

# IDAHO ADMINISTRATIVE BULLETIN

September 1, 2010 -- Volume 10-9

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C.L. "Butch" Otter, Governor  
Teresa Luna, Interim Director, Department of Administration  
Dennis Stevenson, Administrative Rules Coordinator  
Edward Hawley, Administrative Rules Specialist  
Bradley Hunt, Desk-top Publishing Specialist

# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

The Idaho Administrative Bulletin is a monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and any other documents required by law are published in the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once proposed rulemaking has been initiated. The public receives notice of proposed rulemaking actions through the Idaho Administrative Bulletin and a Public Notice (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties can submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual "Notice of Rulemaking" for each proposed rule that is published in the Bulletin. After the comment period closes, the agency considers fully all information submitted regarding the proposed rule. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

## CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **09-1** refers to the first Bulletin issued in calendar year **2009**; Bulletin **10-1** refers to the first Bulletin issued in calendar year **2010**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **10-1** refers to January 2010; Volume No. **10-2** refers to February 2010; and so forth. Example: The Bulletin published in January 2010 is cited as Volume **10-1**. The December 2009 Bulletin is cited as Volume **09-12**.

## 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.

## THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho's 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 - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed or temporary rule, or both.

## **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 Rulemaking - Proposed Rule” 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) 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 when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) 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;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

All proposed rulemakings that are submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of LSO who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s website.

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 (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially 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 one or more of the above legal criteria and the governor finds it is necessary that a rule become effective before it has been submitted to the legislature for review and approval and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows that agency to make a temporary rule immediately effective upon adoption. 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 extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

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, will 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 Rulemaking Pending Rule." 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 and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) 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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or



accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

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**

**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, 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 Code** - annual subscription on CD-ROM. The Code is an annual compilation of all final administrative rules and all enforceable temporary rules and also includes all executive orders of the Governor that have published in the Bulletin, all legislative documents affecting rules, a table of contents, reference guides, and a subject index.

**The Idaho Administrative Bulletin** - annual subscription available on individual CD-ROM sent out monthly. The Bulletin is an official monthly publication of the State of Idaho and is available for purchase on CD-ROM only. Yearly subscriptions or individual CD-ROM's are available for purchase.

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

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering system. Each state agency has a two-digit identification code number known as the “**IDAPA**” number. (The “IDAPA” Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit “TITLE” number is assigned. There are “CHAPTER” numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

### **IDAPA 38.05.01.200.02.c.ii.**

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

“**38.**” refers to the Idaho Department of Administration

“**05.**” refers to Title **05**, which is the Department of Administrations’s Division of Purchasing

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

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

“**02.**” refers to Subsection 200.**02**.

“**c.**” refers to Subsection 200.02.c.

“**ii.**” refers to Subsection 200.02.c.ii.

## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a “DOCKET NUMBER.” The “Docket Number” is a series of numbers separated by a hyphen “-”, (**38-0501-1001**). 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. 38-0501-1001”**

“**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**).

“**1001**” 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 2010**. A subsequent rulemaking on this same rule chapter in calendar year 2010 would be designated as “**1002**”. The docket number in this scenario would be 38-0501-**1002**.

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 2010**

| Vol. No. | Monthly Issue of Bulletin | Closing Date for Agency Filing | Publication Date  | 21-day Comment Period End Date |
|----------|---------------------------|--------------------------------|-------------------|--------------------------------|
| 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                 | May 7, 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              |

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2011**

| Vol. No. | Monthly Issue of Bulletin | Closing Date for Agency Filing | Publication Date  | 21-day Comment Period End Date |
|----------|---------------------------|--------------------------------|-------------------|--------------------------------|
| 11-1     | January 2011              | <b>*November 19, 2010</b>      | January 5, 2011   | January 26, 2011               |
| 11-2     | February 2011             | January 14, 2011               | February 2, 2011  | February 23, 2011              |
| 11-3     | March 2011                | February 11, 2011              | March 2, 2011     | March 23, 2011                 |
| 11-4     | April 2011                | March 4, 2011                  | April 6, 2011     | April 27, 2011                 |
| 11-5     | May 2011                  | April 8, 2011                  | May 4, 2011       | May 25, 2011                   |
| 11-6     | June 2011                 | May 6, 2011                    | June 1, 2011      | June 22, 2011                  |
| 11-7     | July 2011                 | June 3, 2011                   | July 6, 2011      | July 27, 2011                  |
| 11-8     | August 2011               | July 8, 2011                   | August 3, 2011    | August 24, 2011                |
| 11-9     | September 2011            | August 5, 2011                 | September 7, 2011 | September 28, 2011             |
| 11-10    | October 2011              | <b>**August 31, 2011</b>       | October 5, 2011   | October 26, 2011               |
| 11-11    | November 2011             | October 7, 2011                | November 2, 2011  | November 23, 2011              |
| 11-12    | December 2011             | November 4, 2011               | December 7, 2011  | December 28, 2011              |

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

***\*\*Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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| <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<br>Electrical Board (07.01)<br>Plumbing Board (07.02)<br>Building Codes & Manufactured Homes (07.03)<br>Building Code Advisory Board (07.03.01)<br>Public Works Contractors License Board (07.05)<br>Uniform School Building Safety (07.06)<br>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  |

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| <b>IDAPA 48</b>   | <b>Grape Growers and Wine Producers Commission, Idaho</b>  |
| <b>IDAPA 16</b>   | <b>Health and Welfare, Department of</b>   |
| <b>IDAPA 41</b>   | <b>Health Districts, Public</b>  |
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| <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>  |
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| <b>IDAPA 11</b>   | <b>Police, Idaho State</b>  |
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| <b>IDAPA 54</b>   | <b>Treasurer, Office of the State</b>         |
| <b>IDAPA 21</b>   | <b>Veterans Services, Division of</b>         |
| <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>         |
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## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.13 - RULES GOVERNING RAW MILK

#### DOCKET NO. 02-0413-1001

### 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 37-332f, 37-405, 37-516, 37-708, 37-803, and 37-1101, 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 September 15, 2010.

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

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

The proposed rule will amend the existing IDAPA 02.04.13, "Rules Governing Raw Milk," to conform to a new law, Chapter 11, Title 37, Idaho Code, passed by the 2010 Legislature. The proposed rule establishes quality standards for raw milk and raw milk products produced under a herd share, as well as quality standards for cultured raw milk products for permitted raw milk facilities.

**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, a Notice of Intent to Promulgate Rules was not published, however, ISDA held rulemaking meetings with stakeholders and emailed a draft proposed rule to stakeholders to obtain their input. ISDA received a few comments, some of which were included into the proposed rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marv Patten, Bureau Chief, Dairy and CAFO Programs, 208-332-8550 or [marv.patten@agri.idaho.gov](mailto: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 September 22, 2010.

DATED this 23rd day of July 2010.

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) 322-8500  
Facsimile: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0413-1001

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, 7, and ~~8~~11, Idaho Code. ~~(3-29-10)~~(\_\_\_\_)

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is “Rules Governing Raw Milk.” (3-29-10)

**02. Scope.** These rules will govern the production, processing, distribution, 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. ~~(3-29-10)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. This document is available at <http://www.fda.gov/downloads/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSModelDocuments/UCM209789.pdf>. ~~(3-29-10)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. DEFINITIONS.**

The following definitions shall apply in the interpretation and the enforcement of this chapter: (3-29-10)

**01. Adulterated.** The meaning of adulterated includes the following: (\_\_\_\_)

**a.** The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product; or (\_\_\_\_)

**b.** ~~The~~ production, ~~and~~ distribution, or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program; or ~~(3-29-10)~~(\_\_\_\_)

**c.** Any raw milk product or facility that fails to meet any of the requirements of these rules. (\_\_\_\_)

~~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.~~ (3-29-10)

~~03. Dairy Farm. Any place or premises where one (1) or more cows, goats or sheep are milked and from which where a part or all of the raw milk or raw milk products are produced and that are not intended for pasteurization, or are intended for human consumption without pasteurization, but and are distributed, sold or offered for sale for human consumption without pasteurization to persons other than members of the dairy farm’s immediate household.~~ (3-29-10)(\_\_\_\_)

- 043. Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)
- 054. Department.** The Idaho State Department of Agriculture. (3-29-10)
- 065. Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)
- 06. Herd Share.** The undivided ownership interest in no more than seven (7) cows, fifteen (15) goats, or fifteen (15) sheep resulting from an investment of monetary value through a written contractual agreement between an owner and a farmer in exchange for raw milk or raw milk products. ( )
- 087. Official Laboratory.** A biological, chemical, or physical laboratory that is ~~under the direct supervision of the State or~~ approved by the Department. (3-29-10)( )
- 08. Owner.** A person who has made an investment of monetary value in the ownership or care of cows, goats, or sheep and participates in a Herd Share program pursuant to a written contractual agreement. ( )
- 09. Person.** An individual, plant operator, partnership, corporation, company, firm, trustee, association or institution. (3-29-10)
- 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~~ intended for human consumption. (3-29-10)( )
- 11. Raw Milk Permit.** Authorization from the Department allowing raw milk and raw milk products to be sold for human consumption by a dairy farm or raw milk plant that complies with the requirements of these rules. ( )
- 0712. Raw 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. (3-29-10)( )
- 143. Raw Milk Products.** Raw milk products include any milk product processed from raw milk that has not been pasteurized and is intended for human consumption by persons other than members of the dairy farm's immediate household. 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 Fahrenheit (35°F) in a licensed dairy processing plant is exempt from these rules. (3-29-10)( )
- 14. Registration.** A requirement by the Department for the authorization of a Herd Share to provide raw milk and raw milk products for human consumption to owners of that Herd Share as provided in Section 040 of these rules. ( )
- 125. 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. (3-29-10)
- 136. 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 seven (7) lactating sheep.~~ The dairy farm herd may include other cows, goats, or sheep that are dry or are producing milk for purposes other than human consumption. (3-29-10)( )
- 17. Small Herd Raw Milk Permit.** Written authorization from the Department to a small herd dairy farm allowing raw milk and raw milk products to be sold for human consumption as provided in Section 030 of these rules. ( )

**148. 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. (3-29-10)

~~008. 010. (RESERVED).~~

**008. REGULATORY FRAMEWORK.**

These rules set forth procedural requirements for the following types of raw milk dairy farm operations: dairy farm with a Raw Milk Permit; dairy farm with a Small Herd Raw Milk Permit; and dairy farm participating in a Herd Share. ( )

**0109. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.**

**01. Prohibited Acts.** 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.~~ (3-29-10)( )

**02. Restriction on Sale.** Raw milk or raw milk products may not be sold or offered for sale through restaurants or other food service establishments. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed there, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-authorized facilities. ( )

**03. Disposition of Adulterated or Misbranded Product.** Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. The Department may issue a hold order when it is deemed necessary to protect human health. ( )

*[Codified Section 060 is being moved and renumbered to proposed Section 010]*

**0610. 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~~ Subsection 010.02 of this rule. ~~Raw milk and raw milk products shall~~ Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2009 Pasteurized Milk Ordinance, unless the ~~facility~~ dairy farm has a ~~Small Herd exemption~~ Raw Milk Permit or has registered a herd share arrangement with the Department. (3-29-10)( )

**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 and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.  |
| Coliform Limits     | Raw milk and raw milk products <del>shall</del> may not exceed twenty-five (25) per ml.  |
| Drugs               | Raw Milk must test negative by a test method approved by the Department.   |
| Somatic Cell Counts | Raw milk <del>shall</del> must not exceed five hundred thousand (500,000) per ml. Goat; or <del>Sheep</del> Raw Milk <del>shall</del> must not exceed seven hundred and fifty thousand (750,000) per ml.                       |

| RAW MILK          |  |
|-------------------|--|
| Brucellosis Test  | <u>Raw milk obtained from sheep or goats must be from animals that have tested negative on an annual brucellosis test performed by an official laboratory. Raw milk obtained from bovines must be from animals that have tested negative on the Brucellosis Ring Test performed by an official laboratory.</u> |
| Tuberculosis Test | <u>All <del>Raw Milk</del> <del>shall</del> <del>must</del> be from animals that have been accredited as tuberculosis free or <del>shall</del> <del>must</del> have passed an annual tuberculosis test.</u>  |

(3-29-10)( )

**03. Commingled Milk.** Milk from commingled species must meet the somatic cell count of the most restrictive species. ( )

*[Codified Section 030 is being moved and renumbered to proposed Section 011]*

**03011. LABELING.**

**01. Applicability.** Section 011 applies to holders of Raw Milk Permits and holders of Small Herd Raw Milk Permits. ( )

**042. Requirements.** All raw milk and raw milk products must have Department-approved labeling. All bottles, containers, and packages enclosing raw milk or raw milk products ~~shall~~ ~~must~~ be conspicuously marked with the following: ( )

**a.** The words “raw,” “not pasteurized,” or “unpasteurized” preceding the name of the product; ( )

**b.** ~~The~~ quantity of contents; ~~and~~ ( )

**c.** ~~The~~ identity name and address or permit number of the ~~packaging facility~~; permit holder; and ( )

**d.** When applicable, ~~the~~ word “goat” or “sheep;” ~~if applicable, shall~~ ~~must~~ precede the name of the raw milk or raw milk products. (3-29-10)( )

**03. Commingled Milk Label.** The label of raw milk or raw milk products containing milk from commingled species must identify the species from which the raw milk was obtained. ( )

**04. Small Herds.** Department-approved labels are not required for the holders of Small Herd Raw Milk Permits if the raw milk or raw milk products are sold at the point of production. ( )

**025. Misleading Labels.** It is a violation of these rules to use any misleading marks, words, or endorsements on 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. (3-29-10)

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

**020. RAW MILK PERMITS.**

**01. Requirements.** It ~~shall be~~ ~~is~~ unlawful for any person who does not possess a Raw Milk ~~p~~Permit from the Department to produce, process, sell or offer for sale raw milk or raw milk products for human consumption to persons other than members of the dairy farm’s immediate household. ~~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. (3-29-10)( )~~

**02. Obtaining a Raw Milk Permit.** Only a person who complies with these rules may receive and retain a Raw Milk Permit. Raw Milk Permits shall be transferable with respect to persons or locations. Prior to the issuance of a permit each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho must comply with the following requirements: (3-29-10)( )

- a. Submit to and pass a qualifying inspection conducted by the Department; ( )
- b. Meet the applicable sanitation, construction, and procedural requirements of the 2009 Pasteurized Milk Ordinance; ( )
- c. Meet the raw milk and raw milk products quality standards in Section 010 of these rules; ( )
- d. Meet the tuberculosis and brucellosis standards in Section 010 of these rules; and ( )
- e. Produce and process all raw milk and raw milk products on the same premises. ( )

~~**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. (3-29-10)~~

~~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. (3-29-10)~~

~~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. (3-29-10)~~

~~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. (3-29-10)~~

~~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. (3-29-10)~~

**03. Inspection Frequency.** Following the issuance of a permit, the Department will inspect each Raw Milk Permit holder operation at least once every three (3) months. ( )

~~**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. (3-29-10)~~

**04. Sanitation Requirements.** All raw milk dairy farms and raw milk plants that process raw milk or raw milk products into final containers for human consumption must meet the requirements of the 2009 Pasteurized Milk Ordinance and Section 010 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. ( )

**05. Permit Reinstatement.** Any raw milk producer whose permit has been suspended or revoked may

~~make written application for the reinstatement of his permit. (3-29-10)~~

~~**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. (3-29-10)~~

~~**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. (3-29-10)~~

~~**e.** 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. (3-29-10)~~

021. -- 029. (RESERVED).

*[Codified Section 030 has been moved and renumbered to proposed Section 011]*

**030. SMALL HERD RAW MILK PERMITS.**

It is unlawful for any person with a small herd to sell raw milk and raw milk products for human consumption without a Small Herd Raw Milk Permit issued by the Department. The Small Herd Raw Milk Permit applies to raw milk and raw milk products intended for human consumption for persons other than members of the dairy farm's immediate household. ( )

**01. Obtaining a Small Herd Raw Milk Permit.** Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. The Small Herd Raw Milk Permit will indicate the physical location of the small herd and the mailing address of the owner or operator in charge of the herd's care and milk quality. Small Herd Raw Milk Permits are not transferable to another person or location. Applications for a Small Herd Raw Milk Permit may be up on a form provided by the Department. All holders of Small Herd Raw Milk Permits issued by the Department must meet the following conditions: ( )

**a.** Meet the raw milk and raw milk products quality standards as set forth in Section 010 of these rules: ( )

**b.** Meet the tuberculosis and brucellosis standards as set forth in Section 010 of these rules: ( )

**c.** Meet the applicable drug testing requirements as determined by the Department based on dairy farm drug therapy and milk quality history; and ( )

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

**02. Testing Frequency.** Raw milk or raw milk products must be tested at a frequency of at least four (4) times in separate months during any consecutive six-month period. ( )

**03. Product Quality.** Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 010 of these rules. ( )

**04. Test Results Made Available.** A Small Herd Raw Milk Permit holder must provide raw milk and raw milk product quality tests results if requested by individuals who purchase raw milk and raw milk products. ( )

**05. Exemption from Pasteurized Milk Ordinance.** A small herd operation that is in compliance with

a Small Herd Raw Milk Permit requirements is exempt from the sanitary, construction, inspection, and operation requirements of the 2009 Pasteurized Milk Ordinance. ( )

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. (3-29-10)*

~~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. (3-29-10)~~

~~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. (3-29-10)~~

~~03. Processing Location. All raw milk and raw milk products must be produced and processed on the same premises. (3-29-10)~~

~~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. (3-29-10)~~

~~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. (3-29-10)~~

**040. HERD SHARE PROGRAMS.**

**01. Registration.** The dairy farm or farmer responsible for a herd participating in a herd share program must register the farm or dairy with the Department. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: ( )

- a. The name of the farmer, farm, or dairy; ( )
- b. A valid, current address for the farmer, farm, or dairy; and ( )
- c. A statement that raw milk or raw milk products are being produced at the farm or dairy. ( )

**02. Proof of Ownership Interest.** The farmer and each owner of the herd share must enter into a written contract evidencing the herd share arrangement. The contractual documents must include, at a minimum, the following: ( )

- a. A bill of sale, stock certificate, or other written evidence satisfactory to the Department; ( )
- b. A boarding and care plan for the livestock; ( )
- c. A conspicuous notice that the milk or milk products received under the contract will be raw; and ( )
- d. Proof that written information regarding the herd health and production standards used by the dairy or farm have been provided to each herd share owner. ( )

**03. Testing and Results.** The farm or dairy must comply with the testing frequency and standards set forth in Section 37-1101, Idaho Code. A copy of all test results, the name of the tests performed, and an explanation



of the tests and test results must be provided to each owner. Proof that the information has been provided to the owners must be sent to the Department. ( )

**04. Product Quality.** Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 010 of these rules. ( )

**05. Restriction on Sale.** No person who obtains raw milk or raw milk products under a herd share arrangement may sell, offer for sale, advertise for sale, or distribute such raw milk or raw milk products to any person, restaurant, food establishment, grocery store, or farmers' market. ( )

**06. Procurement of Raw Milk or Raw Milk Products.** Raw milk or raw milk products may only be received directly from the dairy farm by the owners of a herd share or by an owner on behalf of another herd share owner participating in the same herd share program. ( )

**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: (3-29-10)~~

~~**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. (3-29-10)~~

~~**02. Applicability.** The number of animals in lactation does not exceed three (3) cows or seven (7) goats or sheep. (3-29-10)~~

~~**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. (3-29-10)~~

~~**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. (3-29-10)~~

~~**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. (3-29-10)~~

~~**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. (3-29-10)~~

**050. PERMIT ENFORCEMENT.**

Section 050 applies to the enforcement of Raw Milk Permits and Small Herd Raw Milk Permits. ( )

**01. Permit Suspension.** The Department may suspend a permit whenever it has reason to believe that a public health hazard exists, when ever 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 comply 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.** Whenever the raw milk or raw milk products create or appear to create an imminent hazard to the

public health, or in the event 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 by 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, offered for sale, or distributed for human consumption. ( )

**02. Permit Revocation.** If repeated violations occur, the Department may revoke a permit after reasonable notice and an opportunity for a hearing have been given to the permit holder. This section is not intended to preclude the institution of court action. ( )

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

a. When the permit has been suspended due to a violation of any of the bacterial, somatic cell, coliform, drug, 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. Whenever the permit has been suspended due to a violation of a requirement other than a 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. ( )

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

*[Codified Section 060 has been moved and renumbered to proposed Section 010]*

**0760. PENALTY.**

Any person who violates any of the provisions of these rules ~~shall be~~ is subject to the penalties provided in Sections 37-408 ~~and 37-1101(3)~~, Idaho Code, or may have their permit to sell raw milk or raw milk products for human consumption revoked or suspended. (3-29-10)( )

~~061. -- 069. (RESERVED).~~

*[Codified Section 070 has been moved and renumbered to proposed Section 060]*

~~0761. -- 999. (RESERVED).~~

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.02 - RULES GOVERNING PUBLIC SAFETY

### DOCKET NO. 13-0102-1001

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b) and 36-411, 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 September 15, 2010.

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

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

Implement Senate Bill 1283 which allows hunter education certification from other countries.

**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 temporary rule confers a benefit to certain hunters, and complies with amendment to Section 36-411, Idaho Code.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0102-1001**

**100. HUNTER EDUCATION.**

**01. Mandatory Hunter Education Program.** All students being certified under this program must have successfully completed at least ten (10) hours of instruction in firearms safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries. ~~(4-6-05)~~(7-12-10)T

**02. Fees.** A fee as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Hunter Education Program. (3-20-04)

**03. Parent to Attend Live Fire Exercise with Student.** For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend the Hunter Education Live Fire Exercise with the student. Preferably, the adult attending the live fire exercise should be the same adult who will accompany the student into the field while hunting. This requirement is mandatory for successful completion of the Hunter Education Course. (3-20-04)

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1001

### 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), 36-301, and 36-1101, 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 September 15, 2010.

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

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

Implement rule changes to the Landowner Appreciation Program (LAP) recommended by the Fish and Game Advisory Committee and the Idaho Sportsmen Caucus Advisory Council. Redefine eligibility requirements for the LAP, and restrict commercialization of LAP tags.

**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 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 input and recommendation of the Fish and Game Advisory Committee and the Idaho Sportsmen Caucus Advisory Council.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 FOR DOCKET NO. 13-0104-1001

**010. DEFINITIONS.**

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

**01. Authorized Corporate Representative.** Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

**02. Blind Person.** A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

**03. Domicile.** The term "domicile" means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

**a.** What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

**b.** Where is the person registered to vote? (7-1-93)

**c.** Where does the person and his immediate family live? (7-1-93)

**d.** Where does the person have his mail sent or forwarded to? (7-1-93)

**e.** Does the person remain listed in the telephone directory? (7-1-93)

**f.** Where does he register his automobiles? (7-1-93)

**g.** Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)

**h.** Where does he have a driver's license? (7-1-93)

**i.** Where are his regular physicians and dentists located? (7-1-93)

**04. Disabled.** A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

**05. Eligible Applicant.** A physically disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code. (5-8-09)

**06. Eligible Property.** At least ~~six hundred forty (640)~~ three hundred twenty (320) acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or ~~antelope~~ pronghorn, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-5-09(\_\_\_\_))

**07. Landowner.** Any person or corporation whose name appears on a deed as the owner of eligible

property or whose name appears on a contract for sale of eligible property as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability corporations wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership or corporation. ~~(10-26-94)(\_\_\_\_)~~

**08. Permanent Disability.** Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

**09. Resident.** The term "resident" is defined in Section 36-202(s), Idaho Code. (5-8-09)

**10. Physician.** A person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. LANDOWNER APPRECIATION ~~PERMITS~~ PROGRAM.**

**01. Eligible Applicants.** Eligible applicants must be registered with the Department and are limited to landowners. Landowners not complying with prohibitions listed in Subsection 400.08, of these rules, shall not be eligible to participate in the landowner appreciation program for three (3) years. ~~(4-5-00)(\_\_\_\_)~~

**02. Hunt Units.** Landowner Appreciation ~~Permits~~ Program controlled hunt tags shall be issued only for those controlled hunt units designated by the Director as eligible for such permits. ~~(3-30-01)(\_\_\_\_)~~

~~**03. Reasonable Access.** In 2001, landowners, authorized corporate, or partnership representatives are not required to provide access or retain written records as a condition to qualifying for Landowner Appreciation Permits. (3-15-02)~~

~~**043. Qualifying Property.** Only property that is used by and provides significant habitat values for deer, elk or ~~antelope~~ pronghorn qualifies for the Landowner Appreciation ~~Permit~~ controlled hunt tag program. Landowners will may receive Landowner Appreciation ~~Permits~~ controlled hunt tags only for the species and sex that use the property. (4-5-00)(\_\_\_\_)~~

~~**054. Applications for Landowner Appreciation ~~Permits~~ Controlled Hunt Tags.** Applications for landowner appreciation ~~permits~~ controlled hunt tag(s) shall be on a form prescribed by the Department. Applicants must be registered with the Department and shall sign the application. (4-5-00)(\_\_\_\_)~~

~~**a.** The application shall include the applicant's hunting or combination license number. (5-15-95)~~

~~**ba.** Applications from landowners with six hundred forty (640) acres or more will be accepted on or after June 15 of each year. Applications received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15 of each year will be entered in the random drawing for ~~permits~~ tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the hunt area. For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times. Applications for left-over permits will be accepted on or after August 15 of each year on a first-come first-served basis. Only written applications will be accepted and must be accompanied by a six dollar and fifty cent (\$6.50) application fee. (5-3-03)(\_\_\_\_)~~

~~**eb.** Only ~~one~~ One (1) application may be submitted ~~for~~ by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. ~~Up to two (2)~~ As second applications may be submitted for eligible property consisting of five thousand (5,000) acres or more. (5-3-03)(\_\_\_\_)~~

**05. Left Over Tags.** Landowners with three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted after August 15 of each year on a first-come, first-served basis. Applications must be accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. ( )

**06. Property and Applicant Registration.** (5-15-95)

**a.** Prior to any eligible applicant applying for a Landowner Appreciation Permit Program controlled hunt, the qualifying property and eligible applicant must be registered with the Department. Registering landowners must notify the Department of any changes in property or applicant eligibility. (4-5-00)( )

**b.** Registration of property and eligible applicant must be on a form prescribed by the Department. The landowner must submit the registration form and a copy of the deed(s), and the most recent tax assessment(s), describing the eligible property showing the name(s) of the owner(s), and a map of eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (4-5-00)

**c.** If the person registering is an authorized corporate or partnership representative, he shall submit with his registration written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (4-5-00)

**07. Issuance of ~~Permits~~ Controlled Hunt Tag(s).** (7-1-93)( )

**a.** ~~Effective in 1999, o~~Once the Department has determined the number of controlled hunt permits tags to be issued in any controlled hunt unit, an additional ten percent (10%) of the number of controlled hunt permits tags MAY be issued as Landowner Appreciation Permits Program tags. In subsequent years up to twenty-five percent (25%) of the number of controlled hunt permits tags MAY be issued only if the hunt is over subscribed by eligible Landowner Appreciation Permit Program applicants. (4-5-00)( )

**b.** Where the number of landowner appreciation applicants exceeds the number of landowner appreciation permits controlled hunt tags available in a unit, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag. (4-5-00)( )

**c.** No more than two (2) Landowner Appreciation Permits Program controlled hunt tags may be issued to any eligible landowner. (4-5-00)( )

**d.** Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation permit program controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation Permits Program controlled hunt tags. ~~However, o~~One (1) additional permit controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation Permits Program controlled hunt tags. No landowner or designated agent(s) is eligible to receive more than one (1) permit controlled hunt tag for one (1) species in a calendar year. (3-15-02)( )

**e.** A successful landowner, corporate or partnership representative drawing a landowner appreciation permit program controlled hunt tag may, ~~without additional fees,~~ designate to whom the permit controlled hunt tag will be issued pursuant to Subsection 400.08 of this rule. (4-5-00)( )

**08. Prohibitions.** Landowner Appreciation Program controlled hunt tags shall not be sold or marketed. ( )

**089. Application of Controlled Hunt Restrictions.** (7-1-93)



- a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt shall not apply to persons who are otherwise eligible to apply for a landowner ~~preference permit~~ appreciation program controlled hunt tag. (7-1-93)(\_\_\_\_)
- b. Landowner appreciation ~~permits~~ program controlled hunt tags issued to non-residents shall not be considered as part of the non-resident quota. (4-5-00)(\_\_\_\_)
- c. Landowner ~~preference permits~~ appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for certain deer, elk and ~~antelope~~ pronghorn permits. (3-30-01)(\_\_\_\_)

**0910. Special Restrictions.** Any person hunting with a Landowner appreciation ~~permit program~~ controlled hunt tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, or ~~antelope~~ pronghorn tags may be used in conjunction with a landowner appreciation ~~permit~~ program. No person shall kill more than one (1) deer, elk or ~~antelope~~ pronghorn during a calendar year EXCEPT: (3-30-01)(\_\_\_\_)

a. ~~In designated controlled depredation hunts, one (1) additional deer, elk or antelope may be taken by persons holding permit/tags for those hunts; or Depredation Hunts. In depredation hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunt prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag.~~ (7-1-93)(\_\_\_\_)

b. ~~In extra tag hunts, one (1) additional deer, elk or antelope may be taken by persons holding tags for those hunts.~~ Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts. (7-1-98)(\_\_\_\_)

c. ~~In no event shall any person take more than two (2) deer, elk or antelope during a calendar year or more than one (1) deer, elk or antelope per day.~~ Limits on Take - Deer, Elk, Pronghorn. In no event shall any person take more deer, elk or pronghorn in a calendar year than the number of tags the person legally possesses for each species. (7-1-93)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**403. ANTELOPE PRONGHORN LANDOWNER APPRECIATION SEASONS.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons 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

## 13.01.04 - RULES GOVERNING LICENSING

### DOCKET NO. 13-0104-1002

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b) and 36-301, 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 September 15, 2010.

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

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

Update rules to reflect previous legislative action (SB 1141a – 2009) and Commission actions, including the elimination of controlled hunt permits, adjustments in elk zone tag quotas, and allowance for rain checks.

**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 temporary rule confers a benefit to certain hunters, and complies with amendments to Sections 36-104, 36-409, 36-416, 36-1104, and 36-1104A, Idaho Code.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0104-1002**

**200. LICENSES, STAMPS, PERMITS AND TAGS.**

**01. Licenses.** A authorized lifetime license certificate holders will be issued appropriate license(s) annually. Certificate holders must have such license(s) in possession while hunting or fishing. However, no hunting or combination license shall be issued to the holder of a lifetime license certificate ~~under the age of fifteen (15) born after January 1, 1975~~ unless a certificate of competency in hunter education is presented in accordance with Section 36-411, Idaho Code. ~~(7-1-93)~~(7-12-10)T

**02. Stamps, Permits, and Tags.** The certificate holder has the responsibility to obtain stamp(s), permit(s), and/or tag(s) as required for hunting or fishing. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. TAGS AND PERMITS ISSUED BY POINT-OF-SALE VALIDATION.**

~~**01. Tags or Permits Properly Sealed.** No big game tag, salmon permit, steelhead permit, WMA pheasant permit or three-day salmon/steelhead fishing license is valid unless it has been properly sealed in the appropriate portion of the tag/permit pouch. (3-20-97)~~

~~**02.** Defaced, altered or tampered permits. Any license (as defined in Section 36-202(z), Idaho Code) which is defaced, altered, or tampered with shall be invalid from the date and time of issuance. It shall be a violation to use or attempt to use any license that has been defaced, tampered with, or altered. Evidence of defacing, tampering, or altering shall include but is not limited to: tears ~~in the paper that would indicate that a person had attempted to lift up the clear acetate covering over a tag or permit which has been sealed in a tag/permit pouch~~ or erasures or typeovers to the license stock. ~~(3-20-97)~~(7-12-10)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**261. AUTHORIZATION NUMBER.**

**01. Authorization Request.** Upon request, the applicant may receive an authorization number assigned by the supplier as directed by the Department. (3-20-97)

**02. Authorization Number Used in Lieu of License.** The authorization number may be used in lieu of the actual license only by the individual for whom the license was purchased. When used in lieu of a license, the person must carry his driver's license, commercial permit, identification card, driver training permit, or instruction permit and, upon request of an authorized officer, present such identification for inspection. Failure to carry such identification or to present it for inspection is a violation. The authorization number may be used for not more than fourteen (14) calendar days from the date of issue, except authorization numbers for short-term licenses shall be valid only for the stated term from the beginning effective date of the license. This allows the authorization-number holder to hunt or fish during the time period it takes to mail the license to the individual. Thereafter, the individual must have in possession the appropriate signed license to hunt or fish. (3-20-97)

**03. Violation.** It is a violation to hunt and fish with an invalid authorization number or an authorization number issued to another person. (3-20-97)

**04. Authorization Number Used Only for Activities That Do Not Require License, Tag, Permit or**

**Stamp.** The authorization number may be used only for those hunting or fishing activities that do not require a license, tag, or permit, ~~or stamp to be sealed in a tag/permit pouch in accordance with Subsection 250.01 to be notched or attached to a carcass.~~ (3-20-07)(7-12-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**505. DEER AND ELK TAG ALLOCATION.**

**01. Allocation of Tags.** Pursuant to Idaho Code, Section 36-408, the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. The allocation will be calculated on a zone basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, nonoutfitted nonresident hunters, and outfitted hunters. When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. When an area becomes controlled, hunt application and eligibility rules will apply to allocated tags in controlled hunts. Only those units or zones with licensed outfitted areas with historic use will be considered for tag allocation. (3-8-07)

**02. Controlled Hunt Areas.** Only those controlled hunt areas with historic licensed deer and/or elk outfitted area(s) may be considered for a tag/~~permit~~ allocation. The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters. (3-8-07)(7-12-10)T

**a.** The number of allocated tags will be in addition to ~~from~~ the number of tags authorized by the Commission within each controlled hunt area with historic licensed deer and/or elk outfitter areas. (3-8-07)(7-12-10)T

**b.** Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's ~~permit and controlled hunt tag~~ by August 20. ~~Successful applicants authorize the Department to provide names and addresses to the outfitter(s) licensed for that controlled hunt.~~ (3-8-07)(7-12-10)T

**c.** Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the Department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period. (5-3-03)

**d.** Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt ~~permit and~~ tag by August 20 will forfeit the opportunity to purchase a controlled hunt ~~permit tag~~. The forfeited controlled hunt ~~permit tag~~ will then be listed as a leftover ~~permit controlled hunt tag~~. The Department will inform the Idaho Outfitters and Guides Board that a ~~permit leftover controlled hunt tag~~ is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt ~~permit tag~~ at a Department regional or headquarters office. (5-3-03)(7-12-10)T

**e.** The number of allocated tag(s) ~~permits~~ will be determined by using one (1) of the following options: (3-30-01)(7-12-10)T

**i.** The number of allocated tags available within the controlled hunt area will be no less than one (1) tag and no more than three percent (3%); or (4-2-08)

- ii. The number of tags available within the controlled hunt area will be based on the average historic use during the previous five (5) year period and calculated tag numbers will be rounded up when permits controlled hunt tags equal or exceed zero point six (0.6) and rounded down when permits controlled hunt tags are less than zero point six (0.6); or ~~(3-30-01)~~(7-12-10)T
- iii. No tags will be allocated. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. ELK ZONE TAG QUOTAS.**

| <b>Zone</b>               | <b>Units</b>           | <b>Total Tags</b> | <b>General Resident Tags</b> | <b>General Nonresident Tags</b> | <b>Outfitter Allocation</b> |
|---------------------------|------------------------|-------------------|------------------------------|---------------------------------|-----------------------------|
| <i>Lolo-B Tags</i>        | <i>10,12</i>           | <i>1600</i>       | <i>1008</i>                  | <i>356</i>                      | <i>236</i>                  |
| <i>Selway A Tags</i>      | <i>16A, 17, 19, 20</i> | <i>647</i>        | <i>179</i>                   | <i>254</i>                      | <i>214</i>                  |
| <i>Selway B Tags</i>      | <i>16A, 17, 19, 20</i> | <i>1067</i>       | <i>480</i>                   | <i>284</i>                      | <i>303</i>                  |
| <i>Middle Fork A Tags</i> | <i>20A, 26, 27</i>     | <i>1551</i>       | <i>1168</i>                  | <i>174</i>                      | <i>209</i>                  |
| <i>Middle Fork B Tags</i> | <i>20A, 26, 27</i>     | <i>1636</i>       | <i>925</i>                   | <i>267</i>                      | <i>444</i>                  |
| <i>Elk City B Tags</i>    | <i>14, 15, 16</i>      | <i>1790</i>       | <i>1414</i>                  | <i>326</i>                      | <i>50</i>                   |
| <i>Dworshak B Tags</i>    | <i>10A</i>             | <i>2380</i>       | <i>2118</i>                  | <i>215</i>                      | <i>47</i>                   |

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets elk zone tag quotas by proclamation following the procedures outlined in Subsection 505 of this rule. The proclamation is available at Department offices and license vendors. ~~(3-29-10)~~(7-12-10)T

**602. SPECIAL MILITARY DEPLOYMENT REFUND AND RAIN CHECK.**

**01. Special Refund and Rain Check Rule.** This special refund and rain check rule applies to the appropriate calendar year hunting season. Because of military deployment to areas of armed conflict, some hunters will be unable to hunt big game animals for which they purchased tags in the state of Idaho. (4-11-06)

**02. Special Refund and Rain Check Eligibility.** Hunters who have purchased tags and who can show in good faith they could not participate in hunting activities due to military deployment to areas of armed conflict will be eligible for a refund or rain check for license and tags for the next calendar year hunting season as outlined in this rule. (4-11-06)

**03. General Season Tag.** Holders of a general season tag for deer or elk may request: (3-20-04)

a. A refund of the hunting license and tag fee; (3-20-04)

b. A rain check for a hunting license and same tag for the next calendar year hunting season; or (4-11-06)

c. An exchange in the calendar year for a tag in another zone or area so long as tags are available in that area or zone. (4-11-06)

**04. Controlled Hunt ~~Permit and~~ Tag.** Holders of a controlled hunt ~~permit and~~ tag for deer, elk, or antelope pronghorn may request: ~~(3-20-04)~~(7-12-10)T

- a. A refund of the hunting license; and controlled hunt ~~permit, and~~ tag fee; (~~3-20-04~~)(7-12-10)T
- b. A rain check for a hunting license; and controlled hunt ~~permit, and~~ tag for the same controlled hunt in the next calendar year hunting season; or (~~4-11-06~~)(7-12-10)T
- c. An exchange in the calendar year for a hunting license and a general season tag in another zone or area so long as tags are available in that area or zone. (4-11-06)

**05. Nonresident Bear or Mountain Lion Tags.** Holders of nonresident bear or mountain lion tags may request: (3-20-04)

- a. A refund of the hunting license and tag fee; or (3-20-04)
- b. A rain check for a hunting license and tag for the next calendar year hunting season. (4-11-06)

**06. Moose, Bighorn Sheep, or Mountain Goat Controlled Hunt ~~Permits~~ Tags.** Holders of moose, bighorn sheep, or mountain goat controlled hunt ~~permits~~ tags may request: (~~3-20-04~~)(7-12-10)T

- a. A refund of the hunting license; and controlled hunt ~~permit, and controlled hunting~~ tag fee; or (~~3-20-04~~)(7-12-10)T
- b. A rain check for a hunting license; ~~controlled hunt permit,~~ and controlled hunt tag for the next calendar year hunting season. (~~4-11-06~~)(7-12-10)T

**07. Ineligible to Request Tag ~~or Permit~~ Refund or Rain Check.** If the person hunts a species of wildlife before requesting a refund or rain check, then the tag ~~or permit~~ fee for that species will not be refunded or eligible for a rain check for the next calendar year season. (~~4-11-06~~)(7-12-10)T

**08. Ineligible to Request License Fee Refund or Rain Check.** If the person hunts for any species during the applicable year hunting season before requesting a refund or rain check, then the hunting license fee will not be refunded or eligible for a rain check for the next calendar year season. (4-11-06)

**09. Rain Check Requests Must be for Same Species.** All rain check requests must be made for the same species. For example, a deer tag will not be eligible for a rain check of an elk tag in the next calendar year season. (4-11-06)

**10. Refunds Will Be for the Amount Paid.** All refunds will be for the amount the person paid for the hunting license or tag. (3-20-04)

**11. Use of Department-Approved Form for Rain Check or Refund Request.** Resident and nonresident military personnel who have purchased general season tags or controlled hunt tags and are unable to participate in any hunting activities due to military deployment must submit a request for a refund or rain check on the department-approved form (found on Idaho Fish and Game website <http://fishandgame.idaho.gov/>) by January 1, next calendar year, along with a copy of their deployment papers, or a letter from their commanding officers stating the dates the individual was deployed for duty in areas of armed conflict. Those requests received after this date will not be eligible for the special refund or rain check. (4-11-06)

**603. -- 699. (RESERVED).**

**700. SPECIAL BIGHORN SHEEP ~~PERMIT~~/TAG.**

**01. Eligibility.** In order to be eligible to bid on the special bighorn sheep tag, a person must be eligible to purchase an Idaho hunting or combination license. (3-20-04)

**02. Validity of Tag.** The Special Bighorn Sheep ~~Permit~~/Tag shall be valid in Unit 11 only during odd-numbered years and during even-numbered years when the Bighorn Sheep Lottery ~~Permit~~/Tag holder chooses not to

hunt in Unit 11.

~~(3-20-04)~~(7-12-10)T

**03. License and ~~Permit~~ Controlled Hunt Tag.** A hunting license and ~~permit~~ controlled hunt tag will be provided to the successful bidder from the net proceeds of the auction. ~~(7-1-93)~~(7-12-10)T

**04. Application of Big Game Rules.** All rules governing the Taking of Big Game Animals, IDAPA 13.01.08, shall apply to the eligible and successful bidders other than as specified herein. (7-1-93)

**a.** No successful bidder shall be eligible to apply for a bighorn sheep controlled hunt ~~permit~~ tag the same year the bidder is issued a Special Bighorn Sheep ~~Permit~~/Tag. ~~(3-30-01)~~(7-12-10)T

**b.** A person receiving a Special Bighorn Sheep ~~Permit~~/Tag, but who is unsuccessful in taking a bighorn sheep, shall be eligible to bid the following year for another Special Bighorn Sheep ~~Permit~~/Tag. ~~(3-15-02)~~(7-12-10)T

**c.** A person successful in taking a bighorn sheep with a special bighorn sheep tag shall be eligible to bid the following year. (3-20-04)

**701. -- 799. (RESERVED).**

**800. BIGHORN SHEEP LOTTERY ~~PERMIT~~/TAG.**

**01. Eligibility.** (7-1-93)

**a.** In order to win and be issued the Bighorn Sheep Lottery ~~Permit~~/Tag, a person must be eligible to purchase an Idaho hunting or combination license ~~EXCEPT that the Lottery Permit/Tag shall be valid in Unit 11 only during even-numbered years and during odd-numbered years when the Special Bighorn Sheep Permit/Tag holder chooses not to hunt in Unit 11.~~ ~~(3-15-02)~~(7-12-10)T

**b.** If any person wins the Bighorn Sheep Lottery ~~Permit~~/Tag and has already been drawn for a bighorn sheep controlled hunt ~~permit~~ tag for the same year, the controlled hunt ~~permit~~ tag shall be returned to the Department and voided and the ~~permit~~ tag fees refunded. The lottery tag will be valid to hunt bighorn sheep that year. ~~(7-1-93)~~(7-12-10)T

**02. Validity of Tag.** The Bighorn Sheep Lottery ~~Permit~~/Tag shall be valid in Unit 11 only during even-numbered years and during odd-numbered years when the Special Bighorn Sheep ~~Permit~~/Tag holder chooses not to hunt in Unit 11. ~~(3-20-04)~~(7-12-10)T

**03. Permit.** A ~~permit and~~ controlled hunt tag will be provided to the lottery tag winner from the net proceeds of the lottery. ~~(7-1-93)~~(7-12-10)T

**04. Application of Big Game Rules.** All Rules Governing the Taking of Big Game Animals shall apply to the eligible ticket purchasers and lottery tag winner, other than as specified herein. (7-1-93)

**a.** A person receiving a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year for another bighorn sheep lottery tag. (3-30-01)

**b.** A person successful in taking a bighorn sheep with a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year. (3-20-04)

**c.** Any person who wins a Bighorn Sheep Lottery ~~Permit~~/Tag, and who is otherwise eligible to apply for a deer, elk or ~~antelope~~ pronghorn controlled hunt ~~permit~~ tag, shall be allowed to apply for a ~~permit~~ controlled hunt for those species during the same year the Bighorn Sheep Lottery ~~Permit~~/Tag is valid. ~~(3-30-01)~~(7-12-10)T

**801. -- 899. (RESERVED).**

**900. CHILDREN WITH SPECIAL NEEDS BIG GAME ~~PERMIT~~/TAG.**

**01. Availability.** The Department shall make up to five (5) big game tags available for children with life threatening medical conditions each year. (3-29-10)

**a.** Any of the five (5) big game tags described in Section 901 that have not been issued by July 15 each year may also be available for children with life threatening conditions. (3-29-10)

**02. Issuance.** The Commission delegates discretionary authority to issue a special needs tag to the Director. (3-29-10)

**03. Eligibility.** In order to receive a special needs big game tag, a resident or nonresident minor (seventeen (17) years of age or younger) must have a life threatening medical condition as certified by a qualified and licensed physician. (3-29-10)

**a.** A qualified applicant must be sponsored by a nonprofit organization that is qualified under section 501(c) (3) of the Internal Revenue code. (3-8-07)

**b.** The primary mission of the sponsoring organization must be to offer opportunities and experiences to minor children with life threatening medical conditions. (3-8-07)

**c.** Minimum age requirements and hunter education requirements are waived for individuals applying for or receiving a special needs big game tag. (3-29-10)

**04. Validity of ~~Permit~~ Tag.** The special needs tag shall be valid for one (1) deer, one (1) elk, one (1) pronghorn, one (1) moose, one (1) black bear, or one (1) mountain lion as allowed by Commission proclamation. ~~(3-29-10)~~(7-12-10)T

**a.** A license is not required to apply for or receive a special needs big game tag. (3-29-10)

**b.** The special needs tag is valid in any open hunt, controlled or general, as provided by Commission proclamation. (3-29-10)

**c.** Applicants may only receive one (1) special needs tag in a lifetime. (3-29-10)

**d.** In exercising hunting privileges, the holder of a special needs tag must be accompanied by an adult in possession of a valid Idaho big game hunting license. (3-29-10)

**05. Application.** Applications shall be on a form as prescribed by the Director. (3-8-07)

**a.** Applications shall be submitted on behalf of applicants by an eligible nonprofit organization. (3-8-07)

**b.** A copy of the nonprofit organization's IRS determination letter must accompany the application. (3-8-07)

**06. Fees.** All fees associated with applying for and receiving a special needs tag shall be waived. (3-29-10)

**07. Hunters with Disabilities Permit Fees.** All fees associated with applying for or receiving a Disabled Persons Motor Vehicle Hunting Permit or a Disabled Archery Permit by the recipient of a special needs tag are waived. (3-29-10)

**08. Application of Big Game Rules.** All rules governing the taking of Big Game Animals, IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply to holders of a special needs big game tag. (3-8-07)



## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.06 - RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

DOCKET NO. 13-0106-1001

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b) and 36-201, 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 September 15, 2010.

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

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

Implement Senate Bill 1266 which classifies raccoons as predatory wildlife, and correct a statutory reference.

