCATION OF A CERTIFICATE AND LIMIT ON ADMISSIONS WITH NOTICE.**

The Department may suspend or revoke a certificate of approval, terminate or limit admissions, with or without a referral of clients, when persuaded by a preponderance of the evidence, that the facility is not in substantial compliance with these rules and minimum standards. Additional causes for suspension or revocation of a certificate of approval, for terminating or limiting admissions, with or without a referral of clients, may be issued for any of the reasons listed in this section of rule. (3-30-09)T

**01. Act Adversely Affecting Welfare of Client.** Any act or omission adversely affecting the welfare of any client, employee, contractor, or volunteer is being permitted, aided, performed, or abetted by the facility, applicant, owner, operator, CEO or administrator, medical director, director of nursing services, or mental health program director. Such acts or omissions may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights or exploitation of vulnerable adults. (3-30-09)T

**02. Endangerment to Health and Safety.** Any state or condition exists at the facility which endangers the health or safety of any client. (3-30-09)T

**03. Misrepresentation or Omission On Application.** The applicant, owner, operator, CEO or administrator, medical director, director of nursing services, or mental health program director has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining or renewing a license. (3-30-09)T

**04. Lack of Sound Judgment in Operation or Management.** The applicant, owner, operator, CEO or administrator, medical director, director of nursing services, or mental health program director has demonstrated a lack of sound judgment in the operation or management of the facility. (3-30-09)T

**05. Substantiated Deficiencies.** The facility has one (1) or more substantiated deficiencies as demonstrated by any one (1) of the following: (3-30-09)T

**a.** Any deficiency that endangers the health and safety of any client, employee, contractor, or volunteer. (3-30-09)T

**b.** Repeat violations of any requirement of these rules and minimum standards or of Idaho law. (3-30-09)T

**c.** An accumulation of minor violations that when taken as a whole, would constitute a substantial deficiency. (3-30-09)T

**06. Lack of Adequate Staffing.** The facility lacks adequate staff to properly care for the number and type of clients receiving care and treatment at the facility. (3-30-09)T

**07. Acts of Key Individuals.** The facility, applicant, owner, CEO or administrator, medical director, director of nursing services, or mental health program director: (3-30-09)T

**a.** Has violated any conditions of a certificate of approval. (3-30-09)T

**b.** Has been denied or has had revoked any license issued under Title 54, Idaho Code, or by the Department; (3-30-09)T

**c.** Has been convicted of operating any facility without a license; (3-30-09)T

**d.** Has been enjoined from operating any facility; (3-30-09)T

**e.** Is directly under the control or influence of any person who has been subject to the proceedings described in this Subsection of these rules; (3-30-09)T

**f.** Fails to comply with the data gathering requirements of the MIS; or (3-30-09)T

**g.** Fails to substantially comply with these rules and minimum standards. (3-30-09)T

**08. Violation of Client Confidentiality.** The applicant, owner, operator, CEO or administrator, medical director, director of nursing services, mental health program director, or any employees, transfers, reinstated former employees, student interns, contractors, volunteers, or any other persons who provide care or services or have access to clients, violate client confidentiality. (3-30-09)T

161. -- 164. (RESERVED).

**165. WRITTEN NOTICE OF DETERMINATION AND ENFORCEMENT ACTION.**

**01. Written Notification.** With the exception of enforcements actions for immediate revocation, suspension, and transfer of clients under Section 155 of these rules, the Department will notify the applicant, or the owner's designated representative, in writing, of its decision to deny, suspend, or revoke an application or certificate of approval. The Department will send the written notification by certified mail, return receipt requested. (3-30-09)T

**02. Written Notification Contents.** The written notice will include the following: (3-30-09)T

**a.** The applicant's or owner's name and identifying information; (3-30-09)T

**b.** A statement of the decision; (3-30-09)T

**c.** A concise statement of the reasons for the decision; and (3-30-09)T

**d.** The process for pursuing an administrative appeal. (3-30-09)T

166. -- 169. (RESERVED).

**170. PENALTY FOR OPERATING A FACILITY WITHOUT A CERTIFICATE OF APPROVAL.**

**01. Penalty for Operating Facility Without a Certificate of Approval.** Any person or entity establishing, conducting, managing, or operating a detox/mental health diversion unit without a certificate of approval issued by the Department is guilty of a misdemeanor. When a person is found guilty, the penalty is punishable by imprisonment in a county jail for a period of time not to exceed six (6) months, or by a fine not to exceed three hundred dollars (\$300), or both fine and imprisonment. Each day of continuing violation constitutes a separate offense. Under Section 39-1312, Idaho Code, the attorney general is authorized to prosecute any violations in the event the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation. (3-30-09)T

**02. Injunction to Prevent Operation Without a Certificate of Approval.** Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law maintain an action in the name of the State for injunctive relief or other process against any person or entity establishing, conducting, managing, or operating a detox/mental health diversion unit without a certificate of approval issued by the Department. (3-30-09)T

**171. PENALTY FOR OPERATING FACILITY NOT IN SUBSTANTIAL COMPLIANCE.**

**01. Civil Monetary Penalties.** Civil monetary penalties are based upon one (1) or more deficiencies of substantial noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to inspection or complaint investigation through which they are identified. Actual harm to a client or clients does not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. (3-30-09)T

**02. Assessment Amount for Civil Monetary Penalty.** When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of substantial compliance. The amounts below are multiplied by the total number of certified beds according to the records of the Department at the time substantial noncompliance is established. (3-30-09)T

**a.** Initial deficiency is eight dollars (\$8). See following example:

<b>ASSESSMENT FOR CIVIL MONETARY PENALTY - INITIAL DEFICIENCY</b>				
<b>TABLE 171.02.a</b>				
<b>Number of Beds</b>	<b>Initial Deficiency</b>	<b>Times Number of Days Out of Substantial Compliance</b>	<b>Penalty Per Day</b>	<b>Amount of Penalty</b>
11	\$8	45 Days	\$88	\$3,960

(3-30-09)T

b. Repeat deficiency is ten dollars (\$10). See following example:

<b>ASSESSMENT FOR CIVIL MONETARY PENALTY - REPEAT DEFICIENCY</b>				
<b>TABLE 171.02.b</b>				
<b>Number of Beds</b>	<b>Repeat Deficiency</b>	<b>Times Number of Days Out of Substantial Compliance</b>	<b>Penalty Per Day</b>	<b>Amount of Penalty</b>
11	\$10	30 Days	\$110	\$3,300

(3-30-09)T

**03. Notice of Civil Monetary Penalties and Appeal Rights.** The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment, and the facility's appeal rights.

(3-30-09)T

**04. Payment of Penalties.** The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrual will begin one (1) calendar day after the date of the initial assessment of the penalty.

(3-30-09)T

**05. Failure to Pay.** Failure of a facility to timely pay the entire penalty, together with any interest, is cause for the Department to take any action described in Subsection 120 of these rules including but not limited to, revocation of the certificate of approval or offsetting and withholding any amounts due from Medicaid payments to the facility.

(3-30-09)T

**172. -- 174. (RESERVED).**

**175. CUMULATIVE ENFORCEMENT POWERS, PENALTIES, OR ACTIONS.**

The Department can take any of the enforcement actions or impose any of the penalties, independently or in conjunction with others, as described in Sections 150 through 164, 170 and 171 of these rules.

(3-30-09)T

**176. -- 179. (RESERVED).**

**180. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE.**

**01. Previous Denial of Certificate of Approval.** The Department will not accept or consider an application for a certificate of approval from any applicant, owner, CEO or administrator, or medical director of a facility who has had a certificate of approval denied until after two (2) years have elapsed from the date of the denial.

(3-30-09)T

**02. Previous Revocation of Certificate of Approval.** The Department will not accept or consider an application for a certificate of approval from any applicant, owner, CEO or administrator, or medical director of a

facility who has had a certificate of approval revoked until after five (5) years have elapsed from the date of the revocation. (3-30-09)T

**181. -- 184. (RESERVED).**

**185. INSPECTIONS, INVESTIGATIONS, AND CONSULTATIONS.**

**01. Inspections or Investigations.** The Department will make or cause to be made such inspections and investigations as it deems necessary. Any holder of a certificate of approval, owner, operator, or applicant planning to alter, add to, or remodel an existing facility, to construct a new facility, or convert an existing structure is referred to Sections 600 through 699 of these rules for construction standards and review procedures that must occur prior to breaking ground or commencing any construction. (3-30-09)T

**02. Initial Inspection.** Prior to commencing occupancy, the building or facility must be inspected and approved by the Department. The Department will make reasonable efforts to schedule an inspection within two (2) weeks of receiving a certificate of occupancy issued by the local governing authority, a city or county in Idaho or other evidence submitted by the applicant that the building or facility is ready for final inspection. (3-30-09)T

**03. Intervals of Inspection Following Initial Inspection.** At the Department's discretion, the intervals of the inspection following the initial inspection will be at least one (1) every twelve (12) months or more frequently as needed. (3-30-09)T

**04. Unannounced Inspections.** At the Department's discretion, inspections and investigations following the initial inspection are made unannounced and without prior notice. (3-30-09)T

**05. Services of Others for Inspections and Investigations.** Under the provisions in these rules, the Department may use the services of any qualified person or organization, either public or private, to examine, survey, inspect, or investigate any person or entity holding a certificate of approval issued by the Department. (3-30-09)T

**06. Access and Authority to Enter.** The Department or its designee must have full access and has the authority to examine: quality of care, services delivery, client records, facility records, physical premises, including the condition of buildings, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with these rules. (3-30-09)T

**07. Authority to Interview.** The Department or its designee has the authority to interview any individual associated with the facility or the provision of care, including persons or governmental units named in the certificate, the complainant, CEO or administrator, medical director, director of nursing services, mental health program director, chemical dependency counselor, staff, clients, clients' families, service providers, authorized provider or physician or other legally responsible person. Interviews are confidential and conducted privately unless otherwise specified by the Department or its designee. (3-30-09)T

**08. Consultations.** Consultations may be provided at the option of the Department. (3-30-09)T

**186. -- 189. (RESERVED).**

**190. COMPLAINTS.**

**01. Filing a Complaint.** Any person who believes that a facility has failed to meet any provision of these rules may file a complaint with the Department. All complaints must have a basis in rule or statute. (3-30-09)T

**02. Investigation.** Upon a preliminary finding that the facility is out of substantial compliance, the Department will investigate, or cause to be investigated the following: (3-30-09)T

**a.** Any complaint alleging a violation of these rules or statute; and (3-30-09)T

**b.** Any reportable incident which indicates there was a violation of these rules or statute. (3-30-09)T

**03. Disclosure of Complaint Information.** The Department will not disclose the name or identifying information of a complainant unless: (3-30-09)T

- a. The complainant consents in writing to the disclosure; (3-30-09)T
- b. The investigation results in a judicial proceeding and disclosure is ordered by the court; or (3-30-09)T
- c. The disclosure is essential to prosecution of a violation of these rules or statute. (3-30-09)T

**04. Method of Investigation.** The nature of the complaint will determine the method used to investigate the complaint. (3-30-09)T

**05. Notification to Complainant.** In compliance with Section 9-340C(9), Idaho Code, the Department will inform the complainant of the results of a completed investigation. Information will otherwise be provided in redacted form as required by law. (3-30-09)T

**191. -- 199. (RESERVED).**

**REQUIREMENTS APPLICABLE TO ALL DETOXIFICATION UNITS,  
SOBERING STATIONS, AND MENTAL HEALTH DIVERSION UNITS**

**(Sections 200 through 299)**

**200. GOVERNING BODY AND ADMINISTRATION.**

**01. Administered by a Governing Body.** Each detox/mental health diversion unit issued a certificate of approval under these rules must be organized, governed, and administered by a governing body. The governing body of each detox/mental health diversion unit has ultimate authority and responsibility for the overall conduct and operation of the facility and for full compliance with these rules. (3-30-09)T

**02. Bylaws.** The governing body must adopt bylaws which specify at least the following: (3-30-09)T

- a. Membership of the governing body, which consists of: (3-30-09)T
  - i. Basis for selecting members, term of office, and duties; and (3-30-09)T
  - ii. Designation of officers, terms of office, and duties. (3-30-09)T
- b. Meetings: (3-30-09)T
  - i. Frequency of meetings; (3-30-09)T
  - ii. Meet at regular intervals with an attendance requirement; and (3-30-09)T
  - iii. Minutes of all governing body meetings must be maintained. (3-30-09)T
- c. Every client must be under the care of a physician licensed by the Idaho State Board of Medicine. (3-30-09)T
- d. Responsibility for operations, maintenance, and practices that can be delegated and how accountability is established. (3-30-09)T
- e. A mechanism for adoption and approval of the organization's bylaws, rules and regulations of the medical staff. (3-30-09)T

f. An appropriate and regular means of communication with the medical staff. (3-30-09)T

**03. Administration.** The governing body, through the CEO or administrator, must provide appropriate physical facilities and personnel that comply with these rules to meet the needs of clients and the community. (3-30-09)T

**201. -- 209. (RESERVED).**

**210. PERSONNEL POLICIES AND PROCEDURES.**

Subject to the governing body's written approval, the CEO or administrator must establish the following policies, procedures, or plans. (3-30-09)T

**01. Written Policies and Procedures for Personnel.** A written personnel policy concerning qualifications, responsibilities, and conditions of employment for each category of personnel must be maintained by the facility. The policy, procedures, or plans must contain at a minimum the following: (3-30-09)T

a. The recruitment of qualified personnel, including consultants when utilized; (3-30-09)T

b. Documentation of orientation of all employees to policies, procedures, and objectives of the facility; (3-30-09)T

c. Competent supervision of all staff; (3-30-09)T

d. Job descriptions for all categories of personnel and uniform rules for each classification concerning hours of work, paydays, overtime, and other related personnel matters; (3-30-09)T

e. An ongoing, planned continuing educational program which maintains and upgrades the knowledge, skills, and abilities of the staff in relation to services provided and employee responsibilities, including the opportunity to attend outside educational programs. (3-30-09)T

i. A minimum of twenty-four (24) hours of training per year must be provided to staff; and (3-30-09)T

ii. Documentation of continuing education or in-service for all direct care personnel that is consistent with clients' needs and services offered. (3-30-09)T

f. Employee grievance procedures. (3-30-09)T

g. A written statement that the facility does not discriminate in employment in any manner prohibited by the laws of the United States or the state of Idaho. (3-30-09)T

h. A written statement that describes the facility's policy and procedure for recruiting and hiring all employees and interns. (3-30-09)T

i. Staff disciplinary, suspension, and termination policies and procedures. (3-30-09)T

j. Those facilities using volunteers must maintain written policies and procedures concerning volunteer services. Volunteers must receive orientation in accordance with Section 215 of these rules. (3-30-09)T

**02. Daily Work Schedules.** Daily work schedules must be maintained in writing that reflect: (3-30-09)T

a. Personnel on duty at any given time for the previous twelve (12) months; (3-30-09)T

b. The first and last names of each employee, including professional designation; and (3-30-09)T

c. Any adjustments made to the schedule. (3-30-09)T



**03. Job Descriptions.** Each employee must be given a current job description that is consistent with his classification, be initialed by the employee, and be retained on file in each employee's personnel record. Job descriptions must contain at a minimum the following: (3-30-09)T

**a.** The authority, responsibilities and duties of each classification; and (3-30-09)T

**b.** Reporting and supervisory requirements for the classification. (3-30-09)T

**04. Organizational Chart.** An organizational chart that clearly reflects lines of authority within the facility's organizational structure must be posted or made available to all employees. (3-30-09)T

**05. Applicable Idaho and Federal Laws.** Applicable Idaho and federal laws must be observed in relation to the employment of any individual. (3-30-09)T

**06. Age Limitations.** No person who is under the age of eighteen (18) years can provide direct care to clients. (3-30-09)T

**07. Payroll Records.** Payroll records must be maintained by the facility that reflect an employee's hours of work, paydays, overtime, and other related matters. (3-30-09)T

**08. Personnel Files.** Personnel files must be maintained by the facility for each employee. This file must contain at a minimum the following: (3-30-09)T

**a.** An application for employment signed by the employee and a resume that must include pre-employment education, training and experience; (3-30-09)T

**b.** Copies of all certification certificates, certification identification card, and all other health care licenses or certificates related to job duties; (3-30-09)T

**c.** Copy of completed criminal history and background check; (3-30-09)T

**d.** Position and qualifications of the position for which the employee is hired, including education and experience; (3-30-09)T

**e.** Letter of hire or other documentation of the terms of employment and the employee's starting and termination date; (3-30-09)T

**f.** Orientation and training documentation reflecting what type of training the employee received and the amount of time for each program; (3-30-09)T

**g.** Verification of a tuberculin skin test upon employment and any subsequent test results; (3-30-09)T

**h.** Copies of the employee's annual written job performance evaluation reviews including: (3-30-09)T

**i.** Documentation of any disciplinary actions taken against the employee; and (3-30-09)T

**ii.** Documentation of any commendations. (3-30-09)T

**211. EMPLOYEE HEALTH.** Personnel policies related to employee health must include: (3-30-09)T

**01. Tuberculin Skin Test.** The current status of a tuberculin skin test, taken immediately prior to employment or within thirty (30) days after employment, must be recorded. (3-30-09)T

**a.** If the skin test is positive, either by history or current test, personnel must seek a medical evaluation and chest x-ray to determine the presence or absence of active disease. Personnel who have active tuberculosis must

be restricted from employment and attendance at the facility until it is determined by laboratory evaluation that the tuberculosis is noninfectious. (3-30-09)T

**b.** Personnel who have a negative reaction to the skin test, must be tested annually if it is determined that they function in a high-risk tuberculosis area. (3-30-09)T

**02. Repeat Skin Test.** A repeat skin test is also required if an employee is exposed to a client or other staff who develop tuberculosis. (3-30-09)T

**03. Report Symptoms.** The facility must require that all personnel report immediately to their supervisor any signs or symptoms of personal illness. (3-30-09)T

**04. Policy for Communicable Disease Precautions.** Personnel who have a communicable disease, infectious wound, or other transmittable condition and who provide care or services to clients or have access to clients are required to implement protective infection control techniques in accordance with these rules and as required by the facility's operator or contractor through its CEO or administrator. Personnel may be required: (3-30-09)T

**a.** Not to work until the infectious state is corrected and noninfectious; (3-30-09)T

**b.** To work in other areas of the facility where contact with others is not expected and the likelihood of transmission of infection is absent; or (3-30-09)T

**c.** To seek other remedies that will avoid spreading the infection. (3-30-09)T

**05. Documentation in Personnel File.** Documentation of compliance with health policy must be current, be initialed by each employee, and be retained on file in each employee's personnel file. (3-30-09)T

**212. -- 214. (RESERVED).**

**215. ORIENTATION AND CONTINUING EDUCATION.**

The facility must provide a formalized, on-going educational program for all personnel, including a written structured orientation program designed to meet the training needs of new employees in relation to an employee's responsibilities. (3-30-09)T

**01. Documentation of Education Program.** Documentation of compliance with orientation and continuing education program must be current, be initialed by each employee, and be retained on file in each employee's personnel file. (3-30-09)T

**02. Content for Orientation and Continuing Education Program.** Orientation and continuing education in the facility must include at a minimum the following: (3-30-09)T