**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 temporary rule confers a benefit to certain hunters, and complies with amendment to Section 36-201, Idaho Code.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0106-1001**

**104. CLASSIFICATION OF WILDLIFE - FURBEARING ANIMALS.**

- |                      |  |                     |
|----------------------|--|---------------------|
| <b>01.</b>           | <b>Furbearing Animals.</b>   | (7-1-93)            |
| <b>a.</b>            | American badger -- <i>Taxidea taxus</i> .  | (4-6-05)            |
| <b>b.</b>            | American marten -- <i>Martes americana</i> .   | (4-6-05)            |
| <b>c.</b>            | American mink -- <i>Mustela vison</i> .  | (4-6-05)            |
| <b>d.</b>            | Beaver -- <i>Castor canadensis</i> .   | (7-1-93)            |
| <b>e.</b>            | Bobcat -- <i>Lynx rufus</i> .  | (4-6-05)            |
| <b>f.</b>            | Canada lynx -- <i>Lynx canadensis</i> .  | (4-6-05)            |
| <b>g.</b>            | Common muskrat -- <i>Ondatra zibethicus</i> .  | (4-6-05)            |
| <del><b>h.</b></del> | <del>Common raccoon -- <i>Procyon lotor</i>.</del>                                   | <del>(4-6-05)</del> |
| <del><b>i.</b></del> | <del>Fisher -- <i>Martes pennanti</i>.</del>   | <del>(7-1-93)</del> |
| <del><b>j.</b></del> | <del>Northern river otter -- <i>Lontra canadensis</i>.</del>                         | <del>(4-6-05)</del> |
| <del><b>k.</b></del> | <del>Red fox -- <i>Vulpes vulpes</i>-includes all color phases found in Idaho.</del> | <del>(7-1-93)</del> |

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. PREDATORY WILDLIFE.**

- |                       |  |                          |
|-----------------------|--|--------------------------|
| <b>01.</b>            | <b><u>Common raccoon.</u> <i>Procyon lotor</i></b>   | <b><u>(7-12-10)T</u></b> |
| <del><b>02.</b></del> | <del><b>Coyote.</b> <i>Canis latrans</i>.</del>  | <del>(7-1-93)</del>      |
| <del><b>03.</b></del> | <del><b>Jackrabbit.</b> <i>Lepus townsendii</i> and <i>L. californicus</i>.</del>                              | <del>(7-1-93)</del>      |
| <del><b>04.</b></del> | <del><b>Long-Tailed and Short-Tailed Weasel, Ermine.</b> <i>Mustela frenata</i>, <i>Mustela erminea</i>.</del> | <del>(4-6-05)</del>      |
| <del><b>05.</b></del> | <del><b>Skunk.</b> <i>Mephitis mephitis</i> and <i>Spilogale gracilis</i>.</del>                               | <del>(7-1-93)</del>      |
| <del><b>06.</b></del> | <del><b>Starling.</b> <i>Sturnus vulgaris</i>.</del>   | <del>(7-1-93)</del>      |

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. PROTECTION OF WILDLIFE.**

- |            |   |
|------------|---|
| <b>01.</b> | <b>Game Species.</b> Those species of wildlife classified as Big Game Animals, Upland Game Animals, |
|------------|---|

Game Birds, Migratory Birds, Game Fish, Crustacea, or Furbearing Animals may be taken only in accordance with Idaho law and rules established by the Idaho Fish and Game Commission. (4-6-05)

**02. Protected Nongame and Threatened or Endangered Species.** No person shall take or possess those species of wildlife classified as Protected Nongame, or Threatened or Endangered at any time or in any manner, except as provided in Sections 36-106(e), 36-401, and 36-1107, Idaho Code, by Commission rule, or IDAPA 13.01.10, "Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife," Subsection 100.06.b. Protected Nongame status is not intended to prevent unintentional take of these species, protection of personal health and/or safety, limit property and building management, or prevent management of animals to address public health concerns or agricultural damage. ~~(4-6-05)~~(7-12-10)T

**03. Unprotected and Predatory Wildlife.** Those species of wildlife classified as Unprotected Wildlife and Predatory Wildlife may be taken in any amount, at any time, and in any manner not prohibited by state or federal law, by holders of the appropriate valid Idaho hunting, trapping, or combination hunting and fishing licenses, provided such taking is not in violation of state, county, or city laws, ordinances, or regulations. (7-1-93)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0108-1001

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b), 36-1101, and 36-1202, 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 September 15, 2010.

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

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

Implement House Bill 416 which amends the definition of edible meat and expands the species exempt from waste. Implement House Bill 463 which requires amendment of existing Commission rules to allow nonresident deer or elk tags to be used for the take of black bear, mountain lion and wolf. Remove Units 48 and 57 from the Motorized Vehicle Rule. Allow the use of electronic calls for take of black bear, mountain lion and wolves in seasons specified by the Commission. Allow the take of wolves by trap or snare in seasons specified by the Commission. Prohibit the use of telemetry equipment as an aid to take of big game. Address depredation hunts for black bear and wolves. Extend the mandatory check and reporting requirements for harvested wolves. Update rules to reflect previous legislative (S B 141aa-2009) and Commission actions, including the elimination of controlled hunt permits, exchange of bear tags and defines various tag types. Amend controlled hunt application requirements and address Mandatory Hunter Reports.

**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 temporary rule confers a benefit to certain hunters, and complies with amendments to Sections 36-104, 36-409, 36-416, 36-1104, 36-1104A, and 36-1202, Idaho Code.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with statutory amendments.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0108-1001**

**200. BAG AND POSSESSION LIMITS.**

No person may take more than one (1) deer, elk, antelope pronghorn, moose, bighorn sheep, mountain goat, black bear, or gray wolf during a calendar year EXCEPT: ~~(3-29-10)~~(7-12-10)T

**01. Depredation Hunts.** In depredation hunts, one (1) additional deer, elk or antelope pronghorn, black bear, or gray wolf may be taken by persons holding permit tags for those hunts, EXCEPT those depredation hunt ~~permittees~~ hunters who were selected for depredation hunts prior to the controlled season for the unit(s) in which they hold a controlled hunt permit tag must include any animal they harvest within the restrictions imposed by the controlled hunt permit tag (no person may take more than one (1) animal per year by using depredation and controlled hunt permit tag). ~~(7-1-93)~~(7-12-10)T

**02. Extra Tag Hunts.** In extra tag hunts, one (1) additional deer, elk or antelope pronghorn may be taken by persons holding tags for those hunts. ~~(7-1-93)~~(7-12-10)T

**03. Limits on Take -- Deer, Elk, Antelope Pronghorn.** In no event shall any person take more deer, elk or antelope pronghorn in a calendar year than the number of tags the person legally possesses for each species. ~~(3-30-01)~~(7-12-10)T

**04. Limits on Take -- Mountain Lion.** No person may take more mountain lions during a calendar year than the number of tags the person legally possesses for mountain lions. (3-30-01)

**05. Limits on Take -- Black Bear.** No person may take more black bears during a calendar year than the number of tags the person legally possesses for black bears. (3-30-01)

**06. Limits on Take -- Gray Wolf.** No person may take more gray wolves during a calendar year than the number of tags they legally possess for gray wolves. (3-29-10)

**201. -- 249. (RESERVED).**

**250. TAGS AND PERMITS.**

No person shall hunt big game animals without having in possession the appropriate hunting license, tags, ~~stamps~~ and permits. ~~(7-1-93)~~(7-12-10)T

**01. Use of Tags.** (7-1-93)

**a.** Permit/ Controlled hunt Tags issued for moose, bighorn sheep, mountain goat and antelope pronghorn may be used only in the controlled hunt for which the permittee hunter was drawn. ~~(7-1-93)~~(7-12-10)T

**b.** Tags issued for antelope archery hunts may be used only in general archery hunts. ~~(7-1-93)~~

**eb.** Extra tags issued for deer, elk or ~~antelope~~ pronghorn may be used only in the hunt area for which the tags are issued. ~~(7-1-93)~~(7-12-10)T

**dc.** Any person who purchases a tag to hunt black bear, or ~~archery antelope~~, who is unsuccessful in killing an animal, and who is subsequently drawn for a black bear controlled hunt permit tag, including an antelope landowner preference permit, must may choose to purchase a controlled hunt bear tag or exchange the general season bear tag for the controlled hunt bear tag, the hunter must return the unused tag to a Department office not later than August 10 to exchange the tag for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. ~~(3-20-97)~~(7-12-10)T

**ed.** General season ~~T~~tags issued for black bear and mountain lion may be used statewide. Extra tags issued for black bear and mountain lion may be used only in the hunt area for which the tags are issued. ~~(4-5-00)~~(7-12-10)T

**fe.** Regular tags issued for deer and elk may be used ONLY as follows: (7-1-93)

i. Regular Deer:

| TYPE OF TAG  | SEASONS  |
|--|--|
| Resident <del>(Type 311)</del>   | Any archery, muzzleloader or general deer season. <del>EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, &amp; 20.</del>  |
| <del>Resident (Type 330)</del>   | <del>Extra Any antlerless deer tag season. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, and 20.</del>  |
| <del>Senior Resident/Senior/Disabled American Veteran (DAV) (Type 330)</del> | Any archery, muzzleloader or general deer season. <del>EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, &amp; 20.</del>  |
| <del>S.E. Idaho Area Units 75, 76, 77, and 78 Nonresident</del>              | <del>To Hunt Deer in Units 75, 76, 77, and 78 you must have your deer tag validated for use in these units. These tags are limited to one thousand two hundred (1200) nonresident tags and will be issued by lottery. EXCEPT in Clearwater Region, Units 8, 8A, 10, 10A, 11, 11A, 12, 13, 14, 15, 16, 16A, 17, 18, 19, &amp; 20.</del> |
| Nonresident <del>(Type 411)</del>  | Any archery, muzzleloader or general deer season <del>or controlled hunt for which the permittee was drawn</del> , or may be used to tag a black bear or mountain lion <u>or gray wolf</u> during the Regular deer season when the black bear or mountain lion, <u>or gray wolf</u> season is open.                                    |
| <del>Combination Controlled Hunt Permit and Tag</del>                        | Only the designated controlled hunt for which the <del>permittee hunter</del> was drawn.   |
| <del>Combination Controlled Depredation Hunt Permit and Tag</del>            | Only the designated controlled depredation hunt for which the <del>permittee hunter</del> was drawn.   |
| <del>Combination Controlled Hunt Permit and Extra Tag</del>                  | Only the designated controlled extra tag hunt for which the <del>permittee hunter</del> was drawn.   |

~~(4-6-05)~~(7-12-10)T

ii. ~~Elk A Tag: Valid only for A Tag elk seasons in specific elk zones. White-tailed deer.~~

| TYPE OF TAG  | SEASONS   |
|--|---|
| Resident <u>White-tailed</u>   | <del>Any elk archery, muzzleloader or general season in A Tag elk seasons in specific zones. To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season.</del>  |
| <del>Senior Resident Junior/<br/>Senior/Disabled American<br/>Veteran (DAV) White-tailed</del>             | <del>Any elk archery, muzzleloader, or general season in A Tag seasons in specific zones. To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season.</del>   |
| Nonresident <u>White-tailed</u>  | <del>Any elk archery, muzzleloader, or general season in A Tag elk seasons in specific zones, or controlled hunt for which the permittee was drawn. To hunt white-tailed deer in any archery, muzzleloader or general white-tailed deer season or may be used to tag a black bear, mountain lion or gray wolf during the white-tailed deer season when the black bear, mountain lion or gray wolf season is open.</del> |
| <del>Combination Controlled<br/>Hunt Permit and Tag<br/>Nonresident White-tailed<br/>Junior Mentored</del> | <del>Only the designated controlled hunt for which the Tag permittee was drawn. Any archery, muzzleloader or general white-tailed deer season.</del>  |
| <del>Combination Controlled<br/>Depredation Hunt Permit<br/>and Tag</del>                                  | <del>Only the designated controlled depredation hunt for which the permittee was drawn.</del>   |
| <del>Combination Controlled<br/>Hunt Permit and Extra Tag</del>  | <del>Only the designated controlled extra tag hunt for which the permittee was drawn.</del>   |

(3-29-10)(7-12-10)T

iii. ~~Elk B A Tag: Valid only for B A Tag elk seasons in specific elk zones.~~

| TYPE OF TAG   | SEASONS  |
|---|--|
| Resident  | Any archery, muzzleloader, or general <u>season</u> in <del>B A</del> Tag elk seasons in specific zones.   |
| <del>Senior Resident Junior/<br/>Senior/Disabled American<br/>Veteran (DAV)</del> | Any archery, muzzleloader, or general <u>season</u> in <del>B A</del> Tag elk seasons in specific zones.   |
| Nonresident   | Any elk <del>controlled hunt for which the permittee was drawn or any archery, muzzleloader, or general in B Tag</del> archery, muzzleloader, or general season in A tag elk seasons in specific zones. <u>May be used to tag a black bear or mountain lion or gray wolf during the open elk season for the zone the elk tag is valid in when the black bear, mountain lion or gray wolf season is open.</u> |
| <u>Nonresident Junior Mentored</u>  | Any archery, muzzleloader, or general season in A Tag elk season in specific zones.  |
| <del>Combination Controlled<br/>Hunt Permit and Tag</del>                         | Only the designated controlled hunt for which the <del>permittee</del> hunter was drawn.   |

| <b>TYPE OF TAG</b>   | <b>SEASONS</b>   |
|--|--|
| <del>Combination</del> Controlled Depredation Hunt <del>Permit and</del> Tag | Only the designated controlled depredation hunt for which the <del>permittee</del> hunter was drawn.   |
| <del>Combination</del> Controlled <del>Permit and</del> Extra Tag            | Only the designated controlled and extra tag hunt for which the <del>permittee</del> hunter was drawn. |

(~~4-6-05~~)(7-12-10)T

iv. Elk B Tag: Valid only for B Tag elk seasons in specified zones.

| <b>TYPE OF TAG</b>                                   | <b>SEASONS</b>  |
|--|---|
| <u>Resident</u>                                      | <u>Any archery, muzzleloader, or general season in B Tag elk seasons in specific zones.</u>   |
| <u>Junior/Senior/Disabled American Veteran (DAV)</u> | <u>Any archery, muzzleloader, or general season in B Tag elk seasons in specific zones.</u>   |
| <u>Nonresident</u>                                   | <u>Any elk archery, muzzleloader, or general season in B tag elk seasons in specific zones. May be used to tag a black bear or mountain lion or gray wolf during the open elk season for the zone the elk tag is valid in when the black bear, mountain lion or gray wolf season is open.</u> |
| <u>Nonresident Junior Mentored</u>                   | <u>Any archery, muzzleloader, or general season in B Tag elk season in specific zones.</u>  |
| <u>Controlled Hunt Tag</u>                           | <u>Only the designated controlled hunt for which the hunter was drawn.</u>  |
| <u>Controlled Depredation Hunt Tag</u>               | <u>Only the designated controlled depredation hunt for which the hunter was drawn.</u>  |
| <u>Controlled Hunt Extra Tag</u>                     | <u>Only the designated controlled and extra tag hunt for which the hunter was drawn.</u>  |

(7-12-10)T

iv. Super Tag.

| <b>TYPE OF TAG</b>   | <b>SEASONS</b>   |
|--|--|
| <del>Combination</del> Controlled Hunt <del>Permit and</del> "Super" Tag | Valid for either <del>antelope</del> pronghorn, deer, moose, or elk and allows the hunter to hunt in any open and/or controlled hunt for the selected species. |

(~~3-15-02~~)(7-12-10)T

gf. Nonresident Junior Mentored Deer or Elk tags are not valid for bear, mountain lion, or gray wolf.  
 (~~3-29-10~~)(7-12-10)T

hg. Any person hunting with a Non resident Junior Mentored License or tag must be accompanied in the field by an adult license holder close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices. (4-6-05)

ih. Any adult accompanying the holder of a Nonresident Junior Mentored Tag must have a tag for the same species, valid in the same area. (4-6-05)



**ji.** Regular tags issued for gray wolf may be used ONLY as allowed by the gray wolf seasons and quotas set by Commission proclamation under Section 36-105(3), Idaho Code. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-10)

**02. Return of Tags by Unsuccessful ~~Permittees~~ Hunters.** ~~Permittees~~ Hunters who are not successful in killing a bighorn sheep, mountain goat or moose shall present or mail their unused tags to a Department office within ten (10) days after the close of the season for which the tag was valid. Canceled tags will be returned to the hunter upon request. (~~5-15-95~~)(7-12-10)T

**03. Archery and Muzzleloader Permits.** Any person hunting in an archery only or muzzleloader only season must have the appropriate permit (archery or muzzleloader) for the relevant season validated on their license. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**260. PERMITS TAGS FOR CONTROLLED HUNTS.**

**01. Use of Controlled Hunt ~~Permits~~ Tags.** No person may hunt in any controlled hunt without having a valid controlled hunt ~~permit~~ tag in possession. (~~7-1-93~~)(7-12-10)T

**a.** A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

**b.** In the event a ~~permit~~ tag is issued based on erroneous information, the ~~permit~~ tag will be invalidated by the Department and may NOT be used. The Department will notify the ~~permittee~~ hunter of the invalidation of the ~~permit~~ tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (~~7-1-93~~)(7-12-10)T

**c.** Any person who ~~receives~~ draws a controlled hunt ~~permit and~~ tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: ~~the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer.~~ (~~3-20-97~~)(7-12-10)T

**i.** The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (7-12-10)T

**ii.** If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (7-12-10)T

**iii.** The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (7-12-10)T

**iv.** Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-12-10)T

~~**d.** Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt.~~ (~~7-1-93~~)

**ed.** Any person who ~~receives~~ draws a controlled hunt ~~permit~~ tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: ~~a controlled hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk.~~ (~~7-1-93~~)(7-12-10)T

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (7-12-10)T

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (7-12-10)T

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (7-12-10)T

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt-archery, muzzleloader, general or controlled hunt. (7-12-10)T

fg. Any person who receives draws a combination controlled hunt permit/tag for antelope pronghorn is prohibited from hunting in any archery antelope or her pronghorn hunt; EXCEPT: The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)(7-12-10)T

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (7-12-10)T

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (7-12-10)T

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (7-12-10)T

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (7-12-10)T

fg. Any person who receives draws a spring controlled hunt permit tag for black bear, is prohibited from hunting in any other spring bear hunt April 15 to June 30, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (7-1-99)(7-12-10)T

hg. Any person who receives draws a fall controlled hunt permit tag for black bear is prohibited from hunting in any other fall bear hunts September 15 to October 31, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT: the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (10-26-94)(7-12-10)T

**02. Nonresident Permit Tag Limitations.** (3-20-04)(7-12-10)T

a. In controlled hunts with ten (10) or fewer permits tags, not more than one (1) nonresident permit tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits tags, not more than ten percent (10%) of the permits tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-6-05)(7-12-10)T

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt permits tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits tags; including outfitter

allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt ~~permits~~ tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. ~~(3-20-04)~~(7-12-10)T

**03. Eligibility.** Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

**a.** Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

**b.** Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn ~~permit~~ tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat ~~permit~~ tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of ~~permits~~ tags nor Landowner ~~Preference Permits~~ Appreciation Program tags. EXCEPT all successful and unsuccessful ~~antelope~~ pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled ~~antelope~~ pronghorn/deer/elk tags to hunt in any open general and/or controlled ~~antelope~~ pronghorn, deer or elk hunt in the following hunting season. ~~(3-15-02)~~(7-12-10)T

**c.** Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or ~~antelope~~ pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and antelope pronghorn controlled hunt permit sales. ~~(3-29-10)~~(7-12-10)T

**d.** Any person who has killed a California bighorn ram, ~~or a Rocky Mountain bighorn ram or a moose~~ on any controlled hunt may not apply for a ~~permit~~ tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram ~~permit~~ tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram ~~permit~~ tag for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. ~~(4-5-00)~~(7-12-10)T

**e.** No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

**f.** Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt ~~permit~~ tag for five (5) years. The harvest of a bighorn ewe does not make the ~~permittee~~ hunter ineligible to apply for a ~~permit~~ tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. ~~(7-1-93)~~(7-12-10)T

**g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat ~~permit~~ tag. ~~(7-1-93)~~(7-12-10)T

**h.** Any person who has killed an antlered moose in Idaho may not apply for a moose ~~permit~~ tag for

antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a ~~permit tag~~ for antlerless moose EXCEPT that any person may apply for ~~permits tags~~ remaining unfilled after the controlled hunt draw. ~~(4-11-06)~~(7-12-10)T

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

j. Any person may apply for both a controlled hunt ~~permit~~ tag and a controlled hunt ~~permit~~ extra tag. ~~(7-1-93)~~(7-12-10)T

k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

**04. Applications.** Individual applications or group applications for controlled hunts ~~shall be made on a form prescribed by the Department and must be received at~~ may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; ~~they may not be resubmitted after correction~~ EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be canceled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. ~~(10-26-94)~~(7-12-10)T

a. Spring black bear - Application period - January 15 - February 15. (4-6-05)

b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

c. Deer, elk, ~~antelope~~ pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. ~~(3-29-10)~~(7-12-10)T

d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

e. Deer, elk, ~~antelope~~ pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. ~~(3-29-10)~~(7-12-10)T

**05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt ~~permit~~ extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. ~~(10-26-94)~~(7-12-10)T

b. Only one (1) controlled hunt ~~permit~~ extra tag will be issued for each person on any application submitted. ~~(10-26-94)~~(7-12-10)T

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt ~~permit~~ tag hunts or controlled hunt ~~permit~~ extra tag hunts. ~~(10-26-94)~~(7-12-10)T

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, ~~antelope~~ pronghorn, moose, bighorn sheep, mountain goat, black bear, ~~lion~~, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, ~~antelope~~ pronghorn, black bear, ~~mountain lion~~, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a ~~permit~~ tag in the mail. ~~(3-29-10)~~(7-12-10)T

e. Any controlled hunt ~~permits~~ tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold ~~forty five (45) days following the close of each respective controlled hunt drawing~~ by any Point-of-Sale vendor, ~~through the Internet, or over the telephone~~ on a first-come, first-served basis ~~on the dates below~~ UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt ~~permit~~ application and tag will be issued to successful ~~applicants~~ controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. ~~The fee for the exchanged tag is the fee for a duplicate tag.~~ ~~(3-15-02)~~(7-12-10)T

i. Spring Turkey and Spring Bear - April 1. (7-12-10)T

ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (7-12-10)T

iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (7-12-10)T

f. A "group application" for deer, elk, and ~~antelope~~ pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. ~~(10-26-94)~~(7-12-10)T

g. A "group application" for moose, bighorn sheep, mountain goat, black bear, and gray wolf is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of ~~permits~~ tags available in a hunt that group application will not be selected for that hunt. ~~(7-1-98)~~(7-12-10)T

i. Landowner permission hunt ~~permits~~ tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. ~~(3-29-10)~~(7-12-10)T

**06. Refunds of Controlled Hunt Fees.** (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or

ineligible applicants. (10-26-94)

**d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

**e.** Application fees are nonrefundable. (7-12-10)T

**07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

**08. Unclaimed ~~Permits~~ Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or ~~antelope~~ pronghorn controlled hunt drawing must purchase and pick up their controlled hunt ~~permit and~~ tag by August 1. All controlled hunt tags ~~and permits~~ not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags ~~and permits~~ left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (~~3-29-10~~)(7-12-10)T

**09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## **261. SPECIAL CONTROLLED HUNTS.**

**01. Special Controlled Hunt Program.** The Special Controlled Hunt ~~Permit~~ Program is a program to partially fund a sportsman access program adopted by the Fish and Game Commission. This program will offer forty (40) tags valid for the current year hunting seasons; including, twelve (12) tags each for elk, deer, and ~~antelope~~ pronghorn, and four (4) tags for moose. (~~4-11-06~~)(7-12-10)T

**a.** The rules for controlled hunts set forth in Section 260, of these rules, do not apply to the Special Controlled Hunt Program. (4-11-06)

**b.** The Special Controlled Hunt application will be marketed by the Department of Fish and Game. The Department will issue these tags to eligible persons selected by an impartial random lottery draw process. The successful applicants will receive the tag ~~and controlled hunt permit~~ necessary to hunt the appropriate species. The Department's various license issuing systems and other methods may be used to market the applications. (~~4-11-06~~)(7-12-10)T

**02. Moneys.** The Department shall deposit all mon eys received from the sale of Special Controlled Hunt Applications in accordance with state law. The Department shall specifically use funds for the sportsman access program. (4-11-06)

**03. General Rules.** (4-11-06)

**a.** Any individual, resident or nonresident, may purchase and submit applications without limit. (4-11-06)

**b.** ~~Blank s~~Special controlled hunt applications may be ~~given or transferred to other individuals, or~~ entered in the name of individuals other than the purchaser. (~~4-11-06~~)(7-12-10)T

**c.** Each successful applicant must have or be eligible to obtain a valid Idaho hunting license. (4-11-06)

**d.** Each tag will be issued to the individual named on the drawn application that meets license eligibility requirements and cannot be transferred. (4-11-06)

**e.** An individual may be drawn for only one (1) special controlled hunt tag for each species. (4-11-06)

f. Each special controlled hunt tag is valid for the designated species and allows the hunter to hunt in any open hunt, general or controlled, for the designated species in the applicable year's season. (4-11-06)

g. The special controlled hunt tag shall be in addition to any other tag the hunter is eligible to obtain. (4-11-06)

h. Any applicant, including those who have harvested an animal on a special controlled hunt tag, shall be eligible to apply for any controlled hunt for the same species in the same year or subsequent years. (4-11-06)

i. ~~Prior to the Department issuing any license, tag or permit to a successful applicant, the individual must complete and sign a statement certifying his eligibility to obtain and possess an Idaho hunting license and the required permits and tags.~~ In the event a license, tag or permit is issued based on erroneous information, all documents issued based on the erroneous information will be invalidated by the Department and may not be used. The Department will notify the individual at his last known place of residence of the invalidation of the license, tag or permit. ~~(4-11-06)~~(7-12-10)T

**04. Application Fees.** The Commission intent for this special controlled hunt program is to provide some of the funding for a statewide sportsman access program. Applications may be sold for individual species (Super Hunt) or grouped for combined species (Super Hunt Combo). The application fees will be set by Commission Order under Section 36-415, Idaho Code, or will be the same as the controlled hunt fee set in Section 36-416, Idaho Code. (4-11-06)

**05. Drawing Dates.** There will be two (2) drawings. All drawings shall be held at ~~10 a.m.~~ at the Department of Fish and Game offices in Boise, Idaho. The first drawing winners will be ~~on or about~~ notified by June 15~~0~~, and the second drawing winners will be ~~on or about~~ notified by August 15 each year. The Commission may order a different drawing day in case of business emergency, holiday, or non-business days. ~~(4-11-06)~~(7-12-10)T

**06. Department Marketed Applications.** (4-11-06)

a. Individual applications for special controlled hunts shall be made on a form prescribed by the Department or submitted electronically at any Fish and Game Headquarters or Regional Offices, any license vendor, through the Internet or over the telephone. ~~(4-11-06)~~(7-12-10)T

b. ~~All Mailed~~ applications must be received at the Licenses Section, Headquarters Office, Idaho Department of Fish and Game, 1075 Park Blvd., PO Box 25, Boise, Idaho 83707-0025, no later than 5 p.m. (MST), May 31 of the current calendar year for the first drawing and no later than 5 p.m. (MST), ~~July 31~~ August 10, of the current calendar year for the second drawing. Electronically submitted applications must be entered no later than 11:59 p.m. (MST), May 31 of the current calendar year for the first drawing and no later than 11:59 p.m. (MST), August 10 of the current calendar year for the second drawing. Applications received or electronically submitted after ~~July 31~~ August 10 shall be ~~ineligible for any the drawing held in June of the following year. If either drawing date is a Saturday, Sunday or other legal holiday, then the applications must be received on the next legal business day.~~ ~~(4-11-06)~~(7-12-10)T

c. All applications entered into the first drawing are not eligible for and will not be entered into the second drawing. (4-11-06)

d. Any individual application that is unreadable, has multiple or no species box checked, has incomplete or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (4-11-06)

e. The Department shall sell applications through its electronic licensing system ~~from July 28~~ through November 30. ~~(4-11-06)~~(7-12-10)T

f. ~~For each tag available, the Department shall draw one (1) winner and two (2) alternates. All alternates will be drawn after all winners have been drawn.~~ Should the winner be ineligible, deceased or incapacitated to hunt, the first alternate drawn will be declared the winner. Should the first alternate be ineligible, deceased or incapacitated to hunt, the second alternate drawn will be declared the winner. Should the second alternate be

ineligible, deceased or incapacitated to hunt, that special controlled hunt ~~permit tag~~ shall be null and void and shall not be issued to any other person. ~~The names and addresses of the alternates shall be confidential until the winner is issued all required licenses, tags or permits.~~ (4-11-06)(7-12-10)T

**07. Refunds of Special Controlled Hunt Fees.** (4-11-06)

**a.** The application fee is not refundable. (4-11-06)

**b.** The special controlled hunt tag, ~~permit~~ and related hunting license are not refundable for any reason. (4-11-06)(7-12-10)T

**262. -- 269. (RESERVED).**

**270. MANDATORY SCHOOL.**

~~Mandatory Class for Deer Hunt Area 39-3~~ Anyone drawing a ~~deer~~ controlled archery-only hunt ~~permit for controlled hunt area 39-3 tag~~ that requires a mandatory hunter orientation class as denoted in the season proclamations must attend ~~at~~ the mandatory hunter orientation class. The class is three (3) hours long and will be offered at times specified by the Department. The orientation classes will be offered on ten (10) dates between October 15 and November 15. Since classroom size is limited, each ~~permittee~~ hunter must schedule a time to attend a class prior to October 15. Attendees will be issued a certificate of completion, which must be carried by the ~~permittee~~ hunter during the hunt. Holders of "Certificates of Completion" from previous hunts are not required to attend this orientation class. (4-6-05)(7-12-10)T

**271. WOLF TRAPPING.**

**01. Mandatory Wolf Trapper Education Class.** Individuals interested in trapping wolves must successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to purchasing a wolf trapping permit. A certificate of completion will be required to purchase the wolf trapping permit. Trappers who complete the class will not be required to take the class again in the future to purchase a wolf trapping permit. (7-12-10)T

**02. Wolf Trapping Permits.** Wolf trapping permits will be available only at Idaho Department of Fish and Game offices. (7-12-10)T

**274. -- 299. (RESERVED).**

**300. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN.**

**01. Big Game Animals of Either Sex.** Big game animals of either sex may be taken as noted below: (7-1-93)

**a.** Mountain Goat. Either sex may be taken EXCEPT nannies accompanied by kids. (7-1-93)

**b.** Black Bear. Either sex may be taken EXCEPT female black bears accompanied by young. (7-1-93)

**c.** Mountain Lion. Either sex may be taken EXCEPT spotted young or females accompanied by young. (7-1-93)

**d.** Gray Wolf. Either sex may be taken. (3-29-10)

**02. Seasons Restricted to Antlered or Male Animals Only.** (7-1-93)

**a.** Deer. Only deer with at least one (1) antler longer than three (3) inches may be taken in any season which is open for antlered deer only. (7-1-93)

**b.** Two-point deer. Only deer with not more than two (2) points on one (1) antler, not including brow point, and at least one (1) antler longer than three (3) inches may be taken in any season which is open for two-point



deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)

**c.** Three-point deer. Only deer having at least one (1) antler with three (3) or more points not counting the brow point or tine may be taken in any season which is open for three-point or larger deer only. A point is an antler projection that is at least one (1) inch long and longer than the width of the projection. (3-15-02)

**d.** Four-point deer. Only deer having at least one (1) antler with four (4) or more points, not including the brow point or tine, may be taken in any season that is open for four-point or larger deer only. (4-6-05)

**e.** Elk. Only elk with at least one (1) antler longer than six (6) inches may be taken in any season which is open for antlered elk only. (7-1-99)

**f.** Spike elk. Only elk with no branching on either antler and at least one (1) antler longer than six (6) inches may be taken in any season which is open for spike elk only. A branch is an antler projection that is at least one (1) inch long and longer than the width of the projection. (7-1-99)

**g.** Brow-tined elk. Any elk having an antler or antlers with a visible point on the lower half of either main beam that is greater than or equal to four (4) inches long. (3-15-02)

**h.** Moose. Only moose with at least one (1) antler longer than six (6) inches may be taken in any season open for antlered moose only. (7-1-93)

**03. Seasons Restricted to Antlerless or Female Animals Only. (7-1-93)**

**a.** Deer. Only deer without antlers or with antlers shorter than three (3) inches may be taken in any season which is open for antlerless deer only. (7-1-93)

**b.** Elk. Only elk without antlers or with antlers shorter than six (6) inches may be taken in any season which is open for antlerless elk only. (7-1-93)

**c.** Antelope Pronghorn. Only antelope pronghorn without a black "cheek patch" or horns less than three (3) inches long may be taken during doe and fawn only antelope pronghorn seasons. ~~(7-1-93)~~(7-12-10)T

**d.** Bighorn sheep. Only bighorn sheep with horns between six (6) inches and twelve (12) inches in length may be taken in any season which is open for bighorn ewes only. (7-1-93)

**e.** Moose. Only moose without antlers or with antlers less than six (6) inches long may be taken in any season which is open for antlerless moose only. (7-1-93)

**301. -- 319. (RESERVED).**

**320. TAG VALIDATION AND ATTACHMENT AND PROXY STATEMENT.**

**01. Tag.** Immediately after any deer, elk, antelope pronghorn, moose, bighorn sheep, mountain goat, mountain lion, black bear, or gray wolf is killed, the appropriate big game animal tag must be validated and securely attached to the animal. ~~(3-29-10)~~(7-12-10)T

**a.** Validation. Cut out and completely remove only the two (2) triangles indicating the date and month of kill. (7-1-93)

**b.** Attachment of Tag. (7-1-93)

**i.** Deer, elk, antelope pronghorn, moose, mountain goat, black bear, and bighorn sheep: to the largest portion of the ~~carcass~~ edible meat to be retained by the hunter or any person transporting for the hunter. The tag must remain attached during transit to a place of processing and must remain attached until the meat is processed. The validated tag must accompany the processed meat to the place of final storage or final consumption.

~~(10-26-94)~~(7-12-10)T

- ii. Mountain lion, black bear, and gray wolf: To the hide.

~~(3-29-10)~~(7-12-10)T

**02. Proxy Statement.** Any person transporting or possessing any portion of a carcass of a big game animal or processed big game animal meat taken by another must have in possession a written statement signed by the taker showing the number and kinds of animals, the date taken, the taker's name and address, the taker's hunting license number, and the taker's tag ~~and/or permit~~ number.

~~(7-1-93)~~(7-12-10)T

**321. -- 349. (RESERVED).**

**350. IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**

**01. Evidence of Sex.** Evidence of sex must be left naturally attached to the carcass of any big game animal.

(4-6-05)

**a.** In antlered or male only seasons, the evidence of sex requirement is met when the head, horns, or antlers are left naturally attached to the whole carcass or to a front quarter. If the head, horns, or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility; AND the horns or antlers must accompany the carcass while in transit.

(5-8-09)

**b.** In spike elk or two-point (2) deer only seasons, the evidence of sex requirement is met when the head with both complete unaltered antlers are left naturally attached to the whole carcass or to a front quarter. If the head or antlers are removed, some other external evidence of sex (either scrotum, penis or testicles) must be left or a commercial meat processing facility naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption; AND both complete unaltered antlers naturally attached to each other must accompany the carcass while in transit.

(5-8-09)

**c.** In antlerless, doe/fawn or female only seasons, if the head is removed from female elk, moose, deer, antelope pronghorn, or bighorn sheep, some other external evidence of sex (either udder or the vulva) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption or a commercial meat processing facility.

~~(5-8-09)~~(7-12-10)T

**d.** The entire head of antlerless male elk, moose, deer, or antelope pronghorn, or a male lamb bighorn sheep killed during an antlerless, female, doe/fawn or ewe only season, may be left naturally attached to the carcass or to a front quarter until the carcass reaches the final place of storage or consumption. If the head is removed, some other external evidence of sex (either scrotum, penis, or testicles) must be left naturally attached to the carcass or to a hind quarter until the carcass reaches the final place of storage or consumption, or a commercial meat processing facility, AND the lower jaw must accompany the carcass while in transit.

~~(5-8-09)~~(7-12-10)T

**e.** For black bear, mountain lion, and gray wolf external evidence of sex (either scrotum, penis or testicles for males, or vulva for females) must be left naturally attached to the hide until the mandatory check has been complied with.

(3-29-10)

**02. Evidence of Species.** In seasons restricted to mule deer only or white-tailed deer only, if the head is removed, the fully-haired tail must be left naturally attached to the carcass.

(7-1-93)

**03. Evidence of Size.** Any hunter taking a bighorn ram must leave that portion of the skull plate containing the upper one-half (1/2) of the eye socket naturally attached to both of the horns until after the horns have been pinned by the Department.

(7-1-93)

**04. Other.** The Department may designate seasons and areas in which the head or lower jaw must accompany the carcass in transit.

(7-1-93)

**351. WASTE OF GAME MEAT.**

Hunters are required to remove and care for the edible meat of big game animals, except mountain lions, black bears and gray wolves. This includes the meat of the front quarters including the meat surrounding the ball joint as far down as the knees, hindquarters as far down as the hock, ~~neck meat,~~ and meat along the backbone, ~~and meat covering the ribs.~~ It does not include meat of the head, internal organs and meat on the bones after close trimming which is the loin and tenderloin. (3-29-10)(7-12-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**410. UNLAWFUL METHODS OF TAKE.**

No person shall take big game animals as outlined in this section. (7-1-93)

**01. Firearms.** (7-1-93)

**a.** With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

**b.** With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

**c.** With any rifle, rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

**d.** With a fully automatic firearm. (10-26-94)

**e.** With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)

**02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives.** (3-20-97)

**a.** With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteen-thousandths (0.015) inch thick. (7-1-93)

**b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

**c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

**d.** With arrows or bolts having expanding broadheads. (7-1-93)

**e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

**f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow (except nonmagnifying scopes containing battery powered or tritium lighted reticles may be used by disabled archery permit holders). (5-8-09)

**g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)

**h.** With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)

**i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)

- j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
- k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
- l.** During an *Archery Only* season, with any firearm, or crossbow (except holders of hand capped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)
- i.** With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)
- ii.** With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a *Traditional Archery Only* season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)
- i.** With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
- ii.** With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)
- 03. Muzzleloaders.** (7-1-93)
- a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, antelope pronghorn, mountain lion, or gray wolf, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. ~~(3-29-10)~~(7-12-10)T
- b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
- c.** During a *Muzzleloader Only* season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)
- i.** Is at least forty-five (.45) caliber for deer, antelope pronghorn, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. ~~(3-29-10)~~(7-12-10)T
- ii.** Is capable of being loaded only from the muzzle. (7-1-93)
- iii.** Is equipped only with open or peep sights. (7-1-93)
- iv.** Is loaded only with loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. (4-2-08)
- v.** Is equipped with no more than two (2) barrels. (7-1-93)
- vi.** Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
- vii.** Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
- viii.** Is equipped with an exposed ignition system. (5-8-09)
- ix.** Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)
- 04. Short-Range Weapon.** During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)

- a. With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
- b. With any muzzleloader that is at least forty-five (0.45) caliber for deer, ~~antelope or pronghorn~~, mountain lion, or gray wolf, or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (3-29-10)
- c. With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- d. With any handgun using straight wall centerfire cartridges not originally developed for rifles. (3-29-10)
- 05. Other.** (7-1-93)
- a. With electronic calls EXCEPT for the hunting of mountain lions, ~~in Units 41, 42 and that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486~~ black bears, and wolves in seasons set by Idaho Fish and Game Commission proclamation. (~~3-15-02~~)(7-12-10)T
- b. With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals." (3-30-01)
- c. With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)
- d. With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment; EXCEPT wolves may be trapped or snared in seasons set by Idaho Fish and Game Commission proclamation and subject to all trapping rules in IDAPA 13.01.16 "The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals." (~~7-1-93~~)(7-12-10)T
- e. Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)
- f. With radio telemetry or other electronic tracking devices used as an aid to locate big game animals. This rule does not affect the use of telemetry equipment on hounds or other sporting dogs. (7-12-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**412. MOTORIZED VEHICLE USE RESTRICTION UNITS.**

The motorized vehicle use restriction applies to areas and hunts in units 29, 30, 30A, 32, 32A, 36A, 37, 37A, 39, 45, 47, ~~48~~, 49, 50, 51, 52, 53, 56, ~~57~~, 58, 59, 59A, 66, 66A, 69, 70, 72 (late season), 73, 75, 76, 77, and 78. The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Seasons Proclamation, which is published in a brochure available at department offices and license vendors. (~~3-29-10~~)(7-12-10)T

**413. -- 419. (RESERVED).**

**420. MANDATORY CHECK AND REPORT REQUIREMENTS.**

Any hunter killing black bear, moose, bighorn sheep or mountain goat, or mountain lion in a unit with no female lion quota must, WITHIN TEN (10) DAYS OF THE DATE OF KILL, or any hunter killing mountain lion in a unit with a female quota must, WITHIN FIVE (5) DAYS OF THE DATE OF KILL, or any hunter killing a gray wolf must, WITHIN ~~FIVE TEN~~ (~~510~~) DAYS OF THE DATE OF KILL, comply with the mandatory check and report requirements by: ~~(3-29-10)~~(7-12-10)T

**01. Harvest Report.** Completing the relevant harvest report (big game mortality report or other report form as required) for the species taken. (4-6-05)

**02. Presentation of Animal Parts.** Presenting the following animal parts so that Department personnel may collect biological data and mark the animal parts: (7-1-93)

**a.** Bear: Skull and hide to be presented to a conservation officer, regional office or official check point for removal and retention of premolar tooth and to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import documentation, shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw black bear pelt which does not have an official state export tag attached (either Idaho's or another state's official export documentation). (3-29-10)

**b.** Mountain Lion: Skull and hide to be presented to a conservation officer or regional office to have the hide marked. No person, who does not possess a fur buyer or taxidermist license and/or appropriate import documentation, shall have in possession, except during the open season and for five (5) days after the close of the season, any raw mountain lion pelt which does not have an official state export tag attached (either Idaho's or another state's official export documentation). (3-29-10)

**c.** Gray Wolf: Skull and hide to be presented to a conservation officer or regional office for removal and retention of a premolar tooth, and to have the hide marked. No person who does not possess a fur buyer or taxidermist license and/or appropriate import documentation shall have in possession, except during the open season and for ~~five ten~~ (~~510~~) days after the close of the season, any raw gray wolf pelt that does not have an official state export tag attached (either Idaho's or another state's official export documentation). ~~(3-29-10)~~(7-12-10)T

**d.** Moose: Antlers from antlered animals to be presented to a conservation officer or regional office. (7-1-93)

**e.** Bighorn Sheep: Ram horns to be presented to a regional office for marking, ewe horns to be presented to a regional office. (7-1-93)

**f.** Mountain Goat: Horns to be presented to a conservation officer or regional office. (7-1-93)

**03. Authorized Representative.** A hunter may authorize another person to comply with the above requirements if that person complies with reporting requirements and possesses enough information to accurately complete the necessary form. (7-1-93)

#### **421. MANDATORY DEER AND ELK REPORT REQUIREMENTS.**

**01. Mandatory Report Form.** After ~~an antelope pronghorn~~, deer and/or elk is killed, the hunter must accurately complete a Mandatory Report as provided by the Director. ~~(3-15-02)~~(7-12-10)T

**02. Mandatory Report.** Any hunter that obtains ~~an antelope pronghorn~~, deer and/or elk tag and kills ~~an antelope pronghorn~~, deer and/or elk, must submit a completed Mandatory Report to the Department or authorized agent, WITHIN TEN (10) DAYS OF KILL. ~~Any~~ hunter that obtains ~~an antelope pronghorn~~, deer and/or elk tag and does not successfully kill ~~an antelope pronghorn~~, deer and/or elk must submit a completed Mandatory Report Form to the Department or authorized agent WITHIN TEN (10) DAYS OF THE CLOSING DATE OF THE APPROPRIATE SEASON. ~~(3-15-02)~~(7-12-10)T

**03. Failure to Report.** Failure to submit the required ~~antelope pronghorn~~, deer and/or elk Mandatory Report by January 31 of the following year as required in Subsection 421.02 will render the hunter ineligible to obtain any subsequent year's license until a late Mandatory Report permit is filed with the Department or authorized agent.

~~To be effective December 31, 2003.~~

~~(3-20-04)(7-12-10)T~~

**04. Drawing for “Super” Tag.** All successful and unsuccessful ~~antelope pronghorn~~, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) “Super” controlled ~~antelope pronghorn~~/deer/elk tags. Each hunter drawn for a “Super” controlled ~~antelope pronghorn~~/deer/elk hunt must notify the Department by May 1 of which species they have selected to hunt. The “Super” controlled hunt tag is valid for the selected species and allows the hunter to hunt in any open general and/or controlled hunt for the selected species in the following season. ~~(3-15-02)(7-12-10)T~~

**422. MANDATORY WOLF TELEPHONE REPORT.**

In addition to other check and reporting requirements, any hunter killing a gray wolf must report the harvest within ~~twenty-four~~ seventy-two (2472) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the gray wolf season brochure available at Department offices and license vendors. ~~(3-29-10)(7-12-10)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**605. ELK ZONE DESCRIPTIONS.**

- 01. Panhandle Zone.** All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9. (7-1-99)
- 02. Palouse Zone.** All of Units 8, 8A, and 11A. (7-1-99)
- 03. Dworshak Zone.** All of Unit 10A. (7-1-99)
- 04. Hells Canyon Zone.** All of Units 11, 13, and 18. (7-1-99)
- 05. Lolo Zone.** All of Units 10 and 12. (7-1-99)
- 06. Elk City Zone.** All of Units 14, 15, and 16. (7-1-99)
- 07. Selway Zone.** All of Units 16A, 17, 19, and 20. (7-1-99)
- 08. Middle Fork Zone.** All of Units 20A, 26, and 36B. (7-1-99)
- 09. Salmon Zone.** All of Units 21, 21A, 27, and 28. (4-5-00)
- 10. Weiser River Zone.** All of Units 22, 32, and 32A. (4-5-00)
- 11. McCall Zone.** All of Units 19A, 23, 24, and 25. (7-1-99)
- 12. Lemhi Zone.** All of Units 29, 37, 37A, and 51. (7-1-99)
- 13. Beaverhead Zone.** All of Units 30, 30A, 58, 59, and 59A. (7-1-99)
- 14. Brownlee Zone.** All of Unit 31. (7-1-99)
- 15. Sawtooth Zone.** All of Units 33, 34, 35, and 36. (7-1-99)
- 16. Pioneer Zone.** All of Units 36A, 49, and 50. (7-1-99)
- 17. Owyhee-South Hill Zone.** All of Units 38, 40, 41, 42, 46, 47, 54, 55, and 57. (4-5-00)
- 18. Boise River Zone.** All of Unit 39. (7-1-99)

19. **Smoky Mountains Zone.** All of Units 43, 44, and 48. (3-15-02)
20. **Bennett Hills Zone.** All of Units 45 and 52. (7-1-99)
21. **Big Desert Zone.** All of Units 52A, ~~53, 63, 63A,~~ and 68, ~~and 68A.~~ (~~7-1-99~~)(7-12-10)T
22. **Island Park Zone.** All of Units 60, 60A, 61, and 62A. (7-1-99)
23. **Teton Zone.** All of Units 62 and 65. (7-1-99)
24. **Palisades Zone.** All of Units 64 and 67. (7-1-99)
25. **Tex Creek Zone.** All of Units 66 and 69. (7-1-99)
26. **Bannock Zone.** All of Units 56, 70, 71, 72, 73, 73A, and 74. (7-1-99)
27. **Bear River Zone.** All of Units 75, 77, and 78. (7-1-99)
28. **Diamond Creek Zone.** All of Units 66A and 76. (7-1-99)
29. **Snake River Zone.** All of Units 53, 63, 63A, and 68A. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**703. CONTROLLED HUNT AREA DESCRIPTIONS -- ANTELOPE PRONGHORN.**

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (~~4-2-08~~)(7-12-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**800. EMERGENCY DEPREDATION HUNTS.**

01. **Eligibility.** (7-1-93)
  - a. Only Idaho residents with a valid Idaho hunting or combination license are eligible to apply to participate in emergency depredation hunts. (7-1-93)
  - b. Persons submitting applications for emergency depredation hunts are eligible to apply for controlled hunts or may hunt in the general season. (7-1-93)
02. **Applications.** (7-1-93)
  - a. Applicants must submit a depredation hunt application and mail it to the regional office of the Idaho Department of Fish and Game in the area(s) they are willing to hunt. Applicants may apply to different areas for deer, elk, ~~and antelope~~ pronghorn, black bear, or gray wolf. (~~7-1-93~~)(7-12-10)T
  - b. Applicants may submit only one (1) application per year for each species. An individual or a group may apply on an application. A group is defined as two (2) hunters applying for the same depredation hunt on the same application. On a group application both hunters must comply with all regulations, complete the application properly, and abide by the same depredation hunt choice. If an individual submits application for more than one (1) species, he does not have to be in the same group for each application. Separate applications may be submitted for deer, elk, ~~and antelope~~ pronghorn, black bear, or gray wolf. (~~7-1-93~~)(7-12-10)T



- c. Application can be made in only one (1) region for deer, one (1) for elk, ~~and~~ one (1) for ~~antelope~~ pronghorn, one (1) for black bear, and one (1) for gray wolf. ~~(7-1-93)~~(7-12-10)T
- d. Any form not properly completed will be ineligible for selection. (7-1-93)
- e. Any holder of an antlerless or doe/fawn, or black bear controlled hunt ~~permit~~ tag will be considered an applicant for any depredation hunt for that species which is: ~~(7-1-93)~~(7-12-10)T
- i. Held prior to the antlerless or doe/fawn, or black bear controlled hunt; and ~~(7-1-93)~~(7-12-10)T
- ii. Is in the same area as the depredation. (7-1-93)
- f. Any holder of an antlerless or doe/fawn, or black bear controlled hunt ~~permit~~ tag may also apply for a depredation hunt in any region. ~~(7-1-93)~~(7-12-10)T
- g. A list of depredation hunt applications received will be maintained for the time period July 1 to June 30. Applications are valid only for the time period for which they are submitted. (7-1-93)
- h. Military personnel returning from active duty after June 30 may apply at any time and will be given priority in the selection process. (4-11-06)

**03. Selection of Participants.** The Department shall place all applications (individual or group) for each depredation hunt received by June 30 in random order. All applications received after June 30 shall be placed at the end of the list in the order received, except that military personnel returning from active duty will be given priority. The Department shall select participants for a hunt in the order in which applicants appear on the list EXCEPT for those hunts which precede, or at the discretion of the Regional Supervisor, follow a controlled hunt for doe/fawn or antlerless animals or black bear. If a depredation hunt is scheduled before or at the discretion of the Regional Supervisor after a doe/fawn or antlerless hunt or black bear hunt in the same unit, the holders of the doe/fawn or antlerless ~~permit~~ tags or black bear tag will be given the option to hunt in the depredation hunt. If no doe/fawn or antlerless or black bear hunts are scheduled in that unit, or if some depredation hunt ~~permits~~ tags are not taken by controlled hunt ~~permittees~~ hunters, participants will be selected from applicants for that depredation hunt. If a group application is selected, both hunters will be offered depredation hunt ~~permits~~ tags. ~~(4-11-06)~~(7-12-10)T

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1001

#### 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 36-1101, 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 September 15, 2010.

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

Some hunters have questioned whether shooting upland game birds from watercraft is an ethical method of take, and have requested Commission action to prohibit the take of upland game birds from any watercraft.

**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.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 FOR DOCKET NO. 13-0109-1001

**300. UPLAND GAME BIRD METHODS OF TAKE.**

**01. Taking of Upland Game Birds.** No person shall take upland game birds: (7-1-93)

**a.** Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Pheasants shall not be taken before twelve o'clock noon on the opening day in certain counties (see Rule 11, Pheasant Seasons). Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. ~~Pheasants~~ Upland game birds shall not be taken before 10 a.m. ~~after the opening day~~ during the pheasant season on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife Management Areas. ~~(4-6-05)( )~~

**b.** With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)

**c.** From ~~boats or other craft having a motor attached UNLESS the motor is completely shut off and forward progress has ceased, or if the boat is drifting naturally, or if it is propelled only by paddle, oars, or pole, or if it is beached, moored, or resting at anchor~~ any watercraft. ~~(7-1-93)( )~~

**d.** By the use or aid of any electronic call. (7-1-93)

**e.** By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)

**f.** When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)

**02. Wild Turkey.** In addition to the methods listed above, wild turkey may not be taken: (7-1-93)

**a.** With lead shot exceeding BB size. (7-1-93)

**b.** With steel shot exceeding T size. (7-1-93)

**c.** By the use of dogs, except during fall hunts. (3-30-01)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

#### DOCKET NO. 13-0109-1002

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b), 36-404, 36-406, 36-407 and 36-1101, 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 September 15, 2010.

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

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

Implement Senate Bill 1285 which allows nine-year old hunters to apply for controlled hunt turkey permits.

**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 temporary rule confers a benefit to certain hunters, and complies with amendment to Sections 36-404, 36-406, and 36-407, Idaho Code.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0109-1002**

**100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.**

**01. Sage Grouse or Sharp-Tailed Grouse.** No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

**02. Migratory Game Birds.** No person shall hunt ducks, geese, brant, coots, common snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (7-1-98)

**03. Wild Turkey.** No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

**a.** There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; general and extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may not obtain both a spring general and a spring controlled turkey tag during the spring. (5-8-09)

**b.** Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit/tag to hunt in any other wild turkey hunt. (4-5-00)

**c.** Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

**d.** Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

**e.** Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)

iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the

fees, all applications will be voided and returned. (2-7-95)

v. A “group application” is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)

vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)

vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)

f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)

g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)

h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)

i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)

j. The Commission establishes youth-only controlled hunts by proclamation. Only hunters ~~nine (9)~~ nine (9) to seventeen (17) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying. EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (~~3-29-10~~)(7-12-10)T

**04. Early September Canada Goose Hunts.** (7-1-98)

a. Controlled Hunts: No person shall hunt Canada geese during controlled, early September seasons (September 1-15) without having in his or her possession the appropriate hunting license and controlled hunt permit. Persons obtaining and using controlled hunt permits must comply with the following requirements: (7-1-98)

i. Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15, annually. Applications must comply with the following requirements: (4-5-00)

ii. Fees: All applicants for controlled hunts must submit a nonrefundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. The Federal Migratory Bird Stamp is required by any person seventeen (17) years of age and older, respectively (Title 50 Code of Federal Regulations, Part 20). (3-30-01)

iii. The following rules previously established for wild turkey also apply to early September Canada goose hunts: Subsections 100.03.b., 100.03.c., 100.03.d., 100.03.e.ii., 100.03.e.iv. through 100.03.e.vi., and 100.03.f. (3-30-01)

iv. Any controlled hunt permits for Canada geese that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis. (7-1-98)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-1001

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-103, 36-104(b), 36-501, 36-502, 36-504, and 36-603, 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 September 15, 2010.

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

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

Implement Senate Bill 1328 which allows the release of certain captured predatory and unprotected wildlife with written landowner permission. Senate Bill 1342 allows the Department to require records from taxidermy/furbuyers and adds a reporting requirement for purchase of raw mountain lion and black bear parts. Clarify legal methods of take and address commercial sale of rattlesnake parts.

**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:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Idaho Code Section 36-502.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0110-1001**

**100. PERMITS, REQUIREMENTS FOR IMPORT, EXPORT, TRANSPORT, RELEASE, AND SALE.**

No person shall import, export, transport into or cause to be transported within, release or sell within the state of Idaho any living wildlife including wildlife eggs without having first obtained a permit from, and on a form prescribed by, the Director of the Idaho Department of Fish and Game. However, no permit shall be issued by the Director for such importation, transportation or release or sale if the wildlife or eggs thereof would pose a threat to wildlife in the state of Idaho either through the threat of disease, genetic contamination or displacement of, or competition with existing species and provided that: ~~(3-23-94)~~(7-12-10)T

**01. Import, Export, Transport, or Sell Restrictions.** No permits shall be required from the Department of Fish and Game to import, export, transport or sell the following: (3-23-94)

**a.** Animals or their eggs normally considered to be of agricultural or domestic types currently common to Idaho which shall not include any wildlife. (3-23-94)

**b.** Mammals classified as furbearers by the Idaho Fish and Game Commission, and that are to be used for purposes provided for in Chapter 30 of Title 25, Idaho Code. (3-23-94)

**c.** Ornamental or tropical aquarium fish of varieties commonly accepted for interstate shipment, but not including green sturgeon (*Acipenser medirostris*), white sturgeon (*Acipenser transmontanus*), walking catfish (family *Catostomidae*), bowfin (*Amia calva*), gar (family *Lepisosteidae*), piranhas (*Serrasalmus* sp., *Rosseveltella* sp., *Pygocentrus* sp.), rudd (*Scardinius erythrophthalmus*), Ide (*Leuciscus idus*), grass carp (*Ctenopharyngodon idella*), and snakeheads or china fish (*Channa* sp.). (3-23-94)

**d.** Animals commonly considered to be conventional household pets, including sugar glider (*Petaurus breviceps*) and African hedgehog (*Atelerix albiventris*). (7-1-99)

**e.** Birds classified as game birds that are produced in captivity and lawfully obtained as shown by proof maintained and presented in accordance with Section 36-709 Idaho Code. (3-23-94)

**02. Fish Legally Taken.** No permit shall be required to keep game fish legally taken, other than salmon or steelhead, alive and in possession in a live well or net or on a stringer in or on the body of water from which they were taken. (7-1-93)

**03. Commercial Fish Facility.** No permit shall be required to possess fish from a commercial fish facility when accompanied by sales receipt as provided in Chapter 46, Title 22, Idaho Code. (7-1-93)

**04. Transport Between Commercial Fish Facilities.** No permit shall be required to transport fish between properly licensed commercial fish facilities. (3-23-94)

**05. Fish Eggs.** No permit shall be required to possess, sell, purchase or transport nonviable fish eggs used for bait or personal consumption. (3-23-94)



**06. Wildlife.** No wildlife except wildlife classified as unprotected, ~~or~~ predatory, native amphibian or native reptile as defined in IDAPA 13.01.06, "Classification and Protection of Wildlife," Subsections 200.03, 200.04, and Sections 201 and 250, may be taken from the wild in the state of Idaho and kept alive in captivity unless authorized by the Commission or in writing by the Director or his designee, and may require a permit from the Idaho Department of Agriculture/USDA APHIS. ~~(7-1-99)~~(7-12-10)T

**a.** No wildlife may be taken alive from state parks, national parks and monuments, wildlife management areas or nature preserves except as designated by the Commission or permitted in writing by the Director and permitted in writing by the responsible land management agency. (3-23-94)

**b.** No person shall capture alive, ~~or~~ hold in captivity, kill, or possess at any time more than four (4) Idaho native reptiles or amphibians of any one (1) species except as authorized by Commission Rule or permitted in writing by the Director. ~~(3-23-94)~~(7-12-10)T

**07. Birds of Prey.** No additional permit shall be required to import, possess, transport or export legally possessed birds of prey in accordance with Idaho falconry rules IDAPA 13.01.14, "Rules Governing Falconry in the State of Idaho," by properly licensed falconers. (3-23-94)

**08. Unprotected Wildlife.** No permit shall be required to sell, export or transport within Idaho, any legally taken species of wildlife classified as unprotected by commission rule. Unprotected native wildlife may be released in accordance with Section 36-502 (c) Idaho Code. The written landowner consent required by Idaho Code shall be in possession while such wildlife are in transit to the release site. ~~(3-23-94)~~(7-12-10)T

**09. Possession of Wildlife.** The possession of any wildlife, progeny or eggs thereof imported into this state without a valid import permit, if such permit is required, shall be unlawful. (3-23-94)

**10. Predatory Wildlife.** Predatory native wildlife may be released in accordance with Section 36-502(c) Idaho Code. The written landowner consent required by Idaho Code shall be in possession while such wildlife are in transit to the release site. (7-12-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. RECOVERY, POSSESSION AND SALE OF WILDLIFE PARTS.**

**01. Wildlife Legally Killed.** (3-23-94)

**a.** The possession, sale and purchase of wildlife or parts of wildlife that have been legally killed is lawful except as provided below and as provided in Chapter 5, Title 36, Idaho Code. (3-23-94)

**i.** The edible flesh of wildlife classified as big game animals, upland game animals, game birds, ~~or~~ migratory birds, or rattlesnakes taken from the wild may not be purchased, bartered or sold. ~~(3-23-94)~~(7-12-10)T

**ii.** The edible flesh of wildlife classified as game fish or crustacea that are taken from the wild may not be purchased, bartered or sold except as provided in Idaho Code Sections 36-501 and 36-801 through 36-805 and rules promulgated pursuant thereto. (3-23-94)

**iii.** The annual sale by holders of a valid Idaho hunting, trapping or combination hunting and fishing license of up to six (6) skins of legally taken rattlesnakes is lawful pursuant to IDAPA 13.01.06, "Classification and Protection of Wildlife", Subsection 300.02 and Subsection 100.06 of this rule. (7-12-10)T

**b.** A written statement showing the taker's name, address, license and tag numbers, date and location of kill, signed by the taker, must be provided to the buyer of any black bear or mountain lion head, hide or parts (except tanned hides finished into rugs or mounts). A copy of the sales statement must be forwarded by the buyer to the Idaho Department of Fish and Game within ten (10) days after such sale. A department CE-50, Statement of Sale/

Purchase of Wildlife Parts, may be used in lieu of a sales statement.

~~(3-23-94)~~(7-12-10)T

**c.** Persons possessing a taxidermist or fur buyer license shall keep a record for two (2) years from the date the wildlife was received for mounting or preservation, furbearers purchased and raw black bear skins, raw mountain lion skins or parts of black bears or mountain lions purchased. Records may be written or retained on media other than paper and must comply with standards set forth in Section 9-328, Idaho Code. Copies of sales statements as per Subsection 300.01.b. satisfy provisions of this rule.

(7-12-10)T

**02. Animals Found Dead.** Protected species of wildlife that have died naturally or accidentally remain in public trust to be disposed of by the Department of Fish and Game. However, a person may recover, possess, sell or purchase the wildlife parts as specified below, but ONLY under the conditions specified and ONLY if the wildlife has NOT been unlawfully killed. Natural causes shall not include any man-caused mortality.

(7-1-98)

**a.** Horns of Bighorn Sheep.

(7-1-93)

**i.** Bighorn sheep horns of animals that have died of natural causes may be recovered and possessed but may not be sold, bartered or purchased and may not be transferred to another person without a permit issued by the Director. All such pickup horns must be presented to an Idaho Department of Fish and Game regional or subregional office for marking by placement of a permanent metal pin in the horn within thirty (30) days of recovery. The insertion of a pin does not in itself certify that the animal was legally taken or possessed. The pin only identifies the horn(s) and indicates that mandatory check and report requirements were complied with.

(3-23-94)

**ii.** No person shall alter, deface or remove a pin placed in a bighorn sheep horn by the Idaho Department of Fish and Game. No person shall possess the horn(s) of a bighorn sheep that bears an altered, defaced or counterfeit Idaho pin or from which the Idaho pin has been removed.

(3-23-94)

**b.** Antlers, bones, and horns of deer, elk, moose, pronghorn and mountain goat, parts of bear and mountain lion and elk teeth of animals that have died of natural causes may be recovered, possessed, purchased, bartered or sold. Reporting of bear and mountain lion parts is required pursuant to Subsection 300.01, of this rule.

~~(3-29-10)~~(7-12-10)T

**03. Wildlife Taken in Other States.** Wildlife or parts thereof that have been legally taken outside of Idaho, may be possessed or sold in Idaho if such sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation;

(3-23-94)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-1001

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b), 36-201 and 36-1101, 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 September 15, 2010.

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

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

Implement Senate Bill 1286 which classifies raccoons as predatory wildlife, and clarify the definitions of "bait" and "game animal."

**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:

The temporary rule confers a benefit to certain hunters, and complies with amendment to Section 36-201, Idaho Code.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the statutory amendment.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0116-1001**

**010. DEFINITIONS.**

- 01. Furbearing Animals.** Furbearing animals are defined as the following species: (7-1-93)
- a.** Marten -- *Martes americana*. (7-1-93)
  - b.** Fisher -- *Martes pennanti*. (7-1-93)
  - c.** Mink -- *Mustela vison*. (7-1-93)
  - d.** Otter -- *Lontra canadensis*. (3-30-01)
  - e.** Beaver -- *Castor canadensis*. (7-1-93)
  - f.** Muskrat -- *Ondatra zibethicus*. (7-1-93)
  - g.** Bobcat -- *Felis rufus*. (7-1-93)
  - h.** Lynx -- *Felis lynx*. (7-1-93)
  - i.** Red Fox -- *Vulpes vulpes*, and includes all color phases found in Idaho. (7-1-93)
  - ~~**j.** *Raccoon* -- *Procyon lotor*. (7-1-93)~~
  - ~~**k.** Badger -- *Taxidea taxus*. (7-1-93)~~
- 02. Predatory Wildlife.** Predatory wildlife is defined as the following species: (7-1-93)
- a.** Coyote. (7-1-93)
  - b.** Jackrabbit. (7-1-93)
  - c.** Raccoon (7-12-10)T
  - ~~**d.** Skunk. (7-1-93)~~
  - ~~**e.** Weasel. (7-1-93)~~
- 03. Unprotected Wildlife.** Unprotected wildlife is defined as all animals OTHER than those classified by the Fish and Game Commission as big game animals, upland game animals, game birds, game fish, crustacea, migratory birds, furbearing animals, threatened or endangered wildlife, protected non game wildlife or predatory wildlife. (~~7-1-93~~)(7-12-10)T
- 04. Bait.** Bait is defined as any animal parts; except bleached bones or liquid scent. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. METHODS OF TAKE.**

**01. Furbearing Animals.** No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-03)

**02. Hunting.** No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

**a.** Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)

**b.** Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

**c.** Hunt any furbearing animal, ~~except raccoon,~~ with or by the aid of artificial light. ~~(7-1-93)~~(7-12-10)T

**d.** Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but ~~no person hunting raccoon at night shall:~~ ~~(7-1-93)~~(7-12-10)T

**i.** Hunt from a motorized vehicle. (7-1-93)

**ii.** Use any light attached to any motor vehicle. (7-1-93)

**iii.** Hunt on private land without obtaining written permission from the landowner or lessee. (7-1-93)

**03. Trapping.** No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

**a.** Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland ~~game animal,~~ game fish, or protected nongame wildlife. ~~(4-6-05)~~(7-12-10)T

**b.** Use any set within thirty (30) feet of any visible bait. (4-6-05)

**c.** Use a dirt hole set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (7-1-93)

**d.** Use live animals as a bait or attractant. (4-6-05)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1001

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 12, 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 36-104(b) and 36-1101, 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 September 15, 2010.

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

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

Clarify the definitions of "bait" and "game animals," and allow incidental take of wolves near bear bait sites.

**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 temporary rule confers a benefit to certain hunters.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the lack of an identified group to represent interested persons makes it infeasible.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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 TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 13-0117-1001**

**100. USE OF BAIT.**

Bait is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions, EXCEPT wolves may be taken incidentally to bear baiting. ~~(7-9-93)~~(7-12-10)T

**01. Time.** (7-1-93)

**a.** No bait or bait container may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and bait may be placed one (1) week prior to the opening of bear season in Units 17, 19, 20, 20A, 26 and 27. (5-8-09)

**b.** All bait, bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of each season; spring, fall, or black bear dog training. (5-8-09)

**02. Location.** (7-1-93)

**a.** No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

**b.** No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

**03. Types.** (7-1-93)

**a.** No person shall use any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife for bait or scent. ~~(4-2-08)~~(7-12-10)T

**b.** The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

**c.** No person shall use salt in any form (liquid or solid) for bait. (3-29-10)

**04. Containers.** (7-1-93)

**a.** No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

**b.** No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

**05. Establishment of Bait Sites.** (7-1-93)

**a.** Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days after the close of each season; spring, fall, or black bear dog training. (3-29-10)

**b.** All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

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

### **16.02.03 - EMERGENCY MEDICAL SERVICES**

#### **DOCKET NO. 16-0203-1001 (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 Section 56-1023, 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 September 15, 2010.

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

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking: This chapter of rules is being repealed under this docket. It is being completely revised, updated, and rewritten under Docket Nos. 16-0203-1002 and 16-0203-1003 publishing in this same Bulletin.

**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. N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders throughout the state starting in May 2009. The stakeholder groups included: Association of Idaho Cities, Idaho Air Medical Services, Idaho Association of Counties, Idaho Commission on Aging, Idaho EMS Chiefs Association, Idaho Fire Chiefs Association, Idaho Hospital Association, Idaho Sheriffs Association, National Ski Patrol, Private EMS Services, Professional Firefighters of Idaho, Regional EMS Associations, Seasonal/Industrial EMS Services, Tribal EMS, and Volunteer EMS. The rules were also presented for review by the EMS Physician Commission and the EMS Advisory Committee. The most recent statewide round of twelve "town hall meetings" was conducted from May 17 through June 17, 2010.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000, ext. 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 September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**IDAPA 16.02.03 IS BEING REPEALED IN ITS ENTIRETY**



## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.03 - EMERGENCY MEDICAL SERVICES

#### DOCKET NO. 16-0203-1002 (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 Section 56-1023, 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 September 15, 2010.

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

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

This chapter of rules is being completely revised, updated, and rewritten under this docket, with the exception of Section 302 which is a fee rule publishing under Docket No. 16-0203-1003 in this same Bulletin. The repeal of this chapter is publishing in this Bulletin under Docket 16-0203-1001.

**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:

This rulemaking has no fiscal impact to the state general fund. The Emergency Medical Services (EMS) program is funded through dedicated funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders throughout the state starting in May 2009. The stakeholder groups included: Association of Idaho Cities, Idaho Air Medical Services, Idaho Association of Counties, Idaho Commission on Aging, Idaho EMS Chiefs Association, Idaho Fire Chiefs Association, Idaho Hospital Association, Idaho Sheriffs Association, National Ski Patrol, Private EMS Services, Professional Fire Fighters of Idaho, Regional EMS Associations, Seasonal/Industrial EMS Services, Tribal EMS, and Volunteer EMS. The rules were also presented for review by the EMS Physician Commission and the EMS Advisory Committee. The most recent statewide round of twelve "town hall meetings" was conducted from May 17 through June 17, 2010.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The documents being incorporated by reference into these rules are used by the state to establish and enforce standards for EMS licensure, data standards, and scope of practice for EMS personnel. These are being incorporated by reference into these rules to give them the force and effect of law. Further, the documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000, ext. 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 September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor

P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET 16-0203-1002

IDAPA 16  
TITLE 02  
CHAPTER 03

16.02.03 - EMERGENCY MEDICAL SERVICES (EMS)

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under Section 56-1023, 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. ( )

**001. TITLE AND SCOPE.**

**01. Scope.** These rules include criteria for training programs, certification and licensure of personnel, licensure of ambulance agencies and nontransport agencies, licensure of ambulances and nontransport vehicles, establishment of fees for training, inspections, certifications, licensure, and appropriate requirements for licensure renewal of personnel, ambulance services and nontransport services, and ambulances and nontransport vehicles. ( )

**02. Title.** The title of these rules is IDAPA 16.02.03, "Emergency Medical Services." ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this Bureau has an EMS Education and Examination Standards Manual that contains policy and interpretation of these rules and the documentation of compliance with these rules. Copies of the Education and Examination 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. ( )

**003. ADMINISTRATIVE APPEALS.**

All contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**004. INCORPORATION BY REFERENCE.**

**01. Idaho Emergency Medical Services Licensure Standards Manual.** The Board of Health and Welfare has adopted the Idaho Emergency Medical Services Licensure Standards Manual, edition 2011-1, and hereby incorporates this Standards Manual by reference. Copies of this Standards Manual may be obtained from the EMS Bureau (see Section 005 of these rules), or online at: <http://www.idahoems.org>. ( )

**02. Idaho Emergency Medical Services Data Standards Manual.** The Board of Health and Welfare has adopted the Idaho Emergency Medical Services Data Standards Manual, edition 2011-1, and hereby incorporates this Standards Manual by reference. Copies of this Standards Manual may be obtained from the EMS Bureau (see Section 005 of these rules), or online at: <http://www.idahoems.org>. ( )

**03. Idaho Emergency Medical Services Physician Commission Standards Manual.** The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2011-1, and hereby incorporates this Standards Manual by reference. Copies of this Standards Manual may be obtained from the EMS Bureau (see Section 005 of these rules), or online at: [www.emspsc.dhw.idaho.gov](http://www.emspsc.dhw.idaho.gov). ( )

**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. ( )

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

**03. Street Address.** ( )

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

**b.** The EMS Bureau is located at 650 W. State Street, Suite B-17, Boise, Idaho 83702. ( )

**04. Telephone.** ( )

**a.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**b.** The telephone number for the EMS Bureau is (208) 334-4000. The toll-free, phone number is 1-877-554-3367. ( )

**05. Internet Websites.** ( )

**a.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**b.** The Emergency Medical Services Bureau's internet website is found at <http://www.idahoems.org>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

**01. Confidentiality of Records.** Any disclosure of confidential information used or disclosed in the course of the Department's business is subject to the restrictions in state or federal law, federal regulation, and Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**02. Public Records Act.** Individuals have a right to review and copy records maintained by the Department, subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code, these rules, and state and federal laws that make records confidential. The Department's Administrative Procedures Section (APS) and designated custodians in Department offices receive and respond to public records requests. The APS can be reached at the mailing address for the Department's business office. Non-identifying or non-confidential information provided to the public by the Department in the ordinary course of business is not required to be reviewed by a public records custodian. Original records must not be removed from the Department by individuals who make public records requests. ( )

**007. -- 008. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

The following individuals must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**01. Initial Licensure.** Candidates for initial licensure described in Section 305 of these rules. ( )

**02. Reinstatement of Licensure.** Individuals requesting reinstatement of licensure described in Section 316 of these rules. ( )

**03. Recognition of Licensure from Other Jurisdictions.** Individuals requesting licensure in Idaho described in Section 340 of these rules. ( )

**04. Certificate of Eligibility.** Individuals requesting a certificate of eligibility described in Section 350 of these rules. ( )

**10. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**  
For the purposes of this chapter of rules the following terms apply: ( )

**01. Advanced Emergency Medical Technician (AEMT).** A person who has met the qualifications for licensure as set forth in Sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under Sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the Commission and practices under the supervision of an Idaho licensed physician. ( )

**02. Advanced Life Support (ALS).** The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the Paramedic curriculum currently approved by the State Health Officer in accordance with Section 201 of these rules and within the scope of practice defined by the Commission, by persons licensed as Paramedics in accordance with these rules. ( )

**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. ( )

**04. Affiliated.** The formal association that exists between an agency and those licensed personnel who appear on the agency's roster which includes active participation, collaboration, and involvement. Affiliation can be demonstrated by the credentialing of licensed personnel by the agency medical director. ( )

**05. Agency.** Any organization licensed by the EMS bureau that operates an air medical service, ambulance service, or nontransport service. ( )

**06. 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 which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established by Board rule. ( )

**07. Air Medical Agency.** 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. ( )

**08. 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. ( )

**09. Ambulance.** Any privately or publicly owned motor vehicle, or nautical vessel, 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 which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established by Board rules. ( )

**10. Ambulance-Based Clinicians.** Licensed Professional Nurses and Advanced Practice Professional Nurses who are currently licensed in accordance with Sections 54-1401 through 54-1418, Idaho Code, and Physician Assistants who are currently licensed in accordance with Sections 54-1801 through 54-1841, Idaho Code. ( )

**11. Ambulance Agency.** 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. ( )

- 12. Applicant.** Any organization that is requesting an agency license under Sections 56-1011 through 56-1023, Idaho Code, and includes the following: ( )
- a.** An organization seeking a new license; ( )
  - b.** An existing agency that intends to: ( )
    - i.** Change the level of licensed personnel it utilizes; ( )
    - ii.** Change its geographic coverage area (except by agency annexation); ( )
    - iii.** Begin or discontinue providing patient transport services or; ( )
    - iv.** Add prehospital, prehospital quick response, transfer, or critical care operational declarations. ( )
- 13. Assessment.** The evaluation of a patient by EMS licensed personnel intending to provide treatment or transportation to that patient. ( )
- 14. Basic Life Support (BLS).** The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the EMR or EMT curriculum currently approved by the State Health Officer in accordance with Section 201 of these rules and within the scope of practice defined by the Commission, by persons licensed as EMRs or EMTs in accordance with these rules. ( )
- 15. Board.** The Idaho Board of Health and Welfare. ( )
- 16. Call Volume.** The number of requests for service that an agency either expects to (anticipated) or has responded to (actual) during a designated period of time. ( )
- 17. Commission.** The Idaho Emergency Medical Services Physician Commission. ( )
- 18. Compensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of compensation other than payment of expenses, reasonable benefits or a nominal fee to perform such services. This individual cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. ( )
- 19. Department.** The Idaho Department of Health and Welfare. ( )
- 20. 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. ( )
- 21. Emergency Medical Responder (EMR).** A person who has met the qualifications for licensure as set forth in Sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under Sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the Commission and practices under the supervision of an Idaho licensed physician. ( )
- 22. Emergency Medical Services (EMS).** The 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. ( )
- 23. EMS Bureau.** The Emergency Medical Services (EMS) Bureau of the Idaho Department of Health and Welfare. ( )

**24. Emergency Medical Technician (EMT).** A person who has met the qualifications for licensure under Sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under Sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the Commission, and practices under the supervision of an Idaho licensed physician. ( )

**25. Emergency Scene.** Any setting outside of a hospital, with the exception of the in-facility transfer, in which the provision of EMS may take place. ( )

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH Z.**

For the purposes of this chapter of rules the following terms apply: ( )

**01. Full-Time Paid Personnel.** Personnel who perform a service with the promise, expectation, or receipt of compensation for performing such services. Full-time personnel differ from part-time personnel in that full-time personnel work a more regular schedule and typically work more than thirty-five (35) hours per week. ( )

**02. 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. ( )

**03. Intermediate Life Support (ILS).** The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the AEMT curriculum currently approved by the State Health Officer in accordance with Section 201 of these rules and within the scope of practice defined by the Commission, by persons licensed as AEMTs in accordance with these rules. ( )

**04. Licensed Personnel.** Those individuals who are emergency medical responders, emergency medical technicians, advanced emergency medical technicians, and paramedics. ( )

**05. 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 licensure. ( )

**06. Nontransport Service.** An agency licensed by the EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended to be the service that will actually transport sick or injured persons. ( )

**07. Nontransport Vehicle.** Any vehicle operated by an agency with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons. ( )

**08. Paramedic.** A person who has met the qualifications for licensure under Sections 56-1011 through 56-1023, Idaho Code, is licensed by the EMS bureau under Sections 56-1011 through 56-1023, Idaho Code, carries out the practice of emergency care within the scope of practice determined by the Commission, and practices under the supervision of an Idaho licensed physician. ( )

**09. Part-Time Paid Personnel.** Personnel who perform a service with the promise, expectation, or receipt of compensation for performing such services. Part-time personnel differ from the full-time personnel in that the part-time personnel typically work an irregular schedule and work fewer than thirty-five (35) hours per week. ( )

**10. Patient.** A sick, injured, incapacitated, or helpless person who is under medical care or treatment. ( )

**11. Patient Care.** The performance of acts or procedures under emergency conditions 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. ( )

**12. Patient Movement.** The relatively short distance transportation of a patient from an off-highway

emergency scene to a rendezvous with an ambulance or air ambulance. ( )

**13. Patient Transport.** The transportation of a patient by ambulance or air ambulance from a rendezvous or emergency scene to a medical care facility. ( )

**14. Planned Deployment.** The deliberate, planned placement of EMS personnel outside of an affiliating agency's deployment model declared on the application under which the agency is currently licensed. ( )

**15. Physician.** A person licensed by the State Board of Medicine to practice medicine and surgery, or osteopathic medicine and surgery in Idaho. ( )

**16. Prehospital.** An setting outside of a hospital, with the exception of transfers, in which the provision of EMS may take place. ( )

**17. Response Time.** The total time elapsed from when the agency receives a call for service to when the agency arrives and is available at the scene. ( )

**18. 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: establishing standing orders and protocols, reviewing performance of licensed personnel, providing instructions for patient care via radio or telephone, and other oversight. ( )

**19. State Health Officer.** The Administrator of the Division of Public Health. ( )

**20. Third Service.** A public EMS agency that is neither law-enforcement nor fire-department based. ( )

**21. Transfer.** The transportation of a patient from one (1) medical care facility to another. ( )

**22. Uncompensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of any compensation for the services rendered. An uncompensated volunteer cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. ( )

**012. -- 049. (RESERVED).**

**050. ADVANCE DO NOT RESUSCITATE DIRECTIVES.**

**01. Protocols.** ( )

**a.** The EMS Advisory Committee will establish standard protocols for EMS personnel to respond to advance DNR directives. ( )

**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. ( )

**c.** The Department will notify Idaho EMS personnel of DNR protocols and any subsequent changes. ( )

**02. Do Not Resuscitate Order.** ( )

**a.** A standard DNR form will be made available to physicians by the Department or its designee. ( )

**b.** One (1) copy will be maintained in the patient's file and one (1) copy will be kept by the patient. ( )

- 03. Do Not Resuscitate Identification.** ( )
- a.** Only a physician signed DNR order or a Department approved bracelet or necklace will be honored by EMS personnel. ( )
- b.** The bracelet or necklace will have an easily identifiable logo that solely represents a DNR code. ( )
- c.** The Department will advise EMS personnel of what constitutes an acceptable identification. ( )
- d.** No DNR identification may be issued without a valid DNR order in place. ( )
- e.** Only vendors authorized by the Department may sell or distribute DNR identifications. ( )
- 051. -- 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. ( )

- 01. Committee Membership.** The Statewide EMS Advisory Committee will be constituted as follows: ( )
- a.** One (1) representative recommended by the State Board of Medicine; ( )
- b.** One (1) representative recommended by the Idaho Chapter of American College of Emergency Physicians; ( )
- c.** One (1) representative recommended by the Committee on Trauma of the Idaho Chapter of the American College of Surgeons; ( )
- d.** One (1) representative recommended by the State Board of Nursing; ( )
- e.** One (1) representative recommended by the Idaho Medical Association; ( )
- f.** One (1) representative recommended by the Idaho Hospital Association; ( )
- g.** One (1) representative of local government recommended by the Idaho Association of Counties; ( )
- h.** One (1) representative of a career third service EMS/Ambulance service; ( )
- i.** One (1) representative of a volunteer third service EMS/Ambulance service; ( )
- j.** One (1) representative of a third service nontransport EMS service; ( )
- k.** One (1) representative of a fire department-based EMS/Ambulance service recommended by the Idaho Fire Chiefs Association; ( )
- l.** One (1) representative of a fire department-based nontransport EMS service; ( )
- m.** One (1) representative of an air medical service; ( )
- n.** One (1) Emergency Medical Technician who represents the interests of Idaho personnel licensed at



that level; ( )

**o.** One (1) Advanced Emergency Medical Technician who represents the interests of Idaho personnel licensed at that level; ( )

**p.** One (1) Paramedic who represents the interests of Idaho personnel licensed at that level; ( )

**q.** One (1) representative who is an administrative county EMS director; ( )

**r.** One (1) EMS instructor who represents the interests of Idaho EMS educators and evaluators;( )

**s.** One (1) consumer; ( )

**t.** One (1) representative of a private EMS transport service; ( )

**u.** 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 ( )

**v.** One (1) board certified or equivalent pediatric emergency medicine physician. ( )

**02. Responsibilities of Committee.** The EMS Advisory Committee will meet at least annually or as needed for the purposes of: ( )

**a.** Reviewing policies and procedures for provision of emergency medical services and recommending same to the EMS Bureau; ( )

**b.** Reviewing EMS training curricula, training standards, and examination processes and recommending same to the EMS Bureau; ( )

**c.** Reviewing EMS candidate selection policy and candidate performance requirements and recommending to the EMS Bureau certification and standards for EMS personnel; ( )

**d.** Reviewing and making recommendations on the licensing of ambulance services in Idaho. ( )

**e.** Reviewing and making recommendations on the licensing of nontransport services in Idaho.( )

**101. -- 199. (RESERVED).**

**EMS EDUCATION  
(Sections 200 through 299)**

**200. EMS TRAINING PROGRAMS.**

EMS training programs must meet all requirements 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. ( )

**201. EMS TRAINING STANDARDS.**

All initial training programs must be conducted per the following criteria: ( )

**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: ( )

**a.** Documentation of candidate qualifications, attendance, skill proficiency, and clinical sessions; ( )

b. Advance scheduling and prior orientation of all other instructors and guest lecturers to the knowledge and skills objectives of the session being taught; ( )

c. Coordination of access for candidates into health care facilities and licensed EMS services using the curriculum of the course; and ( )

d. Acquisition of equipment for all skills objectives within the curriculum being taught. ( )

**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. ( )

**03. Physician Oversight.** A EMT and Paramedic training courses must be conducted under the direction of a physician. ( )

**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. ( )

**202. CERTIFICATION EXAMINATIONS.**

Certification examinations 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, by registered nurses, or by licensed physicians. ( )

**203. MONITORING OF INSTRUCTOR PERFORMANCE.**

The EMS Bureau 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 will be made available to licensed EMS services and other organizations sponsoring EMS training programs. ( )

**204. INSPECTION.**

Representatives of the EMS Bureau are authorized to enter the training facility at reasonable times, for the purpose of ensuring that the training program meets or exceeds the provisions of these rules and the EMS Standards Manual. ( )

**205. CONSISTENCY WITH SCOPE OF PRACTICE.**

All curricula approved for use in Idaho or used as the basis for licensure by a candidate trained elsewhere must be consistent with the scope of practice established by the Commission for the level of licensure requested by the candidate. ( )

**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 licensure levels. ( )

**207. -- 224. (RESERVED).**

**225. QUALIFICATIONS OF EMERGENCY MEDICAL RESPONDER COURSE INSTRUCTORS.**

Emergency Medical Responder Course Instructors must be approved by the EMS Bureau, based on being licensed for at least three (3) years at or above the level of the session of the curriculum being taught. ( )

**226. QUALIFICATIONS OF EMT COURSE INSTRUCTORS.**

EMT course instructors must be approved by the EMS Bureau, based on the following requirements: ( )

**01. Application.** Submission of an application to the EMS Bureau; ( )

**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: ( )

a. The adult learner; ( )

- b. Learning objectives; ( )
- c. Learning process; ( )
- d. Lesson plans; ( )
- e. Course materials; ( )
- f. Preparation; ( )
- g. Teaching aids; ( )
- h. Teaching methods; and ( )
- i. Evaluations. ( )

**03. EMS Instructor Orientation.** Completion of the EMS Bureau orientation program for EMS instructors or equivalent; and ( )

**04. Licensure.** 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 licensed at the EMT level. ( )

**227. PRIMARY OR LEAD EMT INSTRUCTORS.**

Primary or lead instructors must be approved as EMT 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. ( )

**228. EMT SKILLS INSTRUCTORS.**

EMT skills instructors must be approved as EMT Course Instructors and must personally instruct the psychomotor portions of the curriculum. ( )

**229. ADVANCED EMT AND PARAMEDIC INSTRUCTORS.**

AEMT and 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. ( )

**230. -- 299. (RESERVED).**

**PERSONNEL REQUIREMENTS FOR LICENSURE  
(Sections 300 through 399)**

**300. STANDARDS OF PROFESSIONAL CONDUCT.**

**01. Method of Treatment.** Licensed EMS personnel must practice medically acceptable methods of treatment and must not endeavor to extend their practice beyond their competence and the authority vested in them by the medical director. ( )

**02. Commitment to Self-Improvement.** Licensed EMS personnel must continually strive to increase and improve their knowledge and skills and render to each patient the full measure of their abilities. ( )

**03. Respect for the Patient.** Licensed EMS personnel must provide all services with respect for the dignity of the patient, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems. ( )

**04. Confidentiality.** Licensed EMS personnel must hold in strict confidence all privileged information concerning the patient except as disclosure or use of this information is permitted or required by law or Department

rule. ( )

**05. Conflict of Interest.** Licensed EMS personnel must not accept gratuities for preferential consideration of the patient and must guard against conflicts of interest. ( )

**06. Professionalism.** Licensed EMS personnel must uphold the dignity and honor of the profession and abide by its ethical principles and should be familiar with existing laws governing the practice of emergency medical services and comply with those laws. ( )

**07. Cooperation and Participation.** Licensed EMS personnel must cooperate with other health care professionals and participate in activities to promote community and national efforts to meet the health needs of the public. ( )

**08. Ethical Responsibility.** Licensed EMS personnel must refuse to participate in unethical procedures, and assume the responsibility to expose incompetence or unethical conduct of others to the appropriate authority in a proper and professional manner. ( )

**301. GENERAL PERSONNEL LICENSURE REQUIREMENTS.**

Any person who advertises or provides emergency medical services must obtain and maintain a current EMS personnel license or recognition issued by the EMS Bureau. ( )

**302. -- 304. (RESERVED).**

**305. INITIAL LICENSURE.**

**01. What Are the Requirements for Obtaining an Initial EMS Personnel License in Idaho?** Upon successful completion of an approved course, a candidate may apply for licensure to the EMS Bureau. Candidates must provide documentation that they meet the following requirements: ( )

**a.** EMR and EMT candidates must be sixteen (16) years old with parental or legal guardian consent or eighteen (18) years old without parental or legal guardian consent. AEMT and Paramedic candidates must be eighteen (18) years old. ( )

**b.** Candidates must declare each state or jurisdiction in which they have ever applied for, been denied for, or held EMS certification or licensure. ( )

**c.** Candidates must authorize the EMS authority in the other state(s) or jurisdictions to release the candidate's registration, licensure, and certification information to the Idaho EMS Bureau. ( )

**d.** Candidates must have current affiliation with a licensed EMS agency which functions at, or higher than, the level of licensure being sought by the candidate. Candidates must declare all organizations in which they are allowed to practice as licensed personnel. ( )

**e.** Candidates must have a valid state driver's license, an Idaho identification card issued by a county driver's license examining station, or an identification card issued by the Armed Forces of the United States. ( )

**f.** Candidates must successfully complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial or revocation of licensure. ( )

**g.** Candidates must successfully complete the standardized examination designated by the EMS Bureau. The examination type must correspond to the level of licensure being sought in accordance with the EMS Education and Examination Standards Manual in effect at the time of application. Successful completion of the standardized certification examination at or above the level of licensure being sought within the preceding thirty-six (36) months for EMR and EMT or twenty-four (24) months for AEMT and Paramedic will satisfy this requirement. ( )

**h.** See Section 302 of these rules for applicable fees. ( )

**02. How Long After Successfully Completing an EMS Training Course Is an Individual Eligible to Attempt the Certification Examination?** ( )

**a.** Candidates wishing to obtain an Idaho EMS license must successfully complete all components of the standardized certification examination within twenty-four (24) months of course completion. ( )

**b.** If all components of the standardized certification examination are not completed within twenty-four (24) months of course completion, the candidate must repeat the initial training course and all components of the certification examination in order to be eligible for EMS personnel licensure. ( )

**03. Where Can Instructions for EMS Personnel Licensure Application Be Found?** Application instructions may be obtained from the EMS Bureau (see Section 005 of these rules), or online at: <http://www.idahoems.org>. ( )

**306. -- 309. (RESERVED).**

**310. LICENSE DURATION.**

**01. How Are Initial EMS Personnel License Expiration Dates Determined?** All personnel licensure is for the following specified intervals of time. ( )

**a.** EMR and EMT personnel licenses expire on March 31 or September 30. Expiration dates for EMR and EMT initial licenses are set for not less than thirty-six (36) months and not more than forty-two (42) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. ( )

**b.** AEMT and Paramedic personnel licenses expire on March 31 or September 30. Expiration dates for AEMT and Paramedic initial licenses are set for not less than twenty-four (24) months and not more than thirty (30) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. ( )

**02. What Is the Duration of EMS Personnel Licenses Following Renewal?** ( )

**a.** EMR and EMT personnel licenses are issued for three (3) years. ( )

**b.** AEMT and paramedic personnel licenses are issued for two (2) years. ( )

**311. -- 314. (RESERVED).**

**315. LICENSE RENEWAL.**

**01. What Is Required to Renew an EMS Personnel License?** Licensed personnel must provide documentation that they meet the following requirements: ( )

**a.** Affiliation with a licensed EMS agency which functions at, or higher than, the level of licensure being sought. Documentation that the license holder is currently credentialed or undergoing credentialing by the affiliating EMS agency medical director will be submitted as assurance of affiliation for license renewal. ( )

**b.** Continuing education consistent with the license holder's level of licensure. All continuing education and skill proficiency requirements must be completed as described in Sections 317 through 335 of these rules. ( )

**i.** Renewal of an initial license that was based on successful certification examination. All continuing education and skill proficiency requirements must be completed between the date of successful completion of the examination(s) and expiration date of the initial license. ( )

ii. Renewal of an initial license that was issued based on recognition of certification or licensure from other jurisdictions. All continuing education and skill proficiency requirements must be completed between the effective and expiration dates of the license being renewed. ( )

iii. Renewal of successive licenses. All continuing education and skill proficiency requirements must be completed between the effective and expiration dates of the license being renewed. ( )

c. Declaration of any misdemeanor or felony adjudications during the licensure period. ( )

d. Documentation of license renewal requirements is due to the EMS Bureau prior to the license expiration date. Failure to submit a complete renewal application by the license expiration date renders the license invalid and the individual must not practice or represent himself as licensed personnel. ( )

e. See Section 302 of these rules for applicable fees. ( )

**02. Who Is Responsible for Submission of the Required EMS Personnel Application Documentation?** The EMS personnel license holder is responsible for meeting license renewal requirements and submitting completed license renewal documentation to the EMS Bureau before the expiration date of their current license. ( )

**03. How Soon Prior to the License Expiration Date May EMS Personnel Submit License Renewal Documents to the EMS Bureau?** Licensed EMS personnel may submit renewal documentation to the EMS Bureau up to six (6) months prior to the current license expiration date. ( )

**04. What Happens When an EMS Personnel License Expiration Date Falls on a Weekend, Holiday or Other Day That the EMS Bureau Is Closed?** When a license expiration date falls on a weekend or holiday or other day the EMS Bureau is closed, the EMS Bureau will accept applications until the close of the next regular business day following the weekend or holiday. ( )

**05. How Are License Renewal Applications Evaluated?** The EMS Bureau evaluates each renewal application for completeness and accuracy. Random renewal applications are selected for audit by the EMS Bureau. Renewal applications will also be audited when information declared on the application appears incomplete, inaccurate, or fraudulent. ( )

### **316. LAPSED LICENSE.**

**01. What Happens if the EMS Bureau Evaluation of the Renewal Application Is Not Completed Prior to the Personnel License Expiration Date?** A personnel license does not expire while under evaluation by the EMS Bureau, provided the license renewal candidate submitted the renewal application to the EMS Bureau prior to the application deadline. ( )

**02. What Happens if a License Renewal Candidate does not Provide Renewal Application Information as Requested?** The license of a candidate for license renewal who does not provide information as requested by the EMS Bureau within fourteen (14) days of receipt of the request will be considered lapsed. ( )

**03. What Happens if an Individual Fails to Submit Renewal Documentation Before the Expiration Date of the Personnel License?** Individuals who fail to submit a complete renewal application prior to the expiration date of their license cannot practice or represent themselves as licensed EMS personnel. ( )

**04. Can EMS Personnel License Expiration Dates Be Extended When an Individual Fails to Submit Renewal Documentation?** No grace periods or extensions to an expiration date may be granted. After the expiration date the EMS personnel license will no longer be valid. ( )

**05. Can a Lapsed EMS Personnel License Be Reinstated?** An individual may reinstate a lapsed EMS personnel license provided the required documentation is submitted to the EMS Bureau within twenty-four (24) months of the expiration date of the lapsed license. ( )

**06. What Is Required to Reinstate a Lapsed EMS Personnel License?** Individuals desiring to reinstate a lapsed personnel license must provide documentation that they meet the following requirements: ( )

**a.** Affiliation with a licensed EMS agency which functions at, or higher than, the level of licensure being sought. ( )

**b.** Continuing education consistent with the licensee holder's level of licensure. All continuing education must be completed as described in Subsection 316.07 of this rule. ( )

**c.** Reinstatement candidates must have a valid 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. ( )

**d.** Reinstatement candidates must successfully complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial or revocation of licensure. ( )

**e.** Reinstatement candidates must successfully complete the standardized examination designated by the EMS Bureau. The examination type must correspond to the level of licensure being sought in accordance with the EMS Education and Examination Standards Manual in effect at the time of application. Successful completion of the standardized certification examination at or above the level of licensure being sought within the preceding thirty-six (36) months for EMR and EMT or twenty-four (24) months for AEMT and Paramedic will satisfy this requirement. ( )

**f.** See Section 302 of these rules for applicable fees. ( )

**07. What Are the Continuing Education Requirements for Reinstatement of a Lapsed EMS Personnel License?** The reinstatement candidate must document the following continuing education: ( )

**a.** An adequate number of continuing education hours to meet the renewal requirements for the last valid licensure cycle; and ( )

**b.** Additional continuing education hours, in any combination of categories and venues, proportionate to the amount of time since the expiration date of the lapsed license as follows: ( )

**i.** EMR -- Three-quarters (3/4) of one (1) hour of continuing education per month of lapsed time. ( )

**ii.** EMT -- One and one-half (1 1/2) hours of continuing education per month of lapsed time. ( )

**iii.** AEMT -- Two and one-quarter (2 1/4) hours of continuing education per month of lapsed time. ( )

**iv.** Paramedic -- Three (3) hours of continuing education per month of lapsed time. ( )

**08. How Is the Expiration Date Determined for a Reinstated License?** The expiration date for a lapsed license that is being reinstated is determined as stated in Section 310 of these rules. ( )

**09. What Are the Requirements for Reinstatement of an EMS Personnel License Lapsed for More Than Twenty-Four Months?** An individual whose license has been expired for more than twenty-four (24) months must meet all initial licensure requirements to include attending and successfully completing an initial training program for the level of licensure being sought. ( )

**317. CONTINUING EDUCATION AND SKILLS PROFICIENCY.**

All continuing education and skills proficiency assurance must be consistent with the objectives of the initial course curriculum or be a logical progression of those objectives. Continuing education will be from the following

- categories and venues: ( )
- 01. Categories.** ( )
    - a. Pediatric assessment and management; ( )
    - b. Anatomy and physiology; ( )
    - c. Medical terminology; ( )
    - d. Pathophysiology; ( )
    - e. Life span development; ( )
    - f. Public health; ( )
    - g. Pharmacology; ( )
    - h. Airway management, respirations, and artificial ventilation; ( )
    - i. Assessment; ( )
    - j. Medicine; ( )
    - k. Shock and resuscitation; ( )
    - l. Trauma; ( )
    - m. Special patient populations; and ( )
    - n. EMS systems and operations. ( )
  - 02. Venues of Continuing Education.** ( )
    - a. Structured classroom sessions; ( )
    - b. Refresher programs that revisit the original curriculum and have an evaluation component; ( )
    - c. Nationally recognized courses; ( )
    - d. Regional and national conferences; ( )
    - e. Teaching topical material; ( )
    - f. Agency medical director approved self-study or directed study; ( )
    - g. Case reviews and grand rounds; ( )
    - h. Formal distance learning; ( )
    - i. Journal article review with an evaluation instrument; and ( )
    - j. Author or coauthor an EMS related article in a nationally recognized publication. ( )
  - 03. Are Continuing Education Records Subject to Audit?** The EMS Bureau reserves the right to audit continuing education records to verify that renewal requirements have been met. ( )



318. -- 319. (RESERVED).

**320. WHAT MUST AN EMR DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR LICENSE RENEWAL?**

A candidate for EMR license renewal must provide documentation demonstrating completion of the following: ( )

**01. Continuing Education.** Successful completion of twenty-four (24) hours of continuing education. ( )

**a.** Personnel licensed at the EMR level must complete at least two (2) hours in seven (7) of the categories listed in Subsection 317.01 of these rules during each licensure period. The remaining ten (10) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel licensed at the EMR level must include two (2) of the continuing education venues listed in Subsection 317.02 of these rules in each licensure period. ( )

**02. Skills Proficiency.** Demonstrated proficiency in the skills listed in the EMS Licensure Standards Manual. ( )

**03. Optional Module Skills Proficiency.** Demonstrated proficiency in each optional module skill the EMR is authorized to perform. ( )

321. -- 324. (RESERVED).