**a.** All facility policies and procedures relevant to an employee's responsibilities; (3-30-09)T

**b.** Basic procedures relative to client care; (3-30-09)T

**c.** Client rights and responsibilities; (3-30-09)T

**d.** Confidentiality; (3-30-09)T

**e.** Facility's code of ethics; (3-30-09)T

**f.** Use of mechanical and electrical equipment by an employee; (3-30-09)T

**g.** Fire safety and emergency evacuation; (3-30-09)T

**h.** Emergency procedures; (3-30-09)T

- i. Organizational structure; (3-30-09)T
- j. Measures to prevent cross infection, including aseptic and isolation techniques; (3-30-09)T
- k. Special needs of the client population served; (3-30-09)T
- l. Restorative care; (3-30-09)T
- m. Proper maintenance and handling of client records; (3-30-09)T
- n. Philosophical approach to treatment and the facility's goals; and (3-30-09)T
- o. Policies and procedures for reporting cases of suspected abuse or neglect of vulnerable adults. (3-30-09)T

**03. Continuing Education for Direct Care Staff.** Each direct care staff member must annually receive twenty-four (24) hours of continuing education that includes an understanding of the nature of addiction, the withdrawal syndrome, group therapy, family therapy, and other treatment methodologies that are appropriate to the position held by each direct care staff member. Continuing education requirements may be met through in-house educational programs, outside continuing educational programs, or a combination thereof. (3-30-09)T

**216. -- 219. (RESERVED).**

**220. PHYSICIAN-APPROVED TRANSFER POLICY.**

Each detox/mental health diversion unit must develop and implement written, physician-approved policies and procedures for determining when to transfer a client to a hospital for the provision of emergency inpatient and ambulatory medical services. (3-30-09)T

**01. Exchange of Information for Transfer of Clients.** The following information must accompany the client if transferred to or from another health care facility: (3-30-09)T

- a. Provisional diagnosis, treatment, and clinical condition; (3-30-09)T
- b. Reason for transfer and destination; and (3-30-09)T
- c. Pertinent medical and social information that must be part of the client's record in accordance with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164, 42 U.S.C. Sections 290 dd-3 and ee-3, and 42 C.F.R., Part 2 (June 9, 1987). (3-30-09)T

**02. Transfer Agreements Kept On-Site.** Transfer agreements must be maintained on-site at the facility. (3-30-09)T

**221. -- 229. (RESERVED).**

**230. POLICIES AND PROCEDURES APPLICABLE TO ALL DETOXIFICATION UNITS, SOBERING STATIONS, AND MENTAL HEALTH DIVERSION UNITS.**

Subject to the governing body's written approval, the CEO or administrator must develop a set of physician approved written policies and procedures in accordance with these rules that are available at all times to clients, staff, and the public. (3-30-09)T

**231. PHYSICIAN APPROVED ADMISSIONS POLICY, INTAKE PROCEDURES, AND DISCHARGE PLANNING.**

Each detox/mental health diversion unit must have written physician-approved admission policies and procedures that at a minimum meet the following requirements in Subsections 231.01 through 231.10 of this rule. (3-30-09)T

- 01. Admissions Policy.** A client will be admitted, accepted, or retained only when the facility has the

capability, capacity, and services to provide appropriate care, and the client does not require a type of service for which the facility is not approved to provide, or for which the facility does not provide or arrange for, or in which the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services. (3-30-09)T

**02. Criteria for Admissions.** Written criteria for admissions, uniformly applied to all prospective clients, must be provided in accordance with these rules. (3-30-09)T

**03. Criteria for Rejecting Admissions.** Written criteria for rejecting admission requests, uniformly applied to all prospective clients, must be provided in accordance with these rules, and that includes a statement that the following persons are not eligible for admission: (3-30-09)T

**a.** Any person who is violent, charged with a crime, or otherwise needs a secure holding facility; (3-30-09)T

**b.** Any person who is under the age of eighteen (18) years; (3-30-09)T

**c.** Any person who is the subject of involuntary commitment proceedings or detention without a hearing under Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code; (3-30-09)T

**d.** Any person who requires specialized care not available at the facility; (3-30-09)T

**e.** Any person who has a physical or medical condition that is unstable or can only be safely treated in a hospital; (3-30-09)T

**f.** Any person whose primary problem is social, economic, or one of physical health such as epilepsy, mental retardation, dementia, a developmental disability, or, chronic alcoholism, drug abuse, physical disability, or aged, unless in addition to such condition, he meets the admission criteria provided in Sections 320, 420, or 520 of these rules; (3-30-09)T

**g.** Any person who fails to meet the admission criteria in Sections 320, 420, or 520 of these rules; (3-30-09)T

**h.** Any person who can be safely maintained and effectively treated in a less restrictive or intensive level of care; or (3-30-09)T

**i.** Any person who does not voluntarily consent to admission or treatment. (3-30-09)T

**04. Intake Procedures.** Written intake procedures must be provided that include a determination that the facility's services are or are not appropriate to meet the needs of the client. (3-30-09)T

**05. Referrals For Individuals Not Admitted.** Written policies must be provided for making referrals of individuals not admitted to the facility and written policies for accepting referrals from outside facilities. (3-30-09)T

**06. Initial Client Assessments Procedures.** Written procedures must be provided that require a completed initial client assessment on every proposed client prior to admission. (3-30-09)T

**07. Medical Orders.** Written, verbal, and telephone orders from persons authorized to give medical orders under Idaho law and written policies and procedures established by the governing body will be accepted by the medical staff empowered to do so under Idaho law. (3-30-09)T

**a.** Verbal and telephone orders must contain the name of the person giving the order, the first initial and last name and professional designation of the medical staff receiving the order. (3-30-09)T

**b.** The order must be promptly signed or otherwise authenticated by the prescribing person in accordance with written policies and procedures established by the governing body. (3-30-09)T

**08. Services Orientation Procedures for Clients Admitted to a Detoxification Unit or Mental Health Diversion Unit.** Written services orientation information must be recorded in each client's record as soon as practicable. This orientation information must include: (3-30-09)T

- a. The facility's philosophical approach to treatment; (3-30-09)T
- b. Information on client's rights and responsibilities while receiving services at the facility; (3-30-09)T
- c. The services available; and (3-30-09)T
- d. Information on the rules governing client's behavior and those infractions, if any, that may result in discharge or other disciplinary actions. (3-30-09)T

**09. Criteria for Appropriate Rehabilitative Services.** Written criteria must be provided that assures appropriate rehabilitative services are provided whereby each client is assigned a primary addiction therapist or primary mental health professional, depending upon need, who will follow the client's progress during his admission to the detoxification or mental health unit, or both. The client's progress must be documented in the client's record. (3-30-09)T

**10. Criteria for Assuring Clients Remain in Program.** Written criteria must be provided that assures clients will remain in a medical detoxification program, sobering program, or mental health diversion program for the period of time deemed medically necessary and documented by the attending physician. Coercion or force cannot be used to induce any client to remain in treatment. (3-30-09)T

**11. Discharge Criteria and Planning.** Written criteria for discharge, uniformly applied to all prospective clients, must be established in accordance with these rules, including a procedure to screen each client for discharge planning needs. (3-30-09)T

**232. NONDISCRIMINATORY ADMISSIONS POLICY.**

Each detox/mental health diversion unit, contractors, or operators must not discriminate on the grounds of race, creed, color, religion, age, gender, national origin, veteran, or disability with respect to any individual seeking admission or treatment. (3-30-09)T

**01. Compliance with the Americans with Disabilities Act.** Each detox/mental health diversion unit must ensure that they comply with the Federal Americans with Disabilities Act, 28 U.S.C. Section 12101 et seq. and 28 C.F.R. Part 36 (July 1991). Referral services must be provided to individuals not admitted. (3-30-09)T

**02. Written Nondiscrimination Policies.** Each detox/mental health diversion unit must develop written policies that describe how clients will receive services and be admitted on a nondiscriminatory basis in accordance with state and federal law and these rules. (3-30-09)T

**03. Placement Denied or Delayed.** The individual seeking admission to a facility may be denied or delayed admission, if an appropriate placement is not available because of age or sex, or both. (3-30-09)T

**233. -- 234. (RESERVED).**

**235. MEDICATION POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must have written policies and procedures that govern the safe storage, dispensing, and administration of medication. Written policies and procedures must include at a minimum the following requirements in Subsection 235.01 through 235.07 of this rule. (3-30-09)T

**01. Physician's Order.** Each client of a detox/mental health diversion unit must have a written order signed by a physician, a physician's standing order, or a physician's order received by phone and signed by the physician at the earliest opportunity before any medication is administered to a client. (3-30-09)T

**02. Administration of Medication.** Medications can only be provided to a client by licensed nursing staff in accordance with written policies and procedures established by the governing body, which must include at least the following: (3-30-09)T

**a.** Administered in accordance with a physician's, dentists', nurse practitioner's, or physician assistant's written orders; (3-30-09)T

**b.** The client is identified prior to administering the medication; (3-30-09)T

**c.** Medications are administered as soon as possible after preparation; (3-30-09)T

**d.** Medications are administered only if properly identified; (3-30-09)T

**e.** Medications are administered by the person preparing the medication for delivery to the client; (3-30-09)T

**f.** Clients are observed for reactions to medications and if a reaction occurs, it is immediately reported to the charge nurse and director of nursing; and (3-30-09)T

**g.** Each client's medication is properly recorded on his individual medication record. (3-30-09)T

**03. Storage and Distribution of Medication.** Storage and distribution policies and procedures must describe the following: (3-30-09)T

**a.** Receiving of medication; (3-30-09)T

**b.** Storage of medication, including assurances that all prescription drugs stored in the facility must be kept in a double locked container. Only those medications requiring refrigeration can be stored in a refrigerator; and (3-30-09)T

**c.** Medication distribution system to be used including assurances that medications prescribed for one client will not be administered to or by another client or employee. (3-30-09)T

**04. Disposal of Unused, Outdated, or Recalled Drugs.** Policy and procedures for documentation and disposal of unused drugs must provide assurances that no unused, outdated, or recalled drugs are kept in the facility. All unused, outdated, or recalled drugs must be disposed of in a manner that assures that they cannot be retrieved. (3-30-09)T

**05. Written Records of Disposals.** A written record of all disposals of drugs must be maintained in the facility and must include at a minimum the following: (3-30-09)T

**a.** A description of the drug, including the amount; (3-30-09)T

**b.** The client for whom the medication was prescribed; (3-30-09)T

**c.** The reason for disposal; and (3-30-09)T

**d.** The method of disposal. (3-30-09)T

**06. Medication Policies and Procedures for Staff Response.** How staff are to respond if: (3-30-09)T

**a.** A client refuses a medication; (3-30-09)T

**b.** A client misses a medication and the reasons; (3-30-09)T

**c.** A client medication is not available; (3-30-09)T

- d. Medications are missing; (3-30-09)T
- e. A client receives an incorrect medication or dosage. (3-30-09)T
- 07. Written Medication Record.** Each client's medication must be properly recorded on his individual medication record by the person administering the medication. The written record must include: (3-30-09)T
  - a. Client's name; (3-30-09)T
  - b. Prescribing physician's name; (3-30-09)T
  - c. Description of medication, including prescribed dosage; (3-30-09)T
  - d. Verification in writing by staff that medication was taken, not taken, missed, not available, or refused, and the times and dates administered; (3-30-09)T
  - e. Method of administration; (3-30-09)T
  - f. Date and time of administration; (3-30-09)T
  - g. Injection sites; (3-30-09)T
  - h. Name or initial of person administering the medication; and (3-30-09)T
  - i. Any adverse reactions to the medication. (3-30-09)T

**236. -- 239. (RESERVED).**

**240. EMERGENCY PREPAREDNESS POLICIES AND PROCEDURES.**

**01. Emergency Preparedness Plan.** Each detox/mental health diversion unit must develop and implement a written emergency preparedness plan to follow in the event of fire, explosion, flood, earthquake, high wind, or other emergency that includes written procedures outlining steps to be taken in the event of an emergency. (3-30-09)T

**02. Written Procedures.** The facility must have written procedures outlining the steps to be taken in the event of an emergency including: (3-30-09)T

- a. Who is to respond; (3-30-09)T
- b. Each individual's responsibilities; (3-30-09)T
- c. Where and how clients are to be evacuated; and (3-30-09)T
- d. Notification of emergency agencies. (3-30-09)T

**241. -- 244. (RESERVED).**

**245. INFECTION CONTROL.**

Each detox/mental health diversion unit must develop and implement written plans consistent with recognized standards for the prevention and control of infection for both staff and clients. (3-30-09)T

**01. Infection Control Program.** The program must include, at minimum, the following elements: (3-30-09)T

- a. Methods of maintaining sanitary conditions in the facility; (3-30-09)T

- b. Employee infection surveillance and actions; and (3-30-09)T
- c. Isolation procedures; (3-30-09)T

**02. Report for Monitoring Infections.** Specifics for monitoring the course of infections must include, at minimum, a prepared written quarterly report describing the status of each infection. This report must include: (3-30-09)T

- a. Diagnosis; (3-30-09)T
- b. Description of the infection; (3-30-09)T
- c. Causative organism, if identified; (3-30-09)T
- d. Date of onset; (3-30-09)T
- e. Treatment and date initiated; (3-30-09)T
- f. Client's progress; (3-30-09)T
- g. Control techniques utilized; and (3-30-09)T
- h. Diagnostic tests employed. (3-30-09)T

**03. Infection Control and Prevention Procedures.** There must be a written infection control procedure that includes aseptic techniques, cleaning, sanitizing, and disinfection of all instruments, equipment, and surfaces, for all departments and services where client care is delivered. (3-30-09)T

**246. CONTROL OF TUBERCULOSIS.**

In order to assure the control of tuberculosis in the facility, there must be a planned, organized program of prevention through written and implemented procedures that are consistent with current accepted practices and include the following in Subsections 246.01 through 246.03 of this rule. (3-30-09)T

**01. Tuberculin Skin Tests.** The results of a tuberculin skin test, taken immediately prior to admission or within six (6) months prior to admission, must be established for each client. If the status is not known upon admission, a tuberculin skin test must be done as soon as possible. (3-30-09)T

- a. If the tuberculin skin test is negative, the test does not have to be repeated prior to discharge. (3-30-09)T
- b. If the tuberculin skin test is positive, the client must have a chest x-ray to rule out the presence of infectious pulmonary tuberculosis. (3-30-09)T

**02. Protective Infection Control Techniques.** If any x-ray is suggestive of infectious pulmonary tuberculosis, the facility is required to implement protective infection control techniques in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-30-09)T

**03. Transfer of Client Suspected or Diagnosed.** Arrangements for transfer to an appropriate facility must be made for any client suspected or diagnosed with infectious pulmonary tuberculosis. These arrangements must be made in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-30-09)T

**247. -- 249. (RESERVED).**

**250. FOOD AND NUTRITIONAL CARE POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must develop written policies and procedures for providing proper nutritional care for each client that includes procedures to follow if a client refuses food or to follow the prescribed diet. The



acquisition, preparation, storage, and serving of all food and drink in a facility must comply with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (3-30-09)T

**01. Three Nutritious Meals Per Day.** At least three nutritious meals per day and nutritional snacks, must be provided to each client. No more than fourteen (14) hours may elapse between the end of an evening meal and the beginning of the morning meal. Physician approved special diets must be provided upon request by a client. Under no circumstances may food be withheld for disciplinary reasons. Menus must be reviewed and approved in advance by a registered dietitian in Idaho in accordance with the Idaho Diet Manual from the Idaho Dietetic Association. (3-30-09)T

**02. On-Site Food Service.** On-site food service must comply with all provisions of IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." (3-30-09)T

**03. Third-Party Food Service.** When food service is provided by a third-party, the provider must meet all the conditions of these rules pertaining to food service and be in compliance with IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments." Each detox/mental health diversion unit must maintain a written agreement at all times with a food service provider containing assurances that the provider will meet all food service and dietary standards imposed by this rule. (3-30-09)T

**04. Reports for Sanitation and Food Service.** Sanitation reports and food service reports must be maintained on file in the facility. (3-30-09)T

**251. -- 259. (RESERVED).**

**260. CLIENT RECORDS POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must develop written policies and procedures to assure accurate and authentic records are maintained for each client in the facility. (3-30-09)T

**01. Complete and Accurate Records.** Each facility must implement written policies and procedures to assure complete, accurate, and authentic records in accordance with professional standards and practices. (3-30-09)T

**02. Responsible Staff.** The CEO or administrator must designate to a staff member the responsibility for the accurate maintenance of client records. If this person is not a Registered Records Administrator (RRA) or an Accredited Records Technician (ART), consultation from such a qualified individual must be provided periodically to the designated staff person. (3-30-09)T

**03. Individual Client Record.** An individual record must be maintained for each admission with all entries kept current, dated, and signed. Client records must, at a minimum, contain the following: (3-30-09)T

**a.** Client's name, date and time of admission; previous address; home telephone; sex; date of birth; place of birth; ethnicity; marital status; religious preference; usual occupation; Social Security number; branch and dates of military service; name, address, and telephone number of nearest relative or responsible person or agency; place admitted from; attending physician; and date and time of discharge. (3-30-09)T

**b.** Biopsychosocial assessment, including medical history and physical examination that evaluates an individual's strengths, weaknesses, problems, and needs. (3-30-09)T

**c.** Transfer or referral report, where applicable. (3-30-09)T

**d.** Special reports dated and signed by the person making the report such as laboratory, x-ray, social services, mental health, consultation, and other special reports. (3-30-09)T

**e.** Individualized treatment plan based on a biopsychosocial assessment of the client's alcohol or substance use disorder treatment needs, including treatment goals based on client input. (3-30-09)T

**f.** Physician's orders containing the physician's authorization for required medications, tests,

treatments, and diet. Each entry must be dated and signed or counter-signed by the physician. (3-30-09)T

**g.** Progress notes by physicians, nurses, therapists, social workers, and other health care personnel must be recorded indicating observations to provide a full descriptive, chronological picture of the client during his admission. The author must date and sign his entry. (3-30-09)T

**h.** The final diagnosis on discharge or cause of death, condition on discharge, and disposition signed and dated by the attending physician. (3-30-09)T

**i.** Nurses' entries must include the following information: (3-30-09)T

i. Date, time and mode of admission; documentation of the client's general physical and emotional condition as well as mental attitude on admission. (3-30-09)T

ii. Medication administration record. (3-30-09)T

iii. Date and times of all treatments. (3-30-09)T

iv. Any change in the client's physical or mental status. (3-30-09)T

v. Any incident or accident occurring while the client is in the facility. (3-30-09)T

vi. The signature of the charge nurse for each shift indicating the assumption of responsibility for all entries made by nonprofessional nursing personnel. (3-30-09)T

**261. ACCESS TO CLIENT RECORDS.**

Each detox/mental health diversion unit must ensure that client records are protected against loss, tampering, or unauthorized disclosure of information under the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164, 42 U.S.C. Sections 290 dd-3 and ee-3, and 42 C.F.R., Part 2 (June 9, 1987). Only authorized personnel may have access to client records. (3-30-09)T

**01. Release of Medical Information.** No release of medical information can be made without written consent of the client, guardian, by court order, or as authorized by federal or state law. (3-30-09)T

**02. Removal of Client Records.** Client records may only be removed from the facility in accordance with written policies and procedures of the facility as allowed by state and federal law. (3-30-09)T

**03. Retention.** Records must be preserved in a safe location protected from fire, theft, and water damage for a period of time not less than seven (7) years following the date of the client's discharge. (3-30-09)T

**04. Electronic Records.** A facility that implements an electronic record or signature must have written policies in place to assure the following: (3-30-09)T

**a.** Proper security measures to protect the use of an electronic signature by anyone other than the person to which the electronic signature belongs; (3-30-09)T

**b.** The privacy and integrity of the record; (3-30-09)T

**c.** Includes which records will be maintained and signed electronically; (3-30-09)T

**d.** How an e-signature code is assigned and the code and associated staff identities are protected; (3-30-09)T

**e.** How passwords are assigned and the frequency for which they are changed; (3-30-09)T

**f.** Allows clients access to their records within one (1) business day of the request; and (3-30-09)T

**g.** Allows immediate access to records by the Department or its designees, surveyors, and others who are authorized by law. (3-30-09)T

**262. -- 264. (RESERVED).**

**265. CLIENTS' RIGHTS POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must develop written policies and procedures regarding clients' rights and responsibilities. The facility must also have a policy for the development of, adherence to, and procedures for implementation of clients' rights. (3-30-09)T

**01. Availability of Clients' Rights.** The facility must inform each client, any guardian, next of kin, and the public of its clients' rights policy. (3-30-09)T

**02. Staff Trained in Clients' Rights.** Staff must be trained and involved in the implementation of these policies and procedures. (3-30-09)T

**03. Content of Clients' Rights.** The clients' rights, policies, and procedures must ensure that, at a minimum, each client admitted to the facility is: (3-30-09)T

**a.** Informed of these rights and of rules governing client conduct and responsibilities, as evidenced by the client's written acknowledgment, prior to or at the time of admission. If a client is medically or legally unable to understand these rights, policies, and procedures, the client's guardian or responsible person must be informed and acknowledge these rights on behalf of the client. An employee of the facility cannot be the one to acknowledge these rights. (3-30-09)T

**b.** Informed of services available in the facility and of related charges prior to or at the time of admission and during his stay; (3-30-09)T

**c.** Informed of his medical condition, unless medically contraindicated, and is given the opportunity to participate in the planning of his medical treatment and to refuse to participate in any experimental research; (3-30-09)T

**d.** Is transferred or discharged only for medical reasons, or for his welfare or that of other clients and is given reasonable advance notice to ensure orderly transfer or discharge and such actions are documented in his medical record; (3-30-09)T

**e.** Is encouraged and assisted, throughout his period of stay, to exercise his rights as a client and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal. (3-30-09)T

**f.** Is free from mental and physical abuse, and free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the client from injury to self or others; (3-30-09)T

**g.** Is assured of confidential treatment of his medical records, and may approve or refuse their release to any individual outside of the facility, except in case of his transfer to another health care facility, or as required by law or third-party payment contract; (3-30-09)T

**h.** Is treated with consideration, respect and full recognition of his dignity and individuality, including privacy in treatment and in care of his personal needs; (3-30-09)T

**i.** Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care; (3-30-09)T

**j.** May associate and communicate privately with persons of his choice, unless medically contraindicated as documented by a physician in his medical record; (3-30-09)T

k. May meet with, and participate in, activities of social, religious, and community groups at his discretion, unless medically contraindicated as documented by a physician in his medical record; and (3-30-09)T

l. May retain his personal possessions as space permits, unless medically contraindicated as documented by a physician in his medical record. (3-30-09)T

**04. Reported Allegations Investigated.** The facility must develop policies and procedures to assure that allegations of abuse, neglect or exploitation are identified, reported, documented, investigated, and followed up with interventions to prevent reoccurrence and assure protection. (3-30-09)T

**05. Least Restrictive Intervention Procedures to Assure Safety of Clients and Staff.** The facility must develop and implement policies and procedures for the use of least restrictive interventions to assure client and staff safety in unsafe situations, physically or behaviorally caused. (3-30-09)T

**266. RECORD OF CLIENT'S CLOTHING AND PERSONAL PROPERTY.**

An inventory and proper accounting must be kept in each client's record for all clothing and personal property entrusted to the facility for safekeeping. The status of the inventory must be made available to the client, his conservator, guardian, or representative for review upon request. (3-30-09)T

**267. -- 269. (RESERVED).**

**270. MINIMUM STAFFING POLICIES AND PROCEDURES.**

Each detox/mental health diversion unit must develop, implement, and comply with written staffing policies and procedures based on the number of beds, number of clients, client needs, services provided, and configuration of the facility as described in Subsections 270.01 through 270.06 of this rule. (3-30-09)T

**01. Staff Trained for Emergencies.** A staff member trained to respond to fires and other natural disasters, as well as to administer emergency first aid and CPR must be on duty twenty-four (24) hours per day, seven (7) days per week. Training and annual training updates in each of these areas must be documented in personnel files. (3-30-09)T

**02. Direct Care Staff.** The facility must have adequate nursing personnel and direct care staff in sufficient numbers to plan, administer, and provide client bedside care. At a minimum, two (2) staff, one of whom must be an R.N. or L.P.N., must be on duty twenty-four (24) hours per day, seven (7) days per week. In the absence of the director of nursing, an R.N. or L.P.N. must be designated to assume the director of nursing's duties. No person may be assigned nursing duties, including aides and orderlies, who has been on duty in the facility during the preceding twelve (12) hours, except in an emergency. (3-30-09)T

**03. Monthly Staffing Pattern.** Monthly staffing patterns indicating daily staff, staff titles, and client census must be kept for the previous twelve (12) months. A written staffing plan must be developed to ensure appropriate and adequate staff coverage for emergency or high demand situations. (3-30-09)T

**04. Clinical Supervision and Consultation for Staff.** A written staffing plan that specifies a minimum of one (1) hour per month of personal clinical supervision and consultation for each staff person and volunteer who is responsible for the delivery of direct care services must be maintained. The clinical supervision must relate to the individual's skill level with the objective of assisting direct care staff and volunteers to increase their treatment skill and the quality of services delivered to clients. (3-30-09)T

**05. Staffing of Certified Alcohol and Drug Counselor.** The services of a certified alcohol and drug counselor must be available to each client. (3-30-09)T

**06. Staff Trained in Substance Abuse Withdrawal.** The facility, at a minimum, must have at least one (1) staff member on duty twenty-four (24) hours per day, seven (7) days per week trained in the following areas: (3-30-09)T

a. Substance abuse withdrawal symptoms, including delirium tremens; and (3-30-09)T

- b. Symptoms of secondary complications to substance abuse. (3-30-09)T

**271. QUALIFICATIONS AND RESPONSIBILITIES FOR CEO OR ADMINISTRATOR.**

**01. CEO or Administrator.** Each detox/mental health diversion unit must maintain at all times, through employment or contract, a CEO or administrator who is responsible for carrying out the policies established by the governing body and the day-to-day conduct and operations of the facility. This individual must have the qualifications required in Subsections 271.03 and 271.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-30-09)T

**02. CEO's or Administrator's Responsibilities.** The CEO or administrator is responsible for assuring that policies, procedures, conduct and operations required by Title 39, Chapter 3, Idaho Code, Title 39, Chapter 31, Idaho Code, and IDAPA 16.07.50, "Rules and Minimum Standards Governing Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units," are developed and implemented. (3-30-09)T

**03. Required License or Degree.** Each CEO or administrator of a Detox/Mental Health Diversion Unit must, at a minimum, have one (1) or more of the following Idaho licensures or degrees at the time of hire or contract and throughout the duration of employment or contract: (3-30-09)T

- a. Licensed Physician; (3-30-09)T
- b. Licensed Psychologist; (3-30-09)T
- c. Licensed Master's Level Nurse; (3-30-09)T
- d. Licensed Clinical Professional Counselor (LCPC); (3-30-09)T
- e. Licensed Clinical Social Worker (LCSW); (3-30-09)T
- f. Licensed Professional Counselor (LPC); (3-30-09)T
- g. Licensed Master's Level Social Worker (LMSW); (3-30-09)T
- h. Licensed Bachelor's Level Nurse; or (3-30-09)T
- i. Master's degree in the field of alcoholism, substance use disorders, or mental health. (3-30-09)T

**04. Required Experience and Abilities.** Each CEO or administrator of a detox/mental health diversion unit must, at a minimum have and demonstrate the following experience and abilities at the time of hire or contract: (3-30-09)T

a. At least two (2) years of paid full-time experience must be in the field of alcoholism, substance use disorders and mental health. (3-30-09)T

b. At least one (1) year of the two (2) years' full-time experience must be in an administrative capacity that includes knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting. (3-30-09)T

**05. Availability of CEO or Administrator.** The facility's CEO or administrator must, at a minimum, be full-time forty (40) hours per week to provide for safe and adequate care of clients and staff. The facility's CEO or Administrator, or his designee must be available to be on-site at the facility within two (2) hours and must be on-call at all times. (3-30-09)T

**272. QUALIFICATIONS AND RESPONSIBILITIES FOR MEDICAL DIRECTOR.**

**01. Medical Director.** Each detox/mental health diversion unit must maintain at all times through employment, or contract a medical director who is responsible for providing medical care to clients and for supervising all medical care, services, and treatment provided by the medical staff. This individual must have the qualifications required in Subsections 272.03 and 272.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-30-09)T

**02. Medical Director's Responsibilities.** The medical director's responsibilities include, at a minimum, the following: (3-30-09)T

- a. The provision of advice on health related policies and issues; (3-30-09)T
- b. The provision of emergency medical care to admitted clients; (3-30-09)T
- c. The supervision of the performance of the medical examination and laboratory tests required upon the client's admission and the evaluation of the resultant test results; and (3-30-09)T
- d. The supervision of the medical treatment provided to clients. (3-30-09)T

**03. Required License.** Each medical director of a detox/mental health diversion unit must be a licensed physician by the Idaho Board of Medicine at the time of hire or contract and throughout the duration of employment or contract. (3-30-09)T

**04. Required Experience and Abilities.** Each medical director of a detox/mental health diversion unit must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-30-09)T

a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders and mental health. (3-30-09)T

b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting which includes: (3-30-09)T

i. Assessment of the likelihood of danger to self or others, grave disability, capacity to give informed consent, and capacity to understand legal proceedings; (3-30-09)T

ii. Diagnosis using DSM-IV-TR criteria; and (3-30-09)T

iii. Treatment of mental health disorders including knowledge of treatment modalities and experience applying treatment modalities in a clinical setting. (3-30-09)T

d. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-30-09)T

i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-30-09)T

ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-30-09)T

**05. Availability of Medical Director.** The facility's medical director or his designee must be available to be on-site at the facility within two (2) hours and must be on-call at all times. (3-30-09)T

## **273. QUALIFICATIONS AND RESPONSIBILITIES FOR DIRECTOR OF NURSING SERVICES.**

**01. Director of Nursing Services.** Each detox/mental health diversion unit must maintain at all times, through employment or contract, an R.N. licensed in Idaho to serve as the director of nursing services. This individual

must have the qualifications required in Subsections 273.03 and 273.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-30-09)T

**02. Director of Nursing Services Responsibilities.** The director of nursing services is responsible for all nursing services provided to clients and for supervising all of the nursing services provided by staff. The director of nursing services's responsibilities include, at a minimum, the following: (3-30-09)T

- a. To organize, coordinate, and evaluate nursing service functions and staff; (3-30-09)T
- b. To be responsible for development and implementation of client care policies and procedures; (3-30-09)T
- c. To select, supervise, direct, promote, and terminate nursing staff; (3-30-09)T
- d. To establish procedures to insure that staff licenses are valid and current; and (3-30-09)T
- e. To participate with the CEO or administrator and medical director in planning and budgeting for nursing care. (3-30-09)T

**03. Required License.** Each director of nursing services must be an R.N. licensed by the Idaho Board of Nursing at the time of hire or contract and throughout the duration of employment or contract. (3-30-09)T

**04. Required Experience and Abilities.** Each director of nursing services must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-30-09)T

- a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders, and mental health. (3-30-09)T
- b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting. (3-30-09)T
- c. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-30-09)T
  - i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-30-09)T
  - ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-30-09)T

**05. Availability of Director of Nursing Services.** The facility's director of nursing services must, at a minimum, be full-time forty (40) hours per week. (3-30-09)T

**274. QUALIFICATIONS AND RESPONSIBILITIES FOR CHEMICAL DEPENDENCY COUNSELORS.**

**01. Chemical Dependency Counselor.** Each detox/mental health diversion unit must maintain at all times through employment or contract a chemical dependency counselor. This individual must have the qualifications required in Subsections 274.03 and 274.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-30-09)T

**02. Chemical Dependency Counselor's Responsibilities.** A chemical dependency counselor's responsibilities include at a minimum, the following: (3-30-09)T

- a. Case staffing; (3-30-09)T

- b.** Individual case supervision; (3-30-09)T
- c.** Consultation with other clinical professionals; (3-30-09)T
- d.** Review of case record maintenance; and (3-30-09)T
- e.** Other clinically appropriate services determined by the facility. (3-30-09)T

**03. Chemical Dependency Counselor License or Certification.** Each chemical dependency counselor must be certified in Idaho to meet the standards and requirements under IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs," or IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs," at the time of hire or contract and throughout the duration of employment or contract. (3-30-09)T

**04. Required Experience and Abilities.** Each chemical dependency counselor must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-30-09)T

- a.** At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders, and mental health. (3-30-09)T
- b.** At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting. (3-30-09)T
- c.** At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-30-09)T
  - i.** Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-30-09)T
  - ii.** An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-30-09)T

**05. Availability of Chemical Dependency Counselor.** The facility must have at least one (1) chemical dependency counselor, at a minimum, be full-time forty (40) hours per week. (3-30-09)T

## **275. QUALIFICATIONS AND RESPONSIBILITIES FOR MENTAL HEALTH PROGRAM DIRECTOR**

**01. Mental Health Program Director.** Each detox/mental health diversion unit must maintain at all times, through employment or contract, a mental health program director who is responsible for providing mental health counseling, treatment and services to clients and for supervising mental health counseling, treatment, and services provided by mental health clinical staff. This individual must have the qualifications required in Subsections 275.03 and 275.04 of this rule at the time of hire and throughout the duration of employment or contract. (3-30-09)T

**02. Mental Health Program Director's Responsibilities.** A mental health program director's responsibilities include, at a minimum, the following: (3-30-09)T

- a.** Case staffing; (3-30-09)T
- b.** Individual case supervision; (3-30-09)T
- c.** Consultation with other mental health clinical professionals; (3-30-09)T
- d.** Review of case record maintenance; and (3-30-09)T
- e.** Other clinically appropriate services determined by the facility. (3-30-09)T



**03. Required License or Certification.** Each program director must, at a minimum, have one (1) of the following Idaho licensures at the time of hire or contract and throughout the duration of employment or contract: (3-30-09)T

- a. Licensed Clinical Professional Counselor (LCPC): (3-30-09)T
- b. Licensed Clinical Social Worker (LCSW); (3-30-09)T
- c. Licensed Professional Counselor (LPC); (3-30-09)T
- d. Licensed Master's Level Social Worker (LMSW); (3-30-09)T
- e. Licensed Marriage and Family Therapist (LMFT); (3-30-09)T
- f. Licensed Psychologist; (3-30-09)T
- g. Licensed Psychiatrist; or (3-30-09)T
- h. Licensed Professional Nurse. (3-30-09)T

**04. Required Experience and Abilities.** The mental health program director must, at a minimum, have and demonstrate the following experience and abilities at the time of hire or contract: (3-30-09)T

- a. At least two (2) years of paid full-time experience in the field of alcoholism, substance use disorders, and mental health. (3-30-09)T
- b. At least one (1) of the two (2) years' full-time experience must be in a clinical mental health setting. (3-30-09)T
- c. At least one (1) of the two (2) years' full-time experience must be in an administrative capacity that includes: (3-30-09)T
  - i. Knowledge and experience demonstrating competence in planning and budgeting, fiscal management, supervision, personnel management, employee performance assessment, data collection, and reporting; and (3-30-09)T
  - ii. An understanding of and adherence to the ethical standards of the respective license adopted by the governing board for licensure. (3-30-09)T

**04. Availability of Mental Health Program Director.** The facility's mental health program director must, at a minimum, be full-time forty (40) hours per week. (3-30-09)T

**276. -- 279. (RESERVED).**

**280. SMOKING PROHIBITED.**

Each detox/mental health diversion unit, issued a certificate of approval under these rules, must prohibit smoking in the facility. (3-30-09)T

**281. VISITING HOURS.**

Each detox/mental health diversion unit, must establish and post daily visiting hours that are readily observable by the public. (3-30-09)T

- 01. Clergy Members.** A facility must allow clergy members to visit at any hour. (3-30-09)T
- 02. Critically Ill Clients.** Relatives or guardians must be allowed to visit critically ill clients at any time. (3-30-09)T

**03. Privacy Available for Visitations.** The facility must have places or rooms available to clients for privacy for client visits with relatives, friends, clergy, social workers, and guardians. (3-30-09)T

**282. -- 289. (RESERVED).**

**290. QUALITY ASSURANCE.**

Each detox/mental health diversion unit, through the CEO or administrator, medical and nursing staff must ensure that there is an effective, facility-wide, quality assurance program to monitor, protect, and enhance the quality and appropriateness of client care and to identify qualitative problems and recommend and implement plans for correcting them. (3-30-09)T

**01. Quarterly Review.** Each quarter at least five percent (5%) of the open cases for each clinical staff member must be randomly selected and reviewed to determine if: (3-30-09)T

- a.** The diagnosis and the problems identified for treatment are supported in the assessment; (3-30-09)T
- b.** The treatment plan is appropriate for the diagnosis and the problems identified; and (3-30-09)T
- c.** The progress notes in the case record describe the clinical course of the client's treatment. (3-30-09)T

**02. Corrective Action.** The facility must take and document appropriate remedial actions and outcomes to address deficiencies found through its quality assurance program. Corrective action may include: (3-30-09)T

- a.** Education or training; (3-30-09)T
- b.** New or revised policies and procedures; or (3-30-09)T
- c.** Staffing changes that may include a corrective work plan, reassignment, or discharge. (3-30-09)T

**03. Quarterly Reporting to Governing Body.** The CEO or administrator, must report to the facility's governing body each quarter the findings of the quality of care review for the previous quarter. A summary of those findings must be documented in the governing body's minutes. (3-30-09)T

**291. -- 294. (RESERVED).**

**295. AVAILABILITY OF ON-SITE ALCOHOL AND DRUG TESTING.**

**01. On-Site Testing.** Each facility must have testing available on-site for the purpose of detecting the presence of alcohol or any controlled substances in clients. (3-30-09)T

**02. Quality of Tests.** The facility must use tests that are widely recognized as possessing sufficient sensitivity to detect the presence of substances in low quantities. (3-30-09)T

**03. Policies for Collection and Handling Specimens.** The facility must establish and enforce policies to govern the collection and handling of urine specimens when such testing is indicated. (3-30-09)T

**04. Documentation of Test Results.** All test results must be documented in the client's record according to the requirements of the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164, 42 U.S.C. Sections 290 dd-3 and ee-3, and 42 C.F.R., Part 2 (June 9, 1987). (3-30-09)T

**296. -- 299. (RESERVED).**

**ADDITIONAL REQUIREMENTS APPLICABLE TO DETOXIFICATION UNITS**

**(Sections 300 through 399)**

**300. REQUIRED MINIMUM POLICY STANDARDS APPLICABLE TO DETOXIFICATION UNITS.**

Nonhospital, medically-monitored detoxification units issued a certificate of approval under these rules must offer intensive residential detoxification treatment services, twenty-four (24) hours per day, seven (7) days per week, to persons eighteen (18) years of age or older who are diagnosed with substance abuse or addiction disorders. Detoxification units are focused on short-term stabilization of three (3) to five (5) days' duration. (3-30-09)T