**325. WHAT MUST AN EMT DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR LICENSE RENEWAL?**

A candidate for EMT license renewal must provide documentation demonstrating completion of the following: ( )

**01. Continuing Education.** Successful completion of forty-eight (48) hours of continuing education. ( )

**a.** Personnel licensed at the EMT level must complete at least four (4) hours in pediatrics and four (4) hours in any of the eight (8) remaining categories listed in Subsection 317.01 of these rules during each licensure period. The additional twelve (12) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel licensed at the EMT level must include four (4) of the continuing education venues listed in Subsection 317.02 of these rules in each licensure period. ( )

**02. Skills Proficiency.** Demonstrated proficiency in the skills listed in the EMS Licensure Standards Manual. ( )

**03. Optional Module Skills Proficiency.** Demonstrated proficiency in each optional module skill the EMT is authorized to perform. ( )

326. -- 329. (RESERVED).

**330. WHAT MUST AN AEMT DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR LICENSE RENEWAL?**

A candidate for AEMT license renewal must provide documentation demonstrating completion of the following: ( )

**01. Continuing Education.** Successful completion of fifty-four (54) hours of continuing education. ( )

**a.** Personnel licensed at the AEMT level must complete at least four (4) hours in pediatrics and four (4) hours in nine (9) of the remaining categories listed in Subsection 317.01 of these rules during each licensure period. The additional fourteen (14) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel licensed at the AEMT level must include four (4) of the continuing education venues listed in Subsection 317.02 of these rules in each licensure period. ( )

**02. Skills Proficiency.** Demonstrated proficiency in the skills listed in the EMS Licensure Standards Manual. ( )

**03. Optional Module Skills Proficiency.** Demonstrated proficiency in each optional module skill the AEMT is authorized to perform. ( )

**331. -- 334. (RESERVED).**

**335. WHAT MUST A PARAMEDIC DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR LICENSE RENEWAL?**

A candidate for paramedic license renewal must provide documentation demonstrating completion of the following: ( )

**01. Continuing Education.** Successful completion of seventy-two (72) hours of continuing education. ( )

**a.** Personnel licensed at the Paramedic level must complete at least eight (8) hours in pediatrics and four (4) hours in eleven (11) of the remaining categories listed in Subsection 317.01 of these rules during each licensure period. The additional twenty (20) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel licensed at the Paramedic level must include six (6) of the continuing education venues listed in Subsection 317.02 of these rules in each licensure period. ( )

**02. Skills Proficiency.** Demonstrated proficiency in the skills listed in the EMS Licensure Standards Manual. ( )

**03. Optional Module Skills Proficiency.** Demonstrated proficiency in each optional module skill the paramedic is authorized to perform. ( )

**336. -- 339. (RESERVED).**

**340. RECOGNITION OF REGISTRATION, CERTIFICATION OR LICENSURE FROM OTHER JURISDICTIONS.**

**01. Can EMS Personnel Licensed in Other States Practice in Idaho?** Individuals possessing an EMS personnel license or certification from a state other than Idaho may not practice in Idaho without prior recognition or reciprocity granted by the EMS Bureau. ( )

**02. Can Personnel Licensure Candidates Trained in Other States Be Licensed in Idaho?** Individuals trained outside of Idaho must apply for and obtain an Idaho EMS license prior to advertising or providing EMS services in Idaho. ( )

**03. Can Individuals Who Have NREMT Registration but Do Not Possess an Idaho EMS Personnel License Practice in Idaho?** Individuals possessing only registration with the National Registry of Emergency Medical Technicians (NREMT) may not practice in Idaho without an Idaho EMS personnel license. ( )

**04. Can Individuals Licensed or Certified in Other States Practice for a Limited Time Under**

**Certain Circumstances?** Individuals who are currently licensed or certified by another State to practice EMS can apply to the EMS Bureau for limited recognition to practice in Idaho. Limited recognition does not grant an individual the ability to practice outside of the specifics approved on the request for limited recognition. ( )

**05. Can Individuals Certified or Licensed in Other States Having Interstate Compacts with Idaho Practice in Idaho?** Individuals certified or licensed in a state that has an interstate compact that allows reciprocal recognition of EMS personnel may practice in Idaho as licensed personnel as defined in the interstate compact. ( )

**06. How Can an Individual Who Has NREMT Registration or Is Licensed or Certified in Another State Obtain an Idaho EMS Personnel License?** Individuals possessing current NREMT registration or a current EMS certification or license from another state at or above the level of licensure they are seeking in Idaho are eligible for EMS personnel licensure in Idaho if they satisfy the following requirements: ( )

**a.** EMR and EMT candidates must be sixteen (16) years old with parental or legal guardian consent or eighteen (18) years old without parental or legal guardian consent. AEMT and Paramedic candidates must be eighteen (18) years old. ( )

**b.** Candidates must declare each state or jurisdiction in which they have ever applied for, been denied for, or held EMS certification or licensure. ( )

**c.** Candidates must authorize the EMS authority in the other state(s) or jurisdiction(s) to release the candidate's registration, licensure, and certification information to the Idaho EMS Bureau. ( )

**d.** Candidates must have current affiliation with a licensed EMS service which functions at, or higher than, the level of licensure being sought by the candidate. Candidates must declare all organizations in which they are allowed to practice as licensed personnel. ( )

**e.** Candidates must have a valid 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. ( )

**f.** Candidates must successfully complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial or revocation of licensure. ( )

**g.** Candidates must successfully complete the standardized examination designated by the EMS Bureau. The examination type must correspond to the level of licensure being sought in accordance with the EMS Education and Examination Standards Manual in effect at the time of application. Successful completion of the standardized certification examination at or above the level of licensure being sought within the preceding thirty-six (36) months for EMR and EMT or twenty-four (24) months for AEMT and Paramedic will satisfy this requirement. ( )

**h.** See Section 302 of these rules for applicable fees. ( )

**341. -- 344. (RESERVED).**

**345. CHANGES TO AN EXISTING LICENSE.**

**01. How May an Individual Surrender a Current EMS Personnel License?** An individual who possesses a current EMS personnel license may relinquish that license at any time by submitting a letter of intent, with his license, to the EMS Bureau. ( )

**02. Will Surrendering a License Prevent Future Investigative or Disciplinary Actions?** Surrender or expiration of a license may not prevent investigative or disciplinary action against the individual, which may take place thereafter. ( )

**03. How May an Individual Relinquish a Current EMS Personnel License for a License at a Lower Level?** An individual who possesses a current license may relinquish that license and receive a license at a lower level with the same expiration date as the original license. The individual must have current affiliation with a licensed EMS agency which functions at, or higher than, the level of licensure being sought. ( )

**04. Will Relinquishing a License Prevent Future Investigative or Disciplinary Actions?** Relinquishing a license may not prevent investigative or disciplinary action against the individual, which may take place thereafter. ( )

**05. What Are the Reporting Requirements for Changes in Status?** Licensed personnel will notify the EMS Bureau within thirty (30) days of a change in name, mailing address, telephone number or agency affiliation. ( )

**06. How Are Lost Personnel License Cards Replaced?** A license holder may request a duplicate wallet card by contacting the EMS Bureau. ( )

**07. Can a Personnel License Period Be Shortened?** The EMS Bureau will issue a license with a shortened licensure period upon the request of license holder. ( )

**346. MULTIPLE LICENSES -- CAN AN INDIVIDUAL MAINTAIN EMS PERSONNEL LICENSES AT MORE THAN ONE LEVEL?**  
An individual may hold Idaho EMS licenses at more than one (1) level, but can only renew one (1) EMS personnel license at one (1) level. ( )

**347. -- 349. (RESERVED).**

**350. CERTIFICATE OF ELIGIBILITY.**

**01. What Is a Certificate of Eligibility?** A Certificate of Eligibility documents that an individual is fully eligible for EMS personnel licensure once they obtain affiliation with an EMS agency. A certificate of eligibility is not a license to practice. ( )

**02. What Are the General Requirements for Obtaining a Certificate of Eligibility?** Individuals who have satisfied all requirements for EMS personnel licensure except for obtaining agency affiliation may apply to the EMS Bureau for a certificate of eligibility. The EMS Bureau will revoke a certificate of eligibility when the certificate holder is determined to no longer meet eligibility requirements. ( )

**351. INITIAL CERTIFICATE OF ELIGIBILITY.**

**01. What Are the Requirements for Obtaining an Initial Certificate of Eligibility in Idaho?** Upon successful completion of an approved course, a candidate may apply for certificate of eligibility to the EMS Bureau. In addition, candidates must satisfy the following requirements: ( )

**a.** EMR and EMT certificate of eligibility candidates must be sixteen (16) years old with parental or legal guardian consent or eighteen (18) years old without parental or legal guardian consent. AEMT and Paramedic certificate of eligibility candidates must be eighteen (18) years old. ( )

**b.** Certificate of eligibility candidates must declare each state or jurisdiction in which they have ever applied for, been denied for, or held EMS certification or licensure. ( )

**c.** Certificate of eligibility candidates must authorize the EMS authority in the other state(s) or jurisdictions to release the candidate's registration, licensure, and certification information to the Idaho EMS Bureau. ( )

**d.** Certificate of eligibility candidates must have a valid 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. ( )

e. Certificate of eligibility candidates must successfully complete a criminal background check in accordance with IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial or revocation of certificate of eligibility. ( )

f. Certificate of eligibility candidates at any level must successfully complete the standardized examination designated by the EMS Bureau. The examination type must correspond to the level of certificate of eligibility being sought in accordance with the EMS Education and Examination Standards Manual in effect at the time of application. Successful completion of the standardized certification examination at or above the level of certificate of eligibility being sought within the preceding thirty-six (36) months for EMR and EMT or twenty-four (24) months for AEMT and Paramedic will satisfy this requirement. ( )

**02. Where Can Instructions for EMS Certificate of Eligibility Application Be Found?** Application instructions may be obtained from the EMS Bureau (see Section 005 of these rules), or online at: <http://www.idahoems.org>. ( )

**352. CERTIFICATE OF ELIGIBILITY DURATION.**

**01. How Are Initial EMS Personnel Certificate of Eligibility Expiration Dates Determined?** All certificates of eligibility are for the following specified intervals of time. ( )

a. EMR and EMT certificates of eligibility expire on March 31 or September 30. Expiration dates for EMR and EMT certificates of eligibility are set for not less than thirty-six (36) months and not more than forty-two (42) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. ( )

b. AEMT and Paramedic certificates of eligibility expire on March 31 or September 30. Expiration dates for AEMT and Paramedic certificates of eligibility are set for not less than twenty-four (24) months and not more than thirty (30) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. ( )

**02. What Is the Duration of EMS Certificates of Eligibility Following Renewal?** ( )

a. EMR and EMT certificates of eligibility are issued for three (3) years. ( )

b. AEMT and Paramedic certificates of eligibility are issued for two (2) years. ( )

**353. -- 354. (RESERVED).**

**355. CERTIFICATE OF ELIGIBILITY RENEWAL.**

**01. What Is Required to Renew a Certificate of Eligibility?** Candidates for certificate of eligibility renewal must provide documentation that they meet the following requirements: ( )

a. Continuing education consistent with the level of the certificate of eligibility. All continuing education and skill proficiency requirements must be completed between the effective and expiration dates of the current certificate of eligibility. ( )

b. Documentation of certificate of eligibility renewal requirements is due to the EMS Bureau prior to the certificate of eligibility expiration date. ( )

c. Declaration of any misdemeanor or felony adjudications during the certificate of eligibility period. ( )

**02. How Soon May Candidates Submit Certificate of Eligibility Renewal Documents?** Candidates for certificate of eligibility renewal may submit renewal documentation to the EMS Bureau up to six (6) months prior to the current certificate of eligibility expiration date. ( )

**03. Is the Submission Deadline Extended When a Certificate of Eligibility Expiration Date Falls on a Day the EMS Bureau Is Closed?** When a certificate of eligibility expiration date falls on a weekend, holiday, or other day the EMS Bureau is closed, the EMS Bureau will accept applications until the close of the next regular business day following the weekend or holiday. ( )

**356. CERTIFICATE OF ELIGIBILITY CONTINUING EDUCATION AND PROFICIENCY ASSURANCE.**

**01. What Are the Continuing Education and Proficiency Assurance Requirements for Certificate of Eligibility Renewal?** All continuing education and proficiency assurance must be consistent with the objectives of the initial course curriculum or be a logical progression of those objectives. Continuing education will be from the following categories and venues: ( )

**02. Categories.** ( )

**a.** Pediatric assessment and management; ( )

**b.** Anatomy and physiology; ( )

**c.** Medical terminology; ( )

**d.** Pathophysiology; ( )

**e.** Life span development; ( )

**f.** Public health; ( )

**g.** Pharmacology; ( )

**h.** Airway management, respirations and artificial ventilation; ( )

**i.** Assessment; ( )

**j.** Medicine; ( )

**k.** Shock and resuscitation; ( )

**l.** Trauma; ( )

**m.** Special patient populations; and ( )

**n.** EMS systems and operations. ( )

**03. Venues of Continuing Education.** ( )

**a.** Structured classroom sessions; ( )

**b.** Refresher programs that revisit the original curriculum and have an evaluation component; ( )

**c.** Nationally recognized courses; ( )

**d.** Regional and national conferences; ( )

**e.** Teaching topical material; ( )

**f.** Self-study or directed study approved by the EMS Bureau; ( )

- g.** Case reviews and grand rounds; ( )
- h.** Formal distance learning; ( )
- i.** Journal article review with an evaluation instrument; and ( )
- j.** Author or coauthor an EMS related article in a nationally recognized publication. ( )

**04. Are Continuing Education Records Subject to Audit?** The EMS Bureau reserves the right to audit continuing education records to verify the renewal requirements have been met. ( )

**357. -- 359. (RESERVED).**

**360. WHAT MUST THE HOLDER OF AN EMR CERTIFICATE OF ELIGIBILITY DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR RENEWAL?**

A candidate for EMR certificate of eligibility renewal must provide documentation demonstrating completion of the following: ( )

**01. Examination.** Successful completion of the standardized examination designated by the EMS Bureau. ( )

**02. Continuing Education.** Successful completion of twenty-four (24) hours of continuing education in the following education categories and venues: ( )

**a.** Personnel applying for certificate of eligibility renewal at the EMR level must complete at least two (2) hours in seven (7) of the categories listed in Subsection 356.01 of these rules during each certificate of eligibility period. The remaining ten (10) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel applying for certificate of eligibility renewal at the EMR level must include two (2) of the continuing education venues listed in Subsection 356.02 of these rules in each certificate of eligibility period. ( )

**361. -- 364. (RESERVED).**

**365. WHAT MUST THE HOLDER OF AN EMT CERTIFICATE OF ELIGIBILITY DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR RENEWAL?**

A candidate for EMT certificate of eligibility renewal must provide documentation demonstrating completion of the following: ( )

**01. Examination.** Successful completion of the standardized examination designated by the EMS Bureau. ( )

**02. Continuing Education.** Successful completion of forty-eight (48) hours of continuing education in the following education categories and venues: ( )

**a.** Personnel applying for certificate of eligibility renewal at the EMT level must complete at least four (4) hours in pediatrics and four (4) hours in eight (8) of the remaining categories listed in Subsection 356.01 of these rules during each certificate of eligibility period. The remaining twelve (12) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel applying for certificate of eligibility renewal at the EMT level must include four (4) of the continuing education venues listed in Subsection 356.02 of these rules in each certificate of eligibility period. ( )

**366. -- 369. (RESERVED).**

**370. WHAT MUST THE HOLDER OF AN AEMT CERTIFICATE OF ELIGIBILITY DO TO MEET THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR RENEWAL?**

A candidate for AEMT certificate of eligibility renewal must provide documentation demonstrating completion of the following: ( )

**01. Examination.** Successful completion of the standardized examination designated by the EMS Bureau. ( )

**02. Continuing Education.** Successful completion of fifty-four (54) hours of continuing education in the following education categories and venues: ( )

**a.** Personnel applying for certificate of eligibility renewal at the AEMT level must complete at least four (4) hours in pediatrics and four (4) hours in nine (9) of the remaining categories listed in Subsection 356.01 of these rules during each certificate of eligibility period. The remaining fourteen (14) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel applying for certificate of eligibility renewal at the AEMT level must include four (4) of the continuing education venues listed in Subsection 356.02 of these rules in each certificate of eligibility period. ( )

**371. -- 374. (RESERVED).**

**375. WHAT ARE THE CONTINUING EDUCATION AND SKILLS PROFICIENCY REQUIREMENTS FOR RENEWAL OF A PARAMEDIC CERTIFICATE OF ELIGIBILITY?**

A candidate for paramedic certificate of eligibility renewal must provide documentation demonstrating completion of the following: ( )

**01. Examination.** Successful completion of the standardized examination designated by the EMS Bureau. ( )

**02. Continuing Education.** Successful completion of seventy-two (72) hours of continuing education in the following education categories and venues: ( )

**a.** Personnel applying for certificate of eligibility renewal at the Paramedic level must complete at least eight (8) hours in pediatrics and four (4) hours in eleven (11) of the remaining categories listed in Subsection 356.01 of these rules during each certificate of eligibility period. The remaining twenty (20) hours of continuing education can be from any single category or combination of categories. ( )

**b.** Personnel applying for certificate of eligibility renewal at the Paramedic level must include six (6) of the continuing education venues listed in Subsection 356.02 of these rules in each certificate of eligibility period. ( )

**376. -- 399. (RESERVED).**

**AGENCY LICENSURE**  
**(Sections 400 through 499)**

**400. AGENCY LICENSE REQUIRED.**

**01. Who Must Be Licensed as an EMS Agency in Idaho?** Any entity that advertises or provides ambulance, air medical or nontransport emergency medical services in Idaho must be licensed as an EMS agency as defined in these rules. ( )

**02. What Are the Conditions Under Which an EMS Agency License Is Not Required to Provide Services?** An organization that is licensed without restriction to provide emergency medical services in another state



and has not been restricted from operating in Idaho by the EMS Bureau may provide emergency medical services in Idaho within the limits of its license without an Idaho EMS license only when the organization: ( )

a. Holds an EMS license in another state where an interstate compact specific to EMS agency licensure with Idaho is in effect or; ( )

b. Is responding to a natural or manmade disaster declared by federal, state, or local officials and the services of the organization are requested by an entity of local or state government in Idaho or; ( )

c. Transfers a patient from an out of state medical facility to a medical facility in Idaho. The organization may also return the patient to the point of origin or; ( )

d. Transfers a patient from an out of state medical facility through Idaho or; ( )

e. Transports a patient from an out of state emergency scene into Idaho to a medical facility or rendezvous with another ambulance. ( )

**03. Under What Conditions Would the EMS Bureau Restrict an EMS Organization Otherwise Eligible to Respond in Idaho?** EMS organizations licensed in other states that desire to respond in Idaho will be subject to the same administrative license actions as Idaho licensed agencies. ( )

**04. What Services Does a License Allow an Agency to Perform?** Except as provided by a planned deployment agreement as described in Section 429 of these rules, an agency can provide only those services that are within the agency's service type, level of clinical sophistication, and operational declarations stated on the most recent license(s) issued by the EMS Bureau. ( )

**401. WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR AGENCY LICENSURE?**

An entity is eligible for agency licensure upon demonstrated compliance with the requirements set forth in Idaho statute, administrative code, and the EMS Licensure Standards Manual in effect at the time the EMS Bureau received the application. ( )

**402. GROUND EMS AGENCY LICENSING MODEL.**

**01. How Are Ground EMS Agencies Licensed?** Eligible agencies in Idaho will be licensed using a descriptive model which bases the licensure of the agency on the declarations made in the most recent approved initial or renewal application. An agency may only provide those EMS services described in the most recent approved application on which an agency license was granted by the EMS Bureau. ( )

**02. What Are the Ground Agency License Categories in Idaho?** The EMS Bureau licenses ground EMS agencies based on the agency's service type, level of clinical sophistication, and operational declarations. ( )

**03. What Are the Service Types Under Which the EMS Bureau Licenses Ground EMS Agencies?** Ground EMS agencies are licensed as either an ambulance or non transport service, depending on the agency's declared capability(ies). ( )

**04. Can a Nontransport Agency Move Patients by Vehicle?** A nontransport agency is not the agency that is intended for patient transport. A nontransport agency can move a patient by vehicle only when: ( )

a. The responding ambulance or air ambulance agency(ies) cannot access the emergency scene; and ( )

b. Patient care is provided by EMS personnel licensed at the EMT level, or higher unless Subsection 402.04.c. applies: ( )

c. Movement of the patient is a short distance to rendezvous with an ambulance or air ambulance; ( )

- i. The EMS personnel must be in active communication with the ambulance or air ambulance with which they will rendezvous; and ( )
- ii. The patient care integration agreement under which the non-transport agency operates must address and enable patient movement by a licensed EMR. ( )
- d. A non-transport agency must report all patient movement events to the EMS Bureau within thirty (30) days of the event. ( )

**403. WHAT ARE THE CLINICAL LEVELS UNDER WHICH THE EMS BUREAU LICENSES GROUND EMS AGENCIES?**

Ground EMS agencies are licensed at one (1) or more of the following clinical sophistication levels depending on the agency's highest level of licensed personnel and life support services advertised or offered. ( )

- 01. Nontransport.** ( )
  - a. EMR/BLS; ( )
  - b. EMT/BLS; ( )
  - c. AEMT/ILS; and ( )
  - d. Paramedic/ALS. ( )
- 02. Ambulance.** ( )
  - a. EMT/BLS; ( )
  - b. AEMT/ILS; and ( )
  - c. Paramedic/ALS. ( )

**404. WHAT ARE THE OPERATIONAL DECLARATION(S) UNDER WHICH THE EMS BUREAU LICENSES GROUND EMS AGENCIES?**

Agencies will be licensed with one (1) or more of the following operational declarations depending on the services that the agency advertises or offers. Service levels, geographic coverage areas, and resources may differ between the operational declarations under which an agency is licensed. ( )

- 01. Prehospital.** The prehospital operational declaration is available to EMT/BLS, AEMT/ILS and Paramedic/ALS ambulance agencies with primary responsibility for responding to calls for EMS within their designated geographic coverage area. ( )
- 02. Prehospital Support.** The prehospital support operational declaration is available to EMT/BLS, AEMT/ILS, and Paramedic/ALS ambulance agencies that provide support under agreement to a prehospital agency having primary responsibility for responding to calls for EMS within a designated geographic coverage area. ( )
- 03. Prehospital Quick Response.** The prehospital quick response operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS nontransport agencies that provide EMS personnel and equipment within their designated geographic coverage area. ( )
- 04. Transfer.** The transfer operational declaration is available to EMT/BLS, AEMT/ILS, and Paramedic/ALS ambulance agencies that provide EMS personnel and equipment for the transportation of patients from one (1) medical care facility to another within their designated geographic coverage area. ( )
- 05. Critical Care.** The critical care agency provides continuous care, monitoring, medication, or procedures requiring knowledge or skills not contained within the Paramedic scope of practice as defined in IDAPA ( )

16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission.” The critical care operational declaration is available to Paramedic/ALS ambulance agencies that provide EMS personnel and equipment for the transportation of patients from an emergency scene or from one (1) medical care facility to another within their designated geographic coverage area. ( )

**06. Standby.** The standby operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment to be staged at prearranged events within their designated geographic coverage area. ( )

**07. Limited Duration.** The limited duration operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment for a finite period of time with no expectation of license renewal. ( )

**08. Seasonal.** The seasonal operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment only during a period of time that corresponds to the seasonal activity the agency supports. ( )

**09. Industrial.** The industrial operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment only during those periods of time when potential patients are present in the setting the agency supports. The industrial agency provides EMS personnel and equipment intended to treat patients who are employees or contractors of the license holder. The agency with an industrial declaration is not intended to treat members of the general public. ( )

**10. Non-Public.** The non-public operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment intended to treat patients who are employed or contracted by the license holder. The non-public operational declaration is not available to an agency that has any operational declarations other than industrial, limited duration, or seasonal. The agency with a non-public operational declaration is not intended to treat members of the general public. The non-public agency must maintain written plans for patient treatment and transportation. ( )

**11. Rescue.** The rescue operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment to locate endangered persons at an emergency incident, treat the injured, and remove those persons from danger. ( )

**12. Extrication.** The extrication operational declaration is available to EMR/BLS, EMT/BLS, AEMT/ILS, and Paramedic/ALS agencies that provide EMS personnel and equipment intended to remove and support trapped persons from a vehicle or machinery. ( )

**405. WHAT ARE THE ENDORSEMENTS(S) UNDER WHICH THE EMS BUREAU RECOGNIZES UNLICENSED ORGANIZATIONS?**

Organizations that do not meet the EMS personnel requirements for agency licensure that desire to provide patient care operations at an emergency scene will be recognized by the EMS Bureau as an Extrication or Emergency Response Endorsement organization. ( )

**01. Extrication Endorsement.** The extrication endorsement is available to organizations that provide personnel and equipment intended to remove trapped persons from a vehicle or machinery. Extrication endorsement organizations do not meet the EMS personnel requirements for agency licensure. ( )

**a.** Written agreement(s) with the prehospital agency(ies) in the extrication organization’s designated geographic coverage area must exist. Organizations that provide only extrication services must be endorsed by the prehospital or prehospital quick response agency(ies) with whom they operate at accident scenes. The prehospital or prehospital quick response agency(ies) endorsing the extrication organization must submit a copy of the endorsement signed by an official from the extrication endorsement agency and the prehospital or prehospital quick response agency(ies) to the EMS Bureau. ( )

**b.** Licensed personnel representing the agency with primary responsibility for the geographic coverage area must be present during extrication operations to provide patient care. Licensed personnel operating

under a planned deployment agreement with the prehospital or prehospital quick response agency will satisfy this requirement. ( )

c. Only operations to address scene safety and immediate life threats may take place prior to the arrival of licensed personnel representing an agency. ( )

**02. Emergency Response Endorsement.** The emergency response endorsement is available to organizations that provide personnel and equipment intended to stabilize injured persons at an emergency scene. Emergency Response Endorsement organizations do not meet the EMS personnel requirements for agency licensure. ( )

a. Written agreement(s) with the prehospital agency(ies) in the emergency response endorsement organization's designated geographic coverage area must exist. Organizations that provide only emergency response services must be endorsed by the prehospital or prehospital quick response agency(ies) with whom they operate at emergency scenes. The prehospital or prehospital quick response agency(ies) endorsing the emergency response organization must submit a copy of the endorsement signed by an official from the emergency response agency and the prehospital or prehospital quick response agency(ies) to the EMS Bureau. ( )

b. Licensed personnel representing an agency must be present whenever patient care requiring licensed personnel as described in Section 011 of these rules is provided. Licensed personnel operating under a planned deployment agreement with the prehospital or prehospital quick response agency will satisfy this requirement. ( )

c. Only operations to address scene safety and immediate life threats may take place prior to the arrival of licensed personnel representing an agency. ( )

**406. AIR MEDICAL AGENCY LICENSING MODEL.**

**01. How Are Air Medical Agencies Licensed?** Eligible agencies in Idaho will be licensed using a descriptive model which bases the licensure of the agency on the declarations made in the most recent approved initial or renewal application. An agency may only provide those EMS services described in the most recent approved initial or renewal application and agency license. ( )

**02. What Are the Air Medical Agency License Categories in Idaho?** The EMS Bureau licenses air medical EMS agencies based on the agency's service type, level of clinical sophistication, and operational declarations. ( )

**03. What Are the Service Types Under Which the EMS Bureau Licenses Agencies That Provide Air Medical Agencies?** Air medical EMS agencies are licensed as either Air medical I or Air medical II depending on the agency's declared capability(ies). ( )

**04. If an Air Medical Agency Also Provides Ground-Based EMS Services, How Are They Licensed?** An agency that provides both air medical and ground-based EMS services must be licensed as and meet all the requirements of an air medical and either an ambulance or nontransport agency, depending on the ground EMS services provided. ( )

**05. What Are the Clinical Levels Under Which the EMS Bureau Licenses Air Medical Agencies?** Air medical agencies are licensed at one (1) or more of the following clinical sophistication levels depending on the agency's highest level of life support services advertised or offered: ( )

- a. Air medical I-Paramedic/ALS or; ( )
- b. Air medical II; ( )
  - i. EMT/BLS; ( )
  - ii. AEMT/ILS; ( )

- iii. Paramedic/ALS. ( )

**407. WHAT ARE THE OPERATIONAL DECLARATION(S) UNDER WHICH THE EMS BUREAU LICENSES AIR MEDICAL AGENCIES?**

Air medical agencies will be licensed with one (1) or more of the following operational declarations depending on the services that the agency advertises or offers: ( )

**01. Air Medical Transport.** The air medical transport operational declaration is available to air medical agencies that provide transportation of patients by air ambulance from a rendezvous or emergency scene to a medical care facility within their designated geographic coverage area. ( )

**02. Air Medical Transfer.** The air medical transfer operational declaration is available to air medical agencies that provide transportation of patients by air ambulance from one (1) medical care facility to another within their designated geographic coverage area. The air medical transfer operational declaration is available to all air medical I agencies. The air medical transfer operational declaration is available to air medical II agencies only when a licensed professional nurse is present in the patient compartment of the air ambulance. ( )

**03. Air Medical Critical Care.** The critical care air medical agency provides continuous care, monitoring, medication or procedures requiring knowledge or skills not contained within the Paramedic scope of practice as defined in IDAPA 16.02.02, "Rules of the Idaho EMS Physician Commission." The air medical critical care operational declaration is available only to air medical I agencies that provide transportation of patients by air ambulance from a rendezvous or emergency scene or one (1) medical care facility to another within their designated geographic coverage area. ( )

**408. WHAT ADDITIONAL POLICY REQUIREMENTS MUST AN AIR MEDICAL AGENCY MEET?**  
An air medical agency must submit current copies of the following policies to the EMS Bureau: ( )

**01. Non-Discrimination Policy.** Air medical agencies must have written non-discrimination policies to ensure that requests for service are not evaluated based on the patient's ability to pay. ( )

**02. Weather Turn Down Policy.** Air medical agencies must immediately notify other air medical agencies in common geographical areas and the Idaho EMS State Communications Center about any requests for services declined due to weather. Notification to other agencies of flights declined to weather must be documented. ( )

**03. Patient Destination Procedure.** Air medical agencies must have patient destination procedures. ( )

**04. Safety Program Policies.** Air medical agencies must submit to the EMS Bureau written safety program policies that include: ( )

- a. Designation of a safety officer. ( )
- b. Designation of a multi-disciplinary safety committee that includes: pilot, medical personnel, mechanic, communication specialist, and administrative staff. ( )
- c. Post Accident Incident Plan. ( )
- d. Fitness for Duty Requirements. ( )
- e. Annual Air Medical Resource Management Training. ( )
- f. Procedures for allowing any crewmember to decline or abort a flight. ( )
- g. Necessary personal equipment, apparel, and survival gear appropriate to the flight environment. Helmets must be required for EMS crew and pilot during helicopter operations. ( )

**h.** A procedure to review all flights for safety concerns and report the concerns to the safety committee. ( )

**409. WHAT ADDITIONAL EQUIPMENT REQUIREMENTS MUST AN AIR MEDICAL AGENCY MEET?**

An air medical agency must have aircraft and equipment configuration that does not compromise the ability to provide appropriate care or prevent providers from safely performing emergency procedures if necessary while in flight. ( )

**410. WHAT ADDITIONAL TRAINING REQUIREMENTS MUST AN AIR MEDICAL AGENCY MEET?**

An air medical agency must make available for review written documentation of initial and annual air medical specific recurrent training for air ambulance personnel. Education content must include: altitude physiology, stressors of flight, air medical resource management, survival, navigation, and aviation safety issues including emergency procedures. ( )

**411. -- 414. (RESERVED).**

**415. PERSONNEL REQUIREMENTS FOR LICENSED EMS AGENCIES - GENERAL.**

**01. What Are the Licensed Personnel Requirements for Agency Licensure?** An agency must demonstrate a sufficient number of affiliated personnel licensed at or above the agency's clinical level to ensure availability of appropriately licensed and credentialed personnel corresponding to the agency's anticipated call volume. ( )

**02. What Level of Licensed Personnel Must an Agency Have Available?** The agency must ensure availability of personnel licensed and credentialed at or above the agency's highest level of clinical sophistication for the entire anticipated call volume for each of the agency's operational declarations. An agency dispatched by a public safety answering point (PSAP) that uses an emergency medical dispatch (EMD) process to determine the clinical needs of the patient must ensure availability of personnel licensed and credentialed at levels of clinical sophistication appropriate to the anticipated call volume for each of the levels of clinical sophistication the agency provides. ( )

**03. What Are the Personnel Requirements Specific to Ambulance Agencies?** An ambulance agency must ensure that patient care is provided by EMS personnel licensed at the EMT level, or higher. ( )

**04. What Are the Personnel Requirements Specific to Prehospital ALS Agencies?** A licensed Paramedic must be present whenever prehospital ALS services are provided. ( )

**05. What Is the Medical Supervision Requirement for Licensed EMS Agencies?** An agency must designate a physician as the agency medical director who will be responsible for the supervision of medical activities as defined by IDAPA 16.02.02, "Rules of the Idaho EMS Physician Commission." ( )

**06. What Additional Personnel Requirements Exist for Air Medical Agencies?** In addition to meeting the requirements stated above, air medical agencies must also demonstrate the following: ( )

**a.** There must be sufficient air medical personnel on each air ambulance response to provide adequate patient care appropriate to the mission. ( )

**b.** Air medical I agencies must ensure that each flight includes a minimum of one (1) licensed professional nurse and one (1) Paramedic. ( )

**c.** Air medical II agencies must ensure that each flight includes a minimum of two (2) licensed patient care providers with one (1) patient care provider being licensed at or above the agency's highest clinical level of licensure and one (1) of the two (2) required patient care providers on each transfer flight is a licensed professional nurse. ( )

**d.** The medical director for an air medical agency must meet all of the requirements listed in IDAPA 16.02.02, "Rules of the Idaho EMS Physician Commission" as well as actively practice medicine in the response area served by the agency and have training and experience in emergency medicine or critical care and have training in air ambulance operations that includes flight physiology, stressors of flight, and air medical resource management. ( )

**416. PERSONNEL REQUIREMENTS FOR LICENSED EMS AGENCIES – PLANNED DEPLOYMENT.**

**01. Care Provided by Personnel Licensed at a Clinical Level Higher Than That of an EMS Agency.** Personnel licensed at a clinical level that exceeds that of an EMS agency can provide patient care that is within the scope of practice of the licensed personnel only in those cases when a planned deployment agreement exists as described in Section 429 of these rules. ( )

**02. Care Provided by Licensed Personnel from an ILS or ALS Agency in an Agency Licensed at a Lower Clinical Level.** Licensed personnel from an ILS or ALS agency can provide their credentialed level of care in an agency licensed at a lower level of clinical sophistication when a planned deployment agreement exists that addresses the sharing of resources between the two agencies. The care provided must be in accordance with the planned deployment agreement. ( )

**03. Care Provided by Personnel Licensed at a Clinical Level Higher Than That of a Responding EMS Agency While Outside of Their Agency's Geographic Coverage Area.** Personnel licensed at a clinical level that exceeds that of a responding EMS agency, who are responding while outside of their agency's geographic coverage, area can provide patient care that is within the scope of practice of the licensed personnel only in those cases when a planned deployment agreement exists as described in Section 429 of these rules. ( )

**04. When Can a BLS or ILS Agency Provide Prehospital ALS Services?** A BLS or ILS agency may provide ALS prehospital services when a Paramedic is present under a planned deployment agreement as described in Section 429 of these rules. ( )

**417. PERSONNEL REQUIREMENTS – AMBULANCE-BASED CLINICIANS.**

**01. Who Must Be Certified as Ambulance-Based Clinicians in Idaho?** Except as provided in Subsections 418.01 and 418.02 of these rules, any Licensed Professional Nurse, Advanced Practice Professional Nurse, or Physician Assistant, as defined in Subsection 010.10 of these rules, who, in affiliation with a licensed EMS agency, advertises or provides out-of-hospital patient care must maintain a current EMS Ambulance-Based Clinician certificate issued by the EMS Bureau. ( )

**02. What Is Required to Obtain an Ambulance-Based Clinician Certificate?** An individual desiring an Ambulance-Based Clinician certificate must provide the following information to the EMS Bureau on an application provided by the EMS Bureau: ( )

**a.** Documentation of a current, unrestricted license to practice issued by the Board of Medicine or Board of Nursing; and ( )

**b.** Documentation of completion of an ambulance-based clinician course that follows the curriculum approved by the state health officer; or ( )

**c.** Documentation of completion of an EMT course that follows the curriculum approved by the state health officer. ( )

**03. What Is Required to Maintain an Ambulance-Based Clinician Certificate?** An Ambulance-Based Clinician certificate is valid for as long as the holder of the certificate is continuously licensed by his respective licensing board. ( )

**04. May an Ambulance-Based Clinician Certificate Be Revoked?** The EMS Bureau may revoke an Ambulance-Based Clinician certificate based on the procedures for administrative license actions as stated in

Sections 600 through 655 of these rules. ( )

**05. When Must a Currently Practicing Ambulance-Based Clinician Obtain an Ambulance-Based Clinician Certificate?** In order to continue to practice as Ambulance-Based Clinicians, all currently practicing Ambulance-Based Clinicians must obtain an EMS Bureau-issued Ambulance-Based Clinician certificate by July 1, 2011. ( )

**06. Can EMR/BLS, EMT/BLS, and AEMT/ILS Agencies Use Ambulance-Based Clinicians to Meet the Requirements for Licensed Personnel?** An EMR/BLS, EMT/BLS or AEMT/ILS agency may use Ambulance-Based Clinicians to meet the licensed personnel requirements of agency licensure. ( )

**07. What Are the Agency Responsibilities for Verification of Ambulance-Based Clinicians?** The agency must verify that all Ambulance-Based Clinicians possess a current Ambulance-Based Clinician certification issued by the EMS Bureau. The agency must ensure that any Ambulance-Based Clinicians meet additional requirements of the corresponding licensing board. ( )

**418. PERSONNEL REQUIREMENTS – PHYSICIAN ASSISTANTS, LICENSED PROFESSIONAL NURSES, AND ADVANCED PRACTICE PROFESSIONAL NURSES WHO ARE NOT CERTIFIED AS AMBULANCE-BASED CLINICIANS.**

**01. Can a Physician Assistant, Licensed Professional Nurse, or Advanced Practice Professional Nurse Be the Only Patient Care Provider During a Transport or Transfer?** The agency may use a Physician Assistant, Licensed Professional Nurse, or Advanced Practice Professional Nurse as the only patient care provider during a transport or transfer only if the Physician Assistant, Licensed Professional Nurse, or Advanced Practice Professional Nurse is certified by the EMS Bureau as an Ambulance-Based Clinician. ( )

**02. Can an AEMT/ILS Ambulance Agency Provide ILS Services When a Physician Assistant, Licensed Professional Nurse, or Advanced Practice Professional Nurse Is the Patient Care Provider During a Transport or Transfer?** An AEMT/ILS ambulance agency may use a Physician Assistant, Licensed Professional Nurse, or Advanced Practice Professional Nurse as the crew member providing ILS patient services if the Physician Assistant, Licensed Professional Nurse, or Advanced Practice Professional Nurse is accompanied in the patient compartment of the transport vehicle by a licensed EMT. ( )

**419. (RESERVED).**

**420. VEHICLE REQUIREMENTS.**

**01. Do All Licensed Agencies Require Vehicles?** All EMS agency types do not require vehicles. Vehicle numbers and types for agency licensure are based on the deployment needs of the agency as declared on the most recent agency licensure application. ( )

**02. What Are the Vehicle Requirements for Agency Licensure?** An agency with a deployment pattern that requires vehicles must meet the following requirements: ( )

**a.** The agency must possess a sufficient quantity of EMS response vehicles to ensure agency personnel can respond to the anticipated call volume of the agency. ( )

**b.** All EMS response vehicles must be in sound, safe working condition. EMS response vehicle safety inspection requirements are: ( )

**i.** All newly acquired used EMS response vehicles must successfully pass a safety inspection conducted by an inspector authorized to perform Department of Transportation vehicle safety inspections prior to being put into service. ( )

**ii.** All EMS response vehicles involved in a vehicle crash must successfully pass a safety inspection conducted by an inspector authorized to perform Department of Transportation vehicle safety inspections prior to being put back into service. ( )



iii. Vehicle safety inspections must verify conformity to the fuel system, exhaust, wheels and tires, lights, windshield wipers, steering, suspension, brakes, and frame and electrical system elements of a Department of Transportation vehicle safety inspection as defined in Appendix G to Subchapter B of Chapter III at 49 CFR Section 396.17. ( )

iv. Records of vehicle safety inspections will be made available for inspection upon request. ( )

c. All EMS response vehicles must meet minimum Idaho motor vehicle license and insurance requirements. ( )

d. All EMS response vehicles must be appropriately configured according to the declared capability(ies) on the most recent agency license. EMS response vehicles must meet the minimum requirements for applicable federal, industry, or trade specifications and standards for ambulance or air ambulance vehicles as appropriate. Uniquely configured EMS response vehicles must be approved by the EMS Bureau prior to being put into service. ( )

e. EMS response vehicles must be stationed or staged within the agency's declared geographic coverage area in a manner that allows agency personnel to effectively respond to the anticipated volume and distribution of requests for service. ( )

f. Newly acquired EMS response vehicles must be inspected by the EMS Bureau before being put into service except when the newly acquired vehicle is a replacement vehicle and all equipment and supplies are transferred from the vehicle being taken out of service. ( )

**03. Can Nontransport Agencies Use Ambulance Vehicles?** Licensed nontransport agencies may use ambulance vehicles only as nontransport vehicles. ( )

**421. -- 424. (RESERVED).**

**425. EQUIPMENT REQUIREMENTS: WHAT ARE THE EQUIPMENT REQUIREMENTS FOR AGENCY LICENSURE?**

An agency must be equipped with the following: ( )

**01. Equipment and Supplies.** Medical care supplies and devices as specified in the agency minimum equipment list appropriate to the agency's license level, type, and operational declarations. Exceptions to the minimum equipment requirements may be granted by the EMS Bureau upon inspection, when the circumstances and available alternatives ensure that appropriate patient care will be provided for all foreseeable incidents. ( )

**02. Safety and Personal Protective Equipment.** Safety and personal protective equipment for licensed personnel and other vehicle occupants as specified in the minimum equipment list, including body substance isolation and protection from exposure to communicable diseases and pathogens. ( )

**426. COMMUNICATION AND DISPATCH REQUIREMENTS.**

**01. What Are the Communication Equipment Requirements for Agency Licensure?** In order to obtain or maintain eligibility for agency licensure, an agency must meet the following requirements: ( )

a. Air medical agencies must have mobile radios of sufficient quantities to ensure that every aircraft and ground crew has the ability to communicate on 155.340 MHZ and 155.280 MHZ frequencies with encoding capabilities to allow access to the Idaho EMS radio communications system. ( )

b. Ambulance agencies must have mobile radios of sufficient quantities to ensure that every vehicle crew has the ability to communicate on 155.340 MHZ and 155.280 MHZ frequencies with encoding capabilities to allow access to the Idaho EMS radio communications system. ( )

c. Nontransport agencies must have mobile or portable radios of sufficient quantities to ensure that

agency personnel at an emergency scene have the ability to communicate on 155.340 MHz and 155.280 MHz frequencies with encoding capabilities to allow access to the Idaho EMS radio communications system. ( )

**02. What Are the Dispatch Requirements for Agency Licensure?** An agency must have a twenty-four (24) hour dispatch arrangement. ( )

**427. RESPONSE REQUIREMENTS AND WAIVERS TO RESPONSE REQUIREMENTS FOR EMS AGENCIES.**

**01. What Are the Response Requirements for Agency Licensure?** Unless a waiver exists as described below an agency must respond to calls within the agency's declared geographic coverage area on a twenty-four (24) hour a day basis. ( )

**02. Under What Circumstances May a Nontransport Agency Obtain a Waiver to the Twenty-Four Hour Response Requirement?** The controlling authority of a nontransport agency may petition the EMS Bureau for waiver of the twenty-four (24) hour response requirement if one (1) or more of the following conditions exist: ( )

**a.** The community, setting, industrial site, or event being served by the agency is not populated on a twenty-four (24) hour basis. ( )

**b.** The community, setting, industrial site, or event being served by the agency does not exist on a three-hundred sixty-five (365) day per year basis. ( )

**c.** The provision of twenty-four (24) hour response would cause an undue hardship on the community being served by the agency. ( )

**d.** The provision of twenty-four (24) hour response would cause abandonment of the service provided by the agency. ( )

**03. How Can a Nontransport Agency Petition the EMS Bureau for a Waiver of the Twenty-Four Hour Response Requirement?** ( )

**a.** The controlling authority of an existing nontransport agency desiring a waiver of the twenty-four (24) hour response requirement will submit an application for waiver to the EMS Bureau. ( )

**b.** The controlling authority of an applicant nontransport agency desiring a waiver of the twenty-four (24) hour response requirement will declare the request for waiver on the initial application for agency licensure to the EMS Bureau. ( )

**04. What Is Required to Renew a Waiver of the Twenty-Four Hour Response Requirement for a Nontransport Agency?** The controlling authority of a nontransport agency desiring to renew a waiver of the twenty-four (24) hour response requirement will declare the request for waiver on the renewal application for agency licensure to the EMS Bureau. ( )

**05. What Is Required for a Waiver of the Twenty-Four Hour Response Requirement for a Nontransport Agency with a Response Area Populated Less Than Twenty-Four Hours Per Day or Less Than Three-Hundred Sixty-Five Days Per Year?** A nontransport agency with a service area with less than twenty-four (24) hour population or fewer than three-hundred sixty-five (365) day per year population must include the following information on the petition for waiver of the twenty-four (24) hour response requirement: ( )

**a.** A description of the hours or days the geographic area is populated. ( )

**b.** A staffing and deployment plan that ensures EMS response availability for the anticipated call volume during the hours or days of operation. ( )

**06. What Is Required for a Waiver of the Twenty-Four Hour Response Requirement for a**

**Nontransport Agency When the Provision of Twenty-Four Hour Response Would Cause an Undue Hardship on the Community Being Served by the Agency or Abandonment of Service?** A nontransport agency must include the following information on the petition for waiver of the twenty-four (24) hour response requirement when the provision of twenty-four (24) hour response would cause an undue hardship on the community being served by the agency or abandonment of service: ( )

- a. A description of the applicant's operational limitations to provide twenty-four (24) hour response. ( )
- b. A description of the initiatives underway or planned to provide twenty-four (24) hour response. ( )
- c. A staffing and deployment plan identifying the agency's response capabilities and back up plans for services to the community when the agency is unavailable. ( )
- d. A description of the collaboration that exists with all other EMS agencies providing services within the petitioner's geographic response area. ( )
- e. An endorsement recommending waiver from the city(ies) or county(ies) within the agency's geographic response area affected by the petitioner's inability to provide twenty-four (24) hour response. ( )

**07. Under What Circumstances May an Ambulance Agency Obtain a Waiver to the Twenty-Four Hour Response Requirement?** The controlling authority of an existing ambulance agency desiring a waiver of the twenty-four (24) hour response requirement may submit a petition for waiver to the Board only when the provision of twenty-four (24) hour response would cause an undue hardship on the community being served by the agency or abandonment of service. ( )

**08. What Is Required for Waiver of the Twenty-Four Hour Response Requirement for an Ambulance Agency When the Provision of Twenty-Four Hour Response Would Cause an Undue Hardship on the Community Being Served by the Agency or Abandonment of Service?** An ambulance agency must include the following information on the petition for waiver of the twenty-four (24) hour response: ( )

- a. A description of the petitioner's operational limitations to provide twenty-four (24) hour response. ( )
- b. A description of the initiatives underway or planned to provide twenty-four (24) hour response. ( )
- c. A staffing and deployment plan identifying the agency's response capabilities and back-up plans for services to the community when the agency is unavailable. ( )
- d. A description of the collaboration that exists with all other EMS agencies providing services within the petitioner's geographic response area. ( )
- e. An endorsement recommending waiver from the city(ies) or county(ies) within the agency's geographic response area affected by the petitioner's inability to provide twenty-four (24) hour response. ( )

**428. MEDICAL SUPERVISION PLAN REQUIREMENTS – WHAT ARE THE MEDICAL SUPERVISION PLAN REQUIREMENTS FOR AN AGENCY?**

Agencies must comply with the medical supervision plan requirements as stated in IDAPA 16.02.02, "Rules of the Idaho EMS Physician Commission." ( )

**429. WHAT AGREEMENTS MUST AN AGENCY HAVE IN PLACE?** An agency must meet the following requirements: ( )

- 01. Patient Care Integration Agreement.** ( )

**a.** Prehospital, prehospital support, and prehospital quick response agencies that share common geographic coverage areas must develop cooperative written agreements that address integration of patient care between the agencies. A prehospital quick response agency may not provide a level of care that exceeds the level of clinical sophistication of the responding prehospital agency unless the integration plan specifically addresses the continuation of the higher level of care throughout the patient transport. ( )

**b.** Agencies with operational declarations for standby, limited duration, seasonal, industrial, rescue, and extrication must develop a cooperative written agreement with the prehospital agency(ies) that will provide patient transportation. The agreement must address integration of patient care between the agencies. These agencies may not provide a level of care that exceeds the level of clinical sophistication of the responding prehospital agency unless the integration plan specifically addresses the continuation of the higher level of care throughout the patient transport. No written agreement is required in those cases where these agencies will provide the prehospital transport services. ( )