**301. REQUIRED MINIMUM STAFFING STANDARDS APPLICABLE TO DETOXIFICATION UNITS.**

Each detoxification unit must, at a minimum, meet the following standards for staffing in the detoxification unit for direct care staff. (3-30-09)T

**01. Nurse.** At least one (1) R.N. or L.P.N. must be on duty twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**02. Direct Care Staff.** (3-30-09)T

**a.** A detoxification unit with one (1) through six (6) clients must have one (1) direct care staff member on duty twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**b.** A detoxification unit with seven (7) through twelve (12) clients must have two (2) direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**c.** A detoxification unit with thirteen (13) through eighteen (18) clients must have three (3) direct care staff members on duty twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**d.** A detoxification unit with nineteen (19) clients or more must have one (1) additional direct care staff member on duty twenty-four (24) hours per day, seven (7) days per week, beyond the three (3) staff required in Subsection 301.02.c of this rule for each additional six (6) clients or fraction thereof. (3-30-09)T

**03. Physician Supervision.** The treatment of each client must be under the supervision of a physician. (3-30-09)T

**302. -- 309. (RESERVED).**

**310. REQUIRED MINIMUM SERVICE STANDARDS APPLICABLE TO DETOXIFICATION UNIT.**

Each detoxification unit may provide its clients with a variety of services, but must, at a minimum, provide detoxification treatment services in Subsections 310.01 through 310.09 of this rule. (3-30-09)T

**01. Assessment and Treatment Planning Services.** The initial assessment and treatment planning in accordance with these rules, must also include an evaluation relative to the client's treatment potential and a determination of the appropriate level of treatment. (3-30-09)T

**02. Skilled Nursing Care.** On-site skilled nursing care must be provided twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**03. Physician, Physician's Assistant, or Nurse Practitioner's Services.** Services of a physician, physician's assistant, or nurse practitioner must be available twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**04. Counseling Services.** Daily on-site counseling services including: (3-30-09)T

**a.** Individual and group counseling sessions that provide: (3-30-09)T

**i.** Encouragement to remain in treatment for appropriate duration as determined in the detoxification

- treatment plan; and (3-30-09)T
- ii. Encouragement to enter programs for ongoing recovery. (3-30-09)T
  - b. Case Management Services; and (3-30-09)T
  - c. Client Advocacy Services. (3-30-09)T
- 05. Continued Care Planning Services.** Continued care planning must be provided and a system for referral of clients for identified treatment needs when such services are not available at the detoxification unit. (3-30-09)T
- 06. Discharge Criteria and Planning Services.** According to physician-approved written discharge criteria, policies, and procedures, the facility must provide a procedure to screen each client for discharge planning needs. (3-30-09)T
- 07. Other Services.** A detoxification unit may provide other services not identified in this section of rule, if the provision of such services are consistent with the effective treatment of a client's crisis mental health or alcohol and drug related conditions. (3-30-09)T
- 08. Recreation and Leisure Time Activities.** (3-30-09)T
- 09. Documentation of Services.** Services received by the client through the detoxification unit must be recorded and documented in each client's record. (3-30-09)T
- 311. -- 319. (RESERVED).**
- 320. REQUIRED MINIMUM ADMISSION CRITERIA TO DETOXIFICATION UNITS.** According to physician-approved written admission criteria, policies, and procedures, each detoxification unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-30-09)T
- 01. Admission to Detoxification Unit.** A prospective client will be admitted or retained only if he meets the following admission criteria: (3-30-09)T
- a. Must be eighteen (18) years of age or older; (3-30-09)T
  - b. Demonstrates a need for detoxification services; (3-30-09)T
  - c. Has alcohol or other addictive controlled substance intake of sufficient amount and duration to create a reasonable expectation of withdrawal upon cessation of use; (3-30-09)T
  - d. Is medically stable prior to admission and if seeking detoxification from alcohol has a blood alcohol level no greater than 200mg/100cc; (3-30-09)T
  - e. Meets admission criteria specifications that do not exceed ASAM Level III.7-D; and (3-30-09)T
  - f. Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-30-09)T
- 02. Detoxification Unit Able to Provide Services.** The detoxification unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the detoxification unit is not approved to provide. (3-30-09)T
- 03. Monitoring Clients in Detoxification Unit.** The level of monitoring in the detoxification unit of the client or the physical restrictions of the environment must be adequate to prevent the client from causing serious harm to self or others. (3-30-09)T

**04. Notification of Admission of Opiate/Methadone Client.** The director of nursing must be notified that an opiate/methadone client was admitted to the detoxification unit. The name of the clinic where the client received the methadone must be documented in the client's record. (3-30-09)T

**321. -- 324. (RESERVED).**

**325. REQUIRED MINIMUM NURSING ASSESSMENT FOR CLIENTS OF DETOXIFICATION UNITS.**

Each detoxification unit must complete a nursing assessment on each person who applies for admission to the detoxification unit prior to admission. (3-30-09)T

**326. -- 329. (RESERVED).**

**330. REQUIRED MINIMUM TREATMENT NEEDS ASSESSMENT FOR CLIENTS OF DETOXIFICATION UNITS.**

**01. Client Treatment Needs Assessment.** A chemical dependency counselor, within twenty-four (24) hours of admission, or as soon as a client is able, must complete a treatment needs assessment for each client admitted to the detoxification unit. The assessment must establish the historical development and dysfunctional nature of the client's alcohol and drug abuse or dependence and must evaluate the client's treatment needs. (3-30-09)T

**02. Treatment Needs Assessment Content.** The treatment needs assessment must be recorded in the client's record and must include, at a minimum, the following: (3-30-09)T

**a.** A summary of the client's alcohol or drug abuse history including substances used, date of last use, amounts used, frequency, duration, age of first use, patterns, and consequences of use; types of and responses to previous treatment, periods of sobriety, and any other information supporting any diagnostic recommendations or diagnosis made; (3-30-09)T

**b.** A summary of the client's family, including family background, current family composition, substance use and abuse by family members, supportive or dysfunctional relationships, and other family-related issues; (3-30-09)T

**c.** A summary of the client's educational background, including current educational status, levels of achievement, and educational problems or difficulties; (3-30-09)T

**d.** A summary of the client's vocational and employment status including skills or trades learned, work record, and current vocational or employment problems; (3-30-09)T

**e.** A summary of the client's past and current involvement with the criminal justice system; (3-30-09)T

**f.** A general summary of the client's medical history including past or current major illnesses or injuries, afflictions with communicable diseases, or known health problems or needs; (3-30-09)T

**g.** A summary of the client's financial status, including current income sources, family income, ability to pay for services, and insurance coverage; (3-30-09)T

**h.** A social assessment of the client, including a summarization of the nature of and problems with the client's social relationships outside the family unit; (3-30-09)T

**i.** Any history of emotional or behavioral problems, including any history of psychological or psychiatric treatment; (3-30-09)T

**j.** A master problem list developed from client input and identified clinical problems; and (3-30-09)T

- k. A diagnostic summary and master problem list. (3-30-09)T

**331. -- 334. (RESERVED).**

**335. MINIMUM REQUIREMENTS FOR INDIVIDUALIZED DETOXIFICATION TREATMENT PLAN FOR CLIENTS OF DETOXIFICATION UNITS.**

**01. Develop Detoxification Treatment Plan.** A chemical dependency counselor must develop an individualized treatment plan based upon the treatment needs assessment for each client admitted to the detoxification unit. (3-30-09)T

**02. Written Detoxification Treatment Plan.** The individualized detoxification treatment plan must be signed and dated by both the client and the chemical dependency counselor. The signature of the counselor must be followed by the counselor's credentials. (3-30-09)T

**03. Client Records for Detoxification Treatment.** The treatment plan must be recorded in the client's record and must include at a minimum the following: (3-30-09)T

a. A statement of the client's current strengths. (3-30-09)T

b. A statement of specific clinical problems to be addressed during treatment. (3-30-09)T

c. A diagnostic statement and a statement of measurable treatment goals based on client input that relate to the problems identified. (3-30-09)T

d. Measurable short-term objectives based on client input leading to the completion of goals including: (3-30-09)T

i. Time frames for the anticipated dates of achievement or completion of each objective, or for reviewing progress towards objectives; and (3-30-09)T

ii. Specification and description of the indicators to be used to assess progress based on client input. (3-30-09)T

e. A description of the methods or treatment procedures proposed to assist the client in achieving the objectives, including: (3-30-09)T

i. Type and frequency of services or assigned activities to be provided; (3-30-09)T

ii. Referrals for needed services that are not provided directly by the facility; and (3-30-09)T

f. A statement identifying the staff member responsible for facilitating the methods or treatment procedures. (3-30-09)T

**04. Detoxification Treatment Plan Review.** The detoxification treatment plan must be reviewed by a chemical dependency counselor every three (3) days and documented in each client's record. The treatment plan review must include, at a minimum, the following: (3-30-09)T

a. A statement of the client's progress or regress as it relates to the measurable goals and measurable objectives identified in the client's individualized treatment plan. (3-30-09)T

b. Any additional clinical problems identified. (3-30-09)T

c. A statement of the planned actions to be taken to address the identified clinical problems. (3-30-09)T

**336. -- 339. (RESERVED).**

**340. REQUIRED MINIMUM DISCHARGE PLANNING FOR CLIENTS OF DETOXIFICATION UNIT.** According to physician-approved written discharge criteria, policies, and procedures, each detoxification unit must provide each client with a discharge plan that must include, at a minimum, the following. (3-30-09)T

**01. Discharge Criteria.** A client with stable vital signs and stable laboratory results can be discharged from a detoxification unit when the client meets the discharge criteria specifications of the dimensions in Level III.2-D of the Patient Placement Criteria for the Treatment of Psychoactive Substance Use Disorders of the American Society of Addiction Medicine incorporated by reference in Section 004 of these rules. (3-30-09)T

**02. Client Referral.** Each client must be referred to the appropriate level of care upon discharge which may include community resources or state substance use disorders programs. (3-30-09)T

**03. Discharge Summary Content.** The discharge summary must include: (3-30-09)T

**a.** The reason for admission and original diagnosis; (3-30-09)T

**b.** A summary of the client's clinical problems, course of treatment, and progress toward planned goals and objectives identified in the treatment plan; (3-30-09)T

**c.** The reason for discharge and diagnoses at discharge; (3-30-09)T

**d.** A continued care treatment plan and documentation of referrals made; and (3-30-09)T

**e.** An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-30-09)T

**341. -- 400. (RESERVED).**

#### **ADDITIONAL REQUIREMENTS APPLICABLE TO SOBERING STATIONS**

**(Sections 400 through 499)**

**401. REQUIRED MINIMUM STAFFING STANDARDS APPLICABLE TO SOBERING STATIONS.** Each detox/mental health diversion unit that chooses to maintain or operate a sobering station must, at a minimum, meet the following standards for staffing in the sobering station for direct care staff. (3-30-09)T

**01. Nurse.** At least one (1) R.N. or L.P.N. must be on duty during posted hours of operation. (3-30-09)T

**02. Direct Care Staff.** (3-30-09)T

**a.** A sobering station with one (1) through eight (8) clients must have one (1) direct care staff member on duty during posted hours of operation. (3-30-09)T

**b.** A sobering station with nine (9) through eighteen (18) clients must have two (2) direct care staff members on duty during posted hours of operation. (3-30-09)T

**c.** A sobering station with nineteen (19) through thirty (30) clients must have three (3) direct care staff members on duty during posted hours of operation. (3-30-09)T

**d.** A sobering station with more than thirty (30) clients must have one (1) additional direct care staff member beyond the three (3) staff required in Subsection 401.02.c of this rule for each additional ten (10) clients or fraction thereof during posted hours of operation. (3-30-09)T

**03. Physician Supervision.** The services provided to each client must be under the supervision of a

physician. (3-30-09)T

**402. -- 409. (RESERVED).**

**410. REQUIRED MINIMUM SERVICES APPLICABLE TO SOBERING STATIONS.**

Each detox/mental health diversion unit that chooses to maintain or operate a sobering station must provide the following services. (3-30-09)T

**01. Services to Reduce Acute Symptoms and to Monitor.** A sobering station must provide services that reduce the client's acute symptoms in a safe structured setting. (3-30-09)T

**02. Planning Services on Release.** A sobering station must provide a procedure to screen each client for planning needs on release. (3-30-09)T

**411. -- 419. (RESERVED).**

**420. REQUIRED MINIMUM INTAKE CRITERIA APPLICABLE TO SOBERING STATIONS.**

Each detox/mental health diversion unit that maintains or operates a sobering station must develop and implement physician-approved written intake criteria, policies, and procedures that are uniformly applied to all clients. (3-30-09)T

**01. Intake to Sobering Station.** A prospective client will be accepted into or retained only if he meets the following intake criteria: (3-30-09)T

**a.** Must be brought to the sobering station by law enforcement or referred by a hospital or other medical care provider. (3-30-09)T

**b.** Must be eighteen (18) years of age or older; and (3-30-09)T

**c.** Demonstrates the capacity to benefit from sobering; (3-30-09)T

**d.** The services available in the sobering station may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-30-09)T

**02. Sobering Station Able to Provide Services.** The sobering station must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. (3-30-09)T

**a.** The client does not require a type of service for which the facility is not approved to provide; and (3-30-09)T

**b.** The level of monitoring of the client in the unit or the physical restrictions of the environment of the facility are adequate to prevent the patient from causing serious harm to self or others. (3-30-09)T

**03. Monitoring Clients in Sobering Station.** A client admitted to a sobering station must be closely monitored. (3-30-09)T

**a.** Vital signs for each client must be rechecked every fifteen (15) minutes. (3-30-09)T

**b.** The director of nursing must be notified that an opiate/methadone client was admitted to the sobering station. (3-30-09)T

**c.** Documentation of the name of the clinic where the client received the methadone. (3-30-09)T

**d.** The R.N. or L.P.N. on duty will determine when it is safe to remove the client from the fifteen (15) minute checks. If removed, the client must be checked every thirty (30) minutes for the remainder of his stay in the sobering station. (3-30-09)T



**421. -- 424. (RESERVED).**

**425. REQUIRED MINIMUM PLANNING ON RELEASE APPLICABLE TO SOBERING STATIONS.**

According to physician-approved written criteria, policies, and procedures, each sobering station must provide each client with a plan on release that must include, at a minimum, the following. (3-30-09)T

**01. Planning on Release.** The facility must provide a procedure to screen each client for planning needs on release. (3-30-09)T

**a.** A client must be released from a sobering station according to the criteria in Subsection 425.02 of this rule. (3-30-09)T

**b.** A client must be referred to the appropriate level of care upon release which may include community resources and state substance use disorders programs. (3-30-09)T

**02. Summary on Release Content.** The summary on release must include: (3-30-09)T

**a.** Documented signs of being sober such as clear speech, steady gait, clear thinking, and appropriate behavior, including stable vital signs and stable laboratory results. (3-30-09)T

**b.** Documented signs that the client is able to care for self or released as sober and responsible to a third party adult. (3-30-09)T

**c.** A release executed by a sober third party adult into whose care the client has been discharged, if the client is not sober, and the sober third party adult has requested and agreed to assume responsibility for the client's well-being. (3-30-09)T

**d.** Documentation that the client was encouraged to enter programs for ongoing recovery. (3-30-09)T

**e.** An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-30-09)T

**426. -- 499. (RESERVED)**

**ADDITIONAL REQUIREMENTS APPLICABLE TO MENTAL HEALTH DIVERSION UNITS**

**(Sections 500 through 599)**

**500. REQUIRED MINIMUM POLICY STANDARDS APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.**

**01. Crisis Stabilization for Mental Health Diversion Unit.** Each mental health diversion unit issued a certificate of approval under these rules must offer intensive mental health services twenty-four (24) hours per day, seven (7) days per week, to persons with an urgent or emergent need for crisis stabilization services in a safe, structured setting. (3-30-09)T

**02. Focus of Mental Health Diversion Unit.** Mental health diversion units are focused on short-term stabilization for up to a maximum of seven (7) days. In order to assure that adequate arrangements are in place to allow for a safe discharge of a client, the length of stay may be extended up to twenty-four (24) hours. (3-30-09)T

**03. Alternative to Inpatient Hospitalization.** Services at this level of care are used as an alternative to inpatient hospitalization and include crisis stabilization, initial and continuing biopsychosocial assessment, care management, medication management, and mobilization of family or significant other support, and community resources. (3-30-09)T

**04. Initial Assessment.** This level of care provides for an initial assessment by a licensed mental health professional followed by a face-to-face psychiatric evaluation within twenty-four (24) hours of admission or as soon as a client is able. (3-30-09)T

**05. Primary Diagnoses.** The primary diagnoses treated in a mental health diversion unit are active symptomatology consistent with a DSM-IV-TR diagnosis (Axes I-V) as the principle diagnosis however, patients may have additional physical, medical, or co-dependency issues. (3-30-09)T

**501. REQUIRED MINIMUM STAFFING APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.** Each mental health diversion unit must develop and implement policies and procedures to provide necessary and qualified staff in sufficient numbers to assure the health and safety of clients. The program policies must define the types and numbers of clinical and managerial staff needed to provide clients with treatment services in a safe and therapeutic environment. (3-30-09)T

**01. Nurse.** At least one (1) R.N. or L.P.N. must be on duty twenty-four (24) hours per day, seven (7) days per week. (3-30-09)T

**02. Direct Care Staff.** At least one (1) direct care staff must be assigned direct-care responsibility for every four (4) clients. (3-30-09)T

**03. Psychiatrist.** At least one (1) psychiatrist must be on call twenty-four (24) hours per day, seven (7) days per week. The psychiatrist must make daily rounds. Back up coverage for a psychiatrist may be a physician who must consult with the psychiatrist. (3-30-09)T

**04. Physician Supervision.** The treatment of each client must be under the supervision of a physician. (3-30-09)T

**502. -- 509. (RESERVED).**

**510. REQUIRED MINIMUM SERVICES APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.** Each mental health diversion unit may provide its clients with a variety of services, but must, at a minimum, provide the mental health crisis treatment services in Subsections 510.01 through 510.13 of this rule. (3-30-09)T

**01. Psychological or Psychiatric Assessment Services.** Psychological or psychiatric assessment services and planning that must include an evaluation relative to the client's treatment potential and a determination of the appropriate level of treatment sufficient to diagnose psychiatric disorders and organic brain impairment, and to determine the level of intellectual functioning; (3-30-09)T

**02. Social and Psychological Services.** (3-30-09)T

**03. Counseling Services.** Provide on-site counseling services, including individual and group counseling sessions that provide: (3-30-09)T

**a.** Encouragement to remain in treatment for appropriate duration as determined in the treatment plan; (3-30-09)T  
and

**b.** Encouragement to enter programs for ongoing treatment. (3-30-09)T

**04. Medical and Nursing Care Services.** On-site medical and nursing care, including ongoing assessment and care of acute psychiatric problems. (3-30-09)T

**05. Vocational Evaluation and Counseling Services.** (3-30-09)T

**06. Case Management Services.** (3-30-09)T

**07. Client Advocacy Services.** (3-30-09)T

- 08. Educational Services.** Education services regarding: (3-30-09)T
- a.** Acute psychological or psychiatric disorders and the importance of care and treatment in the recovery process; and (3-30-09)T
  - b.** Tuberculosis and the human immunodeficiency virus; (3-30-09)T
    - i.** How each is transmitted; and (3-30-09)T
    - ii.** How to safeguard against transmission. (3-30-09)T
- 09. Continued Care Planning Services.** Provide continued care planning and a system for referral of clients for identified treatment needs if such services are not available at the mental health diversion unit. (3-30-09)T
- 10. Discharge Criteria and Planning Services.** According to physician-approved written discharge criteria, policies, and procedures, the facility must provide a procedure to screen each client for discharge planning needs. (3-30-09)T
- 11. Other Services.** A mental health diversion unit may provide other services not identified in this section of rule, if the provision of such services are consistent with the effective treatment of a client's crisis mental health or alcohol and drug related conditions. (3-30-09)T
- 12. Recreation and Leisure Time Activities.** (3-30-09)T
- 13. Documentation of Services.** Services received by the client through the mental health diversion unit must be recorded and documented in each client's record. (3-30-09)T

**511. -- 519. (RESERVED).**

**520. MINIMUM REQUIREMENTS FOR ADMISSION CRITERIA APPLICABLE TO MENTAL HEALTH DIVERSION UNITS.**

According to physician-approved written admission criteria, policies, and procedures, each mental health diversion unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-30-09)T

- 01. Admission to Mental Health Diversion Unit.** A prospective client will be admitted or retained only if he meets the following admission criteria: (3-30-09)T
- a.** Demonstrates active symptomatology consistent with a DSM-IV-TR diagnosis (Axes I-V) as the principle diagnosis and demonstrates significant functional impairment related to his diagnosis such as self-injurious behavior or threats, current suicidal ideation with expressed intentions or a past history of self destructive, impulsive, or parasuicidal behavior, or grave disability; (3-30-09)T
  - b.** His symptoms do not exceed Level V of LOCUS Criteria; (3-30-09)T
  - c.** Must be eighteen (18) years of age or older; and (3-30-09)T
  - d.** Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from psychiatric hospitalization. (3-30-09)T
- 02. Mental Health Diversion Unit Able to Provide Services.** The mental health diversion unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the mental health diversion unit is not approved to provide. (3-30-09)T
- 03. Monitoring Clients in Mental Health Diversion Unit.** The level of monitoring the client in the mental health diversion unit or the physical restrictions of the environment of the unit must be adequate to prevent the client from causing serious harm to self or others. (3-30-09)T

**521. -- 529. (RESERVED).**

**530. MINIMUM REQUIREMENTS FOR TREATMENT NEEDS ASSESSMENT FOR CLIENTS OF MENTAL HEALTH DIVERSION UNITS.**

**01. Client Treatment Needs Assessment.** Within twenty-four (24) hours of admission, or as soon as a client is able, a psychiatrist must complete a treatment needs assessment for each client admitted to the mental health diversion unit. The assessment must establish the historical development and diagnosis of the client's psychiatric disorders, organic brain impairment, and must evaluate the client's treatment needs. (3-30-09)T

**02. Treatment Needs Assessment Content.** The treatment needs assessment must be recorded in the client's record and must include, at a minimum, the following: (3-30-09)T

**a.** A summary of the client's alcohol or drug abuse history including substances used, date of last use, amounts used, frequency, duration, age of first use, patterns, and consequences of use; types of and responses to previous treatment, periods of sobriety, and any other information supporting any diagnostic recommendations or diagnosis made; (3-30-09)T

**b.** A summary of the client's family including family background, current family composition, substance use and abuse by family members, supportive or dysfunctional relationships, and other family-related issues; (3-30-09)T

**c.** A summary of the client's educational background including current educational status, levels of achievement, and educational problems or difficulties; (3-30-09)T

**d.** A summary of the client's vocational and employment status including skills or trades learned, work record, and current vocational or employment problems; (3-30-09)T

**e.** A summary of the client's past and current involvement with the criminal justice system; (3-30-09)T

**f.** A general summary of the client's medical history including past or current major illnesses or injuries, afflictions with communicable diseases, or known health problems or needs; (3-30-09)T

**g.** A summary of the client's financial status including current income sources, family income, ability to pay for services, and insurance coverage; (3-30-09)T

**h.** A social assessment of the client including a summarization of the nature of and problems with the client's social relationships outside the family unit; (3-30-09)T

**i.** Any history of emotional or behavioral problems including any history of psychological or psychiatric treatment; (3-30-09)T

**j.** A master problem list developed from client input and identified clinical problems; and (3-30-09)T

**k.** A diagnostic summary and master problem list that must be dated and signed psychiatrist followed by the psychiatrist's credentials. (3-30-09)T

**531. -- 534. (RESERVED).**

**535. MINIMUM REQUIREMENTS FOR INDIVIDUALIZED MENTAL HEALTH TREATMENT PLAN FOR CLIENTS OF MENTAL HEALTH DIVERSION UNITS.**

**01. Develop Mental Health Treatment Plan.** A psychiatrist must develop an individualized treatment plan based upon the treatment needs assessment for each client admitted to the mental health diversion unit. (3-30-09)T

**02. Written Mental Health Treatment Plan.** The individualized mental health treatment plan must be signed and dated by both the client and the psychiatrist. The signature of the psychiatrist must be followed by the psychiatrist's credentials. (3-30-09)T

**03. Client Records for Mental Health Treatment.** The treatment plan must be recorded in the client's record and must include, at a minimum, the following: (3-30-09)T

- a.** A statement of the client's current strengths. (3-30-09)T
- b.** A statement of specific clinical problems to be addressed during treatment. (3-30-09)T
- c.** A diagnostic statement and a statement of measurable treatment goals that relate to the problems identified. (3-30-09)T
- d.** Measurable short-term objectives leading to the completion of goals including: (3-30-09)T
  - i.** Time frames for the anticipated dates of achievement or completion of each objective, or for reviewing progress towards objectives; and (3-30-09)T
  - ii.** Specification and description of the indicators to be used to assess progress. (3-30-09)T
- e.** A description of the methods or treatment procedures proposed to assist the client in achieving the objectives, including: (3-30-09)T
  - i.** Type and frequency of services or assigned activities to be provided; (3-30-09)T
  - ii.** Referrals for needed services that are not provided directly by the facility; and (3-30-09)T
- f.** A statement identifying the staff member responsible for facilitating the methods or treatment procedures. (3-30-09)T

**04. Mental Health Treatment Plan Review.** The mental health treatment plan must be reviewed by a psychiatrist every three (3) days and documented in each client's record. The treatment plan review must include, at a minimum, the following: (3-30-09)T

- a.** A statement of the client's progress or regress as it relates to the measurable goals and measurable objectives identified in the client's individualized treatment plan. (3-30-09)T
- b.** Any additional clinical problems identified. (3-30-09)T
- c.** A statement of the planned actions to be taken to address the identified clinical problems. (3-30-09)T

**536. -- 539. (RESERVED).**

**540. MINIMUM REQUIREMENTS FOR DISCHARGE PLANNING FOR CLIENTS OF MENTAL HEALTH DIVERSION UNIT.**

According to physician-approved written discharge criteria, policies, and procedures, each mental health diversion unit must provide a procedure to screen each client for discharge planning needs. (3-30-09)T

**01. Discharge Planning.** A client must be discharged from a mental health diversion unit under the criteria provided in his discharge plan and the discharge criteria in Subsection 540.03 of this rule. (3-30-09)T

**02. Client Referral.** Each client must be referred to the appropriate level of care upon discharge and to the extent available in the local community. (3-30-09)T

**03. Discharge Criteria.** A client with stable vital signs and stable laboratory results may be discharged from this level of care when any of the following occurs. (3-30-09)T

**a.** The client's documented treatment plan goals and objectives have been substantially met or a safe, continuing care program can be arranged at an alternative level of care; (3-30-09)T

**b.** The client no longer meets admission criteria or meets criteria for a less or more intensive level of care; (3-30-09)T

**c.** The client voluntarily withdraws from treatment and does not meet criteria for involuntary treatment at another facility according to Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code; (3-30-09)T

**d.** Support systems that allow the client to be maintained in a less restrictive treatment environment have been thoroughly explored and secured; (3-30-09)T

**e.** The client, family, guardian, or custodian, are competent but nonparticipatory in treatment or following program rules and regulations. Nonparticipation is of such a degree that treatment at this level of care is rendered ineffective or unsafe, despite multiple, documented attempts to address nonparticipation issues and it has been determined that he does not meet criteria for involuntary treatment at another facility under Sections 18-212, 66-326, 66-329, 66-406 or 66-1305, Idaho Code; or (3-30-09)T

**f.** The client is not making progress toward treatment goals and there is no reasonable expectation of progress at this level of care and it has been determined that he does not meet criteria for involuntary treatment at another facility under Sections 18-212, 66-326, 66-329, 66-406, or 66-1305, Idaho Code. (3-30-09)T

**04. Discharge Summary Content.** The discharge summary must include: (3-30-09)T

**a.** The reason for admission and original diagnosis; (3-30-09)T

**b.** A summary of the client's clinical problems, course of treatment, and progress toward planned goals and objectives identified in the treatment plan; (3-30-09)T

**c.** The reason for discharge and diagnoses at discharge; (3-30-09)T

**d.** A continued care treatment plan and documentation of referrals made; and (3-30-09)T

**e.** An inventory and proper accounting for all clothing and personal property returned to the client upon discharge. (3-30-09)T

**541.--599. (RESERVED).**

## **BUILDING CONSTRUCTION AND PHYSICAL STANDARDS REQUIREMENTS**

**(Sections 600 through 699)**

**600. REQUIREMENTS FOR BUILDING CONSTRUCTION AND PHYSICAL STANDARDS.**

**01. Applicability.** These rules apply to: (3-30-09)T

**a.** All new construction of any building or facility for use as a Detox/Mental Health Diversion Unit. (3-30-09)T

**b.** Conversion of any existing building or facility for use as a Detox/Mental Health Diversion Unit. (3-30-09)T

c. All modifications, additions, alterations, upgrades, deletions, conversions, modernization, remodels, or significant, major and material changes to any existing buildings or facilities that affect the structural integrity of the building or facility, that change functional operation, that affect fire safety, or that add beds, departments, or services over those for which the Detox/Mental Health Diversion Unit is currently approved.

(3-30-09)T

**02. Design Development Plans, Working Drawings, and Specifications.** (3-30-09)T

a. Prior to breaking ground and commencing any construction, a complete set of actual construction drawings, plans, and specifications must be submitted to and approved by the Department to assure compliance with these rules and regulations. The Department has up to sixty (60) days, after receiving a complete set of actual construction drawings, plans, and specifications, to notify the applicant of its determination.

(3-30-09)T

b. Ground breaking and actual construction must not be commenced until actual construction drawings, plans, and specifications have been approved by the Department. Any deviations from the approved actual construction drawings, plans, and specifications must be authorized in writing by the Department prior to breaking ground or commencing any work. Ground breaking and any actual construction commenced prior to Department approval is at the applicant's sole risk. All construction is subject to final visual inspection and systems testing. The requirement of Department approval may be waived in writing by the Department in connection with minor alterations provided the alterations comply with all applicable local standards, codes, rules and regulations.

(3-30-09)T

c. The actual construction drawings, plans, and specifications must be prepared by, or executed under, the immediate supervision of a licensed architect or engineer in Idaho. The requirement of a licensed architect or engineer may be waived in writing by the Department, if the Department determines the size of the project does not necessitate involvement of an architect or engineer, provided the alterations comply with all applicable local standards, codes, rules and regulations.

(3-30-09)T

d. The actual construction drawings, plans, and specifications must include, at a minimum, the following:

(3-30-09)T

i. The size and shape of the entire site. (3-30-09)T

ii. The footprint showing orientation and location of all proposed buildings. (3-30-09)T

iii. The location and description of any existing structures, adjacent streets, highways, sidewalks, railroads, etc., properly designated. (3-30-09)T

iv. The size, characteristics, and location of all existing public utilities, including information concerning water supply available for fire protection, distance to nearest fire hydrant, parking, and any hazardous areas, e.g. cliffs, roads, hills, pools, etc. (3-30-09)T

v. Floor plans and the assignment of all spaces, size of areas and rooms, and indicated in outline, the fixed and movable equipment and furniture, including overall dimensions of buildings. (3-30-09)T

vi. The location and size of doors, windows, and other openings with swing of doors properly indicated. (3-30-09)T

vii. A Life Safety Plan showing all fire walls, exits, exit calculations, locations of smoke barriers if required, fire rated walls, locations of stairs, elevators, dumbwaiters, vertical shafts, and chimneys. (3-30-09)T

viii. The location and size of all fixed equipment. (3-30-09)T

ix. Outline specifications that include a general description of construction, including interior finishes and mechanical systems acoustical material, its extent and type of heating, electrical, and ventilation systems. (3-30-09)T

- e.** The actual construction drawings, plans, and specifications must be drawn at a scale sufficiently large to clearly present the proposed design, but not less than a scale of one-eighth (1/8) inch equals one (1) foot. (3-30-09)T
- f.** A plan for each floor, including the basement or ground floor, and approach or site plan, showing roads, parking areas, sidewalks, etc. (3-30-09)T
- g.** The total floor area and number of beds shall be computed and noted on the development drawings, plans, and specifications. (3-30-09)T
- h.** The actual construction drawings, plans, and specifications must be well prepared so that clear, distinct prints may be obtained, accurately dimensioned, and must include all necessary explanatory notes, schedules, legends, and be stamped with a licensed architect's or engineer's seal. (3-30-09)T
- i.** The actual construction drawings, plans, and specifications must be complete and adequate for contract purposes and should include separate drawings for each of the following branches of work: architectural, mechanical, and electrical. (3-30-09)T
- j.** Prior to commencing occupancy, the building or facility must be inspected and approved by the Department. The Department will make reasonable efforts to schedule an inspection within two (2) weeks of receiving a certificate of occupancy issued by the local governing authority, a city or county in Idaho or other evidence submitted by the applicant that the building or facility is ready for final inspection. (3-30-09)T

**601. CODES AND STANDARDS.**

Each detox/mental health diversion unit must comply with all state and local building, fire, electrical, plumbing, zoning, heating, or other applicable codes in which the facility is located and that are in effect when construction is begun. Written evidence of compliance must be kept in the facility. (3-30-09)T

- 01. Code Conflict.** In the event of a conflict between codes, the most restrictive code requirements will apply. (3-30-09)T
- 02. Compliance with Codes and Standards.** Each detox/mental health diversion unit must be in compliance with the applicable provisions of the following codes and standards in Subsection 601.02.a. through 601.02.h. of this rule. (3-30-09)T

  - a.** 2000 Edition of the Life Safety Code, including mandatory references. (3-30-09)T
  - b.** American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People (ANSI/ICC A117.1-2003). (3-30-09)T
  - c.** Idaho Department of Health and Welfare Rules, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," also known as the Idaho Food Code. (3-30-09)T
  - d.** National Electric Code. (3-30-09)T
  - e.** International Fire Code. (3-30-09)T
  - f.** Occupational Safety and Health Act of 1970 (OSHA). (3-30-09)T
  - g.** National Sanitation Federation. (3-30-09)T
  - h.** For facilities operating a sobering station, at least one (1) airborne infection isolation room must comply with (AII) 2006 AIA Guidelines for Design and Construction of Health Care Facilities. (3-30-09)T
- 03. Evidence of Compliance with Local Building Codes.** No facility will be approved unless the applicant provides evidence to the Department that responsible local officials (planning, zoning, and building) have approved the facility/building for code compliance. (3-30-09)T



**602. -- 609. (RESERVED).**

**610. SITE LOCATION REQUIREMENTS.**

The location of each detox/mental health diversion unit in Idaho is governed by the following Subsections 610.01 through 610.07 of this rule. (3-30-09)T

**01. All Weather Road.** The facility must be adjacent to an all-weather road, kept open to motor vehicles at all times of the year. (3-30-09)T

**02. Physician and Medical Facilities.** The facility must be accessible to physician's services and medical facilities. (3-30-09)T

**03. Public Utilities.** The facility must be accessible to public utilities. (3-30-09)T

**04. Fire District.** The facility must be in a lawfully constituted fire district. (3-30-09)T

**05. Parking Space.** The facility must have parking space to satisfy the minimum needs of clients, employees, staff, and visitors. In the absence of a local requirement, each facility will provide not less than one (1) space for each day shift staff member and employee, plus one (1) space for each five (5) client beds. This ratio may be reduced in areas convenient to a public transportation system or to public parking facilities provided that prior written approval of any reduction is obtained from the Department. Space must be provided for emergency and delivery vehicles. (3-30-09)T

**06. Natural or Man-Made Hazards.** If natural or man-made hazards are present on the facility property or border the property, reasonable precautions such as suitable fences, guards, railings or a combination thereof must be taken for the protection of clients. (3-30-09)T

**07. Mitigation of Adverse Effects.** If railroads, factories, airports or similar facilities, are located in close proximity to the facility, reasonable precautions must be taken to mitigate adverse effects of noise, odor, smoke, dust, and other nuisances. (3-30-09)T

**611. -- 619. (RESERVED).**

**620. BEDS AND SLEEPING AREAS FOR MEDICALLY-MONITORED RESIDENTIAL DETOXIFICATION UNIT.**

Each medically-monitored residential detoxification unit must be in compliance with Subsections 620.01 through 620.11 of this rule. (3-30-09)T

**01. Number of Approved Beds for Detoxification Unit.** The number of approved beds for detoxification is limited to the number stated on the certificate of approval. (3-30-09)T

**a.** Each approved bed for detoxification must have, at a minimum, a comfortable single bed mattress with moisture-proof cover, sheets, blankets, bedspread, pillow and pillow cases. (3-30-09)T

**b.** Roll-away type beds, cots, bunk-beds, and folding beds cannot be used and will not be approved. (3-30-09)T

**02. Location of Beds.** Client beds for medical detoxification may be located within an area suitable for multiple beds ("suite"), provided the suite is surrounded by solid walls, floor to ceiling, and is constructed and maintained in accordance with Chapter 18 of the 2000 Edition of the Life Safety Code. (3-30-09)T

**03. Cubicle Curtains.** Cubicle curtains of fire retardant material, capable of enclosing each approved bed must be provided in multiple-bed rooms or suites to ensure privacy for clients. (3-30-09)T

**04. Unacceptable Location of Beds.** Client beds for detoxification must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-30-09)T