**c.** Prehospital agencies and endorsement organizations that share common geographic coverage areas must develop cooperative written agreements that address the training of personnel and the provision of patient care at accident scenes. ( )

**02. Planned Deployment Agreement.** ( )

**a.** Planned deployment allows affiliated EMS personnel to act and provide predetermined services outside of the affiliating agency's geographic coverage area or while responding with another agency within the affiliating agency's geographic coverage area. ( )

**b.** Planned deployment agreements for extrication endorsement and emergency response endorsement organizations must be approved by the medical director from the agency from which the planned deployment will occur as well as the chief administrative officials of the agencies from which and into which the planned deployment will occur. ( )

**c.** The medical directors and chief administrative officials of the agencies from which and into which the planned deployment will occur must approve the planned deployment. ( )

**d.** The planned deployment agreement must be specific as to the geographic locations and the services allowed by the planned deployment. The planned deployment agreement must address integration of care and patient transport. ( )

**430. DATA COLLECTION AND SUBMISSION.**

**01. Who Must Submit Response Records?** An agency must submit response information in accordance with the EMS Data Standards Manual. ( )

**02. What Information Must an Agency Maintain and Submit?** An agency must maintain records of each agency response and submit them to the EMS Bureau within thirty (30) days after the end of the previous calendar month in accordance with the EMS Data Standards Manual. Current and correct agency demographic information specified as a part of the Idaho Specific NEMSIS Data Elements must be submitted no later than the last business day of April, July, October and January. ( )

**03. What Qualifications Must an EMS Data System Utilized by an Agency Meet?** In order to be considered for data exportation to the EMS Bureau on behalf of an agency, an EMS data system must at a minimum be certified "compliant" by the National Emergency Medical Services Information System - Technical Assistance Center ([www.nemsis.org](http://www.nemsis.org)). ( )

**04. What Validation of Data Exported from a Compliant EMS Agency Data System Must Occur Before Records Can Be Submitted?** The EMS agency must submit a set of complete response records as described in the EMS Data Standards Manual to the EMS Bureau in order to validate the EMS agency data system's ability to export data that are complete and accurate. ( )

**05. When Must an EMS Agency Submit Data for Validation?** An EMS agency must submit data as described in the EMS Data Standards Manual in advance of or within fifteen (15) days of acquiring a new or different EMS agency data system. ( )

**06. What Format Must Be Used When Submitting Agency Data?** Agency response records must be compliant with the National Emergency Medical Services Information System (NEMSIS) Data Dictionary, v.2.2.1 and NEMSIS Dataset Schema (XSD) and in accordance with the EMS Data Standards Manual. ( )

**07. What Data Elements Comprise a Complete Response Record?** The response record must, at a minimum, contain the Idaho Specific NEMSIS Data Elements and business rules and quality validations, specified by the EMS Data Advisory Committee and incorporated into the EMS Data Standards Manual. ( )

**431. WHAT MUST AN ORGANIZATION DO TO APPLY FOR LICENSURE AS AN AGENCY?**  
An organization seeking licensure as an agency must submit a completed agency license application to the EMS Bureau to be considered for licensure. ( )

**432. APPLICATION FORM.**

**01. Is There a Standardized Application Form?** The EMS Bureau maintains a standardized agency application. ( )

**02. Must an Applicant Use the Standardized Application?** Requests for agency licensure must be submitted on the standardized form provided by the EMS Bureau. ( )

**03. How Can the Agency Application Be Obtained?** The most current standardized form can be obtained by contacting the EMS Bureau. See Section 005 of these rules for contact information. ( )

**433. WHAT INFORMATION IS REQUIRED ON THE AGENCY APPLICATION?**  
Each application for initial licensure must contain the following: ( )

**01. Call Volume.** The applicant will submit, on the form provided in the agency application, a categorized breakdown of call volume projections for the first full year of operation in each of the following categories: ( )

**a.** The total call volume for each operational declaration within the applicant's geographic coverage area. ( )

**b.** The percentage of patients requiring transport. ( )

**02. Geographic Coverage Area.** A specific description of the Idaho jurisdiction(s) that the applicant will serve using known geopolitical boundaries or geographic coordinates and a graphic representation of the same. The applicant will declare a geographic coverage area for each requested operational declaration. Each operational declaration can have a different geographic coverage area. ( )

**03. Staffing.** The applicant will submit, on the form provided in the agency application, a staffing projection for the first full year of operation that: ( )

**a.** Identifies all licensed personnel by name and license level; ( )

**b.** Ensures all licensed personnel are appropriately licensed and credentialed; ( )

**c.** Identifies all individuals listed as either: uncompensated volunteer, compensated volunteer, part-time paid, or full-time paid; ( )

**d.** Describes how the staffing pattern will ensure appropriately licensed personnel are available to provide the required care. ( )

**04. Vehicles and Equipment.** The applicant will submit, on the form provided in the agency application, a list of vehicles and equipment. The applicant must declare any vehicles and equipment that are shared with another agency, other license category, or operational declaration and describe how the vehicle or equipment is stationed, used, and the frequency of use by each license category, operational declaration, and agency. ( )

**05. Communications.** The applicant will submit, on the form provided in the agency application, a list of communications equipment per Section 426 of these rules. ( )

**06. Dispatch.** The applicant will submit a copy of the dispatch agreement included in the agency application. The dispatch agreement must be signed by an official from the dispatch organization and by the applicant. ( )

**07. Agency Costs and Revenue.** The applicant will submit, on the form provided in the agency application, a categorized breakdown of cost and revenue projections for the first full year of operation in each of the following categories: ( )

- a. Operating expenses specific to the EMS operation; ( )
- b. Revenues specific to the EMS operation; ( )
- c. Capital resources and purchases specific to the EMS operation; ( )
- d. Personnel costs specific to the EMS operation; and ( )
- e. Tax-based revenue and support specific to the EMS operation. ( )

**08. Response Times.** The applicant will submit, on the form provided in the agency application, a statement of response time projections as described below. ( )

a. Applicants in areas where response time data for a similar agency exists will describe how the model declared in the application will change known response times within the geographic coverage area. Applicants will submit, on the form provided in the agency application, declarations of the following: ( )

i. The longest response time recorded in the preceding twenty-four (24) months by a similar agency within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours. The longest known response time declaration will include a description of the beginning and ending points of the response and a description of how the applicant will affect this response time. ( )

ii. The projected longest response time within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours. The longest projected response time declaration will include a description of the beginning and ending points of the response and the predicted frequency of calls to the area with the longest projected response time. ( )

iii. The average recorded response time in the preceding twenty-four (24) months by a similar agency within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours. ( )

iv. The applicant's projected average response time within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours and a description of how the applicant will achieve this average response time. ( )

b. Applicants in areas where no response time data for a similar agency exists will only be required to submit response time projections. Applicants will submit, on the form provided in the agency application, declarations of the following: ( )

i. The projected longest response time within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours. The longest projected response time declaration will include a description of the beginning and ending points of the response and the predicted frequency of calls to the area with

the longest projected response time. ( )

ii. The applicant's projected average response time within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours and a description of how the applicant will achieve this average response time. ( )

**09. Clinical Benefits.** The applicant will submit a narrative describing the projected clinical benefits that will result from licensure. The narrative must include the following: ( )

a. An endorsement from the applicant's medical director that describes the rationale for change; ( )

b. Description of the projected change in the level of care provided for patients within the geographic coverage area; ( )

c. Description of the projected change in time to treatment for patients within the geographic coverage area; ( )

d. Description of the location of agency resources and equipment available to the applicant; ( )

e. Description of the impact on other resources and the community; ( )

f. Description of the process to train personnel. ( )

**10. Medical Supervision Plan.** Each application for initial licensure must contain a Medical Supervision Plan as described in IDAPA 16.02.02, "Rules of the EMS Physician Commission." ( )

**434. IS AN APPLICATION REVIEWED WHEN RECEIVED AT THE EMS BUREAU?**  
The EMS Bureau will review the application for completeness upon receipt. ( )

**435. WHAT NOTIFICATIONS OCCUR UPON RECEIPT OF AN AGENCY APPLICATION?**  
The EMS Bureau will make the following notifications upon receipt of an agency application: ( )

**01. Applicant.** The EMS Bureau will send a written reply to the applicant within fourteen (14) days of receipt verifying the application or any subsequent application material was received and found to be either complete or incomplete. ( )

**02. Applicant Actions Following Notification from the EMS Bureau.** Applicants whose applications are determined to be incomplete will be given the opportunity to address the findings of the EMS Bureau initial review and resubmit documentation needed to complete the application. ( )

**03. Incomplete Application Having No Action Taken Within Sixty Days of Notification.** Any incomplete application having no action taken by the applicant within sixty (60) days of notification by the EMS Bureau will be considered void and will have to be resubmitted as an initial application. ( )

**04. Other Jurisdictions.** ( )

a. Within fourteen (14) days of receipt of a completed application for agency licensure that includes any operational declarations other than industrial or non-public, the EMS Bureau will send a written notice to all cities, counties, and other units of local government that have any geographic coverage area in common with the applicant. ( )

b. The notice will include the applicant's proposed geographic coverage area, agency type, clinical level, operational declarations, and a summary of any declarations made by the applicant that assume knowledge, cooperation, or collaboration of any of the cities, counties, and other units of local government that have any geographic coverage area in common with the applicant. ( )

**436. IS THERE A COMMENT PERIOD FOR AGENCY LICENSURE APPLICATION?**

There will be a comment period for any application for agency licensure that includes any of the following operational declarations: prehospital, prehospital quick response, prehospital support, transfer, critical care, standby, limited duration, seasonal, rescue, or extrication. ( )

**01. Is Every Application for Agency Licensure Subject to a Comment Period?** The comment period described below does not apply to applications for non-public agencies and industrial agencies that include no other operational declaration(s). ( )

**02. Who Can Support or Oppose the Application?** Any city(ies), county(ies), and other unit(s) of local government that have any geographic coverage area in common with the applicant may petition the EMS Bureau in support of, or in opposition to, the application. ( )

**03. Is There a Deadline for Submission of Notices in Support of, or in Opposition to, the Application?** Applications are held for a forty-five (45) day comment period following the notification of application. A city, county, and other unit of local government may submit to the EMS Bureau a notice in support of, or in opposition to, an application during the comment period. ( )

**04. Can an Application Proceed Prior to the Close of the Comment Period?** The comment period may be waived only in those cases where petitions of support for the application are received from all cities, counties, and other units of local government that have any geographic coverage area in common with the applicant. ( )

**05. What Happens if There Are No Comments or No Opposition to the Application During the Comment Period?** If, at the end of the comment period, no notices of opposition are received by the EMS Bureau, the comment period will close and the application will be evaluated per Section 445 of these rules. ( )

**06. What Happens if an Application Is Opposed?** The following will happen when a notice of opposition is received during the comment period: ( )

**a.** The EMS Bureau will notify the applicant and the party opposing the application within fourteen (14) days of the end of the comment period. ( )

**b.** The EMS Bureau will provide requested application information as well as other public information held by the EMS Bureau to address or clarify the issues stated in the notice of opposition. ( )

**c.** The city(ies), county(ies), or other unit(s) of local government opposing the application will have forty-five (45) days in which to submit a declaration to the EMS Bureau containing a description of the specific elements of the application being opposed. ( )

**d.** The EMS Bureau will provide the declaration from city, county, or other unit of local government opposing the application to the applicant. The applicant will have forty-five (45) days in which to submit a formal response. ( )

**07. Hearing.** The party opposing the application will be responsible for arranging a public hearing in which the applicant and the party opposing the application will address the items of concern within the application. The party opposing the application will be responsible for costs associated with the advertising and conducting the public hearing. Requirements for the public hearing are: ( )

**a.** The hearing will not be scheduled until the applicant response is received or the applicant response period is closed. The hearing must be scheduled and advertised at least fourteen (14) days prior to being held. ( )

**b.** The party opposing the application will post a notice of the public hearing in at least one (1) conspicuous place in applicant's proposed geographic coverage area; a copy of such notice must also be published in a daily or weekly newspaper published within the applicant's proposed geographic coverage area. The place, hour, and day of the public hearing will be specified in the notice. ( )

**c.** The hearing will be held in the county courthouse that serves the geographic coverage area of the



applicant. In those cases where the geographic coverage area extends into more than one (1) county, the hearing will be held in the courthouse of county with the largest portion of the geographic coverage area. ( )

**d.** A hearing officer appointed by the Department will preside over the public hearing. ( )

**e.** The applicant and persons in favor of the applicant's position will be permitted to present testimony, and may be questioned by the party opposing the application and the hearing officer. Persons opposing the applicant's position will be permitted to present testimony, and may be questioned by the applicant and the hearing officer. At the discretion of the hearing officer, testimony in favor of, or in opposition to, an application may be presented in alternating order. Following the conclusion of testimony in favor and in opposition, and questioning, the applicant will be allowed to provide a rebuttal. The hearing officer may impose reasonable limits on the time allowed for testimony and rebuttal, provided that restrictions apply equally to all parties, and a standardized timepiece is used for all testimony. Following conclusion of rebuttal by the applicant, the meeting will be closed to further public testimony. ( )

**f.** All persons attending the hearing are bound by the Roberts' Rules of Order for parliamentary procedure regarding decorum, and must comply with directions of the hearing officer. The hearing officer may compel the removal from the hearing of persons who engage in improper conduct. ( )

**08. Hearing Record.** The hearing officer must arrange for a record to be made of a hearing. The hearing must be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The court reporter must be paid for by the party requesting a stenographic record. The record must be transcribed at the expense of the party requesting a transcript and prepayment or guarantee of payment may be required. When a transcript is requested, any party may obtain a copy at the party's own expense. The Department must maintain the complete record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. ( )

**09. Hearing Officer's Recommendation.** A written recommendation must be submitted by the hearing officer to the EMS Bureau no later than thirty (30) days after completion of the hearing. The recommendation must include specific findings on all major facts at issue; a reasoned statement in support of the recommendation and all other findings and recommendations of the hearing officer. ( )

**437. CAN AN APPLICANT MODIFY AN APPLICATION DURING THE APPLICATION PROCESS?**  
An applicant can modify or withdraw an application at any time during the application process. Applications with material changes will be processed per Section 435 of these rules. ( )

**438. WHAT IF AN APPLICANT REACHES AGREEMENT WITH THE ENTITY(IES) OPPOSING THE APPLICATION?**  
The comment period may be waived when an application is modified and petitions of support are received from all cities, counties, and other units of local government that have any geographic coverage area in common with the applicant. ( )

**439. HOW ARE OPPOSED APPLICATIONS PROCESSED?**  
The EMS Bureau will consider the findings of the responses and hearing and will either continue to process or reject the application. ( )

**440. CAN AN APPLICANT APPEAL IF AN APPLICATION IS REJECTED?**  
Appeals to rejected applications will be processed per IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**441. -- 444. (RESERVED).**

**445. APPLICATION EVALUATION.**

**01. How Does the EMS Bureau Review Completed Applications?** When the comment period is concluded, the EMS Bureau will review the application for compliance with the standards set forth in Idaho statute,

administrative code, and the EMS Licensure Standards Manual in effect at the time of application submission. ( )

**02. What Findings May Result from the EMS Bureau Evaluation and How Is the Applicant Notified?** The EMS Bureau will notify the applicant and all cities, counties, and other units of local government that have any geographic coverage area in common with an applicant in writing that the review found the application to be compliant, complete with concerns, or non-compliant. ( )

**03. What Applicant Actions Should Follow Notification from the EMS Bureau?** Applicants whose applications are determined to be other than compliant will be given the opportunity to address the findings of the EMS Bureau review and resubmit documentation needed to either bring the application into compliance or address the concerns found in the initial EMS Bureau review. ( )

**04. What Happens When an Application Is Found To Be in Compliance?** The EMS Bureau will include in the notification to applicants whose applications are found to be in compliance with Sections 56-1011 through 56-1023, Idaho Code, this chapter of rules, and the EMS Licensure Standards Manual, an acknowledgment of eligibility for an agency inspection. ( )

**446. -- 449. (RESERVED).**

**450. AGENCY INSPECTION.**

**01. How Is an Agency Inspection Requested and Scheduled?** Applicants eligible for agency inspections should contact the EMS Bureau to schedule an inspection. In the event that the acquisition of capital equipment or hiring or licensure of personnel is necessary for the inspection process, the applicant must notify the EMS Bureau when ready. ( )

**02. Is There a Timeframe Following Notification of Eligibility for Inspection in Which the Applicant Must Schedule an Inspection?** Any application having no inspection completed within six (6) months of notification of eligibility will be considered void and will have to be resubmitted as an initial application. ( )

**451. AGENCY LICENSURE DURATION.**

**01. What Is the Duration of Agency Licenses?** All agency licenses unless otherwise declared on the license are valid for one (1) year from the end of the month of issuance by the EMS Bureau. ( )

**02. How Are Agency License Expiration Dates Determined?** To the extent possible, EMS agency license expiration dates are established depending on the geographic location of the agency. The geographic distribution of expiration dates can be found in the EMS Licensure Standards Manual. ( )

**452. AGENCY LICENSURE RENEWAL.**

**01. What Must an Agency Do to Renew an Agency License?** An agency seeking to renew an agency license must submit a completed standardized agency renewal application to the EMS Bureau. ( )

**02. How Can the Agency Renewal Application Be Obtained?** The most current standardized form can be obtained by contacting the EMS Bureau. See Section 005 of these rules for contact information. ( )

**03. When Must an Agency Submit an Application for License Renewal?** The agency must submit a completed application for license renewal to the EMS Bureau no sooner than ninety (90) days and no later than sixty (60) days prior to the expiration date of the current license. ( )

**04. What Information Is Required on the Agency Renewal Application?** Each application for license renewal must contain the following: ( )

**a.** The agency will submit, on the form provided in the renewal application, a categorized breakdown of historical call volume for the preceding year of operation in each of the following categories: ( )

- i. The total call volume for the applicant's geographic coverage area. ( )
- ii. The percentage of patients requiring transport. ( )
- b.** Any changes made to the geographic coverage area made by agency annexation will be described on the renewal application. Any other changes to the geographic coverage area require an initial license application. ( )
- c.** The agency will submit, on the form provided in the renewal application, a current staffing plan that:
  - i. Identifies all licensed personnel by name and license level; ( )
  - ii. Ensures all licensed personnel are appropriately licensed and credentialed; ( )
  - iii. Identifies all individuals listed as either: uncompensated volunteer, compensated volunteer, part-time paid, or full-time paid; and ( )
  - iv. Describes how the staffing pattern continues to ensure appropriately licensed personnel are available to provide the required care. ( )
- d.** The agency will verify, on the form provided in the renewal application, a list of vehicles and equipment in use by the agency. The agency must declare any vehicles and equipment that are shared with another agency or other license category and describe how the vehicle or equipment is stationed, used, and the frequency of use by each license category and agency. ( )
- e.** The agency will verify, on the form provided in the renewal application, a list of communications equipment in use by the agency. ( )
- f.** The agency will verify, on the form provided in the renewal application that no changes have been made to the dispatch agreement included in the prior agency application. ( )
- g.** The agency will submit, on the form provided in the renewal application, a historical review of response times as follows: ( )
  - i. The longest response time within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours. The longest known response time declaration will include a description of the beginning and ending points of the response and the frequency of calls to the area with the longest projected response time. ( )
  - ii. The agency's average response time within the geographic coverage area, responding to an emergency call in ideal weather during daylight hours. ( )
- h.** Any changes made to the agency Medical Supervision Plan must be included with the application for renewal. ( )
- 05. What Additional Information Must an Applicant Agency Submit?** Any agency, after July 1, 2011, that obtains a new license, changes the level of licensed personnel it utilizes, changes its geographic coverage area (except by agency annexation), begins or discontinues providing patient transport services or adds prehospital, prehospital quick response, transfer, or critical care operational declarations, will submit the following on the form provided in the renewal application: ( )
  - a.** A categorized breakdown of costs and revenue in each of the categories listed on the initial agency application. ( )
  - b.** A narrative describing the actual clinical benefits that resulted from licensure that includes a review of the declarations made on the agency license application. ( )

**453. HOW DOES THE EMS BUREAU EVALUATE COMPLETED RENEWAL APPLICATIONS?**

When an application is received, the EMS Bureau will, within fourteen (14) days of receipt, review the application for completeness and compliance with standards set forth in Idaho statute, administrative code and the EMS Licensure Standards Manual in effect at the time of application submission. ( )

**454. WHAT FINDINGS MAY RESULT FROM THE EMS BUREAU REVIEW?**

The EMS Bureau will notify the agency in writing that the review found the application to be either: complete and compliant, incomplete, complete with concerns, or non-compliant. ( )

**455. WHAT AGENCY ACTIONS FOLLOW NOTIFICATION FROM THE EMS BUREAU?**

Agencies whose renewal applications are determined to be other than complete and compliant will be given the opportunity to address the findings of the EMS Bureau initial review and resubmit documentation needed to either bring the application into compliance or address the concerns found in the EMS Bureau review. ( )

**456. WHAT HAPPENS IF AN INCOMPLETE OR NONCOMPLIANT APPLICATION IS NOT RESOLVED PRIOR TO THE EXPIRATION OF THE LICENSE?**

If an application is not complete and compliant and is not resolved prior to the expiration date of the license, an agency license will not lapse while undergoing review by the EMS Bureau provided the agency submitted a timely application and takes action to meet licensure requirements within thirty (30) days of notification by the EMS Bureau. ( )

**457. WHAT HAPPENS IF THE EMS BUREAU REFUSES TO GRANT RENEWAL OF AN AGENCY LICENSE?**

Appeals for refusal to grant renewal of an agency license will be processed per IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**458. WHAT HAPPENS WHEN A RENEWAL APPLICATION IS FOUND TO BE COMPLETE AND IN COMPLIANCE?**

When a renewal application is found to be complete and in compliance, the EMS Bureau will notify agencies and provide a list of not less than five (5) available dates and times within a thirty (30) day period in which to schedule the required renewal inspection. ( )

**459. IS THERE A TIMEFRAME IN WHICH RENEWAL INSPECTIONS MUST OCCUR?**

Agencies must successfully complete an annual inspection within the thirty (30) day period described in Section 458 of these rules in order to obtain a renewed license. ( )

**460. -- 464. (RESERVED).**

**465. LAPSED LICENSE.**

**01. What Happens if an Agency Does Not Submit a Complete Application Before the Expiration of the Current License?** An agency that does not submit a complete application as prescribed in these rules and the EMS Licensure Standards Manual will be considered lapsed. The license will no longer be valid. ( )

**02. Is There a Grace Period for an Agency That Does Not Submit a Complete Application in a Timely Manner?** No grace periods or extensions to an expiration date may be granted when an agency does not submit a complete application within the timeframes described in Subsection 452.03 of these rules. ( )

**03. Can an Organization with a Lapsed License Continue to Provide EMS Services?** An organization with a lapsed license cannot provide EMS services. ( )

**04. How Does an Organization with a Lapsed License Regain Agency Licensure?** An organization with a lapsed license will be considered an applicant for initial licensure and be bound by the same requirements and processes as any initial applicant. ( )

**466. CHANGES TO A CURRENT LICENSE.**

**01. Can Licenses Issued by the EMS Bureau Be Transferred or Sold?** Licenses issued by the EMS Bureau cannot be transferred or sold. ( )

**02. When Must Agency Officials Notify the EMS Bureau About Changes?** Agency officials must submit an agency update form to the EMS Bureau, within sixty (60) days of any of the following: ( )

- a. Changes made to the geographic coverage area by agency annexation. ( )
- b. Licensed personnel added or removed from the agency affiliation roster. If licensed personnel are removed for cause, a description of the cause must be included. ( )
- c. Vehicles or equipment added or removed from the agency. ( )
- d. Changes to the agency communication plan or equipment. ( )
- e. Changes to the agency dispatch agreement. ( )
- f. Changes to the agency Medical Supervision Plan. ( )

**03. What Changes Require Agency Officials to Submit an Application for Initial Licensure?** Agencies desiring to make any of the following changes must submit an initial agency application to the EMS Bureau and follow the initial application process defined by the EMS Bureau: ( )

- a. Clinical level of licensed personnel it utilizes. ( )
- b. Geographic coverage area changes, except by agency annexation. ( )
- c. A nontransport agency that intends to provide patient transport or an ambulance agency that intends to discontinue patient transport and become a nontransport agency. ( )
- d. An agency that intends to add prehospital, prehospital quick response, transfer, or critical care operational declarations. ( )

**467. -- 469. (RESERVED).**

**470. HOW WILL CURRENTLY LICENSED AGENCIES TRANSITION TO THE LICENSURE MODEL DESCRIBED IN SECTIONS 400 THROUGH 499 OF THESE RULES?**

Agencies licensed by the EMS Bureau prior to July 1, 2011, will transition to the licensing model described in these rules at the expiration of the then current agency license. Currently licensed agencies will submit a licensure transition application, provided by the EMS Bureau, in order to renew their agency license. ( )

**01. Will a Currently Licensed Agency's Transition Application Be Subject to the Same Comment and Review Process as an Applicant for Initial Licensure?** Licensure transition applications submitted by currently licensed agencies will not be subject to the initial application comment period provided all initial applicant requirements are met. Licensure transition applications submitted by currently licensed agencies will be subject to the same EMS Bureau application evaluation process as an initial application. ( )

**02. What Is the Timeline for Currently Licensed Agencies to Transition to the New Licensing Model and Requirements Described in These Rules?** EMS agencies will transition to the new licensing model as described in the EMS Licensure Standards Manual. ( )

**471. -- 475. (RESERVED).**

**476. INSPECTION.**

Representatives of the EMS Bureau are authorized to enter an agency's facility(s) at reasonable times, for the purpose of inspecting the agency's vehicle(s), equipment, response records, and other necessary items to determine

compliance with Idaho statute, administrative code, and the EMS Licensure Standards Manual. ( )

**01. What Types of Agency Inspections Does the EMS Bureau Conduct?** The EMS Bureau will perform initial, annual, random, and targeted agency inspections. ( )

**02. What Is the Purpose of the Initial Agency Inspection?** The initial inspection is an integral component of the application process that serves to: ( )

a. Physically validate the information contained in the application; ( )

b. Verify applicant compliance with Idaho statute, administrative code, and the EMS Licensure Standards Manual; and ( )

c. Provide observations and assistance where appropriate and requested by the applicant. ( )

**03. What Is the Purpose of the Annual Agency Inspection?** The annual inspection is an integral component of the agency license renewal process that serves to: ( )

a. Review the agency's history of compliance during the most recent licensure period; ( )

b. Verify current agency compliance with Idaho statute, administrative code, and the EMS Licensure Standards Manual; and ( )

c. Provide observations and assistance where appropriate and requested by the applicant. ( )

**04. What Is the Purpose of the Random Agency Inspection?** The random inspection serves to: ( )

a. Validate the agency's continual compliance with Idaho statute, administrative code, and the EMS Licensure Standards Manual; and ( )

b. Provide observations and assistance where appropriate and requested by the applicant. ( )

**05. What Is the Purpose of the Targeted Agency Inspection?** The targeted inspection serves to answer specific concerns related to the agency's compliance with Idaho statute, administrative code, and the EMS Licensure Standards Manual. ( )

**06. How Do the Initial, Annual, Random, and Targeted Inspections Differ?** The EMS Bureau will review historical and current information during the annual, random and targeted inspections whereas an applicant must demonstrate the following during the initial inspection process: ( )

a. Ability to submit data to the EMS Bureau as defined in Section 430 of these rules; ( )

b. Ability to communicate via radio with the state EMS communications center, local dispatch center, neighboring agencies on whom the applicant will rely for support, first response, air and ground patient transport, higher level patient care, or other purposes. ( )

**07. Under What Conditions Would the Results of an EMS Bureau Inspection Cause a Vehicle or Agency to Be Taken Out of Service?** Upon discovery of a condition during inspection that could reasonably pose an immediate threat to the safety of the public or agency staff, the EMS Bureau may declare the condition unsafe and remove the vehicle or agency from service until the unsafe condition is corrected. ( )

**08. Must All Vehicles Be Inspected During EMS Bureau Inspections?** ( )

a. All EMS response vehicles must be inspected during initial agency inspections. ( )

b. A random sample of vehicles may be selected for inspection during annual inspections provided the

agency has a vehicle stockage and inventory plan that provides assurance that all response vehicles meet the minimum equipment requirements. If vehicles selected for random sampling fail to demonstrate compliance with the minimum equipment requirements, the entire fleet of EMS response vehicles must be inspected. ( )

c. Targeted inspections will focus on the specific elements of concern and may not include any vehicle inspections. ( )

**477. DO EXEMPTIONS EXIST FOR AGENCIES THAT ARE CURRENTLY ACCREDITED BY A NATIONALLY RECOGNIZED PROFESSIONAL EMS ACCREDITATION AGENCY?**

Upon petition by the accredited agency, the EMS Bureau will review the accreditation standards under which the accredited agency was measured and may waive specific duplicated annual inspection requirements where appropriate. If an external accreditation inspection is found to be more rigorous than that of the EMS Bureau, the EMS Bureau may elect to relax the frequency of EMS Bureau annual inspections or waive EMS Bureau annual inspections altogether. ( )

**478. -- 499. (RESERVED).**

**STANDARDS FOR THE APPROPRIATE USE OF AIR MEDICAL AGENCIES  
(Sections 500 through 505)**

**500. STANDARDS FOR THE APPROPRIATE USE OF AIR MEDICAL AGENCIES BY 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 501 of these rules into initial training curricula and required continuing education of licensed EMS personnel. ( )

**02. Who Must Establish Written Criteria Guiding Decisions to Request an Air Medical Response?** Each licensed EMS agency must establish written criteria, approved by the EMS agency medical director, to guide the decisions of the agency's licensed EMS personnel to request an air medical response to an emergency scene. The criteria will include patient conditions found in Section 501 of these rules. ( )

**03. What Written Criteria Is Required for EMS Agency Licensure?** Written criteria guiding decisions to request an air medical response will be required for all initial and renewal applications for EMS agency licensure for licenses effective on November 1, 2006, or later. ( )

**04. Who Is Responsible for Requesting an Air Medical Response?** 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 using the local incident management system and licensed EMS agency written criteria. ( )

**05. When Can Licensed EMS Personnel Cancel an Air Medical Response?** Licensed EMS personnel must complete a patient assessment prior to their cancellation of an air medical response. ( )

**06. Who May Establish Criteria for Simultaneous Dispatch?** The licensed EMS agency may establish criteria for simultaneous dispatch for air and ground medical response. Air medical agencies will not respond to an emergency scene unless requested. ( )

**07. Who Is Responsible for Selecting an Appropriate Air Medical Agency?** Selection of an appropriate air medical agency is the responsibility of the licensed EMS agency. ( )

a. The licensed EMS agency, through written policy, will establish a process of air medical selection. ( )

b. The written policy must direct EMS personnel to honor a patient request for a specific air medical agency when the circumstances will not jeopardize patient safety or delay patient care. ( )

**501. AIR MEDICAL RESPONSE CRITERIA.**

The need for an air medical request will be determined by the licensed EMS agency licensed personnel based on their patient assessment and transport time. Each licensed EMS agency must develop written criteria based on best medical practice principles. The following conditions must be included in the criteria: ( )

**01. What Clinical Conditions Require Written Criteria?** The licensed EMS agency written criteria will provide guidance to the licensed EMS personnel for the following clinical conditions: ( )

- a. The patient has a penetrating or crush injury to head, neck, chest, abdomen, or pelvis; ( )
- b. Neurological presentation suggestive of spinal cord injury; ( )
- c. Evidence of a skull fracture (depressed, open, or basilar) as detected visually or by palpation; ( )
- d. Fracture or dislocation with absent distal pulse; ( )
- e. A Glasgow Coma Score of ten (10) or less; ( )
- f. Unstable vital signs with evidence of shock; ( )
- g. Cardiac arrest; ( )
- h. Respiratory arrest; ( )
- i. Respiratory distress; ( )
- j. Upper airway compromise; ( )
- k. Anaphylaxis; ( )
- l. Near drowning; ( )
- m. Changes in level of consciousness; ( )
- n. Amputation of an extremity; and ( )
- o. Burns greater than twenty percent (20%) of body surface or with suspected airway compromise. ( )

**02. What Complicating Conditions Require Written Criteria?** When associated with clinical conditions in Subsection 501.01 of this rule, the following complicating conditions require written guidance for EMS personnel: ( )

- a. Extremes of age; ( )
- b. Pregnancy; and ( )
- c. Patient “do not resuscitate” status as described in Section 050 of these rules. ( )

**03. What Operational Conditions Require Written Guidance for an Air Medical Response?** The licensed EMS agency written criteria will provide guidance to the licensed EMS personnel for the following operational conditions: ( )

- a. Availability of local hospitals and regional medical centers; ( )



- b.** Air medical response to the scene and transport to an appropriate hospital will be significantly shorter than ground transport time; ( )
- c.** Access to time sensitive medical interventions such as percutaneous coronary intervention, thrombolytic administration for stroke, or cardiac care; ( )
- d.** When the patient's clinical condition indicates the need for advanced life support and air medical transport is the most readily available access to advanced life support capabilities; ( )
- e.** As an additional resource for a multiple patient incident; ( )
- f.** Remote location of the patient; and ( )
- g.** Local destination protocols. ( )

**502. COMMUNICATIONS.**

**01. Who Is Responsible for Requesting an Air Medical Response?** The licensed EMS agency will establish a uniform method of communication, in compliance with the local incident management system, to request air medical response. ( )

**02. What Information Must Be Given When Requesting an Air Medical Response?** Requests for an air medical response must include the following information as it becomes available: ( )

- a.** Type of incident; ( )
- b.** Landing zone location or GPS (latitude/longitude) coordinates, or both; ( )
- c.** Scene contact unit or scene incident commander, or both; ( )
- d.** Number of patients if known; ( )
- e.** Need for special equipment; ( )
- f.** How to contact on scene EMS personnel, and ( )
- g.** How to contact the landing zone officer. ( )

**03. Who Is Notified of a Request for an Air Medical Response?** The air medical agency will notify the State EMS Communication Center within ten (10) minutes of launching an aircraft in response to a request for emergency services. Notification will include: ( )

- a.** The name of the requesting entity; ( )
- b.** Location of the landing zone; and ( )
- c.** Scene contact unit and scene incident commander, if known. ( )

**04. Who Is Provided the Estimated Time of Arrival at the Specified Landing Zone?** Upon receipt of a request for emergency services, the air medical agency will provide the requesting entity with an estimated time to arrival in hours and minutes at the location of the specified landing zone and any changes to that estimated time. ( )

**05. Who Must Confirm Availability of an Air Medical Response?** Upon receipt of a request, the air medical agency will inform the requesting entity if the air medical agency is not immediately available to respond. ( )

**503. LANDING ZONE AND SAFETY.**

**01. Who Is Responsible for Setting Up Landing Zone Procedures?** The licensed EMS agency in conjunction with the air medical agency(ies) must have written procedures for establishment of landing zones. Such procedures will be compatible with the local incident management system. ( )

**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: ( )

- a. Landing zone preparation; ( )
- b. Landing zone safety; and ( )
- c. Communication between ground and air agencies. ( )

**03. What Training Is Required for Landing Zone Officers?** The licensed EMS agency will ensure that EMS licensed personnel, designated as Landing Zone Officers, have completed training in establishing an air medical landing zone based on the following elements: ( )

- a. The required size of a landing zone; ( )
- b. The allowable slope of a landing zone; ( )
- c. The allowable surface conditions; ( )
- d. Hazards and obstructions; ( )
- e. Marking and lighting; ( )
- f. Landing zone communications; and ( )
- g. Landing zone safety. ( )

**04. What Is the Deadline for Training as a Landing Zone Officer for EMS License Renewal?** All licensed EMS certified personnel will complete training described in Subsection 503.03 of this rule as a component of required continuing education for license renewal not later than September 30, 2010. ( )

**05. 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. ( )

**504. PATIENT DESTINATION.**

The air medical agency must have written procedures for determination of patient destination. ( )

**01. Procedures for Destination Protocol and Medical Supervision.** The air medical agency written procedure will consider the licensed EMS agency destination protocol and medical supervision received. ( )

**02. Availability of Written Procedures.** The air medical agency must make the written procedures available to licensed EMS agencies that utilize their services. ( )

**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. ( )

**505. PERIODIC REVIEW OF EMS SYSTEM DATA.**

The Department of Health and Welfare, EMS Bureau, will periodically review agency response data with other EMS

system data such as those found in the Trauma Registry maintained in accordance with Title 57, Chapter 20, Idaho Code. ( )

**01. How Often Will the Department Conduct a Review of Air Medical Criteria?** The Idaho EMS Bureau will review the rules, utilization and effectiveness of air medical criteria every three (3) years with the first review being completed no later than June 30, 2009. ( )

**02. What May Be Included During the Review of Air Medical Criteria?** The EMS Bureau review of air medical criteria may include the following: ( )

- a. Licensed EMS agency response data; ( )
- b. Licensed EMS agency guidelines; ( )
- c. Patient treatment and outcome information; and ( )
- d. Trauma Registry data. ( )

**03. What Information Must Be Provided During the Review of Air Medical Response Criteria?** Licensed EMS agencies must provide incident specific patient care related data identified and requested by the EMS Bureau in the review of air medical response criteria. ( )

**04. To Whom Will the EMS Bureau Report the Aggregate Data and Findings?** The EMS Bureau will report the aggregate data and findings from the review of air medical criteria to all licensed EMS agencies, hospitals, county commissioners, and EMS medical directors. ( )

**506. -- 599. (RESERVED).**

**COMPLAINTS, INVESTIGATIONS, AND DISCIPLINARY SANCTIONS  
(Sections 600 through 655)**

**600. WHO MAY REPORT A SUSPECTED VIOLATION?**

Any person who suspects a violation of Sections 56-1011 through 56-1023, Idaho Code, IDAPA 16.02.02 "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," or this chapter of rules may report the violation to the EMS Bureau. ( )

**601. -- 604. (RESERVED).**

**605. HOW IS A COMPLAINT SUBMITTED WHEN A VIOLATION IS SUSPECTED?**

Complaints must be submitted in writing on a complaint intake form found online at: <http://www.idahoems.org>. ( )

**606. ARE ANONYMOUS COMPLAINTS ACCEPTED?**

Anonymous complaints are accepted; however, the inability to collect further information from the complainant may hinder the progress of the investigation. ( )

**607. -- 609. (RESERVED).**

**610. WHEN WILL THE EMS BUREAU INITIATE AN OFFICIAL INVESTIGATION?**

An official investigation will be initiated when: ( )

**01. Complaint with Allegation(s).** A complaint with allegation(s) that, if substantiated, would be violations of Sections 56-1011 through 56-1023, Idaho Code, IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," or this chapter of rules, or; ( )

**02. Discovery of Potential Violation of Statute.** EMS Bureau staff or other authorities discover a

potential violation of Sections 56-1011 through 56-1023, Idaho Code, IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," or this chapter of rules. ( )

**611. -- 614. (RESERVED).**

**615. WHAT VIOLATIONS MAY RESULT IN ADMINISTRATIVE LICENSE ACTION?**

The Bureau Chief may impose an administrative license action on a license holder, applicant, or candidate for EMS license for any action, conduct, or failure to act which is inconsistent with the professionalism, standards, or both, established by these rules including: ( )

**01. Any Violation of These Rules.** ( )

**02. Unprofessional Conduct.** Any act(s) that violate Section 300 (Standards of Professional Conduct) of these rules. ( )

**03. Failure to Maintain Standards of Knowledge, Proficiency, or Both.** Failure to maintain standards of knowledge, or proficiency, or both, required under these rules. ( )

**04. Mental Incompetency.** A lawful finding of mental incompetency by a court of competent jurisdiction. ( )

**05. Impairment of Function.** Performance of duties pursuant to EMS license while under the influence of alcohol, illegal substance, or legal drug or medication causing impairment of function. ( )

**06. Denial of Criminal History Clearance.** 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." ( )

**07. Discipline, Restriction, Suspension or Revocation.** Discipline, restriction, suspension, or revocation in any other jurisdiction. ( )

**08. Danger or Threat to Persons or Property.** 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. ( )

**09. 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 licensure established under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." ( )

**10. Falsification of Applications or Reports.** The submission of fraudulent or false information in any report, application, or documentation to the EMS Bureau. ( )

**11. Obtaining a License by Means of Fraud.** Misrepresentation in an application by means of concealment of a material fact. ( )

**616. -- 629. (RESERVED).**

**630. WHAT IF THE SUBJECT OF AN INVESTIGATION REFUSES TO PARTICIPATE?**

The refusal to participate by the subject will not prohibit full investigation, or a peer review hearing, nor prevent potential administrative license action. ( )

**631. WHAT IF THE SUBJECT OF THE INVESTIGATION NO LONGER HOLDS AN ACTIVE LICENSE WHEN THE INVESTIGATION CONCLUDES?**

Surrender or lapse of a license will not prohibit full investigation with the potential consequence of EMS Bureau imposing a formal administrative license action or fine. ( )

632. -- 634. (RESERVED).

**635. WHAT HEARINGS MAY BE CONDUCTED?**

**01. Rejected Applications.** Hearings concerning any applications rejected by the EMS Bureau will be processed per IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**02. Compliance Conference Hearing.** The EMS Bureau may offer the subject of an investigation the opportunity for a compliance conference hearing when: scope of practice or medical practice misconduct with little or no injury to the public, EMS system, or profession has occurred; or there is little likelihood of repetition and the matter can be resolved by consent order. ( )

**a.** Compliance conference participants will include the subject of the investigation, EMS Bureau staff and other parties deemed appropriate by the EMS Bureau. ( )

**b.** The subject may be offered specific remediation or disciplinary action by consent, which, if agreed to, will resolve the matter with no further right to appeal. ( )

**c.** If the remediation or disciplinary action is not agreed to by consent order, the matter may be referred to a peer review hearing. ( )

**03. Peer Review Hearing.** The EMS Bureau may elect to conduct a peer review hearing for a case that is not appropriate for or not resolved by a compliance conference. ( )

**636. WHO SERVES ON A PEER REVIEW TEAM?**

The peer review team will consist of four team members selected by the EMS Bureau as appropriate to the case being considered from the following: ( )

**01. Licensed Personnel.** EMS personnel license holder licensed at or above the license level of the subject or; ( )

**02. Agency Administrator.** EMS agency administrator or; ( )

**03. Training Officer.** EMS agency training officer or; ( )

**04. Course Coordinator.** Course coordinator of an EMS Bureau approved training course or; ( )

**05. Instructor.** EMS Bureau approved EMS instructor and; ( )

**06. Chair.** Each peer review team will be chaired by a licensed Idaho EMS physician as follows: ( )

**a.** An Idaho EMS Physician Commissioner for cases involving EMS personnel or; ( )

**b.** An Idaho EMS agency medical director for cases involving an EMS agency; or ( )

**c.** An Idaho EMS Bureau approved training course sponsoring physician for cases involving unlicensed EMS educators. ( )

637. -- 640. (RESERVED).

**641. WHAT CORRECTIVE ACTIONS MAY BE USED FOR RESOLUTION OF POTENTIAL VIOLATIONS?**

**01. Letter of Guidance.** A letter of guidance may be issued directing the subject to standards, educational resources, or local jurisdiction for resolution when minor misconduct with no injury to the public, EMS system, or profession has occurred and there is little likelihood of repetition. ( )

**02. Warning Letter.** A warning letter may be used for a first offense if no injury to the public, EMS system, or profession has occurred for a personnel or agency license violation. ( )

**642. WHAT TYPES OF ADMINISTRATIVE ACTION MAY BE IMPOSED BY THE EMS BUREAU?**

**01. Deny.** The EMS Bureau may deny an application. ( )

**02. Refuse to Renew.** The EMS Bureau may refuse to renew a license. ( )

**03. Retain with Probationary Conditions.** The EMS Bureau may allow an EMS license holder to retain a license as agreed to in a consent order or with conditions imposed by the EMS Bureau. ( )

**04. Suspend.** ( )

**a.** The EMS Bureau may suspend an EMS license for a period of day(s) or month(s) up to twelve (12) months with or without conditions. ( )

**b.** The EMS Bureau Chief may suspend a license pending final outcome of an EMS investigation or criminal proceeding when criminal charges or allegations indicate an imminent danger or threat to the health, safety, or well-being of persons or property. ( )

**05. Revoke.** The EMS Bureau may revoke an EMS license. ( )

**a.** An application for reinstatement may be filed with the EMS Bureau one (1) year from the date of license revocation. ( )

**b.** The EMS Bureau will convene a peer review hearing to consider the reinstatement application. ( )

**c.** The EMS Bureau may accept or reject the application for reinstatement. ( )

**d.** Reinstatement of an EMS personnel license is subject to the lapsed license reinstatement requirements in Section 316 of these rules. ( )

**e.** Reinstatement of a revoked EMS agency license will be processed per Subsection 465.04 of these rules. ( )

**643. -- 644. (RESERVED).**

**645. WHEN CAN A FINE BE IMPOSED BY EMS BUREAU?**

In addition to administrative license action allowed by rule, a fine may be imposed by the EMS Bureau upon recommendation by a peer review team on a licensed EMS agency as a consequence to the following agency licensure rule violations: ( )

**01. Failure to Respond.** Failure to respond to a request for service to a prehospital incident when dispatched to a medical illness or injury. ( )

**02. Unauthorized Response.** Responding to a request for service which deviates from or exceeds capabilities authorized by the EMS agency license. ( )

**03. Using Unlicensed Personnel.** Allowing unlicensed EMS personnel to respond to requests for service. ( )

**04. Failure to Report Patient Care Data.** Failure to submit patient care data as required by these rules. ( )

646. -- 649. (RESERVED).

**650. ARE INVESTIGATIONS CONFIDENTIAL?**

**01. Informal Resolution.** Informal resolution of complaints or non-compliance by guidance or warning letter is considered official correspondence and is public information. ( )

**02. Administrative License Action.** Preliminary investigations and documents supplied or obtained in connection with them are confidential until a formal notice of administrative license action is issued. ( )

651. -- 654. (RESERVED).

**655. WHO WILL RECEIVE NOTICE OF THE FINAL DISPOSITION OF AN INVESTIGATION?**

**01. Subject.** The EMS Bureau will send notification to the last known address of the subject of the disposition of the investigation, including any pending or current administrative actions. ( )

**02. Other Jurisdiction for EMS Personnel.** A copy of administrative action imposed on EMS personnel will be sent to each agency of affiliation, agency medical director, and the NREMT. ( )

**03. Other Jurisdictions for EMS Agencies.** A copy of administrative action or nature of fines imposed on EMS agencies will be sent to the agency governing authorities and the agency medical director. ( )

**04. Other Jurisdictions for Educational Programs.** A copy of any administrative action imposed on an EMS educational program or instructor will be sent to the state Board of Education, the sponsoring physician, the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP), and the NREMT. ( )

656. -- 999. (RESERVED).

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.03 - EMERGENCY MEDICAL SERVICES

#### DOCKET NO. 16-0203-1003 (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 56-1023, 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 September 15, 2010.

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

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

The fees for this chapter of rules are being revised under this docket. The rest of the chapter is being completely revised, updated, and rewritten under Docket No. 16-0203-1002 that immediately precedes this docket in this same Bulletin.

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

The fees being imposed for licensure are remaining the same as they are in current rule.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. This rulemaking has no fiscal impact to the state general fund. The Emergency Medical Services (EMS) program is funded through dedicated funds and these fees are not being increased and the impact will be cost neutral.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders throughout the state starting in May 2009. The stakeholder groups included: Association of Idaho Cities, Idaho Air Medical Services, Idaho Association of Counties, Idaho Commission on Aging, Idaho EMS Chiefs Association, Idaho Fire Chiefs Association, Idaho Hospital Association, Idaho Sheriffs Association, National Ski Patrol, Private EMS Services, Professional Fire Fighters of Idaho, Regional EMS Associations, Seasonal/Industrial EMS Services, Tribal EMS, and Volunteer EMS. The rules were also presented for review by the EMS Physician Commission and the EMS Advisory Committee. The most recent statewide round of twelve "town hall meetings" was conducted from May 17 through June 17, 2010.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000, ext. 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 September 22, 2010.

DATED this 29th day of July, 2010.

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](mailto:dhwrules@dhw.idaho.gov) e-mail



THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET 16-0203-1003

**302. LICENSURE FEES -- WHAT ARE THE FEES FOR EMS PERSONNEL LICENSES?**

**01. Initial, Reinstatement, and Recognition/Reciprocity.** The initial, reinstatement, and recognition/reciprocity licensure fee for AEMT and Paramedic is thirty-five dollars (\$35). ( )

**02. Renewal.** The license renewal fee for AEMT and Paramedic is twenty-five dollars (\$25). ( )

**302~~3~~. -- 304. (RESERVED).**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.08 - VITAL STATISTICS RULES

#### DOCKET NO. 16-0208-1001 (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 Sections 39-242 and 39-5403, Idaho Code, and House Bill 492 (2010).

**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 September 15, 2010.

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

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

House Bill 492 (2010) revised the section of the law related to fees charged for certified copies of vital records certificates. It also increased by \$1 (per certified copy) the cost of a death certificate in order to fund training for county coroners. These rule changes are being made in order to bring the rules into alignment with the amended statute.

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

The cost for a certified copy of a death certificate is being changed from \$13 to \$14.