- 05. Numbered Beds.** Client beds for detoxification must be numbered. (3-30-09)T
- 06. Square Footage Requirements.** Square footage requirements for client sleeping areas must, at a minimum, provide not less than sixty (60) square feet of floor space per client. (3-30-09)T
- 07. Visibility of Client Beds.** Client beds for detoxification must be visible at all times to staff in the staff station. (3-30-09)T
- 08. Occupants of Sleeping Areas.** Solid walls or moveable partitions, floor to ceiling, must be used to ensure that sleeping areas and suites for detoxification are only occupied by individuals of the same sex. (3-30-09)T
- 09. Safe and Secure Sleeping Areas.** Sleeping areas for detoxification must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-30-09)T
- 10. Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for medically-monitored detoxification are separate and distinct from client areas for sobering and mental health. (3-30-09)T
- 11. Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for detoxification cannot be reallocated or relocated unless prior written approval has been obtained from the Department. (3-30-09)T
- 621. -- 629. (RESERVED).**
- 630. BEDS AND BEDROOMS FOR MENTAL HEALTH DIVERSION UNIT.**  
Each mental health diversion unit must be in compliance with the following Subsections 630.01 through 630.14 of this rule. (3-30-09)T
- 01. Number of Approved Beds for Mental Health Diversion Unit.** The number of approved beds for mental health diversion is limited to the number stated on the certificate of approval. (3-30-09)T
- a.** Each approved bed for mental health diversion treatment must have, at a minimum, a comfortable single bed mattress with moisture-proof cover, sheets, blankets, bedspread, pillow and pillowcases. (3-30-09)T
- b.** Roll away type beds, cots, bunk beds, and folding beds cannot be used and will not be approved. (3-30-09)T
- 02. Cubicle Curtains.** Cubicle curtains of fire retardant material, capable of enclosing each approved bed must be provided in multiple-bed rooms to ensure privacy for clients. (3-30-09)T
- 03. Maximum Room Capacity.** The maximum room capacity in each bedroom is two (2) clients. (3-30-09)T
- 04. Staff Calling System.** A staff calling system for each client must be installed in each bedroom and in each toilet, bath, and shower room. A staff call must be considered an emergency call and must register at the staff station. The staff calling system must be designed so that a signal light activated by the client will remain lit until turned off by a staff member at the client's calling station - bed, bath, or shower room. The staff calling system is not a substitute for supervision. (3-30-09)T
- 05. Location of Client Beds.** Client beds must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-30-09)T
- 06. Numbered Bedrooms and Beds.** Client bedrooms and beds must be numbered. (3-30-09)T
- 07. Size of Client Sleeping Areas.** Square footage requirements for client sleeping areas must provide for not less than sixty (60) square feet of floor space per client. (3-30-09)T

**08. Entrances to Client Bedrooms.** Entrances to each client bedroom must be visible at all times to staff in the staff station. (3-30-09)T

**09. Ceiling Height.** Ceiling heights must be a minimum of seven (7) feet, six (6) inches. (3-30-09)T

**10. Occupants of Bedrooms.** A client bedroom used for mental health diversion must only be occupied by individuals of the same sex. (3-30-09)T

**11. Bedroom Door Requirements.** Each client bedroom must have a ninety-degree (90°) swinging door, at a minimum, that will not block any corridor or hallway, that is no less than thirty-two (32) inches in width, with a vision window, and that opens out directly into a corridor visible at all times to staff in the staff station. (3-30-09)T

**12. Safe and Secure Client Bedrooms.** Each client bedroom must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-30-09)T

**13. Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for mental health diversion are separate and distinct from client areas for sobering and medically-monitored detoxification. (3-30-09)T

**14. Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for mental health diversion cannot be reallocated or relocated unless prior written approval has been obtained from the Department. (3-30-09)T

**631. -- 639. (RESERVED).**

**640. SOBERING STATION.**

A sobering station is an optional service that may be provided in a detox/mental health diversion unit. When a sobering station is provided it must be in compliance with Subsections 640.01 through 640.16 of this rule. (3-30-09)T

**01. Number of Clients in a Sobering Station.** The number of clients that may be housed in the sobering station is limited to the number stated on the certificate of approval. (3-30-09)T

**02. Visible Client Areas.** Client areas for sobering must be visible at all times to staff at the staff station. If vision windows are used they must provide for one-way vision into client areas for staff at the staff station and must be made of tempered, shatterproof glass. The Department will consider alternative design solutions to one-way vision which will accommodate the requirements for client area accessibility and monitoring. (3-30-09)T

**03. Disease Protection of Clients.** Client areas must provide for disease protection and be maintained in a clean sanitary condition at all times. (3-30-09)T

**04. Furniture.** Furniture located in client areas must be weighted or secured to the floor to ensure safety of staff and clients. (3-30-09)T

**05. Location of Client Areas.** Client areas in a sobering station must not be located in hallways, closets, attics, corridors, trailer houses, or in any room other than one approved for clients. (3-30-09)T

**06. Numbered Rooms.** Client rooms for a sobering station must be numbered. (3-30-09)T

**07. Size of Client Rooms.** Square footage requirements for client rooms in a sobering station must provide for not less than thirty (30) square feet of floor space per client. (3-30-09)T

**08. Entrances to Client Rooms.** Entrances to all sobering station client rooms must be visible at all times to staff at the staff station. (3-30-09)T

**09. Ceiling Height of Client Rooms.** Ceiling heights for client rooms must be a minimum of seven (7) feet, six (6) inches. (3-30-09)T

**10. Floor Drain in Client Room.** Client rooms in a sobering station must have at least one tamper resistant floor drain installed. (3-30-09)T

**11. Doors on Client Rooms.** Client rooms in a sobering station must have a ninety-degree (90°) swinging door, at a minimum, that will not block any corridor or hallway, that is no less than thirty-two (32) inches in width, with a vision window, and that opens out directly into a corridor visible at all times to staff at the staff station. The Department will consider alternative design solutions to one-way vision which will accommodate the requirements for client area accessibility and monitoring. (3-30-09)T

**12. Utilities in Client Rooms.** Client rooms in a sobering station must have a toilet and hand-washing sink with solid walls or partitions to separate the toilet from the sleeping area, and have mechanical ventilation to the outside. (3-30-09)T

**13. Client Rooms Free of Hazards.** Client rooms and areas in a sobering station must be free of safety hazards, and appropriately lighted with no items or articles that a client might use to injure self or others. (3-30-09)T

**14. Airborne Infection Isolation Room.** Each sobering station must have at least one (1) private airborne infection isolation room with a toilet, hand-washing sink, and other accessory facilities that complies with (AII) 2006 AIA Guidelines for Design and Construction of Health Care Facilities. Private airborne infection isolation rooms must have no hardware, equipment, or furnishings that obstruct observation of a client, or that present a physical hazard, or a suicide risk. Private airborne infection isolation rooms must have at least sixty (60) square feet of floor space and a ceiling height of seven (7) feet, six (6) inches. (3-30-09)T

**15. Separate and Distinct Client Areas.** Solid walls, floor to ceiling, must be used to ensure that client areas for sobering are separate and distinct from client areas for medically-monitored detoxification and mental health diversion. (3-30-09)T

**16. Prior Approval Needed for Reallocated or Relocated Beds.** Once the Department has approved the actual construction drawings, plans, and specifications, approved beds for a sobering station cannot be reallocated or relocated unless prior approval has been obtained from the Department. (3-30-09)T

**641. -- 649. (RESERVED).**

**650. CLIENT TOILET AND BATHING FACILITIES.**

**01. Client Toilet Facilities.** Client toilet facilities, must be in compliance with the following: (3-30-09)T

**a.** Be conveniently located with solid walls or partitions to separate each toilet and bathroom from all adjoining rooms with at least one (1) flush toilet for every six (6) clients. (3-30-09)T

**b.** Have mechanical ventilation to the outside from all inside toilets and bathrooms not provided with an operable exterior window. (3-30-09)T

**c.** Have one (1) hand washing sink with a mirror convenient to every toilet. (3-30-09)T

**d.** Have permanently wired light fixtures located and maintained so as to give adequate light to all parts of the room. (3-30-09)T

**e.** Have arrangements for individual privacy for clients. (3-30-09)T

**f.** Provide a privacy screen at each window. (3-30-09)T

**g.** The minimum dimensions of a room containing only a toilet are three (3) feet by six (6) feet. Toilets must be accessible for use by persons with mobility and sensory impairments. (3-30-09)T

**02. Client Bathing Facilities.** Client bathing facilities must comply with the following: (3-30-09)T

**a.** Each tub, shower, and lavatory must have hot and cold running water with at least one (1) tub or shower for every eight (8) clients, not otherwise served by bathing facilities located in a client's room. (3-30-09)T

**b.** Each tub or shower room or enclosure must provide space for private use of the bathing fixture, for drying and dressing and for a wheelchair and attendant. (3-30-09)T

**651. -- 654. (RESERVED).**

**655. ADMINISTRATIVE AREAS.**

The following administrative areas must be located in the facility, or readily available to staff. The size and disposition of each administrative area will depend upon the number and types of approved beds to be served. Depending on the size of the facility and the number of clients served, there may be a need for more than one of the administrative areas listed below. Although identifiable spaces are required to be provided for each of the indicated functions, consideration will be given to design solutions which would accommodate some functions without specific designation of areas or rooms. Details of such proposals must be submitted to the Department for prior approval. Each administrative area must be in compliance with Subsections 655.01 through 655.10 of this rule. (3-30-09)T

**01. Staff Station.** The facility must have one (1) or more staff stations centrally located in each distinct service area for the sobering station, the medically-monitored detoxification unit, and the mental health diversion unit, with adequate space for charting and storage for administrative supplies. (3-30-09)T

**02. Lounge and Toilets for Staff.** The facility must have lounge and toilet rooms for staff. The toilet rooms may be unisex. (3-30-09)T

**03. Closets and Compartments.** Individual closets or compartments, for the safekeeping of coats and personal effects of personnel, must be located convenient to the staff station or in a central location close to personnel. (3-30-09)T

**04. Clean Workroom or Clean Holding Room.** If the room is used for work, it must contain a counter and hand-washing facilities. When the room is used only for storage as part of a system for distributing clean and sterile supplies, the work counter and hand-washing facilities can be omitted. (3-30-09)T

**05. Soiled Workroom and Soiled Holding Room.** The soiled workroom must contain a clinical sink or equivalent flushing rim fixture and a sink for hand-washing, towel dispenser, work counter, waste receptacle, and soiled linen receptacle. (3-30-09)T

**06. Drug Distribution Station.** The drug distribution station must be secure and convenient, with prompt twenty-four (24) hour availability of medicine. A secure medicine preparation area must be available and under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for controlled drugs, convenient to hand washing station and have a minimum area of fifty (50) square feet. A medicine dispensing unit can be located at the staff station, in the clean workroom, or in an alcove or other space convenient to staff and under staff control. (3-30-09)T

**07. Nourishment Station.** The nourishment station must contain a sink equipped for hand-washing, towel dispenser, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets. Ice for clients' must be provided only by icemaker-dispenser units. (3-30-09)T

**08. Equipment Storage Rooms.** Rooms must be available for storage of equipment. (3-30-09)T

**09. Janitor's Closet.** Rooms must be available for storage of janitorial supplies and equipment. (3-30-09)T

**10. Lockable Storage Area.** A storage area of at least sixty-four (64) cubic feet (4x4x4), with segregated lockable storage compartments for client personal effects, must be maintained on-site. This storage area for client personal effects may be located in a separate area inside or outside of the facility's buildings. (3-30-09)T

**656. -- 659. (RESERVED).**

**660. ADDITIONAL ROOM AND AREA REQUIREMENTS.**

The facility must comply with Subsections 660.01 through 660.05 of this rule for room and area requirements. (3-30-09)T

**01. Day Room.** The following minimum requirements apply to day room areas: (3-30-09)T

**a.** The facility must have an adequately ventilated separate day room or area for the exclusive use of clients, employees, and invited guests. (3-30-09)T

**b.** The total area set aside for day use purposes must be at least twenty (20) square feet per approved bed with a minimum total area of at least two hundred twenty-five (225) square feet. The same area can be used for dining and day room space. (3-30-09)T

**02. Dietary Facilities.** Food service, facilities, and equipment on-site and food service prepared by off-site contractors, must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," also known as the Idaho Food Code. (3-30-09)T

**03. Dining Room.** The following minimum requirements apply to dining areas: (3-30-09)T

**a.** The facility must have an adequately ventilated separate dining room or area for the exclusive use of clients, employees, and invited guests. (3-30-09)T

**b.** The total area set aside for dining purposes must be at least twenty (20) square feet per approved bed with a minimum total area of at least two hundred twenty-five (225) square feet. (3-30-09)T

**04. Program Areas.** The following program areas must be located in the facility, or readily available to staff. Although identifiable spaces are required to be provided for each of the indicated functions, consideration will be given to design solutions which would accommodate some functions without specific designation of areas or rooms. Details of such proposals must be submitted to the Department for prior approval: (3-30-09)T

**a.** Sufficient general or individual offices to assure privacy for interviews, client counseling and business transactions. (3-30-09)T

**b.** One (1) or more multipurpose rooms for client social activities, meetings, group counseling, and health education purposes. (3-30-09)T

**c.** One (1) or more medical examination rooms. (3-30-09)T

**d.** Provision for secure and convenient on-site storage of medical records. (3-30-09)T

**e.** Quiet social area for clients. (3-30-09)T

**05. Public Areas.** Each Detox/Mental Health Diversion Unit must provide: (3-30-09)T

**a.** Entrance at grade level, sheltered from the weather and able to accommodate persons with mobility and sensory impairments. (3-30-09)T

**b.** Lobby space, including: (3-30-09)T

**i.** Reception and information counter or desk; (3-30-09)T

- ii. Waiting area; (3-30-09)T
- iii. Public toilet facility; (3-30-09)T
- iv. Public telephone; and (3-30-09)T
- v. Drinking fountain. (3-30-09)T
- c. Outdoor areas that are secure and safe. (3-30-09)T

**661. -- 664. (RESERVED).**

**665. LINEN AND LAUNDRY FACILITIES AND SERVICES.**

The facility must comply with Subsections 665.01 through 665.07 of this rule for linen and laundry facilities and services. (3-30-09)T

**01. Available Linen.** Every Detox/Mental Health Diversion Unit must have available at all times a quantity of linen essential to the proper care and comfort of clients. (3-30-09)T

**02. Clean Linen.** Linen must be of good quality, not thread-bare, torn or badly soiled or stained. (3-30-09)T

**03. Laundry Processing Area.** If linen is processed on-site, the laundry processing area must have commercial type equipment with which a seven-days' supply can be processed within a regularly scheduled work week. (3-30-09)T

**04. Separate and Distinct Soiled Linen Processing Area.** Separate and distinct soiled linen processing, receiving, holding, and sorting area with hand-washing facilities that maximize disease protection and clean sanitary conditions at all times. (3-30-09)T

**05. Separate and Distinct Clean Linen Inspection Area.** Separate and distinct clean linen inspection, mending, processing, receiving, storage, issuing, and holding area that maximize disease protection and clean sanitary conditions at all times. (3-30-09)T

**06. Adequate Storage.** Adequate storage must be provided for laundry supplies. (3-30-09)T

**07. Janitor's Closet.** A Janitor's closet containing a floor receptor or service sink and storage space for housekeeping equipment and supplies must be provided. (3-30-09)T

**666. -- 679. (RESERVED).**

**670. DETAILS AND FINISHES FOR WALLS AND FLOOR SURFACES.**

Walls and floors must be of such character to permit cleaning which meet the interior finish requirements of the 2000 Edition of the Life Safety Code. Walls and ceiling in kitchens, bathrooms, and utility rooms must have washable surfaces. (3-30-09)T

**671. -- 674. (RESERVED).**

**675. WATER.**

Each detox/mental health diversion unit must have an adequate supply of running hot and cold water, installed and maintained in compliance with the local plumbing code. There must be a sufficient amount of water under adequate pressure to meet the sanitary requirements of the facility at all times. The water supply must meet the following minimum requirements in this rule. (3-30-09)T

**01. Approved Water Supply.** An approved public or municipal water supply must be used whenever available. (3-30-09)T

**02. Private Water Supply.** In areas where an approved public or municipal water supply is not available, a private water supply must be provided, and it must meet the standards approved by the Department. (3-30-09)T

**03. Requirements for Public or Private Water Supplies.** Public or private water supplies must meet the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-30-09)T

**04. Water Samples from Private Supply.** If water is from a private supply, water samples must be submitted to an approved laboratory for bacteriological examination at least quarterly. Copies of laboratory reports must be kept on file in the facility. (3-30-09)T

**676. -- 679. (RESERVED).**

**680. LIGHTING.**

The facility must provide adequate and appropriate lighting in all client sleeping areas, dining rooms, living rooms, common and private areas, bathrooms and hallways. Adequate artificial light must be provided to include sufficient illumination for reading, observation, and activities. There must be a minimum of three hundred seventy-six (376) lumens in areas used for reading, study, or close work. Lighting in work areas must be a minimum of three hundred twenty-three (323) lumens. (3-30-09)T

**681. -- 684. (RESERVED).**

**685. VENTILATION.**

**01. Detox/Mental Health Diversion Unit Ventilation.** Each detox/mental health diversion unit must be adequately ventilated and precautions must be taken to prevent offensive odors in compliance with the minimum requirements of the Uniform Mechanical Code. (3-30-09)T

**02. Sobering Station Ventilation.** A facility with a sobering station, must have private airborne infection isolation rooms that are adequately ventilated and precautions must be taken to prevent offensive odors in compliance with the following minimum requirements of the 2006 AIA Guidelines for Design and Construction of Health Care Facilities:

TABLE 685.02 - MINIMUM REQUIREMENTS OF THE 2006 AIA GUIDELINES FOR DESIGN AND CONSTRUCTION OF HEALTH CARE FACILITIES - VENTILATION PRECAUTIONS FOR SOBERING STATIONS				
Area	Air Movement/Relation	Minimum Outdoor Air Changes/Hr	Total Air Changes/ Hr	Exhausted
Isolation Room	In	2	12	Yes

(3-30-09)T

**686. -- 689. (RESERVED).**

**690. UTILITY REQUIREMENTS.**

**01. Plumbing.** All plumbing in the facility must comply with state and local codes. All plumbing fixtures must be easily cleanable and maintained in good repair. The temperature of hot water at plumbing fixtures used by clients must be between one hundred five degrees (105°F) Fahrenheit and one hundred twenty degrees (120°F) Fahrenheit. Hot water capacity must be at least three (3) gallons per client bed per hour. (3-30-09)T

**02. Heating and Cooling.** A heating and cooling system must be provided for the facility that is capable of maintaining a minimum temperature of seventy degrees (70°F) Fahrenheit during the day and a minimum of sixty-two degrees (62°F) Fahrenheit during the night. Wood stoves are not permitted as the sole source of heat and



the thermostat for the primary source of heat must be remotely located away from any wood stove. (3-30-09)T

**03. Sewage Disposal.** All sewage and liquid wastes must be discharged into a municipal sewerage system where such a system is available. Where a municipal sewerage system is not available, sewage and liquid wastes must be collected, treated, and disposed of in a manner approved by the Department. (3-30-09)T

**691. -- 694. (RESERVED).**

**695. ACCESSIBILITY FOR PERSONS WITH MOBILITY AND SENSORY IMPAIRMENTS.**

For clients with mobility or sensory impairments, the facility must provide a physical environment which meets the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and must provide the necessary accommodations. (3-30-09)T

**01. Ramps.** Ramps for clients who require assistance with ambulation must comply with the requirements of the ADAAG 4.8. (3-30-09)T

**02. Bathrooms and Doors.** Bathrooms and doors large enough to allow the easy passage of a wheelchair as provided for in the ADAAG 4.13. (3-30-09)T

**03. Grab Bars.** Grab bars in client toilet and bathrooms must be in compliance with ADAAG 4.26. (3-30-09)T

**04. Toilet Facilities.** Toilet facilities must be in compliance with ADAAG 4.19. (3-30-09)T

**05. Hand Railing.** Suitable hand railing must be provided on both sides of all stairs leading into and out of a building for clients who require the use of crutches, walkers, or braces. (3-30-09)T

**696. -- 999. (RESERVED).**

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

*The written comment deadline is October 28, 2009, unless otherwise listed.  
(Temp & Prop) indicates that the Rule is both Temporary and Proposed.  
(\*PH) indicates that a Public Hearing has been scheduled for this docket.*

#### **IDAPA 01 - BOARD OF ACCOUNTANCY** **PO Box 83720, Boise, ID 83720-0002**

**01-0101-0901, Idaho Accountancy Rules.** Allows a licensee to apply for a retired license at age 55; updates incorporation by reference documents and corrects statutory citations.