**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 cost for system changes to implement the new fee is estimated to be at least \$27,900. \$13,950 of this is to be covered by the Idaho Association of Counties and the remaining \$13,950 is to come from Department (Vital Statistics) monies that are not from the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring the rules into alignment with the changes to statute made under House Bill 492 (2010).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Greg Heitman at (208) 334-5986.

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 September 22, 2010.

DATED this 29th day of July, 2010.

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](mailto:dhwrules@dhw.idaho.gov) e-mail

THE FOLLOWING IS THE PROPOSED TEXT FOR FEE DOCKET NO. 16-0208-1001

251. FEES FOR COPIES, SEARCHES, AND OTHER SERVICES.

01. **Certified Copies.** The fee for the issuance of a certified copy of a certificate of death is fourteen dollars (\$14). The fee ~~shall be thirteen (\$13) dollars per copy~~ for the issuance of a certified copy of any other vital record is thirteen dollars (\$13) per copy. ~~(3-13-02)( )~~

02. **Searches.** The fee ~~shall be thirteen (\$13) dollars~~ for each search of the files for a death record when no record is found or no copy is made is fourteen dollars (\$14). The fee for each search of the files for any other vital event when no record is found or no copy is made is thirteen dollars (\$13). ~~(3-13-02)( )~~

03. **Verifications.** Except for Idaho state executive agencies and public health districts, ~~there shall be a fee of nine (\$9) dollars~~ for verification of data from certificates is nine dollars (\$9). ~~(3-13-02)( )~~

04. **Statistical, Research, or Public Health Services.** The State Registrar ~~shall~~ assesses the fee for statistical, research or public health services. The costs ~~shall be~~ are calculated based upon the costs of retrieving the data and the costs of compiling, organizing, and printing the data. Cost may be reduced on a pro-rated basis to reflect the number of expected requests for the same information or service. ~~(12-26-83)( )~~

05. **Fees for Other Services.** ~~(12-31-91)( )~~

a. The fee ~~shall be thirteen (\$13) dollars~~ for establishing a new birth certificate pursuant to a report of adoption is thirteen dollars (\$13). ~~(3-13-02)( )~~

b. The fee ~~shall be thirteen (\$13) dollars~~ for establishing a delayed certificate of any event is thirteen dollars (\$13). ~~(3-13-02)( )~~

c. The fee ~~shall be thirteen (\$13) dollars~~ for establishing a new or amended birth certificate pursuant to a court order, a paternity affidavit or rescission, or a subsequent marriage affidavit is thirteen dollars (\$13). ~~(3-13-02)( )~~

d. A service fee of three dollars (\$3), in addition to the fourteen dollars (\$14) for a certified copy of a death certificate and thirteen (\$13) dollars for a certified copy of a stillbirth certificate, ~~shall~~ must be paid to the local deputy state registrar for securing each expedited certified copy of a vital record. ~~(3-13-02)( )~~

e. The fee ~~shall be ten dollars (\$10)~~ for filing a copy of "Request and Consent for Artificial Insemination" as required by Section 39-5403, Idaho Code, is ten dollars (\$10). ~~(12-31-91)( )~~

f. The fee ~~shall be thirteen dollars (\$13)~~ for copies of death certificates provided upon written request to local, states other than Idaho, or federal government agencies in accordance with Section 39-270(b), Idaho Code, is fourteen dollars (\$14). The fee for any other vital event is thirteen dollars (\$13). ~~(3-13-02)( )~~

g. Fees for correction of certificates of death or stillbirth. ~~( )~~

i. When a funeral director must correct an error on a certificate of death ~~or stillbirth~~ for which certified copies have been issued, and a replacement copy has been requested, the correction fee ~~shall be thirteen (\$13)~~ is fourteen dollars (\$14) and ~~shall~~ must include issuance of one (1) certified copy of the corrected death ~~or stillbirth~~ record. ~~( )~~

ii. When a funeral director must correct an error on a certificate of stillbirth for which certified copies have been issued, and a replacement copy has been requested, the correction fee is thirteen dollars (\$13) and must include issuance of one (1) certified copy of the corrected stillbirth record. ~~( )~~

iii. The fee ~~shall be two dollars (\$2)~~ for additional (replacement) copies of certificates of death or stillbirth issued at the time of correction is two dollars (\$2). ~~(3-13-02)~~( )

iv. When a correction is requested for a certificate of death or stillbirth, but no replacement copy is requested, there is no charge to the requestor. ( )

h. A service fee of five dollars (\$5) will be added for priority mailing or special handling, including additional document requests. This fee will be in addition to the current fee(s) for the requested certified copy(ies) ~~and/or search(es), or both.~~ ~~(7-1-97)~~( )

**06. Waiver of Fee Requirement.** Fees may be waived for Idaho state executive agency and public health district requests. Statistical information prepared for public health planning purposes may be published and distributed without charge whenever the Director determines that the publication and distribution is in the public interest. (12-26-83)

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.11 - IMMUNIZATION REQUIREMENTS FOR CHILDREN ATTENDING LICENSED DAYCARE FACILITIES

DOCKET NO. 16-0211-1001

### 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 39-1118, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| Thursday, September 9, 2010<br>6:00 p.m. MDT  | Tuesday, September 14, 2010<br>6 p.m. MDT   | Thursday, September 16, 2010<br>6:00 p.m. PDT                             |
|---|---|---|
| Central District Health Dept.<br>707 N Armstrong Place<br>Immunization Lobby<br>Boise, ID | Eastern ID Public Health Dept.<br>1250 Hollipark Dr.<br>North Conf. Rm<br>Idaho Falls, ID | Red Lion Hotel<br>621 21st Street<br>Port One - Conf. Rm.<br>Lewiston, ID |

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

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

In an effort to increase the number of children who are fully protected from preventable diseases, the Department is amending these rules to increase the number of vaccines required for children attending licensed daycare facilities. The changes to these rules will help protect children from additional vaccine-preventable diseases, provide a conditional attendance clause for children who are in the process of receiving required vaccines, provide clarification on exclusion of children from attendance, and update existing language to match current practices. Parents who choose not to immunize their children will still be able to sign an exemption form for medical, religious, or other reasons.

**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: This rulemaking has no anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with the following: Idaho Public Health Districts, Idaho Medical Association (IMA), American Academy of Pediatrics - Idaho chapter, American Academy of Family Physicians - Idaho chapter, IdahoSTARS, Idaho Child Care Program staff (ICCP), and the Idaho Immunization Coalition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the "Recommended Immunization Schedules for Persons Aged 0 through 18 Years -- United States, 2010," is being incorporated by reference into these rules because it contains the national standard for immunization schedules and is regularly updated to reflect best practices and to give it the force and effect of law. The document is not being republished in this chapter of rules due to its length and format and because of the cost of republication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rebecca Coyle at (208) 334-5942.

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 September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED RULE TEXT FOR DOCKET NO. 16-0211-1001**

**004. INCORPORATION BY REFERENCE.**

~~No documents have been incorporated by reference in this chapter of rules. The “Recommended Immunization Schedules for Persons Aged 0 Through 18 Years -- United States, 2010,” are incorporated by reference for this chapter of rules. Published in the Morbidity and Mortality Weekly Report, January 8, 2010, Vol. 58 (51 and 52), by the Centers for Disease Control and Prevention as recommended by the Advisory Committee on Immunization Practices (ACIP). This document is referred to in this chapter of rules as “ACIP Recommended Schedule.” These schedules may be obtained from the Department or viewed online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5851a6.htm>.~~ (4-6-05)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. ACIP.** The Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices. (4-6-05)(\_\_\_\_)
- 02. Board.** The Idaho State Board of Health and Welfare. (12-31-91)
- 03. Board of Medicine.** The Idaho State Board of Medicine. (5-24-91)
- 04. Child.** A person less than ~~twelve~~ thirteen (1~~2~~3) years of age, as defined in Section 39-1102, Idaho Code. (5-24-91)(\_\_\_\_)
- 05. Department.** The Idaho Department of Health and Welfare. (5-24-91)
- 06. Director.** The Director of the Idaho Department of Health and Welfare, or designated individual. (12-31-91)
- ~~**07. Immunization Document.** A medical or other written record initiated and retained by a licensed daycare facility which gives the month, day and year of each immunization a child has received. (5-24-91)~~
- 087. Immunization Record.** An electronic medical health record, an immunization registry document, or a written document signed immunization certificate confirmed by a ~~physician~~ licensed health care professional or a physician’s representative which states the month, day, and year of each immunization a person has received. (5-24-91)(\_\_\_\_)
- 098. Initial Attendance.** The first admission of a child to any licensed daycare facility in Idaho. (5-24-91)
- 409. Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of tests performed, the date of each test and the results, accompanied by a physician’s statement indicating the child is

immune. Tests performed must meet the requirements ~~of~~ in IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." (4-6-05)(\_\_\_\_)

**140. Licensed Daycare Facility.** Any Idaho daycare facility maintained by an individual, organization or corporation and licensed by an authorized governmental entity to provide care to children. (5-24-91)

**121. Licensed Daycare Facility Operator.** Any person who owns and operates or is designated by an individual, organization or corporation to manage the day-to-day operation of a licensed daycare facility described in Subsection 010.10 of these rules. (4-6-05)

**12. Licensed Health Care Professional.** A practitioner, licensed in the State of Idaho by the Board overseeing the practitioner's license, or by a similar body in another state or jurisdiction within the United States. The practitioner's scope of practice or licensure must allow for the ordering of immunizations and writing of prescriptions, or the practitioner must be under the direction of a licensed physician. Licensed health care professionals who may provide for immunization requirements include: medical doctors, osteopaths, nurse practitioners, physicians' assistants, licensed professional nurses, registered nurses, and pharmacists. Other persons authorized by law to practice any of the healing arts, shall not be considered licensed health care professionals for the purposes of this chapter. (\_\_\_\_)

**13. Parent, Custodian, or Guardian.** The legal parent, custodian, or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (5-24-91)

~~**14. Pertussis.** An infectious agent, *Bordetella pertussis*, that causes the disease commonly known as whooping cough.~~ (4-6-05)

**154. Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States, to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine. (4-6-05)(\_\_\_\_)

**165. Physician's Representative.** Any person appointed by or vested with the authority to act on behalf of a physician in matters concerning health. (5-24-91)

**176. Regulatory Authority.** The Director of the Idaho Department of Health and Welfare or the Director's designee. (5-24-91)

011. -- 099. (RESERVED).

**100. IMMUNIZATION PROGRAM REQUIREMENTS.**

All immunizations listed in Subsections 100.01 through 100.059 of these rules, are required of children who ~~are to~~ attend licensed daycare facilities. These immunizations must be administered age appropriately according to the "General ACIP Recommendations on Immunizations Schedule," ~~established by the ACIP incorporated by~~ reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department. (4-6-05)(\_\_\_\_)

**01. Diphtheria, Tetanus and A-Cellular Pertussis (DTaP) Vaccine.** ~~Five (5) doses of DTaP (Diphtheria, Tetanus and a-cellular Pertussis) vaccine are required and must be administered to the child unless fewer doses are medically recommended.~~ (4-6-05)(\_\_\_\_)

**02. Polio Vaccine.** ~~Three (3) doses of polio vaccine are required and must be administered to the child unless fewer doses are medically recommended. See Section 110 of these rules.~~ (4-6-05)(\_\_\_\_)

**03. Measles, ~~Rubella~~ and Mumps, and Rubella (MMR) Vaccine.** ~~Two (2) doses of measles, rubella and mumps vaccine are required and must be administered to the child according to ACIP recommendations.~~ (4-6-05)(\_\_\_\_)

**04. Haemophilus Influenza Type B (HIB) Vaccine.** ~~Haemophilus influenza type b (HIB) vaccine is required and must be administered to the child according to ACIP recommendations.~~ (4-6-05)(\_\_\_\_)

05. **Hepatitis B Vaccine.** ~~Three (3) doses of hepatitis B vaccine administered to children born after November 22, 1991, unless fewer doses are medically recommended. See Section 110 of these rules.~~ (4-6-05)(\_\_\_\_)

06. **Varicella Vaccine.** (\_\_\_\_)

07. **Pneumococcal Vaccine.** (\_\_\_\_)

08. **Rotavirus Vaccine.** (\_\_\_\_)

09. **Hepatitis A Vaccine.** (\_\_\_\_)

101. **TIME PERIOD FOR COMPLIANCE.**

The ~~legal~~ parent, custodian, or guardian of a child must comply with the provisions contained in this chapter within fourteen (14) days of initial attendance to any licensed daycare facility in Idaho. (4-6-05)(\_\_\_\_)

102. **EVIDENCE OF IMMUNIZATION STATUS.**

01. **Immunization ~~Certification Statement~~ Record.** Within the deadlines established in Section 101 of these rules, a ~~legal~~ parent, custodian, or guardian of each child must present to the licensed daycare facility operator an immunization record ~~or certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received.~~ (4-6-05)(\_\_\_\_)

02. **Schedule of Intended Immunizations Form.** A child who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may conditionally attend daycare when a schedule of intended immunizations form is provided. The licensed daycare facility operator, ~~within fourteen (14) days of initial attendance,~~ must have a ~~statement~~ schedule of intended immunizations form completed by a ~~legal~~ parent, custodian, or guardian ~~of for~~ any child who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations. ~~This statement~~ A form provided by the Department, or one similar, must include the following information: (4-6-05)(\_\_\_\_)

- a. Name and ~~age~~ date of birth of child; (4-6-05)(\_\_\_\_)
- b. Type, number and dates of scheduled immunizations to be administered; (4-6-05)(\_\_\_\_)
- c. Signature of the ~~legal~~ parent, custodian, or guardian ~~providing the information,~~ and (4-6-05)(\_\_\_\_)
- d. Signature of a ~~physician or physician's representative~~ licensed health care professional providing care to the child. (5-24-91)(\_\_\_\_)

103. -- 104. (RESERVED).

105. **EXCEPTIONS TO IMMUNIZATION REQUIREMENT ~~FOR THE APPLICABLE DISEASE.~~**

A child who meets one (1) or both of the following conditions in Subsections 105.01 or 105.02 of this rule, when supporting documentation is in the possession of the licensed daycare facility operator, will not be required to ~~undergo~~ receive the required immunizations: in order to attend the licensed daycare facility. (4-6-05)(\_\_\_\_)

01. **Laboratory Proof.** A child who has laboratory proof of immunity to any of the ~~nine (9)~~ childhood diseases listed in Section 100 of these rules, will not be required to ~~undergo~~ receive the required immunizations for which the child is immune. (4-6-05)(\_\_\_\_)

02. **Disease Diagnosis.** A child who has a statement signed by a licensed physician health care professional stating the child has had ~~measles (rubeola) or mumps~~ varicella (chickenpox) disease ~~and~~ diagnosed by ~~the physician~~ a licensed health care professional upon personal examination will not be required to ~~undergo~~ receive the required immunizations for the diagnosed disease. (4-6-05)(\_\_\_\_)

106. -- 109. (RESERVED).



**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of the licensed daycare facility operator, a child who meets one (1) or both of the ~~following~~ conditions in Subsections 110.01 and 110.02 of this rule, will be exempt from the required immunizations. (4-6-05)( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; ~~or~~ (4-6-05)( )

**02. Religious or Other Objections.** A signed statement of the legal parent, custodian, or guardian on a form provided by the Department ~~or one containing similar information, and that~~ includes the following: (4-6-05)( )

a. Name of child, date of birth; and (5-24-91)( )

b. A statement of objection on religious or other grounds. (5-24-91)

**111. -- 1949. (RESERVED).**

**150. EXCLUSION CRITERIA.**

**01. Noncompliance.** A child meeting any one (1) of the following conditions must be excluded by the licensed daycare facility operator: ( )

a. Has received fewer than the required number of doses of immunizations described in Section 100 of these rules; ( )

b. Has failed to continue to receive immunizations as provided on the schedule of intended immunizations form described in Subsection 102.02 of these rules; ( )

c. Has received one or more doses at less than the minimum interval or less than the minimum age as recommended by the ACIP under Section 004; ( )

d. Has not received any doses of the required immunization and does not have a valid exception or exemption described in Sections 105 and 110 of these rules; or ( )

e. Has no immunization record on file at the daycare facility. ( )

**02. Exempted Children.** A child exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable Diseases." ( )

**151. -- 199. (RESERVED).**

**200. DOCUMENTATION AND RETENTION OF IMMUNIZATIONS ~~DATA~~ RECORD BY LICENSED DAYCARE FACILITY OPERATORS.**

**01. Provision of Information.** The licensed daycare facility operator will provide to the legal parent, custodian, or guardian, information on immunization requirements and the ACIP recommended immunization schedule. (4-6-05)( )

~~**02. Immunization Document.** The licensed daycare facility operator will copy the immunization data from the child's immunization record to a daycare immunization document or have on file a true and correct copy of the child's immunization record. This immunization document must include the month, day and year of each immunization the child has received.~~ (4-6-05)

**032. Immunization ~~Document~~ Record Retention.** The immunization documentation described in

Subsection ~~200.102~~ of these rules, must be retained by the licensed daycare facility ~~on all children~~ for each child as long as the child attends the licensed daycare facility plus one (1) year after last attendance. ~~(4-6-05)(\_\_\_\_)~~

**201. -- 299. (RESERVED).**

**300. INSPECTIONS ~~BY PUBLIC DISTRICT HEALTH DEPARTMENTS.~~**

**01. Compliance Inspection.** The regulatory authority will verify that the immunization ~~document~~ record described in Subsection ~~200.02 010~~ of these rules, is ~~initiated and~~ retained in the licensed daycare facility. ~~(4-6-05)(\_\_\_\_)~~

**02. Recording of Violation.** Following an inspection which reveals a violation of this chapter by a licensed daycare facility, the regulatory authority will record the violations in writing and provide a copy to the licensed daycare facility operator. (4-6-05)

**03. Response to Violation.** The licensed daycare facility operator will submit a written report to the regulatory authority within thirty (30) days following the inspection stating that the specified violations have been corrected. (4-6-05)

**04. Failure to Respond.** The regulatory authority will report in writing to the licensing authority any violations recorded in Subsection 300.02 of ~~these~~ this rules, to which a licensed daycare facility operator has not responded as required by Subsection 300.03 of ~~these~~ this rules. ~~(4-6-05)(\_\_\_\_)~~

**301. -- 309. (RESERVED).**

**310. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. ~~Noncompliance.~~** ~~Licensed daycare facility operators in Idaho must exclude any child who is not in compliance with this chapter within fourteen (14) days of initial attendance in their daycare facility.~~ **Enforcement** The regulatory authority may exclude any child who does not meet the requirements in this chapter and who has not been excluded from the licensed daycare facility as required in Section 150 of these rules. ~~(4-6-05)(\_\_\_\_)~~

**02. Length of Exclusion.** Any child excluded from a licensed daycare facility in Idaho as required in Subsection 310.01 of ~~these~~ this rules, may not be readmitted to the facility until they ~~are~~ child is in compliance with the requirements of this chapter. ~~(4-6-05)(\_\_\_\_)~~

**311. -- 399. (RESERVED).**

**400. TECHNICAL ASSISTANCE.**

**01. Random Evaluations.** A representative of the Department will randomly select and visit licensed daycare facilities in Idaho to evaluate the facility files for the following: (4-6-05)

- a. Immunization ~~documents~~ record described in Subsection ~~200.02 010~~ of these rules; ~~(4-6-05)(\_\_\_\_)~~
- b. Exceptions documentation described in Section 105 of these rules; and (4-6-05)
- c. Exemption statements described in Section 110 of these rules. (4-6-05)

**02. Notice of Intent to Review.** A representative of the Department will in form licensed daycare facilities selected in Subsection 400.01 of ~~these~~ this rules, at least thirty (30) days prior to an intent to review the licensed daycare facilities' documents. ~~(4-6-05)(\_\_\_\_)~~

**03. Evaluation Results.** Information will be provided to the licensed daycare facility about the results of the immunization evaluation described in Subsection 400.01 of ~~these~~ this rules, and the recommendations for correcting deficiencies and increasing immunity levels. ~~(4-6-05)(\_\_\_\_)~~

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.13 - RULES GOVERNING CERTIFICATION OF IDAHO WATER QUALITY LABORATORIES

#### DOCKET NO. 16-0213-1001 (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 56-1003 and 56-1007, 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 September 15, 2010.

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

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

This chapter of rules is being repealed under this docket. It is being completely revised, updated, and rewritten under Docket No. 16-0213-1002 immediately following this notice in this Bulletin.

**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: As a result of this proposed rule change, the Idaho Bureau of Laboratories (IBL) will increase revenue generated from Drinking Water Lab Certification fees by approximately \$12,500 from the certification of in-state laboratories and out-of-state laboratories seeking reciprocity.

**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 5, 2010, Idaho Administrative Bulletin, Volume 10-5, page 26](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Radwin at (208) 334-2235 x256.

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 September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**IDAPA 16.02.13 IS BEING REPEALED IN ITS ENTIRETY**

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.02.13 - STATE OF IDAHO DRINKING WATER LABORATORY CERTIFICATION PROGRAM

#### DOCKET NO. 16-0213-1002 (CHAPTER REWRITE - 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 Sections 56-1003 and 56-1007, 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 September 15, 2010.

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

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

An internal Department audit of the Idaho Bureau of Laboratories practices in the spring of 2008 found that the Laboratory had not reviewed the certification of water quality laboratory fees and rules on an annual basis since the early 1990s. It was determined that some of the process and criteria outlined in the rules are not being used and that the fees need to be updated. As a result, this chapter of rules is being completely revised, updated, and rewritten under this docket.

This chapter of rules is being rewritten to conform to the U.S. Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance, Fifth Edition (EPA 815-R-05-004) and to update fees. Further, the rewritten rules provide laboratories and the Department a clear and accurate description of the criteria and processes required for initiating, maintaining, and revoking drinking water certification.

Finally, the standard "required sections" of this chapter of rules are being updated to conform to the current requirements of the Office of the Administrative Rules Coordinator. Also, the obsolete sections at the end of the chapter are being deleted.

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

The Idaho Bureau of Laboratories is increasing the fees collected for certification of in-state laboratories and out-of-state laboratories seeking reciprocity.

**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.

As a result of this proposed rule change, the Idaho Bureau of Laboratories (IBL) will increase revenue generated from Drinking Water Lab Certification fees by approximately \$12,500 from the certification of in-state laboratories and out-of-state laboratories seeking reciprocity.

**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 5, 2010, Idaho Administrative Bulletin, Volume 10-5, page 26](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The federal regulations and the EPA manual contain the national standards used for the operation of certified drinking water laboratories. These are being incorporated by reference into these rules to give them the force and effect of law. Further, the documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Radwin at (208) 334-2235 x256.

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 September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED RULE TEXT FOR FEE DOCKET NO. 16-0213-1002**

**IDAPA 16**  
**TITLE 02**  
**CHAPTER 13**

**16.02.13 - STATE OF IDAHO DRINKING WATER LABORATORY CERTIFICATION PROGRAM**

**000. LEGAL AUTHORITY.**

Under Section 56-1003, Idaho Code, the Idaho Legislature has delegated to the Board of Health and Welfare the authority to set standards for laboratories in the State of Idaho. Under Section 56-1007, Idaho Code, the Department is authorized to charge and collect fees for services rendered by the Department. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.02.13, "State of Idaho Drinking Water Laboratory Certification Program." ( )

**02. Scope.** These rules establish a process for certification and standards of operation for laboratories certified by the State of Idaho to test drinking water. ( )

**002. WRITTEN INTERPRETATIONS.**

The Department may have written statements in the form of guidance and policy documents that pertain to the interpretation of the rules in this chapter. Such written statements may be inspected and copies obtained at the Idaho Bureau of Laboratories, 2220 Old Penitentiary Rd. Boise, ID 83712. ( )

**003. ADMINISTRATIVE APPEALS.**

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

**004. INCORPORATION BY REFERENCE.**

**01. Selected Sections from the Code of Federal Regulations, Title 40, Part 141 -- National Primary Drinking Water Regulations, July 1, 2009 Edition.** The following sections from the Code of Federal Regulations are hereby incorporated by reference: 40 CFR 141.21-25, 28, 40, 42, 74, and Appendix A to Subpart C of Part 141. 40 CFR 141 may be accessed in electronic format at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_09/40cfr141\\_09.html](http://www.access.gpo.gov/nara/cfr/waisidx_09/40cfr141_09.html). ( )

**02. Manual for the Certification of Laboratories Analyzing Drinking Water EPA 815-R-05-004, Fifth Edition, January 2005.** The Manual for the Certification of Laboratories Analyzing Drinking Water EPA 815-R-05-004, Fifth Edition, January 2005, including Supplement 1 EPA 815-F-08-006, June 2008, is hereby incorporated by reference. It may be accessed in electronic format at: <http://www.epa.gov/safewater/methods/laboratorycertification.html>. ( )

**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. ( )

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

**03. Street Address.** ( )

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

**b.** The Idaho Bureau of Laboratories is located at 2220 Old Penitentiary Road, Boise, Idaho, 83712-8299. ( )

**04. Telephone.** ( )

**a.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**b.** The telephone number for the Idaho Bureau of Laboratories is (208) 334-2235. ( )

**05. Internet Website.** ( )

**a.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**b.** The webpage for the Department's Idaho Bureau of Laboratories (IBL) is found at: [www.statelab.idaho.gov](http://www.statelab.idaho.gov). ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORD REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

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

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

**010. DEFINITIONS.**

- 01. Analyst.** A person responsible for testing, quality control, and reporting of analytical results. ( )
- 02. Board.** The Idaho Board of Health and Welfare. ( )
- 03. Certification Authority for the State of Idaho (CA).** The CA has signature authority for all certification decisions as required for primacy in 40 CFR 142.10 (b)(3)(i). The Bureau Chief of the Idaho Bureau of Laboratories is the certification authority for the State of Idaho. ( )
- 04. Certification Officer (CO).** The CO is the person responsible for on-site evaluations and providing technical support and guidance to a certified drinking water laboratory (CDWL). ( )
- 05. Certified Drinking Water Laboratory (CDWL).** A facility that examines drinking water for the purpose of identifying or measuring microbiological, chemical, radiological, or physical parameters, and is certified by the State of Idaho. ( )
- 06. Department.** The Idaho Department of Health and Welfare. ( )
- 07. Department of Environmental Quality (DEQ).** The state agency that has primacy and is primarily responsible for administering and enforcing regulations related to environmental quality. ( )
- 08. Director.** The Director of the Idaho Department of Health and Welfare, or his designee. ( )
- 09. Discipline.** Areas of certification for the testing of drinking water, i.e., microbiology, radiochemistry, inorganic chemistry, and organic chemistry. ( )
- 10. Drinking Water Coordinator (DWC).** The drinking water coordinator is an Environmental Health Specialist at a public health district assigned to monitor public water systems. ( )
- 11. Idaho Bureau of Laboratories (IBL).** The IBL is a bureau in the Division of Public Health in the Idaho Department of Health and Welfare. ( )
- 12. LIMS.** Laboratory Information Management System. ( )
- 13. Laboratory Supervisor.** A person who directs the day-to-day activities of a CDWL. ( )
- 14. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water that is delivered to any user of a public water system. ( )
- 15. On-Site Evaluation.** The physical, quality control, and data audit of a laboratory, including all aspects of operation related to the testing of drinking water samples. ( )
- 16. Primacy.** The responsibility for ensuring that Safe Drinking Water Act (SDWA) laws are implemented and the authority to enforce a law and related regulations (40 CFR 142.2) applicable to public water systems within the state. ( )
- 17. Proficiency Test (or Testing) (PT).** Sample(s) provided to demonstrate that a laboratory can successfully analyze the sample(s) within the acceptance limits specified in the regulations. The qualitative or quantitative composition of the reference material is unknown to the laboratory at the time of the analysis. ( )
- 18. Public Water System (PWS).** A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. ( )
- 19. Quality Assurance (QA).** An integrated system of management activities that involves planning, quality control, quality assessment, reporting, and quality improvement to ensure a product or service meets defined standards of quality with a stated level of confidence. ( )

- 20. Quality Control (QC).** The overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of the users. QC also includes operational techniques and activities that are used to fulfill the requirement of quality. ( )
- 21. Quality Assurance Plan (QA Plan).** A comprehensive plan detailing the aspects of quality assurance required to adequately fulfill the needs of a program. This document is required before a laboratory can be certified or reciprocity is granted. ( )
- 22. Reciprocity.** An extension of certification by the CA to an accredited or certified out-of-state laboratory based upon satisfactory review of documentation that demonstrates compliance with these rules. ( )
- 23. Regulatory Agency.** The Idaho Department of Environment Quality (DEQ). ( )
- 24. Regulatory Authority (RA).** The assigned drinking water Analyst III at a regional DEQ office. ( )
- 25. Standard Operating Procedure (SOP).** A written document that describes the method of an operation, analysis, or action whose techniques and procedures are thoroughly prescribed and that is officially approved as the method for performing a routine or repetitive test. ( )
- 26. Standard Methods (SM).** SM refers to a standard method of water testing published in the Standard Methods for the Examination of Water and Wastewater, as incorporated by reference under Section 004 of these rules. ( )
- 27. Subcontracting.** The procedure whereby a laboratory certified by the State of Idaho may send samples to another laboratory that is certified or has been granted reciprocity by the State of Idaho for analysis. ( )
- 011. -- 099. (RESERVED).**

**REQUIREMENTS FOR CERTIFICATION OF DRINKING WATER LABORATORIES**  
**(Sections 100-199)**

**100. APPLICATION FOR CERTIFICATION.**

- 01. Required Information on Application.** An application for first-time certification for microbiology, inorganic chemistry, organic chemistry, or radiochemistry must be submitted to the CA on a form provided by the IBL. The following information must be included: name, location, and contact information of the drinking water laboratory, name of the owner, listing of methods/analytes for which certification is requested, documentation of the education, experience, and training of the laboratory supervisor for each discipline for which certification is being requested. ( )
- 02. Time Frame for Renewal of Application for Reciprocity.** Applications for renewal of reciprocity must be received by the IBL at least thirty (30) days before the current certificate expires. ( )
- 03. Reapplication for Additional Analytes or to Change Methods.** An in-state laboratory seeking to change methods or to add analytes utilizing the same method for which the laboratory is currently certified must submit a written application requesting the change in certification and include a copy of the SOP with QC requirements specific to the method. ( )
- 04. Reapplication for Certification.** A laboratory that has been downgraded to provisional or has been decertified for an analyte or method, or both, must provide written documentation to the CO of the corrective actions within the specified period. A laboratory that has been decertified in entirety must re-apply following the same procedure as a laboratory applying for first-time certification. ( )



**05. Reciprocity for Out-State-Laboratories.** Each out-of-state laboratory seeking reciprocity with Idaho must submit the same information as an in-state drinking water laboratory applying for first-time certification. ( )

**101. CERTIFICATION FEES.**

**01. Annual Base Fee.** All CDWLs must pay an annual base fee of fifty dollars (\$50) per discipline and twenty dollars (\$20) per analyte per method for which certification is requested. Certification is valid for one (1) year from the date of issuance. ( )

**02. Non-Refundable Application Fee.** Each new laboratory that is seeking certification or reciprocity must include a non-refundable application fee of two hundred dollars (\$200) per discipline with the application. ( )

**102. TYPES OF CERTIFICATION.**

**01. Certified.** A certified laboratory meets the regulatory performance criteria described in these rules. ( )

**02. Provisionally Certified.** A provisionally certified laboratory has deficiencies, but demonstrates the ability to consistently produce valid data within the acceptance limits in these rules. ( )

**03. Not Certified.** A laboratory with the status of “not certified” can not produce consistently valid data, or is not following method protocol, or both. Such laboratories cannot analyze compliance samples. ( )

**04. Interim Certification.** The CA may grant interim certification to a laboratory if the laboratory has appropriate instrumentation, is using approved methods, has adequately trained personnel to perform the analyses, and has satisfactorily analyzed PT samples for the contaminants involved. The CO will review the laboratory’s quality control data before granting this type of certification and will conduct an on-site evaluation as soon as possible. ( )

**05. Reciprocity.** Reciprocity may be granted by the CA to out-of-state laboratories if such laboratories are certified or accredited by an approved regulatory agency and meet the regulatory performance criteria described in these rules. ( )

**103. SUBCONTRACTING.**

**01. List of Subcontractors.** Laboratories who subcontract work must maintain a list of subcontractors and documentation of the subcontracting laboratories' certification or reciprocity with the State of Idaho. ( )

**02. Identification Requirements for Subcontracting Laboratory.** The laboratory performing the subcontracted analysis must be identified by name and EPA identification number on the final report. ( )

**03. Availability of the Report from the Subcontracting Laboratory.** The report from the subcontracting laboratory must be available to the client upon request. ( )

**04. Availability of all Subcontracting Laboratory Records.** All subcontracting laboratory records must be available to the COs. ( )

**104. -- 109. (RESERVED).**

**110. ON-SITE EVALUATION.**

**01. On-Site Audits and Evaluations.** COs will perform audits of the premises and operations of new laboratories or laboratories requesting continuing certification for the purpose of determining if there is enough security to maintain the integrity of the samples and data. The frequency of the on-site evaluation is at the discretion of the CA or a minimum of every three (3) years. In addition, the CO will evaluate the: ( )

- a. Physical set up of the laboratory; ( )
- b. Quality assurance program; ( )
- c. Personnel qualifications; ( )
- d. Equipment considerations; and ( )
- e. Adequacy of data handling. ( )

**02. Written Report of Findings from the On-Site Evaluation.** The CO will generate a written report of findings from the on-site evaluation. The report will detail areas requiring a written response and specify the length of time the laboratory has to respond. The length of time for the laboratory to respond will be proportional the number and severity of deviations. If the conditions observed during an on-site evaluation are such that an immediate down grade or decertification is warranted the laboratory will be notified by certified mail within thirty (30) days by the CA. ( )

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

**120. PERSONNEL QUALIFICATIONS.**

**01. General Supervisor Qualifications. ( )**

a. A supervisor must be on-site frequently enough to satisfactorily perform the required duties outlined below. The CO must be notified if the supervisor is unable to be on-site for a period greater than three (3) consecutive weeks. ( )

b. Supervisors are responsible for ensuring that all laboratory personnel have demonstrated proficiency for assigned functions and that all data reported by the laboratory meet the required quality assurance criteria and regulatory requirements. ( )

c. If a formal complaint is received from the regulatory agency, then the CO will notify the responsible laboratory supervisor and request a report describing the incident, the probable cause, and the corrective action to be taken to ensure the situation is resolved. The incident report must be received by the CA within thirty (30) days of the laboratory being notified of the problem. The CO in conjunction with the CA will evaluate the response and if found to be acceptable, no further action will be required of the laboratory. If the response is incomplete, the CO will provide in writing the additional steps that must be completed for certification status to remain uninterrupted. ( )

d. No drinking water supervisor will be responsible for the supervision of more than two (2) certified drinking water laboratories unless specifically approved by the CA. ( )

e. If a microbiology supervisor is not available, a consultant having the same qualifications may be utilized. The laboratory must submit the academic qualifications and work experience of the potential consultant to the CA. In addition, the laboratory must define and submit a list of the specific functions the consultant will be performing along with a schedule of routine visits. If the information is found to be acceptable, the CA will notify the laboratory director or owner in writing. A record of all consultant visits and communications must be maintained and be available for review during the on-site evaluation. The record must include a brief description of on-site findings and include any telephone or electronic consultation. Each entry must be dated and signed by the consultant. ( )

**02. Supervisor Qualifications by Discipline. ( )**

a. The supervisor of a microbiology laboratory must have a bachelor's degree from an accredited college in microbiology, biology, or equivalent. Supervisors who have a degree in a subject other than microbiology must have had at least two (2) college-level microbiology courses in which environmental microbiology was part of the curriculum. In addition, the supervisor must have a minimum of two (2) weeks training at a federal agency, state

agency, or academic institution in the microbiological analysis of drinking water or eighty (80) hours of on-the-job-training in water microbiology at a certified laboratory, or other comparable training acceptable to the CA. ( )

**b.** The supervisor of a chemistry laboratory must have at least a bachelor's degree from an accredited college with a major in chemistry or equivalent and at least one (1) year of experience in the analysis of drinking water. In addition, the supervisor must have a working knowledge of quality assurance principles. ( )

**c.** The supervisor of a radiochemistry laboratory must have at least a bachelor's degree from an accredited college with a major in chemistry, or equivalent, and should have at least one (1) year of experience in the measurement of radioactive analytes in drinking water. In addition, the supervisor must have a working knowledge of QA and QC principles as applied to all radiochemical practices and procedures conducted in the laboratory. ( )

**03. Analyst or Equivalent Job Title.** ( )

**a.** An analyst performing microbiological testing must have a minimum of a high school education or equivalent, at least three (3) months of bench experience in environmental microbiological testing, and thirty (30) days on-the-job training in drinking water microbiology under the direction of an experienced analyst. If an analyst has a bachelor's degree in microbiology, or related field, the three- (3) month bench training may be shortened to thirty (30) hours at the discretion of the laboratory supervisor. Before analyzing compliance samples, the analyst must demonstrate competency by successfully completing a PT. ( )

**b.** Analysts in each of the chemical disciplines should have at least a bachelor's degree with a major in chemistry, or equivalent, and at least one (1) year of experience in the analysis of drinking water for the discipline in which they are working. If the analyst is responsible for the operation of analytical instrumentation, he or she must have completed specialized training offered by the manufacturer or another qualified training facility or have successfully served an apprenticeship under an experienced analyst. The duration of this apprenticeship should be proportional to the sophistication of the instrument. Data produced by analysts and instrument operators while in the process of obtaining the required training or experience are acceptable only when reviewed and validated by a fully qualified analyst or the laboratory supervisor. Documentation of training must be maintained for each analyst and available for evaluation by the CO. ( )

**04. Chemistry Technician.** Technicians in each of the chemical disciplines must have at least a high school diploma or equivalent, have completed a method-training program under an experience analyst, and have six (6) months bench experience in the analysis of drinking water. The method-training record for each analyst should be recorded in a training file and available for evaluation by the CO. ( )

**121. -- 129. (RESERVED).**

**130. REPORTING, NOTIFICATION, AND DISTRIBUTION OF LABORATORY RESULTS.**

**01. Submission of Test Results in Approved Format.** The drinking water supervisor in each of the disciplines of certification is responsible for submission of all test results performed on samples submitted by PWSs, including subcontracted samples, in a format approved by the DEQ Drinking Water Program. Reports must be submitted to the appropriate regulatory authority or drinking water coordinator in a timely manner not to exceed ten (10) business days after the completion of testing or upon receipt of results from subcontract laboratories. ( )

**02. Notification of High Contaminant Levels.** The chemistry supervisor or designee must notify the appropriate regulatory agency or drinking water coordinator by phone as soon as feasible of any nitrate and nitrite level exceeding the current MCL including subcontracted samples. Notification must also be made when any other regulated chemical or radiological contaminant exceeds four (4) times the MCL. ( )

**03. Notification of Positive Microbiological Results.** The microbiological supervisor or designee is responsible for an immediate telephone notification to the appropriate regulatory agency in the case of a positive result for a microbiological test. If the RA or DWC is not available, the results must be given to the person designated by the RA or DWC to take the information. ( )

**131. -- 139. (RESERVED).**

**140. LABORATORY QUALITY ASSURANCE.**

**01. The QA Plan.** Each laboratory certified or having reciprocity with the State of Idaho must have and adhere to a QA plan. Laboratories seeking certification will be required to submit such a plan for review as part of the application process. ( )

**02. Required Items for the QA Plan.** The EPA Manual for the Certification of Laboratories Analyzing Drinking Water lists the items that must be included: ( )

- a. Laboratory organization and responsibility; ( )
- b. SOPs with dates of last revision; ( )
- c. Laboratory sample receipt and handling procedure; ( )
- d. Instrument calibration procedures; ( )
- e. Analytical procedures; ( )
- f. Data reduction, validation, reporting and verification; ( )
- g. Type of quality control (QC) checks and frequency of use; ( )
- h. List of schedules of internal and external system and data quality audits and inter laboratory comparisons; ( )
- i. Preventive maintenance procedures and schedules; ( )
- j. Corrective action contingencies; and ( )
- k. Record-keeping procedures. ( )

**03. Chain-of-Custody Procedures.** Each laboratory must have a procedure in place in the event the submitter requires an evidence chain-of-custody. ( )

**04. Maintenance of Records.** ( )

a. Each laboratory must maintain a record keeping system that allows the history of the sample and associated data to be readily understood through documentation. This would include access to LIMS, both present and prior systems, all electronic data including backup, QC documents and all associated calculations, maintenance records including replacement history of instruments, submission forms, submission forms to subcontracting laboratories, final reports from subcontracting laboratories, and final reports generated by the certified laboratory. ( )

b. The laboratory must retain all records for a minimum of five (5) years from generation of the last entry in the records. ( )

c. A laboratory must notify public water system clients before disposing of records. ( )

d. Laboratories must be aware of and adhere to specific record retention as required for specific analytes or disciplines. ( )

**05. Proficiency Testing (PT).** Proficiency test samples must be successfully analyzed annually per analyte per method for which the laboratory is certified. All PT samples must be obtained from an approved supplier, and must be analyzed in the same manner as routine samples by the primary analyst assigned to the specific analysis. If testing is rotated among a number of analysts the supervisor will be responsible for determining who completes the

PT. Records must include the name of the analyst who completed the testing. The results of the PT must be sent directly from the supplier to the CO. The methods listed on the laboratory's certificate must be the methods used for PT samples. ( )

**141. -- 149. (RESERVED).**

**150. EVALUATION.**

**01. Documentation of Corrective Action.** If a CDWL is found to be noncompliant, it will be notified in writing by the CA of the number and seriousness of the deviations. The noncompliant laboratory will be required to submit documentation of correction to the CA or his designee within the time limit specified by the CA. ( )

**02. Adequacy of Corrective Action.** Upon receipt of documentation of corrective action, the CO in conjunction with the CA will review the response to determine the adequacy of the corrective action taken. The laboratory will be eligible for certification if the response is found to be complete. If the response is incomplete or inadequate, the laboratory will be notified in writing of the additional changes required along with a specified time for completion. ( )

**03. Unacceptable PT Result.** In the event of an unacceptable PT, the laboratory must submit an incident report to the CO that includes a description of the incident and corrective action taken. A second PT must be completed within sixty (60) days of the laboratory being notified of the failure. If the second PT is successfully analyzed no further action will be taken. If a second PT is not analyzed or if the second PT is also unacceptable, the laboratory will be downgraded in accordance with Section 210 of these rules. ( )

**04. Continued Certification of Other Tests.** A CDWL that has an unacceptable PT result per analyte per method may remain certified for performance of all tests for which satisfactory performance has been demonstrated through the annual successful PT testing. ( )

**151. -- 199. (RESERVED).**

**REQUIREMENTS FOR DRINKING WATER LABORATORIES TO MAINTAIN,  
DOWNGRADE, OR REVOKE CERTIFICATION  
(Sections 200-299)**

**200. MAINTENANCE OF CERTIFICATION.**

In order to maintain certification, drinking water laboratories must be able to demonstrate they continue to meet all of the following requirements. ( )

**01. Successful Completion of PT Samples.** Each year, each laboratory must successfully complete a PT per analyte per method for which the laboratory is seeking to maintain certification. ( )

**02. Use of Specified Methods.** Each laboratory must be able to demonstrate it is using the methods specified in the drinking water regulations. ( )

**03. Maintain Required Standard of Quality.** The CO must be satisfied the laboratory is maintaining the required standard of quality for certification. This is based on the results of the PT testing, on-site evaluations, and any feedback from regulatory agencies. ( )

**04. Notification of Major Changes.** The laboratory must notify the CA in writing within thirty (30) days of major changes that could affect the accuracy and precision of testing. A major change includes but is not limited to the loss of a laboratory supervisor, equipment failure or breakdown, or change in location or ownership. ( )

**201. -- 209. (RESERVED).**

**210. CRITERIA AND PROCEDURES FOR DOWNGRADING OR REVOKING CERTIFICATION STATUS.**

**01. Reasons a Laboratory May be Downgraded to Provisionally Certified Status.** A laboratory may be downgraded to provisionally certified status for an analyte or method for any of the following reasons: ( )

- a.** Failure to analyze a PT annually within acceptance limits specified in the regulations as demonstrated by a failure of a second PT; ( )
- b.** Failure to submit an incident report after failing a PT or to analyze a second PT; ( )
- c.** Failure to notify the CA within thirty (30) days of major changes; ( )
- d.** Failure to maintain the required standard of quality based upon observations made by the CO during an on-site evaluation; or ( )
- e.** Failure to report compliance data to the regulatory agency in a timely manner. ( )

**02. Procedure for Downgrading to Provisionally Certified Status.** ( )

**a.** The CA will notify the laboratory director or owner by certified mail of the intent to downgrade the laboratory to provisional certification per analyte per method within thirty (30) days of learning of any of the items listed under Subsection 210.01 of this rule. The laboratory will be given thirty (30) days from the date of receipt to develop a written corrective action plan and submit it with all supporting documentation to the CA. This information will be reviewed and evaluated for adequacy. The laboratory will be notified by certified mail if the response is acceptable or if additional corrective action must be taken. The CO will document that the corrective action plan has been implemented during the next on-site evaluation. ( )

**b.** If a laboratory fails a second PT, the CA will downgrade the laboratory to provisionally certified status for that analyte or method and notify the laboratory by certified mail. ( )

**c.** A provisionally certified laboratory has three (3) months to correct the problem in a manner that is acceptable to the CA. If the downgrading of certification is based on the results of PT testing, the reason for the error must be identified and corrected. A third PT must be successfully analyzed. A provisionally certified laboratory may continue to analyze samples for compliance purposes, but must notify its clients of the downgraded status of certification and provide that information in writing on all reports. ( )

**d.** An out-of-state laboratory that has reciprocity with Idaho and is downgraded to provisional status by either the accreditation agency or certification authority of the home state must notify the CA of the change within thirty (30) days of the downgrade. ( )

**03. Criteria for Revoking Certification Status.** ( )

**a.** A laboratory must be downgraded from certified, provisionally certified, or interim certified status to “not certified” for a particular analyte or method for the following reasons: ( )

- i.** Reporting PT data from another laboratory as its own; ( )
- ii.** Falsification of data or other deceptive practices; ( )
- iii.** Failure to use the analytical methodology specified in the regulations; and ( )
- iv.** For provisionally certified laboratories, failure to correct the identified deficiencies that lead to the downgrading of certification status. ( )

**b.** Reciprocity of out-of-state laboratories who do not notify the CA of any changes in the status of certification or accreditation will automatically be revoked. ( )

**04. Procedure for Revocation.** ( )

**a.** The CA will notify the laboratory in writing of the intent to revoke certification. The laboratory will have thirty (30) days from the time of the notification to provide a written response. ( )

**b.** If the laboratory responds with an acceptable written corrective action plan, including documentation of implementation, the revocation will be suspended. ( )

**c.** If the response is unacceptable, incomplete, or both, certification will be revoked. If the laboratory does not respond, certification will be revoked. The laboratory will be notified in writing of the revocation. ( )

**05. Upgrading or Reinstatement of Certification.** A laboratory seeking an upgrade of certification must request this change in writing and provide documentation that the deficiencies which led to the provisional certification have been corrected. In addition, an on-site evaluation and successful completion of an additional PT may be required. A laboratory seeking certification after a revocation must follow the same procedure as a new laboratory seeking initial certification. ( )

**211. -- 999. (RESERVED).**

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.15 - IMMUNIZATION REQUIREMENTS FOR IDAHO SCHOOL CHILDREN

DOCKET NO. 16-0215-1001

### 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 39-1118, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

| Thursday, September 9, 2010<br>6:00 p.m. MDT  | Tuesday, September 14, 2010<br>6:00 p.m. MDT  | Thursday, September 16, 2010<br>6:00 p.m. PDT                             |
|---|---|---|
| Central District Health Dept.<br>707 N Armstrong Place<br>Immunization Lobby<br>Boise, ID | Eastern Idaho Public Health Dept.<br>1250 Hollipark Dr.<br>North Conf. Rm.<br>Idaho Falls, ID | Red Lion Hotel<br>621 21st Street<br>Port One - Conf. Rm.<br>Lewiston, ID |

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

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

In an effort to increase the number of children who are fully protected from preventable diseases, the Department is amending these rules to increase the number of vaccines required for children attending schools in Idaho. The changes to these rules will help protect children from additional vaccine-preventable diseases, provide a conditional admission clause for children who are in the process of receiving required vaccines, provide clarification on exclusion of children from attendance, and update existing language to match current practices. Parents who choose not to immunize their children will still be able to sign an exemption form for medical, religious, or other reasons.

**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:

This rulemaking has no anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with the following: Idaho Public Health Districts, Idaho Medical Association (IMA), American Academy of Pediatrics - Idaho chapter, American Academy of Family Physicians - Idaho chapter, State Board of Education, Idaho School Boards Association, Idaho State Department of Education, School Nurses Association of Idaho (SNOI), Head Start - Friends of Family and Children, Meridian Joint District No. 2 - Nursing Services, and the Idaho Immunization Coalition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the "Recommended Immunization Schedules for Persons Aged 0 through 18 Years -- United States, 2010," is being incorporated by reference into these rules because it contains the national standard for immunization schedules and is regularly updated to reflect best practices and to give it the force and effect of law. The document is not being republished in this chapter of rules due to its length and format and because of the cost of republication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rebecca Coyle at (208) 334-5942.

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 September 22, 2010.



DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0215-1001**

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is, IDAPA 16.02.15, “Immunization Requirements for Idaho School Children.” (4-6-05)

**02. Scope.** These rules contain the legal requirements for the administration of an immunization program for children enrolled in grades preschool, kindergarten through twelve (12) of any Idaho public, private, or parochial school. (~~3-30-07~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

~~No documents have been incorporated by reference in this chapter of rules.~~ The “Recommended Immunization Schedules for Persons Aged 0 Through 18 Years -- United States, 2010.” are incorporated by reference for this chapter of rules. Published in the Morbidity and Mortality Weekly Report, January 8, 2010, Vol. 58 (51 and 52), by the Centers for Disease Control and Prevention as recommended by the Advisory Committee on Immunization Practices (ACIP). This document is referred to in this chapter of rules as “ACIP Recommended Schedule.” These schedules may be obtained from the Department or viewed online at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5851a6.htm>. (4-6-05)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. ACIP.** The Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices. (4-6-05)( )

**02. Admission.** Admission to a public, private or parochial school is: (4-2-08)

**a.** Registration of a child before attendance; or (4-2-08)

**b.** Re-entry of a child after withdrawing from previous enrollment. (4-2-08)

- c.** Transfer of a child from one (1) Idaho school to another or from schools outside Idaho. ( )
- 03.** **Child.** A minor who is enrolled in preschool, kindergarten through grade twelve (12) in any Idaho public, private, or parochial school. ~~(3-30-07)~~( )
- 04.** **Department.** Idaho Department of Health and Welfare. (10-13-92)
- 05** **Immunization Record.** An electronic medical health record, an immunization registry document, or a written immunization certificate confirmed by a licensed health care professional or a physician's representative which states the month, day, and year of each immunization a person has received. ( )
- 056.** **Laboratory Proof.** A certificate from a licensed medical laboratory stating the type of test performed, the date of each test, and the results, accompanied by a physician's statement indicating the child is immune. Tests performed must meet the requirements of IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." ~~(4-6-05)~~( )
- 07.** **Licensed Health Care Professional.** A practitioner, licensed in the State of Idaho by the Board overseeing the practitioner's license, or by a similar body in another state or jurisdiction within the United States. The practitioner's scope of practice for licensure must allow for the ordering of immunizations and writing of prescriptions, or the practitioner must be under the direction of a licensed physician. Licensed health care professionals who may provide for immunization requirements include: medical doctors, osteopaths, nurse practitioners, physicians' assistants, licensed professional nurses, registered nurses, and pharmacists. Other persons authorized by law to practice any of the healing arts, shall not be considered licensed health care professionals for the purposes of this chapter. ( )
- 068.** **Parent, Custodian, or Guardian.** The legal parent, custodian, or guardian of a child or those with limited power of attorney for the temporary care or custody of a minor child. (4-6-05)
- ~~**07.** **Pertussis.** *An infectious agent, Bordetella pertussis, that causes the disease commonly known as whooping cough.* (4-6-05)~~
- 089.** **Physician.** A medical doctor or osteopath licensed by the Idaho State Board of Medicine, or by a similar body in another state or jurisdiction within the United States, to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine. ~~(4-6-05)~~( )
- ~~**0910.** **Physician's Representative.** Any person appointed by, or vested with the authority to act on behalf of a physician in matters concerning health. (8-15-79)~~
- 11.** **Preschool.** The provision of education for children before the commencement of statutory and obligatory education, differing from traditional daycare in that the emphasis is learning and development rather than enabling parents to work or pursue other activities. Preschools may include, but are not limited to, federally-funded Head Start centers, state-funded preschools, government-funded special education programs, public school preschool programs, and for-profit and not-for profit preschool programs. ( )
- 102.** **Private or Parochial School.** Any Idaho school maintained by an individual, organization or corporation, not at public expense, and open only to children selected and admitted by the individual, organization or corporation, or to children of a certain class or possessing certain qualifications, which may or may not charge tuition fees. (1-25-79)
- ~~**143.** **Public School.** Any Idaho school maintained at the public expense and open to all children within a given district, including those responsible for the education and training of exceptional children or those schools specially chartered. (1-25-79)~~
- 14.** **Regulatory Authority.** The Director of the Idaho Department of Health and Welfare or the Director's designee. ( )

~~125.~~ **School Authority.** An authorized representative designated by the Board of Trustees of a public school or a person or body designated to act on behalf of the governing body of a private or parochial school. (8-15-79)

011. -- 099. (RESERVED).

**100. IMMUNIZATION ~~PROGRAM~~ REQUIREMENTS.**

All immunizations listed in Subsections 100.01 through 100.04 of this rule, are required of children upon admission to kindergarten through grade twelve (12) of any Idaho public, private, or parochial school. Upon admission to preschool, children must be age appropriately immunized with all immunizations listed in Subsections 100.01 through 100.03 of this rule. Immunizations must be administered according to the "General ACIP Recommendations on Immunizations Schedule," established by the ACIP or their equivalent incorporated by reference in Section 004 of these rules, unless fewer doses are medically recommended by a physician. These recommendations are available from the Department ~~as provided in Section 004 of these rules.~~ Exemptions from these immunization requirements are provided in Section 110 of these rules. (4-2-08)( )

**01. ~~Measles, Mumps and Rubella (MMR)~~ Child Born on or Before September 1, 1999. (4-2-08)**

~~a. A child born after September 1, 1999, is required to have any combination of two (2) doses of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule. (4-2-08)~~

~~b. A child born on or before September 1, 1999, is required to have one (1) dose of either of the vaccines listed in Subsections 100.01.c. and 100.01.d. of this rule.~~ must meet the following minimum immunization requirements prior to admission for these vaccines: one (1) dose of (4-2-08)

~~e. Measles, Mumps, and Rubella (MMR); or (4-2-08)~~

~~d. Measles, Mumps, Rubella and Varicella (MMRV).~~ four (4) doses of Diphtheria, Tetanus, Pertussis (DTaP), three (3) doses of Polio, and three (3) doses of Hepatitis B. (4-2-08)( )

**02. ~~Diphtheria and Tetanus~~ Child Born After September 1, 1999 Through September 1, 2005. (4-2-08)**

~~a. A child born after September 1, 1999, is required to have any combination of five (5) doses of the following vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule. If the fourth dose was administered on or after the child's fourth birthday, the fifth dose is not needed. (4-2-08)~~

~~b. A child born on or before September 1, 1999, is required to have any combination of four (4) doses, of the vaccines listed in Subsections 100.02.c. through 100.02.g. of this rule.~~ through September 1, 2005, must meet the following minimum immunization requirements prior to admission for these vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of (4-2-08)

~~e. Diphtheria, Tetanus, and acellular Pertussis (DTaP—Pediatric); (3-30-07)~~

~~d. Diphtheria, Tetanus and Pertussis (DTP); (3-30-07)~~

~~e. Tetanus, Diphtheria and acellular Pertussis (Tdap—Adolescent); (3-30-07)~~

~~f. Diphtheria, Tetanus (DT—Pediatric); or (4-2-08)~~

~~g. Tetanus, Diphtheria (Td—Adolescent),~~ three (3) doses of Polio, and three (3) doses of Hepatitis B. (3-30-07)( )

**03. Pertussis Child Born After September 1, 2005. (4-2-08)**

~~a. A child born after September 1, 1999, is required to have any combination of five (5) doses of the vaccines listed in Subsections 100.03.c. through 100.03.e. of this rule. If the fourth dose was administered on or after~~

~~the child's fourth birthday, the fifth dose is not needed.~~ (4-2-08)

~~b. A child born on or before September 1, 1999, is required to have any combination of four (4) doses of the vaccines listed in Subsection 100.03.c. through 100.03.e. of this rule. 2005, must meet the following minimum immunization requirements prior to admission for the following vaccines: two (2) doses of Measles, Mumps, and Rubella (MMR), five (5) doses of~~ (4-2-08)

~~e. Diphtheria, Tetanus, and acellular Pertussis (DTaP—Pediatric);~~ (4-2-08)

~~d. Diphtheria, Tetanus and Pertussis (DTP); or~~ (4-2-08)

~~e. Tetanus, Diphtheria and acellular Pertussis (Tdap—Adolescent), four (4) doses of Polio, three (3) doses of Hepatitis B, two (2) doses of Hepatitis A, and two (2) doses of Varicella.~~ (4-2-08)( )

**04. Polio.** ~~A child is required to have three (3) doses of Polio vaccine. Seventh Grade Immunization Requirements.~~ Effective with the 2011-2012 school year, and each year thereafter, in addition to the required immunizations listed in Section 100.01 through 100.03 of this rule, a child must meet the following minimum immunization requirements prior to admission in to the seventh (7th) grade for these vaccines: one (1) dose of Tetanus, Diphtheria, Pertussis Booster (Tdap), and one (1) dose of Meningococcal. This requirement will be extended to: 7th - 8th grade students in 2012, 7th - 9th grade students in 2013, 7th - 10th grade students in 2014, 7th - 11th grade students in 2015, and 7th - 12th grade students in 2016. (4-2-08)( )

~~05. Hepatitis B.~~ A child born after November 22, 1991, is required to have three (3) doses of Hepatitis B vaccine. (4-2-08)

**065. Summary of Immunization Requirements.** ( )

**a. Immunization requirements.**

| TABLE 100.065.a. SUMMARY OF IMMUNIZATION REQUIREMENTS |   |  |                                    |
|---|---|--|------------------------------------|
| Immunization Requirement*                             | Child born after on or before September 1, 1999 | Child born on or before after September 1, 1999, through September 1, 2005 | Child born after September 1, 2005 |
| Measles, Mumps, and Rubella (MMR)                     | <del>2</del> <u>1</u> doses                     | <del>4</del> <u>2</u> doses  | <u>2</u> doses                     |
| Diphtheria, Tetanus, Pertussis                        | <del>5</del> <u>4</u> doses                     | <del>4</del> <u>5</u> doses  | <u>5</u> doses                     |
| <del>Pertussis</del>                                  | <del>5</del> doses                              | <del>4</del> doses   |                                    |
| Polio   | 3 doses   | 3 doses  | <u>4</u> doses                     |
| Hepatitis B   | 3 doses   | 3 doses**  | <u>3</u> doses                     |
| Hepatitis A   | <u>0</u> doses                                  | <u>0</u> doses   | <u>2</u> doses                     |
| Varicella   | <u>0</u> doses                                  | <u>0</u> doses   | <u>2</u> doses                     |

\* Exemptions for immunization requirements are found in Section 110 of these rules.  
 \*\* ~~Hepatitis B—Three (3) doses unless child was born on or before November 22, 1991.~~

(4-2-08)( )

**b. Seventh grade immunization requirements.**

| <b>TABLE 100.05.b SUMMARY OF SEVENTH GRADE IMMUNIZATION REQUIREMENTS</b>            |   |  |
|---|---|--|
| <b>Immunization Requirement*</b>  | <b>Child admitted to 7th grade prior to 2011-2012 school year</b> | <b>Child admitted to 7th grade during 2011-2012 school year and each year thereafter</b> |
| Tetanus, Diphtheria, Pertussis (Tdap)   | 0 doses   | 1 dose   |
| Meningococcal   | 0 doses   | 1 dose   |
| * Exemptions for immunization requirements are found in Section 110 of these rules. |   |  |

( )

**101. DEADLINE FOR COMPLIANCE.**

The *legal* parent, custodian, or guardian of any child who is to attend any public, private, or parochial school in Idaho must comply with the provisions contained in this chapter at the time of admission and before attendance.

(4-6-05)( )

**102. EVIDENCE OF IMMUNIZATION STATUS.**

**01. Immunization ~~Certification Statement~~ Record.** Within the deadlines established in Section 101 of these rules, a *legal* parent, custodian, or guardian of each child must present to school authorities an immunization *certification statement signed by a physician or a physician's representative stating the type, number and dates of immunizations received* record.

(4-6-05)( )

**02. Schedule of Intended Immunizations Form.** A child who has received at least one (1) dose of each required vaccine and is currently on schedule for subsequent immunizations may be conditionally admitted. School authorities, at the time of admission and before attendance, must have a *statement schedule of intended immunizations form completed by a legal parent, custodian, or guardian of for any child who is not immunized, excepted, or exempted, and who is in the process of receiving, or has been scheduled to receive, the required immunizations.* A form ~~is~~ provided by the Department, or one similar, must include the following information:

(4-6-05)( )

- a. Name and ~~age~~ date of birth of child; (4-6-05)( )
- b. School and grade child is enrolled in and attending; (4-6-05)
- c. Types, numbers, and dates of scheduled immunizations to be administered; (4-6-05)( )
- d. Signature of the *legal* parent, custodian, or guardian ~~providing the information~~; and (10-13-92)( )
- e. Signature of a *physician or physician's representative* licensed health care professional providing care to the child. (7-9-90)( )

**03. Children Admitted to School and Failing to Continue the Schedule of Intended Immunizations.** A child, who does not receive the required immunizations as scheduled in Subsection 102.02 of ~~these~~ this rules, will be excluded by school authorities until documentation of the administration of the required immunizations is provided to school authorities by the child's *legal* parent, custodian, or guardian. (4-6-05)( )

**103. -- 104. (RESERVED).**

**105. EXCEPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities at the time of admission and before

attendance, a child who meets one (1) or ~~more~~ both of the following conditions in Subsections 105.01 and 105.02 of this rule, will not be required to ~~undergo~~ receive the required immunizations in order to attend school. (4-6-05)( )

**01. Laboratory Proof.** Laboratory proof of immunity to any of the ~~eight (8)~~ childhood diseases listed in Section 100 of these rules, will not be required to receive the immunization for that disease; ~~or for which the child is immune~~. (4-6-05)( )

**02. Disease Diagnosis.** A child who has a statement signed ~~statement of by~~ a licensed ~~physician~~ health care professional stating that the child has had ~~measles or mumps~~ varicella (chickenpox) disease diagnosed by ~~the physician~~ a licensed health care professional upon personal examination, will not be required to receive the immunization for the diagnosed disease. (4-6-05)( )

**106. -- 109. (RESERVED).**

**110. EXEMPTIONS TO IMMUNIZATION REQUIREMENT.**

When supporting documentation is in the possession of school authorities, at the time of admission and before attendance, a child who meets one (1) or both of the following conditions in Subsections 110.01 and 110.02 of this rule, will not be required to ~~undergo~~ receive the required immunizations. (4-6-05)( )

**01. Life or Health Endangering Circumstances.** A signed statement of a licensed physician that the child's life or health would be endangered if any or all of the required immunizations are administered; ~~or~~. (4-6-05)( )

**02. Religious or Other Objections.** A signed statement of the legal parent, custodian, or guardian on a form provided by the Department ~~or one containing similar information, and that~~ includes the following: (4-6-05)( )

- a. Name of child, date of birth; and (1-25-79)( )
- b. A statement of objection on religious or other grounds. (1-25-79)

**111. -- 149. (RESERVED).**

**150. ENFORCEMENT OF IMMUNIZATION REQUIREMENT.**

**01. Noncompliance.** Any child not in compliance with this chapter upon admission to any Idaho public, private, or parochial school, will be denied attendance by school authorities, unless the child is excepted or exempted from these immunization requirements as provided in Sections 105 and 110 of these rules. The regulatory authority may exclude any child who does not meet the requirements in this chapter and who has not been excluded from school. (4-2-08)( )

**02. Length of Exclusion.** Any child denied attendance in accordance with Subsection 150.01 of this rule, will not be allowed to attend any Idaho public, private or parochial school until the child is in compliance with the requirements of this chapter. (4-2-08)

**03. Exempted Children.** A child exempted under Section 110 of these rules, may be excluded by the regulatory authority in the event of a disease outbreak under IDAPA 16.02.10, "Idaho Reportable Diseases." ( )

**151. -- 199. (RESERVED).**

**200. REPORTS BY SCHOOL AUTHORITIES.**

**01. Responsibility and Timeliness.** School authorities must submit a report of each school's immunization status, by grade, to the Department on or before the first day of November each year. (4-6-05)

**02. Form and Content of Report.** Each school report must include the following information ~~with~~

and be ~~provided~~ submitted on a Department form or electronically ~~by school~~: ~~(4-6-05)~~( )

- a.** Inclusive dates of reporting period; (10-13-92)
- b.** Name and address of school, school district and county; (4-6-05)
- c.** Grade being reported and total number of children enrolled in the grade; (4-6-05)
- d.** The name and title of the person completing the report form. (4-6-05)
- e.** Number of children who meet all of the required immunizations listed in Section 100 of these rules; (4-6-05)
- f.** Number of children who do not meet all of the required number of immunizations listed by specific immunization type; (4-6-05)
- g.** Number of children who do not meet the immunization requirement, but are in the process of receiving the required immunizations; and (4-6-05)
- h.** Number of children who claimed exemption to the required immunizations as allowed in Section 110 of these rules. (4-6-05)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-1002

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

**EFFECTIVE DATE:** The effective dates of the temporary rules are: December 19, 2009, January 1, 2010, and September 1, 2010.

**Editor's Note:** The January 1, 2010, temporary effective date reflects the date on which the deletion of Section 790 became effective. This Section is being deleted from the rule in this rulemaking. Because this Section 790 is being deleted, there is no actual effective date shown in this docket. This date indicates when the formerly required waiver was no longer considered an eligibility requirement and when enforcement of the requirement was terminated.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code; also eligibility for special immigrants per Public Law 111-118, Section 8120; and Public Law 111-3, Section 211, regarding verification of citizenship or nationality for purposes of determining eligibility for Medicaid or the Children's Health Insurance Program (CHIP).

**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 September 15, 2010.

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

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

Due to changes in federal regulations and the expiration of the ISSH Waiver from the Medicaid State Plan, these AABD rules are amended to:

1. Allow for the use of electronic data transfer from the Social Security Administration (SSA) to verify U.S. citizenship and identity as provided in Public Law 111-3, Section 211;
2. Change the eligibility time period for Afghani and Iraqi special immigrants to comply with changes in Public Law 111-118, Section 8120; and
3. Remove references to the Idaho State School and Hospital (ISSH) Waiver as it is no longer available as of January 1, 2010.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule changes is appropriate because they confer benefits.

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

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

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

1. Cost impacts for electronic data transfer with SSA for this chapter is minimal to state general funds or AABD.
2. There are no Special Immigrants currently eligible for AABD, therefore the anticipated fiscal impact for 2011 is \$0.
3. There are no ISSH waiver participants, therefore the anticipated fiscal impact is \$0.



**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are being done to confer benefits and align with federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Callie King at (208) 334-0663.

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 September 22, 2010.

DATED this 13th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0305-1002**

**104. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.**

To be eligible for AABD cash and Medicaid, an individual must provide documentation of U.S. citizenship and identity unless he or she otherwise met the requirements under Subsection 104.09 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. (3-29-10)

**01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity.** The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
- b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
- c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)
- d. A document issued by a federally-recognized Indian tribe evidencing membership, enrollment in, or affiliation with such tribe. (3-29-10)

**02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity.** The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 104.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
  - i. United States fifty (50) states; (3-30-07)

- ii. District of Columbia; (3-30-07)
- iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
- iv. Guam, on or after April 10, 1899; (3-30-07)
- v. U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
- vi. America Samoa; (3-30-07)
- vii. Swain's Island; or (3-30-07)
- viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
- b.** A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
- c.** A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
- d.** A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
- e.** A Northern Mariana Identification Card, Form I-873; (3-30-07)
- f.** An American Indian Card issued by the Department of Homeland Security with the classification code "KIC," Form I-873; (3-30-07)
- g.** A final adoption decree showing the child's name and U.S. place of birth; (3-30-07)
- h.** Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
- i.** An official U.S. Military record showing a U.S. place of birth; (4-2-08)
- j.** A certification of birth abroad, FS-545; (4-2-08)
- k.** A verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; or (4-2-08)
- l.** Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (4-2-08)

**03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity.** The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with at least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a.** A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; (4-2-08)
- b.** A life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth; (4-2-08)
- c.** A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization; or (4-2-08)
- d.** An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth

of the child's parents. (4-2-08)

**04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity.** The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 104.01 through 104.03 of this rule do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with at least one (1) document listed in Subsections 104.05 through 104.07 of this rule to establish both citizenship and identity. (3-29-10)

- a. Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)
- b. One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)
  - i. Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
  - ii. U.S. State vital Statistics official notification of birth registration; (3-30-07)
  - iii. A delayed U.S. public birth record that was recorded more than five (5) years after the person's birth; (4-2-08)
  - iv. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
  - v. Medical (clinic, doctor, or hospital) record; (3-30-07)
  - vi. Institutional admission papers from a nursing facility, skilled care facility or other institution; (4-2-08)
  - vii. Bureau of Indian Affairs (BIA) roll of Alaska Natives; or (4-2-08)
- c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: (4-2-08)
  - i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
  - ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
  - iii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; and (3-30-07)
  - iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

**05. Documents Accepted for Proof of Identity but Not Citizenship.** The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 104.02 through 104.04 of this rule to establish both citizenship and identity. (3-29-10)

- a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)
- b. A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 104.05.a. of this rule; (3-29-10)

- c. School identification card with a photograph of the individual; (3-30-07)
- d. U.S. Military card or draft record; (3-30-07)
- e. Military dependent's identification card; (3-30-07)
- f. U. S. Coast guard Merchant Mariner card; (3-30-07)
- g. A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; or (4-2-08)
- h. A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 104.05.a. through 104.05.i. of this rule. (3-29-10)

**06. Additional Documents Accepted for Proof of Identity.** If the participant provides citizenship documentation as described in Subsections 104.02 or 104.03 of this rule, three (3) or more corroborating documents may be used to prove identity. (3-29-10)

**07. Identity Rules for Children.** The following documentation of identity for children under sixteen (16) may be used: (3-30-07)

- a. School records may be used to establish identity. Such records also include nursery or day care records. (3-30-07)
- b. Clinic, doctor, or hospital records. (4-2-08)
- c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 104.02 of this rule are not available. A declaration may be used if it meets the following conditions: (3-29-10)
  - i. It states the date and place of the child's birth; and (3-30-07)
  - ii. It is signed by a parent or guardian. (3-30-07)
- d. A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 104.05.a. through 104.05.c. of this rule are not available. (3-29-10)
- e. A declaration cannot be used for identity if a declaration for citizenship documentation was provided for the child. (3-30-07)

**08. Eligibility for ~~Applicants and~~ Medicaid Participants Who Do Not Provide Citizenship and Identity Documentation.** (~~3-30-07~~)

~~a. Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation.~~ (~~3-30-07~~)

~~b. Any Medicaid participants, who does not have ninety (90) days to provide proof of U.S. citizenship and identity documentation, at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: Medicaid benefits will be approved pending verification if the participant meets all other eligibility requirements. Medicaid will be denied if the participant refuses to obtain documentation.~~ (~~3-30-07~~)(9-1-10)T

- ~~i. Does not meet other eligibility criteria required in this chapter of rules; or~~ (~~3-30-07~~)
- ~~ii. Refuses to obtain the documentation.~~ (~~3-30-07~~)

**09. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements.** The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 104.01 through 104.08 of this rule is provided: (3-29-10)

- a. Supplemental Security Income (SSI) recipients; (4-2-08)
- b. Individuals determined by the SSA to be entitled to or are receiving Medicare; (4-2-08)
- c. Social Security Disability Income (SSDI) recipients; *and* ~~(4-2-08)~~(9-1-10)T
- d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act; ~~(4-2-08)~~(9-1-10)T
- e. Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules; *and* ~~(3-29-10)~~(9-1-10)T
- f. Individuals whose name and social security number are validated by the Social Security Administration data match as meeting U.S. citizenship status. (9-1-10)T

**10. Assistance in Obtaining Documentation.** The Department will assist individuals who are mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation. (3-30-07)

**11. Provide Documentation of Citizenship and Identity One Time.** When an individual has provided citizenship and identity documents, changes in eligibility will not require an individual to provide such documentation again unless later verification of the documents provided raises a question of the individual's citizenship or identity. (3-30-07)

**105. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.**

To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 105.01 through 105.17 of this rule. An individual must also provide proof of identity as provided in Section 104 of these rules. (3-29-10)

- 01. U.S. Citizen.** A U.S. Citizen. (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U.S. National, National of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
  - a. At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
  - b. The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
  - c. The child is under eighteen (18) years of age; (3-30-07)
  - d. The child is a lawful permanent resident; and (3-30-07)
  - e. If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S.

Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)

**05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-30-07)

**06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)

**07. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and;

**a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)

**b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)

**c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

**d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; ~~or~~ (12-19-09)T

**e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; ~~(3-30-07)~~ (12-19-09)T

**f.** Is an Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007; or (12-19-09)T

**g.** Is an Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008. (12-19-09)T

**08. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-30-07)

**09. American Indian Born in Canada.** An American Indian born in Canada under 8 U.S.C. 1359. (3-30-07)

**10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-30-07)

**11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-30-07)

**12. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

**a.** Is under the age of eighteen (18) years; or (3-20-04)

**b.** Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

**13. Qualified Non-Citizen Receiving Supplement Security Income (SSI).** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

**14. Permanent Resident Receiving AABD Cash On August 22, 1996.** A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

~~**15. Afghan Special Immigrants.** An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, are eligible for eight (8) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (3-29-10)~~

~~**16. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)~~

**175. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements.** Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 105.01 through 105.164 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. ~~(3-29-10)~~(12-19-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

*(Editor's Note: The effective date of this deletion is January 1, 2010. This is the date when the waiver was no longer a required part of the eligibility determination process.)*

~~**790. IDAHO STATE SCHOOL AND HOSPITAL (ISSH) WAIVER.** To be eligible, the participant must be at least fifteen (15) years of age but less than nineteen (19) years of age and is currently at or would be placed at the Idaho State School and Hospital (ISSH) if not for waiver services. (3-20-04)~~

~~7910.~~ -- 798. (RESERVED).

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.09 - MEDICAID BASIC PLAN BENEFITS

#### DOCKET NO. 16-0309-1003

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 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(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Bills 656 and 708 passed by the 2010 legislature; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (also known as the Medicare Modernization Act), Section 1001(d); and 42 CFR Part 455, Subpart D.

**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 September 15, 2010.

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

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

Rules changes are being made in these rules to implement the legislative intent in House Bills 656 and 708 passed by the 2010 legislature, as well as the Medicare Modernization Act, Section 1001(d). Rule changes for this docket include:

1. Change in definition for Medicaid Inpatient Cost Limits to clarify the "beginning of the principal year" (H0656);
2. Revision of reporting requirements for DSH (Section 1001(d));
3. Clarification to the definition of "uninsured patient costs" in DSH requirements (Section 1001(d)); and
4. Pharmacy cost survey (H0708).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs.

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

Changes related to the pharmacy cost survey will result in a cost reduction of \$1.67 million to the state general funds. The total cost reduction for both state and federal funds is \$8 million. There is no anticipated fiscal impact to the state general fund related to the other changes being made in this docket.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are to implement the legislative intent in H0656 and H0708 passed by the 2010 legislature, and to implement Section 1001(d) of the Medicare Modernization Act.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Lourie Neal at (208) 287-1162.



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 September 22, 2010.

DATED this 17th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0309-1003**

**400. INPATIENT HOSPITAL SERVICES - DEFINITIONS.**

**01. Administratively Necessary Day (AND).** An Administratively Necessary Day (AND) is intended to allow a hospital time for an orderly transfer or discharge of participant inpatients who are no longer in need of a continued acute level of care. ANDs may be authorized for inpatients who are awaiting placement for nursing facility level of care, or in-home services which are not available, or when catastrophic events prevent the scheduled discharge of an inpatient. (3-30-07)

**02. Allowable Costs.** The current year's Medicaid apportionment of a hospital's allowable costs determined a final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (3-30-07)

**03. Apportioned Costs.** Apportioned costs consist of the share of a hospital's total allowable costs attributed to Medicaid program participants and other patients so that the share borne by the program is based upon actual services received by program participants, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (3-30-07)

**04. Capital Costs.** For the purposes of hospital reimbursement, capital costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (3-30-07)

**05. Case-Mix Index.** The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the current year will be divided by the index of the principal year to assess the percent change between the years. (3-30-07)

**06. Charity Care.** Charity care is care provided to individuals who have no source of payment, third-party or personal resources. (3-30-07)

**07. Children's Hospital.** A Medicare-certified hospital as set forth in 42 CFR Section 412.23(d). (3-30-07)

**08. Critical Access Hospitals (CAH).** A rural hospital with twenty five (25) or less beds as set forth in 42 CFR Section 485.620. (7-1-10)T

**089. Current Year.** Any hospital cost reporting period for which reasonable cost is being determined will be termed the current year. (3-30-07)

**0910. Customary Hospital Charges.** Customary hospital charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Department. No more than ninety-one and seven-tenths percent (91.7%) of covered charges will be reimbursed for the separate operating costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 405.03.b. of these rules. (3-29-10)

**101. Disproportionate Share Hospital (DSH) Allotment Amount.** The DSH allotment amount determined by CMS that is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (3-30-07)

**112. Disproportionate Share Hospital (DSH) Survey.** The DSH survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH in accordance with Subsection 405.09.a. of these rules. (3-30-07)

**123. Disproportionate Share Threshold.** The disproportionate share threshold is: (3-30-07)

**a.** The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (3-30-07)

**b.** A Low Income Revenue Rate exceeding twenty-five percent (25%). (3-30-07)

**134. Excluded Units.** Excluded units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (3-30-07)

**145. Hospital Inflation Index.** An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year. (3-30-07)

**156. Low Income Revenue Rate.** The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (3-30-07)

**a.** Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (3-30-07)

**b.** The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care must not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (3-30-07)

**167. Medicaid Inpatient Day.** For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (3-30-07)

**178. Medicaid Utilization Rate (MUR).** The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH survey. In this paragraph, the term "inpatient days" includes *Medicaid swing bed days*, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of

care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH threshold computations. ~~(3-30-07)~~(7-1-10)T

**189. Obstetricians.** For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (3-30-07)

**190. On-Site.** A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location must be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (3-30-07)

**201. Operating Costs.** For the purposes of hospital reimbursement, operating costs are the allowable costs included in the cost centers established in the finalized Medicare cost report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (3-30-07)

**212. Other Allowable Costs.** Other allowable costs are those reasonable costs recognized under the Medicaid reasonable cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as operating costs, but recognized by Medicare principles as allowable costs will be included in the total reasonable costs. Other allowable costs include, but are not necessarily limited to, physician's component which was combined-billed, capital costs, ambulance costs, excess costs, carry-forwards and medical education costs. (3-30-07)

**223. Principal Year.** The principal year is the period from which the Medicaid Inpatient Operating Cost Limit is derived. (3-30-07)

**a.** For inpatient services rendered on or after November 1, 2002, the principal year is the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare cost report or its equivalent is prepared for Medicaid cost settlement. (3-30-07)

**b.** For inpatient services rendered on or after January 1, 2007, the principal year is the provider's fiscal year ending in calendar year 2003 ~~and every subsequent fiscal year end in which a finalized Medicare cost report, or its equivalent, is prepared for Medicaid cost settlement.~~ ~~(3-30-07)~~(7-1-10)T

**c.** For inpatient services on or after July 1, 2010, the principal year will be the Medicare cost report period used to prepare the Medicaid cost settlement. (7-1-10)T

**234. Public Hospital.** For purposes of Subsection 405.03.b. of these rules, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (3-30-07)

**245. Reasonable Costs.** Except as otherwise provided in Section 405.03 of these rules, reasonable costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Medicaid cost limit. (3-30-07)

**256. Reimbursement Floor Percentage.** The floor calculation for hospitals with more than forty (40) beds is seventy-seven and four-tenths percent (77.4%) of Medicaid costs, and the floor calculation for hospitals with forty (40) or fewer beds is ninety-one and seven-tenths percent (91.7%). (3-29-10)

**267. TEFRA.** TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (3-30-07)

**278. Uninsured Patient Costs.** For the purposes of determining the additional costs beyond

uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. *An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient.*

~~(3-30-07)~~(7-1-10)T

**289. Upper Payment Limit.** The Upper Payment Limit for hospital services is defined in the Code of Federal Regulations. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. INPATIENT HOSPITAL SERVICES - PROVIDER REIMBURSEMENT.**

Under the Medicaid provisions of the Social Security Act, in reimbursing hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of inpatient services in accordance with the procedures detailed under this Section of rule. The upper limits observed by the Department in reimbursing each individual hospital must not exceed the payment that would be determined as a reasonable cost under the policies, definitions and procedures observed under Medicare (Title XVIII) principles of cost reimbursement. (3-30-07)

**01. Exemption of New Hospitals.** A hospital that has operated as the type of facility for which it is certified (or the equivalent thereof) under present and previous ownership for less than three (3) full years will be paid in accordance with the Title XVIII principles of reasonable cost reimbursement, including those provisions applicable to new providers for the carryover and recovery of unreimbursed costs, in accordance with 42 CFR Section 413.64. (3-30-07)

**02. Medicaid Inpatient Operating Cost Limits.** The following describe the determination of inpatient operating cost limits. (3-30-07)

**a. Medicaid Cost Limits for Dates of Service Prior to a Current Year.** The reimbursable reasonable costs for services rendered prior to the beginning of the principal year, but included as prior period claims in a subsequent period's cost report, will be subject to the same operating cost limits as the claims under settlement. (3-30-07)

**b. Application of the Medicaid Cost Limit.** In the determination of a hospital's reasonable costs for inpatient services rendered after the effective date of a principal year, a Hospital Inflation Index, computed for each hospital's fiscal year end, will be applied to the operating costs, excluding capital costs and other allowable costs as defined for the principal year and adjusted on a per diem basis for each subsequent year under the Hospital Inflation Index. (3-30-07)

**i.** Each inpatient routine service cost center, as reported in the finalized principal year end Medicare cost report, will be segregated in the Medicaid cost limit calculation and assigned a share of total Medicaid inpatient ancillary costs. The prorated ancillary costs will be determined by the ratio of each Medicaid routine cost center's reported costs to total Medicaid inpatient routine service costs in the principal year. (3-30-07)

**ii.** Each routine cost center's total Medicaid routine service costs plus the assigned share of Medicaid inpatient ancillary costs of the principal year will be divided by the related Medicaid patient days to identify the total costs per diem in the principal year. (3-30-07)

**(1)** The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 405.02.b.ii. of this rule to identify each inpatient routine service cost center per diem cost limit in the principal year. (3-30-07)

**(2)** If a provider did not have any Medicaid inpatient utilization or render any Medicaid inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the principal year, the principal year for only those routine cost centers without utilization in the provider's principal year will be

appropriately calculated using the information available in the next subsequent year in which Medicaid utilization occurred. (3-30-07)

iii. Each routine cost center's cost per diem for the principal year will be multiplied by the Hospital Inflation Index for each subsequent fiscal year. (3-30-07)

iv. The sum of the per diem cost limits for the Medicaid inpatient routine service cost centers of a hospital during the principal year, as adjusted by the Hospital Inflation Index, will be the Medicaid cost limit for operating costs in the current year. (3-30-07)

(1) At the date of final settlement, reimbursement of the Medicaid current year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem operating costs as adjusted for each subsequent fiscal year after the principal year through the current year by the Hospital Inflation Cost Index. (3-30-07)

(2) Providers will be notified of the estimated inflation index periodically or Hospital Inflation Index (CMS Market Basket Index) prior to final settlement only upon written request. (3-30-07)

**03. Adjustments to the Medicaid Cost Limit.** A hospital's request for review by the Department concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Section 405 of this chapter of rules, must be granted under the following circumstances: (3-30-07)

**a.** Adjustments. Because of Extraordinary Circumstances. Where a provider's costs exceed the Medicaid limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (3-30-07)

**b.** Reimbursement to Public Hospitals. A Public Hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (3-30-07)

**c.** Adjustment to Cost Limits. A hospital is entitled to a reasonable increase in its Medicaid Cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid in patients since the principal year. Any hospital making such showing is entitled to an increase commensurate with the increase in per diem costs. (3-30-07)

i. The Medicaid operating cost limit may be adjusted by multiplying cost limit by the ratio of the current year's Case-Mix Index divided by the principal year's Case-Mix Index. (3-30-07)

ii. The contested case procedure set forth in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," is available to larger hospitals seeking such adjustments to their Medicaid Cost Limits. (3-30-07)

~~**d.** Medicaid Operating and Capital and Medical Education Costs. All hospitals will be guaranteed at least eighty percent (80%) of their total allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (3-30-07)~~

~~i. With the exception of Subsection 405.03.d.ii. of this rule, at the time of final settlement, the allowable Medicaid costs related to each hospital's fiscal year end will be according to the Reimbursement Floor Percentage. (3-30-07)~~

~~ii. In the event that CMS informs the Department that total hospital payments under the Inpatient Operating Cost Limits exceed the inpatient Upper Payment Limit, the Department may reduce the guaranteed percentage defined as the Reimbursement Floor Percentage to hospitals. (3-30-07)~~

**ed.** Adjustment to the Proration of Ancillary Costs in the principal year. Where the provider asserts that

the proration of an ancillary costs does not adequately reflect the total Medicaid cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each participant for each type of patient day during each participant's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect. (3-30-07)

**04. Payment Procedures.** The following procedures are applicable to in-patient hospitals: (3-30-07)

**a.** The participant's admission and length of stay is subject to preadmission, concurrent and retrospective review by a Quality Improvement Organization (QIO) designated by the Department. QIO review will be governed by provisions of the QIO Idaho Medicaid Provider Manual as amended. If such review identifies that an admission or continued stay is not medically necessary, then no Medicaid payment will be made. Failure to obtain a timely QIO review as required by Section 405 of this chapter of rules, and as outlined in the QIO Idaho Medicaid Provider Manual as amended, will result in the QIO conducting a late review. After a QIO review has determined that the hospital stay was medically necessary, Medicaid will assess a late review penalty to the hospital as outlined in Subsection 405.05 of this rule. (3-30-07)

**i.** All admissions are subject to QIO review to determine if continued stay in inpatient status is medically necessary. A QIO continued stay review is required when the participant's length of stay exceeds the number of days certified by the QIO. If no initial length of stay certification was issued by the QIO, a QIO continued stay review is required when the admission exceeds a number of days as specified by the Department. (3-30-07)

**ii.** Reimbursement for services originally identified as not medically necessary by the QIO will be made if such decision is reversed by the appeals process required in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (3-30-07)

**iii.** Absent the Medicaid participant's informed decision to incur services deemed unnecessary by the QIO, or not authorized by the QIO due to the negligence of the provider, no payment for denied services may be obtained from the participant. (3-30-07)

**b.** In reimbursing licensed hospitals, the Department will pay the lesser of customary hospital charges or the reasonable cost of semi-private rates for in-patient hospital care as set forth in this rule, unless an exception applies as stated in Section 402 of these rules. The upper limits for payment must not exceed the payment which would be determined as reasonable cost using the Title XVIII standards and principles. (3-30-07)

**05. Hospital Penalty Schedule.** (3-30-07)

**a.** A request for a preadmission and/or continued stay QIO review that is one (1) day late will result in a penalty of two hundred and sixty dollars (\$260), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**b.** A request for a preadmission and/or continued stay QIO review that is two (2) days late will result in a penalty of five hundred and twenty dollars (\$520), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**c.** A request for a preadmission and/or continued stay QIO review that is three (3) days late will result in a penalty of seven hundred and eighty dollars (\$780), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**d.** A request for a preadmission and/or continued stay QIO review that is four (4) days late will result in a penalty of one thousand and forty dollars (\$1,040), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**e.** A request for a preadmission and/or continued stay QIO review that is five (5) days late or greater will result in a penalty of one thousand three hundred dollars (\$1,300), from the total Medicaid paid amount of the inpatient hospital stay. (3-30-07)

**06. AND Reimbursement Rate.** Reimbursement for an AND will be made at the weighted average Medicaid payment rate for all Idaho nursing facilities for routine services, as defined per 42 CFR 447.280(a)(1), furnished during the previous calendar year. ICF/ID rates are excluded from this calculation. (3-30-07)

**a.** The AND reimbursement rate will be calculated by the Department by March 15 of each calendar year and made effective retroactively for dates of service on or after January 1 of the respective calendar year. (3-30-07)

**b.** Hospitals with an attached nursing facility will be reimbursed the lesser of their Medicaid per diem routine rate or the established average rate for an AND; and (3-30-07)

**c.** The Department will pay the lesser of the established AND rate or a facility's customary hospital charge to private pay patients for an AND. (3-30-07)

**07. Reimbursement for Services.** Routine services as addressed in Subsection 405.08 of this rule include all medical care, supplies, and services which are included in the calculation of nursing facility property and nonproperty costs as described in these rules. Reimbursement of ancillary services will be determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

**08. Hospital Swing-Bed Reimbursement.** The Department will pay for nursing facility care in certain rural hospitals. Following approval by the Department, such hospitals may provide service to participants in licensed hospital ("swing") beds who require nursing facility level of care. (3-30-07)

**a.** Facility Requirements. The Department will approve hospitals for nursing facility care provided to eligible participants under the following conditions: (3-30-07)

**i.** The Department's Licensure and Certification Section finds the hospital in conformance with the requirements of 42 CFR 482.66 "Special Requirements" for hospital providers of long-term care services ("swingbeds"); and (3-30-07)

**ii.** The hospital is approved by the Medicare program for the provision of "swing-bed" services; and (3-30-07)

**iii.** The facility does not have a twenty-four (24) hour nursing waiver granted under 42 CFR 488.54(c); and (3-30-07)

**iv.** The hospital must not have had a swing-bed approval terminated within the two (2) years previous to application for swing-bed participation; and (3-30-07)

**v.** The hospital must be licensed for less than one hundred (100) beds as defined by 42 CFR 482.66(a)(1) for swing-bed purposes; and (3-30-07)

**vi.** Nursing facility services in swing-beds must be rendered in beds used interchangeably to furnish hospital or nursing facility-type services. (3-30-07)

**b.** Participant Requirements. The Department will reimburse hospitals for participants under the following conditions: (3-30-07)

**i.** The participant is determined to be entitled to such services in accordance with IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled"; and (3-30-07)

**ii.** The participant is authorized for payment in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 222.02. (3-30-07)

**c.** Reimbursement for "Swing-Bed" Patient Days. The Department will reimburse swing-bed hospitals on a per diem basis utilizing a rate established as follows: (3-30-07)

i. Payment rates for routine nursing facility services will be at the weighted average Medicaid rate per patient day paid to hospital-based nursing facility/ICF facilities for routine services furnished during the previous calendar year. ICF/ID facilities' rates are excluded from the calculations. (3-30-07)

ii. The rate will be calculated by the Department by March 15 of each calendar year. The rate will be based on the previous calendar year and effective retroactively for dates of service on or after January 1 of the respective year. (3-30-07)

iii. The weighted average rate for nursing facility swing-bed days will be calculated by dividing total payments for routine services, including patient contribution amounts but excluding miscellaneous financial transactions relating to prior years, by total patient days for each respective level of care occurring in the previous calendar year. (3-30-07)

iv. Routine services include all medical care, supplies, and services which are included in the calculation of nursing facility property and nonproperty costs as described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 225.01. (3-30-07)

v. The Department will pay the lesser of the established rate, the facility's charge, or the facility's charge to private pay patients for "swing-bed" services. (3-30-07)

vi. Reimbursement of ancillary services not included in the nursing facility rates furnished for extended care services will be billed and determined in the same manner as hospital outpatient reasonable costs in accordance with Medicare reasonable cost principles, except that reimbursement for prescription drugs will be in accord with Section 665 of these rules. (3-30-07)

vii. The number of swing-bed days that may be reimbursed to a provider in a twelve (12) month period will be limited to the greater of one thousand ninety five (1,095) days which may be prorated over a shorter fiscal period or, fifteen percent (15%) of the product of the average number of available licensed beds in the hospital in the period and the number of days in the fiscal period. (3-30-07)

d. Computation of "Swing-Bed" Patient Contribution. The computation of the patient's contribution of swing-bed payment will be in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 224. (3-30-07)

**09. Adjustment for Disproportionate Share Hospitals (DSH).** All Idaho hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. (3-29-10)

a. DSH Survey Requirements. The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. No later than July 15 of each calendar year, the Department must notify each hospital of their calculated DSH payment and notify each hospital of its preliminary calculated distribution amount. A hospital may file an amended survey to complete, correct, or revise the original DSH survey by submitting the amended survey and supporting documentation to the Department no later than thirty (30) days after the notice of the preliminary DSH calculation is mailed to the hospital. The state's annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data. (3-30-07)

b. Mandatory Eligibility. Mandatory Eligibility for DSH status will be provided for hospitals which: (3-30-07)

i. Meet or exceed the disproportionate share threshold as defined in Subsection 400.13 of these rules. (3-30-07)

ii. Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services. (3-29-10)



- (1) Subsection 405.09.b.ii. of this rule does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (3-30-07)
- (2) Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (3-30-07)
- iii. The MUR will not be less than one percent (1%). (3-30-07)
- iv. If an Idaho hospital exceeds both disproportionate share thresholds, as described in Subsection 400.13 of these rules, and the criteria of Subsections 405.09.b.ii. and 405.09.b.iii. of this rule are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 405.09.b.vi. through 405.09.b.x. of this rule. (3-29-10)
- v. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals will receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- vi. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- vii. Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- viii. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) will receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- ix. Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) will receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (3-30-07)
- c.** Deemed Disproportionate Share Hospital (DSH). All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 405.09.b. of this rule, will be designated a Deemed Disproportionate Share Hospital. The disproportionate share payment to a Deemed DSH hospital will be the greater of: (3-29-10)
- i. Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (3-30-07)
- ii. An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH allotment amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (3-30-07)
- d.** Insufficient DSH Allotment Amounts. When the DSH allotment amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH allotment amount was exceeded. (3-30-07)
- e.** DSH Payments Will Not Exceed Costs. A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the State Plan or were uninsured for health care services provided during the year. (3-30-07)
- i. Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state will not be considered a source of third party payment. (3-30-07)

ii. Claims of uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. (3-30-07)

f. DSH Will be Calculated on an Annual Basis. A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. (3-30-07)

g. To the extent that audit findings demonstrate that DSH payments exceed the documented hospital specific cost limits, the Department will collect overpayments and redistribute DSH payments. (7-1-10)T

i. If at any time during an audit the Department discovers evidence suggesting fraud or abuse by a provider, that evidence, in addition to the Department's final audit report regarding that provider, will be referred to the Medicaid Fraud Unit of the Idaho Attorney General's Office. (7-1-10)T

ii. The Department will submit an independent certified audit to CMS for each completed Medicaid State plan rate year, consistent with 42 C.F.R. Part 455, Sub part D, "Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments." (7-1-10)T

iii. Beginning with FFY 2011, if based on the audit of the DSH allotment distribution, the Department determines that there was an overpayment to a provider, the Department will immediately: (7-1-10)T

(1) Recover the overpayment from the provider; and (7-1-10)T

(2) Redistribute the amount in overpayment to providers that had not exceeded the hospital-specific upper payment limit during the period in which the DSH payments were determined. The payments will be subject to hospital-specific upper payment limits. (7-1-10)T

iv. Disproportionate share payments must not exceed the DSH state allotment, except as otherwise required by the Social Security Act. In no event is the Department obligated to use State Medicaid funds to pay more than the State Medicaid percentage of DSH payments due a provider. (7-1-10)T

**10. Out-of-State Hospitals.** (3-30-07)

a. Cost Settlements for Certain Out-of-State Hospitals. Hospitals not located in the state of Idaho will have a cost settlement computed with the state of Idaho if the following conditions are met: (3-30-07)

i. Total inpatient and outpatient covered charges are more than fifty thousand dollars (\$50,000) in the fiscal year; or (3-30-07)

ii. When less than fifty thousand dollars (\$50,000) of covered charges are billed to the state by the provider, and a probable significant underpayment or overpayment is identifiable, and the amount makes it administratively economical and efficient for cost settlement to be requested by either the provider or the state, a cost settlement will be made between the hospital and the Department. (3-30-07)

b. Payment for Hospitals Without Cost Settlement. Those out-of-state hospitals not cost settling with the state will have annually adjusted rates of payment no greater than seventy-five percent (75%) for inpatient covered charges and no greater than eighty percent (80%) of outpatient covered charges or, the Department's established fee schedule for certain outpatient services. These rates represent average inpatient and outpatient reimbursement rates paid to Idaho hospitals. (3-30-07)

**11. Institutions for Mental Disease (IMD).** Except for individuals under twenty-two (22) years of age which are contracted with the Department under the authority of the Division of Family and Community Services and certified by the Health Care Financing Administration, no services related to inpatient care will be covered when admitted to a freestanding psychiatric hospital. (3-30-07)

**12. Audit Function.** Under a common audit agreement, the Medicare Intermediary may perform any audit required for both Title XVIII and Medicaid purposes. The Department may elect to perform an audit even

though the Medicare Intermediary does not choose to audit the facility. (3-30-07)

**13. Adequacy of Cost Information.** Cost information as developed by the provider must be current, accurate, and in sufficient detail and in such form as needed to support payments made for services rendered to participants. This includes all ledgers, books, reports, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.), which pertain to the determination of reasonable costs, leaving an audit trail capable of being audited. Financial and statistical records will be maintained in a consistent manner from one (1) settlement period to another. (3-30-07)

**14. Availability of Records of Hospital Providers.** A participating hospital provider of services must make available to the Department in the state in which the facility is licensed, the provider's fiscal and other necessary records for the purpose of determining its ongoing record keeping capability and to ascertain information pertinent to the determination of the proper amount of program payments due the provider. (3-30-07)

**15. Interim Cost Settlements.** The Department may initiate or a hospital may request an interim cost settlement based on the Medicare cost report as submitted to the Medicare Intermediary. (3-30-07)

**a. Cost Report Data.** Interim settlement cost report data will be adjusted to reflect Medicaid payments and statistical summary reports sent to providers before the filing deadline. (3-30-07)

**b. Hard Copy of Cost Report.** Hospitals which request to undergo interim cost settlement with Idaho Medicaid must submit a hard copy of the Medicare cost report to the Department upon filing with the Intermediary. (3-30-07)

**c. Limit or Recovery of Payment.** The Department may limit a recovery or payment of an interim settlement amount up to twenty-five percent (25%) of the total settlement amount when the cost report information is in dispute. (3-30-07)

**16. Notice of Program Reimbursement.** Following receipt of the finalized Medicare cost report and the timely receipt of any other information requested by the Department to fairly cost settle with the provider, a certified letter with the return receipt requested will be sent to the provider which sets forth the amounts of underpayment or overpayment made to the provider. The notice of the results of the final retroactive adjustment will be sent even though the provider intends to request a hearing on the determination, or has appealed the Medicare Intermediary's determination of cost settlement. Where the determination shows that the provider is indebted to the Medicaid program because total interim and other payments exceed cost limits, the state will take the necessary action to recover overpayment, including the suspension of interim payments sixty (60) days after the provider's receipt of the notice. Such action of recovery or suspension will continue even after a request for an informal conference or hearing is filed with the state. If the hearing results in a revised determination, appropriate adjustments will be made to the settlement amount. (3-30-07)

**a. Timing of Notice.** The Department will make every effort to issue a notice of program reimbursement within twelve (12) months of receipt of the cost report from the Medicare Intermediary. (3-30-07)

**b. Reopening of Completed Settlements.** A Medicaid completed cost settlement may be reopened by the provider or the state within a three (3) year period from the date of the letter of notice of program reimbursement. The issues must have been raised, appealed and resolved through the reopening of the cost report by the Medicare Intermediary. Issues previously addressed and resolved by the Department's appeal process are not cause for reopening of the finalized cost settlement. (3-30-07)

**17. Nonappealable Items.** The formula for the determination of the Hospital Inflation Index, the principles of reimbursement which define allowable cost, non-Medicaid program issues, interim rates which are in compliance with state and federal rules, and the preliminary adjustments prior to final cost settlement determinations as supported by properly completed cost reports and audits must not be accepted as appealable items. (3-30-07)

**18. Interim Reimbursement Rates.** The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide

services in conformity with applicable state and federal laws, rules, and quality and safety standards. (3-30-07)

**a.** Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

**b.** Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider. (3-30-07)

**c.** Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half (½) of the difference. (3-30-07)

**d.** Unadjusted Rate. The Medicaid interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors. (3-30-07)

**19. Audits.** All financial reports are subject to audit by Departmental representatives in accordance with Section 305 of these rules. (3-30-07)

**20. Interim Reimbursement Rates.** The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards. (3-30-07)

**a.** Annual Adjustments. Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Medicaid Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage. (3-30-07)

**b.** Retrospective Adjustments. Interim rates will not be adjusted retrospectively upon request for rate review by the provider. (3-30-07)

**c.** Basis for Adjustments. The Department may make an adjustment based on the Medicare cost report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half (½) of the difference. (3-30-07)

**d.** Unadjusted Rate. The Medicaid interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors. (3-30-07)

**21. Audits.** All financial reports are subject to audit by Departmental representatives in accordance with Section 305 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**665. PRESCRIPTION DRUGS: PROVIDER REIMBURSEMENT.**

**01. Nonpayment of Prescriptions.** Prescriptions not filled in accordance with the provisions of Subsection 664.02 of these rules will be subject to nonpayment or recoupment. (3-30-07)

**02. Payment Procedures.** The following protocol must be followed for proper reimbursement.

(3-30-07)

**a.** Filing Claims. Pharmacists must file claims electronically with Department-approved software or by submitting the appropriate claim form to the fiscal contractor. Upon request, the contractor will provide pharmacies with a supply of claim forms. The form must include information described in the pharmacy guidelines issued by the Department. (3-30-07)

**b.** Claim Form Review. Each claim form may be subject to review by a contract claim examiner, a pharmaceutical consultant, or a medical consultant. (3-30-07)

**c.** Billed Charges. A pharmacy's billed charges are not to exceed the usual and customary charges defined as the lowest charge by the provider to the general public for the same service including advertised specials. (3-30-07)

**d.** Reimbursement. Reimbursement to pharmacies is limited to the lowest of the following: (3-30-07)

i. Federal Upper Limit (FUL), as established by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, plus the dispensing fee assigned by the Department; (3-30-07)

ii. State Maximum Allowable Cost (SMAC), as established by the Department, plus the assigned dispensing fee; (3-30-07)

iii. Estimated Acquisition Cost (EAC), as established by the Department following negotiations with representatives of the Idaho pharmacy profession defined as an approximation of the net cost of the drug ~~and a reasonable operating margin~~, plus the assigned dispensing fee; or ~~(3-30-07)~~(7-1-10)T

iv. The pharmacy's usual and customary charge to the general public as defined in Subsection 665.02.c. of this rule. (3-30-07)

**e.** Dispensing Fees. Only one (1) dispensing fee per month will be allowed for the dispensing of each maintenance drug to any participant as an outpatient or a resident in a care facility except: (3-30-07)

i. Multiple dispensing of topical and injectable medication when dispensed in manufacturer's original package sizes, unless evidence exists, as determined by the Department, that the quantity dispensed does not relate to the prescriber's order; (3-30-07)

ii. Multiple dispensing of oral liquid maintenance medication if a reasonable quantity, as determined by the Department, is dispensed at each filling; (3-30-07)

iii. Multiple dispensing of tablets or capsules if the quantity needed for a thirty-four (34) day supply is excessively large or unduly expensive, in the judgment of the Department; or (3-30-07)

iv. When the dose is being titrated for maximum therapeutic response with a minimum of adverse effects. (3-30-07)

**f.** Remittance Advice. Claims are processed by computer, and payments are made directly to the pharmacy or its designated bank through electronic claims transfer. A remittance advice with detailed information of each claim transaction will accompany each payment made by the Department. (3-30-07)

**g.** Return of Drugs. Drugs dispensed in unit dose packaging as defined by IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," Subsection 156.05, must be returned to the dispensing pharmacy when the participant no longer uses the medication as follows: (3-30-07)

i. A pharmacy provider using unit dose packaging must comply with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," Subsection 156.05. (3-30-07)

ii. The pharmacy provider that receives the returned drugs must credit the Department the amount billed for the cost of the drug less the dispensing fee. (3-30-07)

iii. The pharmacy provider may receive a fee for acceptance of returned unused drugs. The value of the unused drug being returned must be cost effective as determined by the Department. (3-30-07)

**03. Periodic State Cost Surveys.** The Department will utilize periodic state cost surveys to obtain the most accurate pharmacy drug acquisition costs in establishing a pharmacy reimbursement fee schedule. Pharmacies participating in the Idaho Medicaid program are required to participate in these periodic state cost surveys by disclosing the costs of all drugs net of any special discounts or allowances. (7-1-10)T

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

### **16.03.09 - MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1004**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010. This temporary rule will cease to be in effect June 30, 2011, in accordance with H0701 (2010).