#### **IDAPA 02 - DEPARTMENT OF AGRICULTURE** **PO Box 790, Boise, ID 83701-0790**

**02.01.04 - Rules Governing the Idaho Preferred® Promotion Program.**

**02-0104-0901,** Simplifies fee payment for new participants who join midway through the year; updates promotion opportunities to reflect current program options; clarifies annual renewal process.

**02-0104-0902,** Allows ISDA to charge Idaho Preferred® participants for promotional materials.

**02-0105-0901, Rules Governing Certificates of Free Sale.** New chapter establishes the fee and application procedures for obtaining a certificate of free sale.

**02-0413-0901, Rules of the Department of Agriculture Governing Retail Raw Milk.** Chapter repeal.

**02-0413-0902, Rules Governing Raw Milk.** Modifies raw milk quality standards and sanitary requirements for human consumption; clarifies the "cow share" program; provides a small herd exemption for facility construction requirements; incorporates by reference the sanitary milk production and milk processing provisions of the 2009 Pasteurized Milk Ordinance; establishes sanitary criteria, milk quality, and permitting protocols for "cow share" programs.

**\*02-0419-0901, Rules Governing Domestic Cervidae.** (\*PH) Introduces herd management plans to enable the agency to conduct facility inspections and herd inventories more efficiently.

**02-0431-0901, Rules Governing the Stockpiling of Agricultural Waste.** New chapter establishes specific setback distances for stockpiled livestock waste that is not stored on agricultural waste storage property.

**02-0501-0901, Resource Conservation and Rangeland Development Program.** Addresses needed security changes; completes an update of the RCRDP loan program and removes RCRDP grant program now covered by WQPA rules; sets new application requirements and improves loan servicing.

**02-0603-0901, Rules Pertaining to the Idaho Nursery and Florists Law.** (Temp & Prop)

**02-0604-0901, Phytosanitary and Post-Entry Seed Certification.** (Temp & Prop)

Both fee rules drop the hourly rate for the issuance of federal phytosanitary certificates and initiate a \$60 per certificate fee to cover the federal administrative fee and increased costs to the programs.

**02-0608-0901, Quarantine Rules Pertaining to Apples and Cherries.** Removes peach, nectarine, and apricot from list of regulated articles that host apples maggots.

**02-0622-0901, Noxious Weeds Rules.** Updates list of noxious weeds by adding new species and removing or reclassifying currently listed species.

**02-0633-0901, Organic Food Product Rules.** Changes application and registration deadline to July 1st and removes late fees for certification and registration.

**IDAPA 03 - STATE ATHLETIC COMMISSION  
1109 Main St., Ste. 220, Boise, ID 83702**

**03.01.01 - Rules of the State Athletic Commission.**

**03-0101-0901,** Requires application for a sanctioning permit; requires all combatants to apply for a license; adds \$30 application and renewal fee for a ring official; allows commissioner to lower the age of a ring official to 18 given good cause; changes term "boxer" to "combatant".

**03-0101-0902,** Defines the types of events regulated; clarifies blood testing requirements, the criteria for approval of amateur sanctioning authorities, and the annual review of such approval; provides other security in lieu of a bond; requires a physical and eye exam within 36 hours of an event; clarifies fair techniques and fouls in MMA and limits MMA contests to 3 rounds for amateur events and 5 rounds for professional events.

**IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS  
PO Box 83720, Boise, ID 83720-0285**

**05-0101-0901, Rules for Contract Providers.** Clarifies and updates current practices; updates definitions and removes redundancies.

**IDAPA 07 - DIVISION OF BUILDING SAFETY  
1090 E. Watertower St., Meridian, ID 83642**

**07-0106-0901, Rules Governing the Use of the National Electrical Code.** Would allow the installation of certain cables in crawl spaces to be run at angles with floor joists without the need for drilling holes or a running board.

**07.02.05 - Rules Governing Plumbing Safety Licensing.**

**07-0205-0901,** Outlines the specific skills that will be tested as part of the journeyman plumbing practical exam.

**07-0205-0902,** Specifies the continuing education requirements and deadlines for certificate of competency renewals for journeyman and contractor plumbers and requires division's approval of CE courses and instructors.

**07-0205-0903,** Requires apprentices to register for 5-year period and specialty apprentices to register for 3-year period; to be eligible to sit for the journeyman exam, an apprentice must provide the division proof of completion of the required number of employment and instructional hours.

**07.03.01 - Rules of Building Safety.**

**07-0301-0901,** Adopts 2009 editions of the International Building Code, International Residential Code, the International Energy Conservation Code, and the International Existing Building Code, with specified amendments.

**07-0301-0902,** Adopts 2009 edition of the International Energy Conservation Code with specified amendments.

**07-0301-0903,** Provides notice of availability of guidance, educational, and technical support to school districts to implement the processes of integrated design and fundamental commissioning and of a list of all third party commissioning agents in the state; provides for a process of performing and certifying the annual optimization review to ensure energy efficiency; and provides for certifications regarding qualification of schools for the building replacement value calculation.

**07-0303-0901, Rules for Modular Buildings.** Identifies organizations designated by the Board from which inspectors may obtain certification as a qualified inspector.

**07.03.11 - Rules Governing Manufactured/Mobile Home Industry Licensing.**

**07-0311-0901,** Provides for civil penalties for violators of Idaho's manufactured housing industry licensing laws and rules; more accurately identifies those who sell manufactured homes as "retailers" instead of "dealers."

**07-0311-0902,** (Temp & Prop) No longer requires that original and renewal applications for manufactured home retailers (dealers) and installers show proof of completion of required education hours.

**07-0601-0901, Rules Governing Uniform School Building Safety.** Eliminates references to specific editions of the various codes that are adopted and updates the statutory authority requiring code adoption.

**07.07.01 - Rules Governing the Installation of Heating, Ventilation and Air Conditioning.**

**07-0701-0901,** Provides the division authority to impose a civil penalty against any person who fails to request an inspection of an HVAC installation.

**07-0701-0902,** Amends the Fuel Gas Code to require piping, regulators, meters, and other equipment to be installed in a manner that protects it from any physical damage and heavy snowfall; specifies requirements for the location and minimum spacing of certain gas piping stubbed out for meter or regulator connection; makes the International Fuel Gas Code and the International Mechanical Code the applicable minimum standards for installations performed in residential buildings and commercial buildings.

**IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION**

**PO Box 83720, Boise, ID 83720-0037**

**08-0104-0901, Rules Governing Residency Classification.** (Temp & Prop) Changes align with statutory changes and clarify language allowing students to retain resident status when they leave the state for educational purposes.

**08-0111-0901, Registration of Postsecondary Educational Institutions and Proprietary Schools.** (Temp & Prop) Clarifies that postsecondary institutions must register with the State Board to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate.

**08-0114-0901,** Idaho Rural Physician Incentive Program. New chapter sets out requirements for program and procedures for accessing the rural physicians incentive fund.

**08.02.02 - Rules Governing Uniformity.**

**08-0202-0906,** Requires teachers and administrators to take 1 of 3 courses in Mathematical Thinking for Instruction that most closely aligns with their current assignments as part of their professional development.

**08-0202-0907,** Creates a mathematical consulting teacher endorsement to ensure that qualified educators are conducting follow up support for the Mathematical Thinking for Instruction course.

**08.02.03 - Rules Governing Thoroughness.**

**08-0203-0905,** Defines an Idaho high school credit as a minimum of 60 hours of instruction; provides a waiver process for requiring less than 60 hours of total instruction if substantiated; establishes a policy for mastery of a subject.

**08-0203-0906,** (Temp & Prop) Defines and establishes the Idaho Special Education Manual as the official policies, procedures and criteria for special education in Idaho in accordance with federal law; removes obsolete references and requirements.

**08-0203-0907,** Changes the term "Idaho Achievement Standards" to the "Idaho Content Standards".

**IDAPA 09 - DEPARTMENT OF LABOR**

**317 W. Main St., Boise, ID 83735**

**09-0301-0901, Rules of the Rural Broadband Development Matching Fund Program.** (Temp & Prop) Chapter repeal.

**IDAPA 11 - IDAHO STATE POLICE**

**700 S. Stratford Drive, Meridian, ID 83643**

**11-0501-0901, Rules Governing Alcohol Beverage Control.** Increases fingerprint fees; establishes definitions and fees for multi-purpose arenas; provides specific circumstances when minors are permitted or prohibited on premises; requires display of suspension notices for providing notification to the public.

**11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council.**

**11-1101-0901,** (Temp & Prop) Establishes that the certification of a former officer who is under decertification investigation will not lapse while under investigation and requires applicants to disclose any prior decertification proceedings against them and the results thereof.

**11-1101-0902,** Establishes requirements for Conducted Energy Device certification; updates language to encompass all disciplines the Council certifies; requires an officer charged with a felony or non-traffic misdemeanor to notify the

POST executive director; establishes that a decertified officer is not eligible for POST certification of any kind in the future and that an officer under decertification investigation is not eligible for certification while under investigation; updates contact information.

**11-1104-0901, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers.** Allows the POST executive director to review “general under honorable conditions” and “uncharacterized” military discharges for possible waiver; requires applicants to disclose any decertification proceedings against them and the results thereof.

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**  
**PO Box 25, Boise, ID 83707**

**13-0103-0901, Public Use of the Lands Owned or Controlled by the Department of Fish and Game.** Allows director to delegate more authority to regional staff; defines “designated roads and trails” and “commercial use”; prohibits certain unpermitted uses, such as landing or launching aircraft, discharging paintball guns, placing geocaches, group events of over 15 people, and use of non-certified weed-seed-free hay; prohibits leaving portable hunting blinds and tree stands unattended for more than 30 minutes.

**13-0111-0901, Rules Governing Fish.** Eliminates definition of “no bait”; corrects wording regarding the 2 pole permit, steelhead and salmon permits, and recording of harvested fish; requires a sliding sinker for sturgeon fishing; allows unlimited poles for boat fishing on Lake Pend Oreille in conjunction with the Angler Incentive Program; amends requirements for trapping or seining minnows or crayfish; eliminates statewide bag and possession limits to allow regional limits; requires a maximum 5/8” hook gap for steelhead fishing.

**13.01.14 - Rules Governing Falconry.**

**13-0114-0901,** Repeal of chapter.

**13-0114-0902,** Chapter rewrite implements major revisions made to federal falconry regulations that eliminates federal permitting requirements and increases state management authority for falconry.

**IDAPA 15 - OFFICE OF THE GOVERNOR - MILITARY DIVISION**  
**4040 Guard Street, Boise, ID 83705**

**Bureau of Homeland Security**

**15-0301-0901, Hazardous Substance Response Rules.** Creates local emergency response authorities and regional response teams; establishes the location and jurisdiction of regional response teams; determines liability for incident response costs; provides procedures for notification to local and state emergency response authorities of a hazardous substance incident and the call-out procedure for emergency response agencies; provides for cost recovery and cost reimbursement procedures for emergency response agencies.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**PO Box 83720, Boise, ID 83720-0036**

**16-0202-0902, Rules of the Emergency Medical Services (EMS) Physician Commission.** (Temp & Prop) Chapter rewrite defines the allowable scope of practice, act and duties that can be performed by licensed EMS personnel and defines required level of physician supervision; incorporates by reference the Commission's Standards Manual; and conforms rule to statutory changes.

**16-0203-0901, Rules Governing Emergency Medical Services.** Changes align definitions and terms with statutory changes; removes waiver provision for nontransport EMS service minimum standards waiver requests; removes references to EMT-1 licensure level.

**16-0304-0904, Rules Governing the Food Stamp Program in Idaho.** (Temp & Prop) Clarifies the criteria used to determine a full month of income for food stamp households.

**16.03.09 - Medicaid Basic Plan Benefits.**

**16-0309-0903,** Removes limitation on the “place of service” where medically necessary services can be delivered; revises psychosocial rehabilitation rules to match new rewritten mental health rules; revises paraprofessionals rules to align with licensure rules and DDA rules.

**16-0309-0904,** Removes the cap on benefits to allow a participant to earn the maximum number of points in both the Behavioral Preventative Health and Wellness Preventative Health programs; limits points received to offset

premiums only; aligns pharmacy provider qualifications; removes sporting or fitness programs; removes references to vouchers, and requires prior authorization for PHA services and products.

**16.03.10 - Medicaid Enhanced Plan Benefits.**

**16-0310-0905**, Updates Personal Care Services to reflect changes in the payment methodology for PCS homes; separates, aligns, clarifies, and augments rules for adult PCS and children's PCS; and clarifies PCS medication rules.

**16-0310-0906**, Removes requirement that developmental disability and psychosocial rehabilitation providers must contract with schools to provide services; removes references to the ISSH Waiver; revises rule on negotiations for the plan of service since Independent Assessor Provider no longer reviews individual support plans.

**16-0310-0907**, Removes current fiscal intermediary rules for the HCBS A&D waiver and replaces them with a reference to the self-direction rules found in IDAPA 16.03.13, and references to requirements for providers of FI services; clarifies agency training and criminal history requirements that pertain to personal assistance agencies.

**16-0313-0901, Consumer-Directed Services.** (Temp & Prop) Aligns, clarifies, and augments the self-direction programs to include the HCBS A&D programs; requires use of a provider agreement rather than a contract with the fiscal employer agent.

**16-0410-0902, Rules Governing the Community Services Block Grant Program.** (Temp & Prop) Excludes child support income when determining program eligibility; increases income limit for CSBG Program eligibility to 200% of the federal poverty guidelines.

**16-0414-0901, Rules Governing the Low Income Home Energy Assistance Program.** (Temp & Prop) Uses 60% of State Median Income to determine income eligibility and excludes child support as countable income.

**16-0750-0901, Rules and Minimum Standards Governing Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.** Provides the minimum standards, licensing, and regulations for a certificate of approval to operate a nonhospital, medically-monitored detoxification/mental health diversion unit in Idaho.

**IDAPA 17 - INDUSTRIAL COMMISSION  
PO Box 83720, Boise, ID 83720-0041**

**17-0203-0901, Security for Compensation.** Self-insured employers must maintain a licensed resident claims adjuster located within Idaho to service claims; requires documents to be date-stamped with the name of the receiving office and by each receiving agent or vendor acting on behalf of the claims office to determine where delays in claims processing may be occurring; requires prompt and accurate reporting of each adjuster for each policyholder of the surety; deletes obsolete order.

**17.02.08 - Miscellaneous Provisions.**

**17-0208-0902**, Requires attorneys to provide an itemization of the amount and disposition of any and all medical bills or medical obligations to third-party payers remaining due after approval of a lump sum settlement.

**17-0208-0903**, Updates the conversion factors on the medical fee schedule.

**17.06.01 through 17.06.05 - Boiler and Pressure Vessel Safety Rules.**

**17-0601-0901, General.** Chapter repeal.

**17-0602-0901, Administration.** Chapter repeal.

**17-0603-0901, Inspections.** Chapter repeal.

**17-0604-0901, Repairs and Alterations.** Chapter repeal.

**17-0605-0901, Boiler Attendants.** Chapter repeal.

**17.08 - Idaho Minimum Safety Standards and Practices for Logging.**

**17-0801-0901, General Provisions.** Updates meet OSHA requirements regarding logging signs.

**17-0802-0901, Health, Safety, and Sanitation.** Updates meet OSHA requirements relating to first aid transportation, required first aid training, identifying proper contents of first aid kits, clarifying safety shoe and life jacket requirements.

**17-0803-0901, Explosives and Blasting.** Updates meet OSHA requirements relating to crimping of fused detonator caps.

**17-0805-0901, Signals and Signal Systems.** Updates meet OSHA requirements relating to signaling of dangerous conditions.

**17-0808-0901, *Falling and Bucking.*** Updates meet OSHA requirements relating to first aid training by logging cutters, back-cuts of timber, and properly identifies illustrations of undercuts.

**17-0809-0901, *Rigging, Lines, Blocks, and Shackles.*** Updates meet OSHA requirements relating to rope clip fastening.

**17-0810-0901, *Canopy and Canopy Construction for Logging Equipment.*** Updates meet OSHA requirements relating to seatbelts for logging construction equipment.

**17-0816-0901, *Recommended Safety Program.*** Updates meet OSHA requirements relating to first aid training, and to clarify reporting of injuries and fatalities, management responsibilities, record keeping and establishment of a safety committee.

#### **IDAPA 18 - DEPARTMENT OF INSURANCE**

**PO Box 83720, Boise, ID 83720-0043**

**18-0144-0901, *Schedule of Fees, Licenses and Miscellaneous Charges.*** (Temp & Prop) Establishes application, licensing, and renewal fees for an Independent Review Organization.

**18-0153-0901, *Continuing Education.*** Changes law and ethics course requirement; adds general subjects acceptable for public adjusters; clarifies the qualifications and standards for credit for courses taught on-line; requires reporting of course completion within 180 days or 30 days prior to the producer's license expiration date; addresses requirements for pursuing independent study courses; provides for additional credit when an individual teaches a course for credit.

#### **IDAPA 19 - BOARD OF DENTISTRY**

**PO Box 83720, Boise, ID 83720-0021**

**19-0101-0901, *Rules of the State Board of Dentistry.*** Provides procedures for specialty examinations for licensure for dental specialists; restricts continuing education credits from self-study for license renewals to 8 for dentists and 6 for dental hygienists; allows a dentist with no anesthesia permit to use other anesthesia personnel in his office during dental procedures, as long as the dentist's facilities meet anesthesia permit holder requirements.

#### **IDAPA 20 - DEPARTMENT OF LANDS**

**PO Box 83720, Boise, ID 83720-0043**

**\*20-0304-0901, *Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.*** (\*PH) Removes fees from rule and allows the Board to set fees per statute; clarifies several definitions and encroachment standards; allows some boat lifts to be approved with an abbreviated permitting process; provides for lake specific encroachment standards.

**20-0317-0901, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.*** Removes fees from rule and allows the Board to set the fees; clarifies the rights granted, how rental rates are determined, and the lease modification process.

#### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

**1109 Main St., Suite 220, Boise, ID 83702**

**24-0101-0901, *Rules of the Board of Architectural Examiners.*** (Temp & Prop) Updates the board's website address and the incorporation by reference section to include the 2009-2010 NCARB Handbook for Interns and Architects.

**24-0301-0901, *Rules of the Board of Chiropractic Physicians.*** Updates the board's website address; adds definition for direct personal supervision; clarifies who qualifies as a chiropractic intern and when a temporary permit is available.

**24-0501-0901, *Rules of the Board of Drinking Water and Wastewater Professionals.*** Updates the board's website address; reduces fees for endorsement, original license, and license renewal; creates, defines, and sets forth the qualifications for a Class 1 Restricted license and Very Small Wastewater System license; clarifies an ambiguity in the qualifications for a land application license.

**24-0601-0901, *Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants.*** (Temp & Prop) HB 261 moved the licensing from the Board of Medicine to the Bureau of Occupational Licenses; changes comply with statutory amendments to protect the public health, safety and welfare.



**24-0701-0901, Rules of the Idaho State Board of Landscape Architects.** Clarifies reference requirement for applicants; updates web address.

**24-0801-0901, Rules of the State Board of Morticians.** Updates the board's website address; outlines the requirements for continuing education to maintain licensee competency.

**24-1001-0901, Rules of the State Board of Optometry.** (Temp & Prop) Defines "opticianry"; clarifies that failure to release contact lens prescriptions as required by federal law could be gross incompetence; clarifies the expiration date for prescriptions, spectacles and contact lenses.

**24-1101-0901, Rules of the State Board of Podiatry.** Updates the board's contact information; updates the American Podiatric Medical Association's Code of Ethics to current edition; clarifies licensure by endorsement requirements for residency programs and disciplinary action.

**24.12.01 - Rules of the Idaho State Board of Psychologist Examiners.**

**24-1201-0901,** Creates an inactive status; establishes and clarifies board's ability to require a licensee complete a rehabilitation program as part of discipline for a violation; allows board to waive a licensee's continuing education in a hardship circumstance; allows additional activities to qualify for continuing education and clarifies continuing education requirements.

**24-1201-0902,** Clarifies the experience required for a psychology license to allow credit for an internship; allow for licensure through endorsement; establishes a temporary license to practice in Idaho in an emergency or special circumstance.

**24-1501-0901, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists.** Clarifies the content of the graduate program to ensure competency; allows for supervision to be provided by a counselor education faculty member for the benefit of a student and it clarifies interns; supervised experience need not be provided by a registered supervisor for out-of-state applicants; deletes reference to professional counselor administration fees for examination; clarifies endorsement for applicants from a foreign country; updates language for various methods of meeting licensure requirements; updates Board website address.

**24-1601-0901, Rules of the State Board of Dentistry.** Updates board contact information; clarifies that supervising denturist or dentist must be present and directly observe any intern interaction with a patient.

**24-1701-0901, Rules of the State Board of Acupuncture.** Decreases application and annual renewal fees for licensure, certification, and technician certification; updates board's website address.

**24-1801-0901, Rules of the Real Estate Appraiser Board.** Updates the incorporation by reference of the Uniform Standards of Professional Appraisal Practice document to the current edition; clarifies the definition of a classroom hour and a residential unit; increases license renewal fee to \$350; adds a lack of activity section to allow for termination of incomplete applications upon notification; clarifies requirements for licensure as established by the federal Appraisal Qualifications Board; clarifies continuing education for registered trainees; corrects education classroom hours for residential appraisers and clarifies education requirements for general appraisers in compliance with the AQB; clarifies continuing education requirements and provides an exemption from CE for health or other good cause.

**24-1901-0901, Rules of the Board of Examiners of Residential Care Facility Administrators.** Updates Board's contact information; allows for termination of inactive applications upon notification to the applicant; clarifies qualifications for applicants licensed as nursing home administrators to ensure competency; adds a special exemption from continuing education requirements to allow the board to consider a hardship.

**24-2201-0901, Rules of the Idaho Liquefied Petroleum Gas Safety Board.** Updates board's website address; increases fees for inspections to align the board's revenues to expenditures to eliminate its budget deficit.

**24-2301-0901, Rules of the Speech and Hearing Services Licensure Board.** Updates board's website address; establishes an endorsement fee; increases renewal fee; exam fees for unexcused applicants are non refundable; clarifies the need for continuing education when reinstating a license and the requirements for endorsement for out-of-state applicants; adds provision to carry over continuing education and adds a special exemption for continuing

education; clarifies issuance of provisional permits and number of permit holders that can be supervised at a time; clarifies what records must be maintained by the supervisor of a hearing aid dealer and fitter and the contents of quarterly reports for audiology and hearing aid dealers and fitters.

**24-2601-0901, Rules of the Idaho Board of Midwifery.** Establishes the framework for licensure and the scope of practice for midwives.

#### **IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD**

**1365 North Orchard, Suite 172, Boise, ID 83706**

**25-0101-0901, Rules of the Outfitters and Guides Licensing Board.** Updates board's website address; adds additional activities to the definition of "hazardous excursions"; eliminates the multiple-year license and clarifies on line fees, Outfitter bond cancellations and the fee for controlled hunts; eliminates the rule associated with cash bonds; clarifies executive director's limited authority to grant or deny certain license applications or temporary authorization applications.

#### **IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

**PO Box 83720, Boise, ID 83720-0065**

**26.01.20 - Rules Governing the Administration of Park and Recreation Areas and Facilities.**

**26-0120-0902,** Prohibits the use of saddle or other recreational packing livestock on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the park manager or designee.

**26-0120-0903,** Provides definitive guidance for agency staff in wildfire management by providing procedures to follow when large geographic areas may be affected by fire closures.

**26-0120-0904,** Clarifies that any hunting or pursuit of wildlife in a park setting must also comply with current IDFG rules and regulations.

**26-0131-0901, Rules Governing the Administration of Idaho Department of Parks and Recreation Recreational Program Grant Funds.** Increases the off-highway vehicle registration sticker fee by \$1 to fund county sheriffs for off-highway vehicle related law enforcement and establishes a formula to distribute these funds to sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program.

#### **IDAPA 27 - BOARD OF PHARMACY**

**PO Box 83720, Boise, ID 83720-0067**

**27.01.01 - Rules of the Idaho State Board of Pharmacy.**

**27-0101-0901,** Amends standards of conduct to require licensees to provide the board with notice of any changes to the licensee's name, address, or telephone number within 10 business days from the date of any such change.

**27-0101-0902,** Establishes criteria for registration of drug outlets and pharmacists engaged in the practice of telepharmacy across state lines; provides necessary regulatory framework for the practice of telepharmacy across state lines to meet statutory mandates; establishes a registration fee and annual renewal fee for out-of-state pharmacists engaged in the practice of telepharmacy across state lines; deletes the Idaho Telepharmacy Pilot Project rules; authorizes and establishes criteria for outsourcing, under certain circumstances, of "central prescription processing or filling" to a "central pharmacy" and defines those terms; defines "institution engaged in the practice of telepharmacy across state lines," "central order entry pharmacy," and "hospital system."

**27-0101-0903,** Requires pharmacies to notify the board in writing of their hours of operation and of any change in those hours at least 30 days prior to commencing new hours of operation and requires pharmacies to remain open during their stated hours of operation and to maintain sufficient staffing to ensure pharmacies are open during their stated business hours.

**27-0101-0904,** Provides standards and procedures for the inspection, distribution, transfer, acceptance, storage, and dispensing of donated drugs; and establishes provisions to enforce the Idaho Legend Drug Donation Act.

**27-0101-0905,** Clarifies that a pharmacist, filling a drug order for a legend drug that is not a controlled substance, may provide up to a 3-month supply when the practitioner has written a prescription for a smaller supply with refills in sufficient numbers to fill the larger supply.

**27-0101-0906,** Sets forth conditions for a licensed pharmacist to practice outside a licensed pharmacy; addresses access to records and information, provides for security and documentation, and mandates the maintenance of records to provide accountability and an audit trail.

**27-0101-0907,** Adds repackagers who are authorized distributors of record for FDA registered manufacturers to the definition of normal distribution channel per the Wholesale Drug Distribution Act

**27-0101-0908,** Clarifies that a pharmacy may transfer a prescription to another pharmacy without first having to fill it and clarifies the recordkeeping responsibility of the receiving pharmacy.

**IDAPA 28 - DEPARTMENT OF COMMERCE  
PO Box 83720, Boise, ID 83720-0093**

**28.02.03 - Rules of the Idaho Regional Travel and Convention Grant Program.**

**28-0203-0901**, (Temp & Prop) Chapter repeal.

**28-0203-0902**, (Temp & Prop) Establishes framework for the distribution of grant funds to eligible non-profit, incorporated organizations to stimulate and expand the travel and convention industry throughout the state.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION  
PO Box 83720, Boise, ID 83720-0074**

**31-4101-0901, The Telephone Customer Relations Rules.** Simplifies regulatory requirements and allows companies more flexibility to respond to customers' service requests, while maintaining some service quality standards related to basic local exchange service to encourage competition in telephone services.

**31-4102-0901, Information to Customers of Telephone Companies.** Chapter repeal.

**31-4201-0901, The Title 62 Telephone Corporation Rules.** Chapter repeal.

**IDAPA 33 - IDAHO REAL ESTATE COMMISSION  
PO Box 83720, Boise, ID 83720-0077**

**33.01.01 - Rules of the Idaho Real Estate Commission.**

**\*33-0101-0901**, (\*PH) Establishes the conditions for accepting a late license renewal application.

**\*33-0101-0902**, (\*PH) Clarifies that a late renewal constitutes a lapse of the required errors and omissions coverage, even if coverage is later made retroactive by the carrier.

**33-0102-0901, Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases.** Provides that a non-Idaho attorney may represent a party and appear before the commission in a contested case under the procedures for limited admission.

**33-0103-0901, Rules Governing Subdivided Lands Registration.** Reduces registration fees to encourage use of the on-line documents management system.

**IDAPA 35 - IDAHO TAX COMMISSION  
PO Box 36, Boise, ID 83722-0410**

**35-0101-0901, Income Tax Administrative Rules.** Adds new tax brackets; includes trusts and estates into discussion of capital gains deduction and pass-through entities; modifies how a taxpayer can make the election to forego the net operating loss carryback by removing the option of attaching the federal election; provides rules for nonresidents for calculating deductions in computing Idaho adjusted gross income; provides that unemployment compensation for nonresidents is sourced to state that paid it; directs taxpayers on how to make intercompany eliminations; provides that commissions and fees related to the sale of another taxpayer's real property are sourced to the state where the property related to the commission and fees is located; clarifies that one qualified corporation within the water's edge group that makes the election binds the other corporations to that election, including corporations added to the combined group in years after the initial election; states that filing of a protective 1120-F return by itself will not constitute the filing of a federal return for purposes of the water's edge combined report; allows a resident trust or estate an income tax credit for taxes paid to other states; corrects terms and delete obsolete information relating to the tax paid by an S corporation; notes the reduction required to qualified investment for grants received from the rural Idaho economic development biofuel infrastructure matching grant fund; amends grocery tax credit; requires all W-2s to be filed with commission by the last day of February.

**35-0102-0901, Idaho Sales and Use Tax Administrative Rules.** Contractors who install materials into real property are consumers of the property and material suppliers who do not install building materials are retailers and are required to collect sales tax; defines "transportation of freight or passengers" and stipulates that service provision must be indiscriminate and must transport people and goods; removes terms "zoos and museums" from rule; deletes tire pressure requirement for ATVs and clarifies that the new resident exemption applies to motor vehicles, privately owned aircraft and off-road vehicles; if seller holds valid certificate he is not required to collect sales tax; amends the Demonstration Pilot Project Fund requirements.

**35.01.03 - Property Tax Administrative Rules.**

**35-0103-0902**, Updates references to appropriate and current editions of guides and professional standards; clarifies that a candidate must pass at least 2 appraisal courses in the property tax certification program; rewrites assessment procedures for section 42 low income housing properties; requires commission to notify the urban renewal agency of the pending dissolution of a revenue allocation area; makes January 1 the date for establishing market value for determining the occupancy value upon which the tax is based; requires assessor to notify commission when the homeowner's exemption is erroneously claimed; provides the reporting process to be used by taxpayers per statute; when a taxing district annexes parcels, the annexation value may be included on the new construction roll, but the new construction roll can not include the value of new construction that has been included in the annexation value; require that the personal property declaration form be filed for taxpayers who are eligible for and expect to receive the benefit of the QIE; define the due date as irrespective of any income tax extensions that may have been granted.

**35-0103-0903**, (Temp & Prop) Provides and explains the formula to compute the voter test; adds school two-year temporary supplemental funds and the Cooperative Service Agency funds to list of funds to be left in the base when computing levies for taxing districts encompassing urban renewable revenue allocation areas.

**35-0105-0902, Motor Fuels Tax Administrative Rules.** Ethanol must be reported as a receipt on the motor fuels distributors report when it is blended with gasoline; deductions on the monthly motor fuel distributor report for ethanol and biodiesel cannot be claimed for periods before 6/1/09; requires motor fuels distributor who reports at least 25 receipts or disbursements of motor fuel on its monthly fuel tax return to file electronically and adds an exemption to this; exempts persons who produce 5,000 gallons or less of biodiesel fuel in a calendar year for their personal consumption from paying the 1¢ per gallon petroleum transfer fee; informs consumers of new penalties for using dyed diesel fuel for an illegal purpose; sets recordkeeping requirements for carriers registered under the Full Fee Plan.

**35-0109-0901, Idaho County Option Kitchen and Table Wine Tax Administrative Rules.****35-0112-0901, Idaho Beer Tax Administrative Rules.**

Both rulemakings allow for quarterly, semiannual, and annual returns for distributors and wine direct shippers who are remitting less than \$600 per reporting of tax.

**35.02.01 - Tax Commission Administration and Enforcement Rules.**

**35-0201-0901**, Corrects Twin Fall's field office address; adds recordkeeping and retention requirements; adds interest rate and applicable Revenue Ruling for 2010 to the table that identifies this information by year; clarifies what a "perfected protest" is and to define "unperfected protest"; addresses "settlements" rather than "compromises," defines "disputed liability," "doubt as to collectability" and "economic hardship"; adds "promotion of effective tax administration" as an additional ground; adds the ISP's Alcohol Beverage Control Bureau to the list of disclosure agreements.

**35-0201-0902**, (Temp & Prop) Details procedures the commission will follow when the commission settles an administrative proceeding in which the amount in dispute exceeds \$50,000.

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION****PO Box 83720, Boise, ID 83720-0003**

**38-0301-0901, Rules Governing Group Insurance.** Establishes active and retired state employee eligibility requirements and the 2 year supplemental reimbursement for individuals in the Medicare prescription drug gap.

**38.04.04 - Rules Governing Capitol Mall Parking.**

**38-0404-0901**, Chapter repeal.

**38-0404-0902**, Chapter rewrite updates rules with existing or desired practices and parking space limitations.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT****PO Box 7129, Boise ID 83707-1129**

**39-0222-0901, Rules Governing Registration and Permit Fee Administration.** Allows cancellation of future installment payment plan privileges after 2 or more suspensions and provides for the reinstatement of installment payment plan privileges after 12 consecutive months of no suspensions of any type on their account; provides for collection of a \$50 installment payment plan fee for each plan to cover administrative costs.

**39-0241-0901, Rules Governing Special Provisions Applicable to Fees for Services.** Removes fixed rates and replaces them with a reference to charges in statute; change terms "microfilm" to "imaged" and "magnetic tapes" to "electronic media".

**39-0260-0901, Rules Governing License Plate Provisions.** Provides for issuing Restricted Vehicle plates to Idaho licensed motorbike, all terrain vehicle, and utility vehicle dealers and Restricted Vehicle dealer plates and wrecker plates; clarifies what is considered an unacceptable personalized plate message; provides for the creation of a business logo plate available as permanent commercial trailer plates for businesses wanting their own logo plate for registering their commercial trailers and provides for the periodic validation for non-resident owners every 3 years.

**39-0312-0901, Rules Governing Safety Requirements of Overlegal Permits.** Changes the required dimension for flags from 12"x12" to 18"x18" per federal regulation.

**39-0316-0901, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads.** Allows for 7 feet of front trailer overhang for night operations on 2-lane, 2-way highways; overhangs exceeding 7 feet will be restricted to daylight only travel when operating on 2-lane, 2-way highways.

**39-0341-0901, Rules Governing Traffic Control Devices.** Adopts by reference the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways; adds conforming additions to the manual; allows the optional use of the IdaShield object marker for additional delineation of non-signalized at-grade railroad/road crossings of public roads.

**39-0345-0901, Rules Governing Aircraft Registration.** Clarifies required application information for aircraft registration.

**IDAPA 40 - IDAHO COMMISSION ON THE ARTS  
2410 Old Penitentiary Rd. N., Boise, ID 83712**

**40-0101-0901, Rules of the Idaho Commission on the Arts.** Changes revise deadline dates for consistency; identify eligible artists and art organizations; provides that ongoing projects and programs are eligible for grants.

**IDAPA 46 - BOARD OF VETERINARY MEDICINE  
PO Box 7249, Boise, ID 83707**

**46-0101-0901, Rules of the State of Idaho Board of Veterinary Medicine.** Adopts by reference the April 2008 version of the Principles of Veterinary Medical Ethics of the AVMA; provides that applicants for veterinarian technician licensure provide certified copies of school records or letters verifying completion of education requirements; clarifies that technician applicants may take the state jurisprudence examination more than once, but at three month intervals; eliminates multiple references in various parts of the rules requiring technicians and assistants to be employed by a supervising veterinarian; strikes verbal abuse or harassment of patient as grounds for discipline of a veterinary technician to be consistent with grounds for discipline of a veterinarian; requires that the route of administration of drugs be noted in the patient's medical records; requires that veterinarians provide a copy of a patient's records within a specified period of time; changes time period for a veterinarian to provide a written order as a follow-up to an oral order given a veterinary drug outlet; clarifies the disposal of controlled substances and outdated stock and material; removes a reference to law enforcement agencies and personnel as certified euthanasia technicians; modifies requirements on needle sizes for euthanasia agencies; adds requirement that drugs approved for use by certified euthanasia technicians be transported only in a storage cabinet securely bolted to the transporting vehicle; modifies the supplies and items required to be in a euthanasia room, including current certifications; strikes reference to law enforcement CETs working under the supervision of a veterinarian; clarifies provisions for reinstatement of a CET.

**IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION  
PO Box 83720, Boise, ID 83720-0037**

**47-0101-0901, Rules of the Idaho Division of Vocational Rehabilitation.** Clarifies the appeals process.

**IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION  
PO Box 1218, Caldwell, ID 83606**

**\*48-0101-0902, Rules of the Idaho Grape Growers and Wine Producers Commission.** (\*PH) Revises the tax (to be phased in over a 3-year period with a cap for taxes on wineries imposed in the first year) on wine production to \$.04 per gallon, \$7 per ton of grapes, and \$6.68 per 167 gallons of grape juice produced outside of Idaho.

***NOTICE OF PROCLAMATION OF RULEMAKING***

**Board of Correction**

06-0101-0901, Rules of the Board of Correction.

***NOTICE OF ADOPTION OF TEMPORARY RULES***

**Dept. of Health and Welfare**

16-0210-0902, Idaho Reportable Diseases.

16-0603-0902, Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs.

***NOTICE OF PUBLIC HEARING***

**Dept. of Education**

08-0202-0905, Rules Governing Uniformity.

08-0203-0903, Rules Governing Thoroughness.

**Idaho Grape Growers and Wine Producers Commission**

48-0101-0901, Rules of the Idaho Grape Growers and Wine Producers Commission

***NOTICE OF NEGOTIATED RULEMAKING MEETINGS***

**Dept. of Agriculture**

02-0414-0902, Rules Governing Dairy Waste.

**Dept. of Environmental Quality**

58-0101-0901, Rules Governing the Control of Air Pollution in Idaho.

Please refer to the Idaho Administrative Bulletin, **October 7, 2009, Volume 09-10**, for all rulemaking notices and for the text of temporary, proposed and final rules, public hearings and negotiated rulemaking meeting schedules, Governor's executive orders, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.*

To view the Bulletin or Code, or for information on purchasing the Bulletin and other rules publications, visit our website at [www.adm.idaho.gov/adminrules/](http://www.adm.idaho.gov/adminrules/) or call (208) 332-1820 or write the Dept. of Administration, Office of the Administrative Rules Coordinator, 650 W. State St., Room 100, Boise, ID 83720-0306.

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