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Bills 656 and 701 passed by the 2010 legislature.

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

Rules changes are being made in these rules to implement the legislative intent in House Bills 656 and 701 passed by the 2010 legislature. Rules changes for this docket include:

1. Reduction to outpatient hospital costs (H0656); and
2. Change in definition for hospital floor reimbursement percentage (H0656).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs. Temporary rulemaking is also being done under the authority granted in House Bill 701 (2010), Section 13.

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

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

Changes related to House Bill 656 (2010) will result in a positive fiscal impact on the state general fund of approximately \$18 million per state fiscal year. A related additional positive fiscal impact of \$7 million will be realized due to changes in reimbursement mechanisms for certain private hospitals. This will result in an overall cost reduction to the state general fund of \$25 million.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Lourie Neal at (208) 287-1162.

DATED this 11th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 16-0309-1004**

**400. INPATIENT HOSPITAL SERVICES - DEFINITIONS.**

**01. Administratively Necessary Day (AND).** An Administratively Necessary Day (AND) is intended to allow a hospital time for an orderly transfer or discharge of participant inpatients who are no longer in need of a continued acute level of care. ANDs may be authorized for inpatients who are awaiting placement for nursing facility level of care, or in-home services which are not available, or when catastrophic events prevent the scheduled discharge of an inpatient. (3-30-07)

**02. Allowable Costs.** The current year's Medicaid apportionment of a hospital's allowable costs determined at final or interim settlement consists of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (3-30-07)

**03. Apportioned Costs.** Apportioned costs consist of the share of a hospital's total allowable costs attributed to Medicaid program participants and other patients so that the share borne by the program is based upon actual services received by program participants, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (3-30-07)

**04. Capital Costs.** For the purposes of hospital reimbursement, capital costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (3-30-07)

**05. Case-Mix Index.** The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the current year will be divided by the index of the principal year to assess the percent change between the years. (3-30-07)

**06. Charity Care.** Charity care is care provided to individuals who have no source of payment, third-party or personal resources. (3-30-07)

**07. Children's Hospital.** A Medicare-certified hospital as set forth in 42 CFR Section 412.23(d). (3-30-07)

**08. Current Year.** Any hospital cost reporting period for which reasonable cost is being determined will be termed the current year. (3-30-07)

**09. Customary Hospital Charges.** Customary hospital charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Department. (7-1-10)T

**a.** No more than ninety-one and seven-tenths percent (91.7%) of covered charges will be reimbursed for the separate operating costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 405.03.b. of these rules. ~~(3-29-10)~~(7-1-10)T

**b.** For in-state private hospitals that are not specified in Section 56-1408, Idaho Code, no more than one hundred percent (100%) of covered charges will be reimbursed. (7-1-10)T

**c.** No more than one hundred one percent (101%) of covered charges will be reimbursed to Critical Access Hospitals (CAH) for in-state private hospitals. (7-1-10)T

**d.** No more than eighty-seven and one-tenth percent (87.1%) of covered charges will be reimbursed to out-of-state hospitals. (7-1-10)T

**10. Disproportionate Share Hospital (DSH) Allotment Amount.** The DSH allotment amount



determined by CMS that is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (3-30-07)

**11. Disproportionate Share Hospital (DSH) Survey.** The DSH survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH in accordance with Subsection 405.09.a. of these rules. (3-30-07)

**12. Disproportionate Share Threshold.** The disproportionate share threshold is: (3-30-07)

**a.** The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (3-30-07)

**b.** A Low Income Revenue Rate exceeding twenty-five percent (25%). (3-30-07)

**13. Excluded Units.** Excluded units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (3-30-07)

**14. Hospital Inflation Index.** An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year. (3-30-07)

**15. Low Income Revenue Rate.** The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (3-30-07)

**a.** Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (3-30-07)

**b.** The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care must not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (3-30-07)

**16. Medicaid Inpatient Day.** For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (3-30-07)

**17. Medicaid Utilization Rate (MUR).** The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH survey. In this paragraph, the term "inpatient days" includes Medicaid swing-bed days, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH threshold computations. (3-30-07)

**18. Obstetricians.** For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (3-30-07)

**19. On-Site.** A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location must be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (3-30-07)

**20. Operating Costs.** For the purposes of hospital reimbursement, operating costs are the allowable costs included in the cost centers established in the finalized Medicare cost report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (3-30-07)

**21. Other Allowable Costs.** Other allowable costs are those reasonable costs recognized under the Medicaid reasonable cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as operating costs, but recognized by Medicare principles as allowable costs will be included in the total reasonable costs. Other allowable costs include, but are not necessarily limited to, physician's component which was combined-billed, capital costs, ambulance costs, excess costs, carry-forwards and medical education costs. (3-30-07)

**22. Principal Year.** The principal year is the period from which the Medicaid Inpatient Operating Cost Limit is derived. (3-30-07)

**a.** For inpatient services rendered on or after November 1, 2002, the principal year is the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare cost report or its equivalent is prepared for Medicaid cost settlement. (3-30-07)

**b.** For inpatient services rendered on or after January 1, 2007, the principal year is the provider's fiscal year ending in calendar year 2003 and every subsequent fiscal year-end in which a finalized Medicare cost report, or its equivalent, is prepared for Medicaid cost settlement. (3-30-07)

**23. Public Hospital.** For purposes of Subsection 405.03.b. of these rules, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (3-30-07)

**24. Reasonable Costs.** Except as otherwise provided in Section 405.03 of these rules, reasonable costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Medicaid cost limit. (3-30-07)

**25. Reimbursement Floor Percentage.** *The floor calculation for hospitals with more than forty (40) beds is seventy seven and four tenths percent (77.4%) of Medicaid costs, and the floor calculation for hospitals with forty (40) or fewer beds is ninety one and seven tenths percent (91.7%).* (3-29-10)(7-1-10)T

**a.** The floor calculation for out-of-state hospitals is seventy-three and five-tenths percent (73.5%) of Medicaid costs. (7-1-10)T

**b.** The floor calculation for in-state CAH hospitals is one hundred one percent (101%) of Medicaid costs. (7-1-10)T

**c.** For in-state hospitals that are not specified in Section 56-1408, Idaho Code, the floor calculation is eighty-five percent (85%) of Medicaid costs. (7-1-10)T

**d.** For in-state hospitals that are specified in Section 56-1408, Idaho Code, the floor calculation is seventy-seven and four-tenths percent (77.4%) of Medicaid costs. (7-1-10)T

**26. TEFRA.** TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (3-30-07)

**27. Uninsured Patient Costs.** For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment Amount, only inpatient costs of uninsured patients will be considered. An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient. (3-30-07)

**28. Upper Payment Limit.** The Upper Payment Limit for hospital services is defined in the Code of Federal Regulations. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**415. OUTPATIENT HOSPITAL SERVICES: PROVIDER REIMBURSEMENT.**

**01. Outpatient Hospital.** The Department will not pay more than the combined payments the provider is allowed to receive from the participants and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare. Outpatient hospital services identified below that are not listed in the Department's fee schedules will be reimbursed reasonable costs based on a year end cost settlement. (3-30-07)

**a.** Maximum payment for hospital outpatient diagnostic laboratory services will be limited to the Department's established fee schedule. (3-30-07)

**b.** Maximum payment for hospital outpatient partial care services will be limited to the Department's established fee schedule. (3-30-07)

**c.** Hospital-based ambulance services will be reimbursed at the lower of either the provider's actual charge for the service or the maximum allowable charge for the service as established by the Department in its pricing file. (3-30-07)

**d.** Hospital Outpatient Surgery. Those items furnished by a hospital to an outpatient in connection with Ambulatory Surgical Center must be surgical procedures covered by Idaho Medicaid. The aggregate amount of payments for related facility services, furnished in a hospital on an outpatient basis, is equal to the lesser of: (3-30-07)

i. The hospital's reasonable costs as reduced by federal mandates for certain operating costs, capital costs, customary hospital charges; or (3-30-07)

ii. The blended payment amount which is based on hospital specific cost and charge data and Medicaid rates paid to free-standing Ambulatory Surgical Centers (ASC); or (3-30-07)

iii. The blended rate of costs and the Department's fee schedule for ambulatory surgical centers at the time of cost settlement; or (3-30-07)

iv. The blended rate for outpatient surgical procedures is equal to the sum of forty-two percent (42%) of the hospital specific amount and fifty-eight percent (58%) of the ASC amount. (3-30-07)

**e.** Hospital Outpatient Radiology Services include diagnostic and therapeutic radiology, CAT scan procedures, magnetic resonance imaging, ultrasound and other imaging services. The aggregate payment for hospital outpatient radiology services furnished will be equal to the lesser of: (3-30-07)

i. The hospital's reasonable costs; or (3-30-07)

ii. The hospital's customary charges; or (3-30-07)

iii. The blended payment amount for hospital outpatient radiology equal to the sum of forty-two percent (42%) of the hospital specific amount and fifty-eight percent (58%) of the Department's fee schedule amount. (3-30-07)

**02. Reduction to Outpatient Hospital Costs.** ~~With the exception of Medicare designated sole community hospitals and rural primary care hospitals, all other hospital~~ Outpatient costs not paid according to the Department's established fee schedule, including the hospital specific component used in the blended rates, will be reduced by five and eight-tenths percent (5.8%) of operating costs and ten percent (10%) of each hospital's capital costs component. This reduction will only apply to the following provider classes: ~~(3-30-07)(7-1-10)T~~

**a.** In-state hospitals specified in Section 56-1408(2), Idaho Code, that are not a Medicare-designated sole community hospital or rural primary care hospital. (7-1-10)T

**b.** Out-of-state hospitals that are not a Medicare-designated sole community hospital or rural primary care hospital. (7-1-10)T

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1002

### 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:** Three public hearings concerning this rulemaking will be held as follows:

| Wednesday, September 15, 2010<br>6:00 p.m. PDT   | Wednesday, September 15, 2010<br>6:00 p.m. MDT  | Wednesday, September 15, 2010<br>6:00 p.m. MDT   |
|--|---|--|
| Dept. of Health & Welfare-Reg. 1<br>1120 Ironwood Drive, Suite 102<br>Lower Level Large Conf. Rm.<br>Coeur d'Alene, ID | Dept. of Health & Welfare-Reg. 4<br>1720 Westgate Drive<br>Suite A, Room 131<br>Boise, ID | Dept. Health & Welfare-Reg. 7<br>150 Shoup Avenue<br>2nd Floor, Large Conf. Rm.<br>Idaho Falls, ID |

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

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

In 2008, the Department began meeting with stakeholder groups to redesign developmental disabilities (DD) benefits for children. This project is known as the "Children's System Redesign" and is sponsored by the Division of Medicaid and the Division of Family and Community Services. The Department is proposing a phased implementation of these redesigned benefits starting July 1, 2011. Implementation requirements are provided in Section 523 of this proposed docket.

In order to phase in these new benefits as seamlessly as possible, the Department is proposing that we continue to operate the current children's DD benefits concurrently with the redesigned children's DD benefits. To accomplish this we are proposing that the current requirements for developmental therapy, Intensive Behavioral Intervention (IBI), and other DDA services be moved from IDAPA 16.04.11, "Developmental Disabilities Agencies," to IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," in Sections 649 through 659 of this proposed docket.

The major restructuring for the Children's System Redesign provides the following: definitions, requirements for children's DD programs, including the new services and provider qualifications.

**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: This rulemaking is cost-neutral.

Individualized budgets and limitations are being proposed for participants, using historical costs of developmental disabilities agency (DDA) services for children, to ensure the redesign of benefits remains cost-neutral. In addition, improved efficiencies of the redesign will safeguard against increasing program costs. Improvements include the addition of independent assessors and case managers to eliminate conflict of interest, and the creation of an array of outcome-based services and supports that align with varying health needs.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010. The notice for this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, p. 26](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**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 September 22, 2010.

DATED this 17th day of August, 2010.

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](mailto:dhwrules@dhw.idaho.gov) e-mail

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0310-1002**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance With Department Criminal History Check.** Agencies must verify that individuals working in the area listed in Section 009.04 of these rules whom are employed or whom they contract have complied with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." (3-19-07)

**02. Availability to Work or Provide Service.** (3-19-07)

**a.** The employer, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant record. (3-19-07)

**b.** Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (3-19-07)

**03. Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the agency to the Department when the agency learns of the conviction. (3-19-07)

**04. Providers Subject to Criminal History and Background Check Requirements.** The following providers are required to have a criminal history and background check: (3-19-07)

**a.** Adult Day Care Providers. The criminal history and background check requirements applicable to providers of adult day care as provided in Sections 329 and 705 of these rules. (4-2-08)

- b.** Adult Residential Care Providers. The criminal history and background check requirements applicable to adult residential care providers as provided in Section 329 of these rules. (4-2-08)
- c.** Attendant Care Providers. The criminal history and background check requirements applicable to attendant care providers as provided in Section 329 of these rules. (4-2-08)
- d.** Behavior Consultation or Crisis Management Providers. The criminal history and background check requirements applicable to behavior consultation or crisis management providers as provided in Sections 329 and 705 of these rules. (4-2-08)
- e.** Certified Family Home Providers and All Adults in the Home. The criminal history and background check requirements applicable to certified family homes are found in Sections 305, 329 and 705 of these rules, and as provided in IDAPA 16.03.19, "Rules Governing Certified Family Homes." (4-2-08)
- f.** Chore Services Providers. The criminal history and background check requirements applicable to chore services providers as provided in Sections 329 and 705 of these rules. (4-2-08)
- g.** Crisis Intervention Providers. The criminal history and background check requirements applicable to crisis intervention providers as provided in Section 685 of these rules. ( )
- h.** Companion Services Providers. The criminal history and background check requirements applicable to companion services providers as provided in Section 329 of these rules. (4-2-08)
- i.** Day Rehabilitation Providers. The criminal history and background check requirements applicable to day rehabilitation providers as provided in Section 329 of these rules. (4-2-08)
- j.** Developmental Disabilities Agencies (DDA). The criminal history and background check for DDA and staff as provided in IDAPA 16.04.21, "~~Rules Governing~~ Developmental Disabilities Agencies (DDA)," Section 009. (3-19-07)( )
- k.** Homemaker Services Providers. The criminal history and background check requirements applicable to homemaker services providers as provided in Section 329 of these rules. (4-2-08)
- l.** Mental Health Clinics. The criminal history and background check requirements applicable to mental health clinic staff as provided in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 714. (3-19-07)
- m.** Personal Assistance Agencies Acting As Fiscal Intermediaries. The criminal history and background check requirements applicable to the staff of personal assistance agencies acting as fiscal intermediaries as provided in Subsection 329.02 of these rules. (3-19-07)
- n.** Personal Care Providers. The criminal history and background check requirements applicable to personal care providers as provided in Subsection 305.06 of these rules. (3-19-07)
- o.** Psychiatric Consultation Providers. The criminal history and background check requirements applicable to psychiatric consultation providers as provided in Section 329 of these rules. (4-2-08)
- p.** Psychosocial Rehabilitation Agencies. The criminal history and background check requirements applicable to psychosocial rehabilitation agency employees as provided in Subsection 130.02 of these rules. (3-19-07)
- q.** Residential Habilitation Providers. The criminal history and background check requirements applicable to residential habilitation providers as provided in Sections 329 and 705 of these rules, and IDAPA 16.04.17 "Rules Governing Residential Habilitation Agencies," Sections 202 and 301. (4-2-08)
- r.** Respite Care Providers. The criminal history and background check requirements applicable to respite care providers as provided in Sections 329, 665, and 705 of these rules. (4-2-08)( )

**rs.** Service Coordinators and Paraprofessionals. The criminal history and background check requirements applicable to service coordinators and paraprofessionals working for an agency as provided in Section 729 of these rules. (3-19-07)

**st.** Supported Employment Providers. The criminal history and background check requirements applicable to supported employment providers as provided in Sections 329 and 705 of these rules. (4-2-08)

**u.** Therapeutic Consultant. The criminal history and background check requirements applicable to therapeutic consultation providers as provided in Section 685 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**013. DEFINITIONS P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below: (3-19-07)

**01. Patient Day.** For a nursing facility or an ICF/ID, a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care will be deemed to exist. (3-19-07)

**02. Participant.** A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

**03. Patient.** The person undergoing treatment or receiving services from a provider. (3-19-07)

**04. Personal Assistance Agency.** An entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides pay roll and benefits for personal assistants working for them, and is the employer of record as well as the actual employer. (5-8-09)

**05. Personal Assistance Services (PAS).** Services that include both attendant care for participants under an HCBS waiver and personal care services for participants under the Medicaid State Plan. PAS 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 instrumental activities of daily living (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 are based on the participant's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. (5-8-09)

**06. Physician.** A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (3-19-07)

**07. Physician's Assistant.** A person who meets all the applicable requirements to practice as licensed physician assistant under Title 54, Chapter 18, Idaho Code, and ID APA 22.01.03, "Rules for the Licensure of Physician Assistants." (3-19-07)

**08. Picture Date.** A point in time when case mix indexes are calculated for every nursing facility based on the residents in the nursing facility on that day. The picture date to be used for rate setting will be the first day of the first month of a quarter. The picture date from that quarter will be used to establish the nursing facility's rate for the next quarter. (3-19-07)

**09. Plan of Care.** A written description of medical, remedial, or rehabilitative services to be provided to a participant, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (3-19-07)

**10. Private Rate.** Rate most frequently charged to private patients for a service or item. (3-19-07)



11. **PRM.** The Provider Reimbursement Manual. (3-19-07)
12. **Property.** The homestead and all personal and real property in which the participant has a legal interest. (3-19-07)
13. **Property Costs.** Property costs are the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The Department may require and utilize an appraisal to establish which components are an integral part of property costs. (3-19-07)
14. **Property Rental Rate.** A rate paid per Medicaid patient day to free-standing nursing facilities and ICF/IDs in lieu of reimbursement for property costs other than property taxes, property insurance, and the property costs of major movable equipment at ICF/ID facilities. (3-19-07)
15. **Provider.** Any individual, partnership, association, corporation or organization, public or private, that furnishes medical goods or services in compliance with these rules and who has applied for and received a Medicaid provider number and has entered into a written provider agreement with the Department in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)
16. **Provider Agreement.** An written agreement between the provider and the Department, in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205. (3-19-07)
17. **Provider Reimbursement Manual (PRM).** The Providers Reimbursement Manual, a federal publication which specifies accounting treatments and standards for the Medicare program, CMS Publications 15-1 and 15-2, which are incorporated by reference in Section 004 of these rules. (3-19-07)
18. **Psychologist, Licensed.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (3-19-07)
19. **Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. (3-19-07)
20. **Public Provider.** A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (3-19-07)
21. **Raw Food.** Food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions. (3-19-07)
22. **Reasonable Property Insurance.** Reasonable property insurance means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year cannot be considered reasonable. (3-19-07)
23. **Recreational Therapy (Services).** Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping, attendance or participation in sporting events or practices, at tendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, training for Special Olympics, and special day parties (birthday, Christmas, etc.). (3-19-07)
- ~~24.~~ **Regional Medicaid Services (RMS).** Regional offices of the Division of Medicaid. (~~3-19-07~~)
- ~~25.~~ **Regional Nurse Reviewer (RNR).** A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX and Title XXI long term care for the Department. (3-19-07)

- 265. Registered Nurse - R.N.** Which in the state of Idaho is known as a Licensed Professional Nurse and who meets all the applicable requirements to practice as a licensed professional nurse under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01 “Rules of the Idaho Board of Nursing.” (3-19-07)
- 276. Related Entity.** An organization with which the provider is associated or affiliated to a significant extent, or has control of, or is controlled by, that furnishes services, facilities, or supplies for the provider. (3-19-07)
- 287. Related to Provider.** The provider, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies. (3-19-07)
- 298. Residential Care or Assisted Living Facility.** A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as “facility.” Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. (3-19-07)
- 3029. Resource Utilization Groups (RUG).** A process of grouping residents according to the clinical and functional status identified by the responses to key elements of the MDS. The RUG Group is used for the purposes of rate setting and determining nursing facility level of care. (4-2-08)
- 340. Skilled Nursing Care.** The level of care for patients requiring twenty-four (24) hour skilled nursing services. (3-19-07)
- 321. Social Security Act.** 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (3-19-07)
- 332. State Plan.** The contract between the state and federal government under 42 U.S.C. section 1396a(a). (3-19-07)
- 343. Supervision.** Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (3-19-07)
- 354. Title XVIII.** Title XVIII of the Social Security Act, known as Medicare, for the aged, blind, and disabled administered by the federal government. (3-19-07)
- 365. Title XIX.** Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-19-07)
- 376. Title XXI.** Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-19-07)
- 387. Third Party.** Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a participant of medical assistance. (3-19-07)
- 398. Transportation.** The physical movement of a participant to and from a medical appointment or service by the participant, another person, taxi or common carrier. (3-19-07)
- 4039. Uniform Assessment.** A set of standardized criteria to assess functional and cognitive abilities. (3-19-07)
- 440. Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities as described in IDAPA 16.03.23 “Rules Governing Uniform Assessments of State-Funded Clients.” (3-19-07)
- 421. Utilities.** All expenses for heat, electricity, water and sewer. (3-19-07)

**432. Utilization Control (UC).** A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants or participants to Title XIX and Title XXI benefits in a nursing facility. (3-19-07)

**443. Utilization Control Team (UCT).** A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the nursing facilities approved by the Department as providers of care for eligible medical assistance participants. (3-19-07)

**454. Vocational Services.** Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the participant would be able to participate in a sheltered workshop or in the general work force within one (1) year. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. SELECTIVE CONTRACTING.**

The Department may contract with a limited number of providers of certain Medicaid products and services; *including: dental services, eyeglasses, transportation, and some medical supplies.* (3-19-07)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**503. DEVELOPMENTAL DISABILITY DETERMINATION: TEST INSTRUMENTS.**

A variety of standardized test instruments are available. Tests used to determine a developmental disability must reflect the current functional status of the individual being evaluated. Tests over one (1) year old must be verified to reflect the current status of the individual by an appropriate professional. Instruments designed only for screening purposes must not be used to determine eligibility. (3-19-07)

**01. Test Instruments For Adults.** Unless contra-indicated, the following test instruments or subsequent revisions must be used to determine eligibility: (3-19-07)

- a. Cognitive: Wechsler Adult Intelligence Scale-Third Edition (WAIS-III). (3-19-07)
- b. Functional: Scales of Independent Behavior-Revised (SIB-R). (3-19-07)

**02. Test Instruments for Children.** The assessments utilized to determine eligibility must be based on age appropriate criteria. Evaluations must be performed by qualified personnel with experience and expertise with children; selected evaluation tools and practices should be age appropriate, based on consideration of the child's language and motor skills, be racially and culturally non-discriminatory, and be conducted in settings that are typically comfortable and familiar to the child. Unless contraindicated, test instruments such as the following must be used with children: (3-19-07)

- a. Cognitive: (3-19-07)
  - i. Bayley Scales of Infant Development, Third Edition (BSID-III) for ages birth through forty-two (42) months; (3-19-07)
  - ii. Stanford Binet Intelligence Scales, Fifth Edition (SB5) for ages two (2) years through adult; (3-19-07)
  - iii. Wechsler Preschool and Primary Scale of Intelligence -Third Edition (WPPSI-III) for ages two (2) years, six (6) months to seven (7) years, three (3) months; (3-19-07)

- iv. Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV) for ages six (6) through sixteen (16) years, eleven (11) months; or (3-19-07)
- v. Wechsler Adult Intelligence Scale - Third Edition (WAIS-III) for ages sixteen (16) years to adult. (3-19-07)
- b. Functional: (3-19-07)
- ~~i. American Association on Mental Retardation Adaptive Behavior Scale: School (ABS-S) for ages three (3) through twenty-one (21) years; (3-19-07)~~
- ~~ii. Battelle Developmental Inventory, 2nd Edition (BDI-2) for ages birth to ninety-five (95) months; (3-19-07)~~
- ~~iii. Developmental Profile II (DP-II) for ages birth through twelve (12) years; (3-19-07)~~
- ~~iv. Scales of Independent Behavior (SIB-R) for ages birth through adult; (3-19-07)(\_\_\_\_)~~
- ~~v. Vineland Adaptive Behavior Scales (VABS) for ages birth to eighteen (18) years, eleven (11) months; (3-19-07)~~
- ~~vi. Mullen Scales of Early Learning (MSEL) for ages birth to three (3) years; (3-19-07)~~
- ~~vii. Preschool Language Scale - 3 (PLS-3) for ages birth to three (3) years; (3-19-07)~~
- ~~viii. Peabody Developmental Motor Scales for ages birth to three (3) years; or (3-19-07)~~
- ~~ix. Receptive Expressive Emergent Language Scale - Third Edition (REEL-3) for ages birth to three (3) years. (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 Waiver Services.** DD Waiver services as described in Sections 700 through 719 of these rules; and (3-29-10)

**02. Developmental Disability Agency Services.** Developmental Disability Agency services as described in Sections ~~65049~~ through ~~66059~~ of these rules and IDAPA 16.043.421, "Developmental Disabilities Agencies (DDA)"; 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**516. -- 5719. (RESERVED).**

**SUB-PART: CHILDREN'S DEVELOPMENTAL DISABILITIES PRIOR AUTHORIZATION**  
**(SECTIONS 520 THROUGH 528)**

**520. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION (PA).**

The purpose of the children's DD Prior Authorization is to ensure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of service, prior approval of services, and a quality improvement program. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for the specific service. ( )

**521. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: DEFINITIONS.**

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

**01. Action Plan.** An initial or annual plan of service that identifies all services and supports based on a family-centered planning process and is developed for providing DD services to children ages birth through seventeen (17). ( )

**02. Assessment.** A process that is described in Section 522 of these rules for program eligibility and in Section 526 of these rules for plan of service. ( )

**03. Baseline.** A participant's skill level prior to intervention written in measurable, behaviorally-stated terms. ( )

**04. Child.** A person who is under the age of eighteen (18) years. ( )

**05. Concurrent Review.** A clinical review to determine the need for continued prior authorization of services. ( )

**06. Family-Centered Planning Process.** A process facilitated by the plan developer, comprised of the child participant (unless otherwise determined by the family-centered planning team), parent or legal guardian, and individuals significant to the participant who collaborate with the participant to develop the plan of service. ( )

**07. Family-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the parent or legal guardian and the plan developer. The family-centered planning team may include others identified by the family or agreed upon by the family and the Department as important to the process. ( )

**08. Individualized Family Service Plan (IFSP).** An initial or annual plan of service, developed by the Department or its designee, for providing early intervention services to children birth to age three (3). This plan must meet the provisions of the Individuals with Disabilities Education Act (IDEA), Part C. The IFSP may serve as the action plan when meeting all of the components of the action plan. ( )

**09. Level of Support.** An assessment score derived from a functional assessment that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. ( )

**10. Medical, Social, and Developmental Assessment Summary.** A form used by the Department to gather a participant's medical, social and developmental history and other summary information. It is required for all participants receiving home and community-based services under a plan of service. The information is used in the assessment and authorization of a participant's services. ( )

**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 family-centered planning process and who oversees the provision of services. ( )

**12. Plan of Service.** An initial or annual plan that identifies all services and supports based on a

family-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. For the purpose of these rules, the plan of service is referring to the Action Plan and Individual Family Service Plan (IFSP). ( )

**13. Practitioner of the Healing Arts, Licensed.** A licensed physician, physician assistant, or nurse practitioner. ( )

**14. 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. ( )

**15. Provider Status Review.** The written documentation which providers are required to complete that identifies the participant's progress toward goals defined in the plan of service. ( )

**16. 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. ( )

**17. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. ( )

**18. 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. ( )

**19. 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. ( )

**20. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. ( )

**522. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: ELIGIBILITY DETERMINATION.**

The Department will make the final determination of a child's eligibility, based upon the assessments administered by the Department. Initial and annual assessments must be performed by the Department or its contractor. The purpose of the eligibility assessment is to determine a participant's eligibility for developmental disabilities services in accordance with Section 66-402, Idaho Code, and Sections 500 through 506 of these rules, to determine a participant's eligibility for children's home and community-based state plan options services in accordance with Section 662 of these rules, and to determine a participant's eligibility for ICF/ID level of care for children's waiver services in accordance with Section 682 of these rules. ( )

**01. Initial Eligibility Assessment.** For new applicants, an assessment must be completed by the Department or its contractor within thirty (30) days from the date a complete application is submitted. ( )

**02. Annual Eligibility Determination.** Eligibility determination must be completed annually for current participants. The assessor must reassess the participant, or establish an addendum that the existing assessments reflect the participant's current level of care needs. At least sixty (60) days before the expiration of the current plan of service: ( )

**a.** The eligibility determination process must be completed to determine level of care needs; and ( )

**b.** The assessor must provide the results of the eligibility determination to the participant. ( )

**03. Determination of Developmental Disability Eligibility.** ( )

**a.** The assessments that are required and completed by the Department or its contractor for determining a participant's eligibility for developmental disabilities services must include: ( )

- i. Medical, Social, and Developmental Assessment Summary: ( )
- ii. A functional assessment which reflects the participant's current functioning. The Department or its contractor will administer a functional assessment for use in initial eligibility determination of developmental disability eligibility. Thereafter, a new functional assessment will be required if the assessor determines that additional documentation is necessary to determine the participant's level of care criteria: and ( )
- iii. A medical assessment which contains medical information that accurately reflects the current status of the participant and established categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code. ( )
- b. The participant must provide the results of psychometric testing if eligibility for developmental disabilities services is based on intellectual disability and he has no prior testing, or prior testing is inconclusive or invalid. Initial eligibility determinations also require documentation of diagnosis for participants whose eligibility is based on developmental disabilities other than intellectual disability. ( )

**04. ICF/ID Level of Care Determination for Waiver Services.** The Department or its contractor will determine ICF/ID level of care for children in accordance with Section 584 of these rules. ( )

**05. Determination for Children's Home and Community Based State Plan Option.** The Department or its contractor will determine that a child meets the established criteria necessary to receive children's home and community based state plan option services in accordance with Section 662 of these rules. ( )

**523. TRANSITION TO NEW CHILDREN'S DEVELOPMENTAL DISABILITY BENEFITS.**

**01. Phase-in Schedule.** To transition to the new benefits under Sections 520 through 528, Sections 660 through 666, and Sections 680 through 686 of these rules, a child will be phased in to the new benefits by order of his birthdate. ( )

**02. Notification.** During the phased-implementation, the Department will notify a family three (3) months prior to their child's birthdate. ( )

**03. New Applicants.** A new applicant entering the system will be enrolled in the new children's DD benefit programs. ( )

**04. Opportunity for Early Enrollment.** A family may opt to transition their child to the new benefits prior to their child's birthdate. The Department will accept application for a family choosing to opt-in early, but transitioning a child at his scheduled transition date will be the Department's top priority. ( )

**05. Choosing a Path.** A child will not be able to receive both the new children's HCBS state plan option and children's waiver services listed in Section 660 through 666 and 680 through 688, at the same time he is receiving the old DDA services listed in Section 649 through 659. ( )

**524. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: COVERAGE AND LIMITATIONS.**

The scope of these rules defines prior authorization for the following Medicaid developmental disabilities services for children: ( )

**01. Children's Home and Community Based State Plan Option Services.** Children's home and community based state plan option services as described in Sections 660 through 666 of these rules; and ( )

**02. Children's DD Waiver Services.** Children's DD waiver services as described in Sections 680 through 686 of these rules. ( )

**525. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: PROCEDURAL REQUIREMENTS.**

**01. Documentation Requirements Prior to the Plan of Service.** Prior to the development of the plan

of service, the plan developer will gather the following information to guide the family-centered planning process: ( )

**a.** Eligibility Determination Documentation. Eligibility determination documentation completed by the Department or its contractor as defined in Subsection 522.03 of these rules. ( )

**b.** History and Physical. A current history and physical completed by a practitioner of the healing arts is required at least annually or more frequently as determined by the practitioner. For participants in Healthy Connections, the Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. ( )

**c.** Additional Information. Assessments and information related to the participant's medical conditions, risk of deterioration, living conditions, individual goals, and behavioral or psychiatric needs. ( )

**526. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATIONS: PLAN OF SERVICE PROCESS.**

In collaboration with the participant, the Department must ensure that the participant has one (1) plan of service. This plan of service is based on the individualized participant budget referred to in Section 527 of these rules and must identify all services and supports. The participant and his parent or legal guardian may develop their own plan or designate a paid or non-paid plan developer. The plan of service must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. ( )

**01. Qualifications of a Paid Plan Developer.** The paid plan developer must be provided by the Department or its contractor. ( )

**02. Plan of Service Development.** The plan of service must be developed with the parent or legal guardian. With the parent or legal guardian's consent, the family-centered planning team may include other family members or individuals who are significant to the participant. In developing the plan of service, the family-centered planning team 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 to the Department 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, provider payments may not be authorized. ( )

**03. Prior Authorization for Services 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. ( )

**04. No Duplication of Services.** The plan developer is responsible for monitoring the services on the plan of service and must ensure that there is no duplication of services. ( )

**05. Plan Monitoring.** The parent or legal guardian and plan developer must monitor the plan. The family-centered planning team must identify the frequency of monitoring, which must be at least every six (6) months. The plan developer must meet face-to-face with the participant at least annually. Plan monitoring must include the following: ( )

**a.** Review of the plan of service with the parent or legal guardian to identify the current status of programs and changes if needed; ( )

**b.** Contact with service providers to identify barriers to service provision; ( )

**c.** Discuss with parent or legal guardian satisfaction regarding quality and quantity of services; and ( )

**d.** Review of provider status reviews. ( )

**06. Provider Status Reviews.** The following service providers, listed in Subsections 526.06.a. and



526.06.b. of this rule, must report to the plan developer the participant's progress toward goals. The provider must complete a six (6) month and annual provider status review. The semi-annual and annual provider status reviews for: ( )

a. Habilitative supports must report the progress toward the identified goals listed on the plan of service, and must demonstrate the continued need for the service. ( )

b. Habilitative intervention and family training services must include: ( )

i. The initial baseline; ( )

ii. Measurement that reflects the present status of the participant; ( )

iii. Progress towards the identified objectives listed on the plan of service; ( )

iv. Statement that describes the continued need for the service; ( )

v. Modifications made to the implementation plan, if applicable; and ( )

vi. Recommendations for revisions to the plan, if applicable. ( )

07. Content of the Plan of Service. The plan of service must identify, at a minimum, the type of service to be delivered, goals to be addressed within the plan year, target dates, intervention objectives, and methods for collaboration. ( )

08. Informed Consent. The participant and his parent or legal guardian 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. ( )

09. 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. ( )

a. Exceptions. An implementation plan is not required for waiver providers of: ( )

i. Respite care; ( )

ii. Habilitative Supports; ( )

iii. Family Education; and ( )

iv. Therapeutic Consultation. ( )

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. ( )

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, and the signature of the person making the change complete with his title and the date signed. ( )

11. 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 requires a parent's or legal guardian's signature and may be subject to prior authorization by the Department. ( )

**12. 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. ( )

**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: ( )

i. Notify the providers who appear on the plan of service of the annual review date. ( )

ii. Obtain a copy of the current annual provider status review from each provider for use by the family-centered planning team. Each provider status review must meet the requirements in Subsection 526.06 of these rules. ( )

iii. Convene the family-centered planning team to develop a new plan of service. ( )

**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 520 and 526 of these rules. ( )

**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. ( )

**d. 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. ( )

**e. Annual Eligibility Determination Results.** An annual determination must be completed in accordance with Section 522 of these rules. ( )

**13. Complaints and Administrative Appeals.** ( )

**a. Complaints.** Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Department. ( )

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

**527. CHILDREN'S DEVELOPMENTAL DISABILITY PRIOR AUTHORIZATION: PROVIDER REIMBURSEMENT.**

Providers are reimbursed on a fee-for-service basis based on a participant budget. ( )

**01. 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. 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 Department will monitor the budget setting methodology on an ongoing basis to ensure that participant needs are accurately reflected in the methodology. ( )

**02. Participant Notification of Budget Amount.** The Department notifies each participant of his set budget amount. The notification will include how the participant may appeal the set budget amount. ( )

**03. Annual Re-Evaluation.** 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. ( )

**528. CHILDREN'S DEVELOPMENTAL DISABILITIES PRIOR AUTHORIZATION: QUALITY ASSURANCE AND IMPROVEMENT.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to ensure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may terminate authorization of service for providers who do not comply with the corrective action plan. ( )

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. ( )

**03. Concurrent Review.** The Department will obtain the necessary information to determine that participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. ( )

**04. Abuse, Fraud, or Substandard Care.** Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. ( )

**529. -- 579. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**634. -- 649. (RESERVED).**

**65049. DEVELOPMENTAL DISABILITIES AGENCIES (DDA).**

Under 42 CFR 440.130(d), the Department will pay for rehabilitative services including medical or remedial services provided by facilities that have entered into a provider agreement with the Department and are certified as developmental disabilities agencies by the Department. Services provided by a developmental disabilities agency to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. (3-19-07)

**651. (RESERVED).**

**6520. DEVELOPMENTAL DISABILITIES AGENCY (DDA) SERVICES: ELIGIBILITY.**

**01. DDA Services Eligibility.** Prior to receiving services in a DDA an individual must be determined to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code. (3-19-07)( )

**02. Intensive Behavioral Intervention (IBI) Service Eligibility.** IBI is available to children with developmental disabilities through the month of their twenty-first birthday, who have the following characteristics: ( )

**a.** Self-injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department; and ( )

b. A severe deficit, defined as equivalent to fifty percent (50%) or less of chronological age, in at least one (1) of the following areas: ( )

i. Verbal and nonverbal communication as evidenced by the SIB -R Social Interaction & Communication Skills cluster score; ( )

ii. Social interaction as evidenced by the SIB-R Social Interaction subscale score; or ( )

iii. Leisure and play skills as evidenced by the SIB-R Home/Community Orientation subscale score. ( )

**6531. DDA SERVICES: COVERAGE REQUIREMENTS AND LIMITATIONS.**

Developmental disabilities agency services must be recommended by a physician or other practitioner of the healing arts. The following therapy services are reimbursable when provided in accordance with these rules. ( )

**01. ~~Requirement for Plan of Service and Prior Authorization~~ Required DDA Services.** Each DDA is required to provide developmental therapy; in addition, each DDA must provide or make available the following services: psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy. Developmental therapy must be provided by qualified employees of the agency. Psychotherapy, occupational therapy, physical therapy, and speech and hearing therapy must either be provided by qualified employees of the agency or through a formal written agreement. (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."~~ Sufficient Quantity and Quality. All required services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified individuals in accordance with the requirements in Section 420 of these rules. (3-19-07)( )

b. ~~All therapy services for adults with developmental disabilities 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."~~ When a Required Service Is Not Available. When a required service, other than developmental therapy, is not provided by the agency due to a documented shortage of available providers in a specific geographic area, the DDA must document its effort to secure the service or facilitate the referral for the needed service, including notifying the service coordinator, when the participant has one. (3-29-10)( )

**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":** **Requirements to Deliver 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. Developmental therapy services must be delivered by Developmental Specialists or paraprofessionals qualified in accordance with these rules, based on a comprehensive developmental assessment completed prior to the delivery of developmental therapy. (3-19-07)( )

a. ~~Comprehensive Developmental Assessment;~~ Areas of Service. These services must be directed toward the rehabilitation or habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency. (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;~~ Age-Appropriate. Developmental therapy includes instruction in daily living skills the participant has not gained at the normal developmental stages in his life, or is not likely to develop without training or therapy. Developmental therapy must be age-appropriate. (3-19-07)(\_\_\_\_)

c. ~~Occupational Therapy Assessment~~ Tutorial Activities and Educational Tasks are Excluded. Developmental therapy does not include tutorial activities or assistance with educational tasks as associated with educational needs that result from the participant's disability. (3-19-07)(\_\_\_\_)

d. ~~Physical Therapy Assessment;~~ Settings for Developmental Therapy. Developmental therapy, in both individual and group formats, must be available in both community-based and home-based settings, and be based on participant needs, interests, or choices. (3-19-07)(\_\_\_\_)

e. ~~Speech and Language Assessment;~~ Staff-to-Participant Ratio. When group developmental therapy is center-based, there must be a minimum of one (1) qualified staff, who may be a paraprofessional or a Developmental Specialist, providing direct services for every twelve (12) participants. Additional staff must be added, as necessary, to meet the needs of each individual served. (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. ~~Psychotherapy 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." The following psychotherapy services must be available through each agency and based on assessment(s) conducted by the professional qualified to deliver the service: (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. Individual psychotherapy: (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: Group psychotherapy in which there is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and (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. Family-centered psychotherapy that includes the participant and at least one (1) other family member at any given time. (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. Psychotherapy services, alone or in combination with supportive counseling, are limited to a maximum of forty-five (45) hours in a calendar year, including individual, group, and family-centered. (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. Psychotherapy services must be provided by one (1) of the following qualified professionals: (4-2-08)( )*~~

~~i. *Licensed Psychiatrist: ( )*~~

~~ii. *Licensed Physician: ( )*~~

~~iii. *Licensed Psychologist: ( )*~~

~~iv. *Licensed Clinical Social Worker: ( )*~~

~~v. *Licensed Clinical Professional Counselor: ( )*~~

~~vi. *Licensed Marriage and Family Therapist: ( )*~~

~~vii. *Certified Psychiatric Nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree: ( )*~~

~~viii. *Licensed Professional Counselor whose provision of psychotherapy is supervised by persons qualified above under Subsections 651.03.i. through 651.03.vii. of this rule: ( )*~~

~~ix. *Registered Marriage and Family Therapist Intern whose provision of psychotherapy is supervised as described in Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." ( )*~~

~~x. *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 ( )*~~

~~xi. *A Psychologist Extender, registered with the Bureau of Occupational Licenses, whose provision of psychotherapy is supervised as described in IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." ( )*~~

~~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 Occupational Therapy Services.** ~~The following services are excluded for Medicaid payments:~~ 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. Occupational therapy services must be available and provided by a licensed occupational therapist and be based on the results of an occupational therapy assessment completed in accordance with Section 655 of these rules. (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 Physical Therapy Services.** ~~Therapy services may not exceed the limitations as specified below:~~ 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. Physical therapy services must be available and provided by a licensed physical therapist and be based on the results of a physical therapy assessment completed in accordance with Section 655 of these rules. (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)F~~

~~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)~~

**06. 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. Speech-language pathology services must be available and provided by a qualified speech-language pathologist, as defined in these rules, and be based on the results of a speech and language assessment completed in accordance with Section 655 of these rules. ( )

**07. Optional Services.** DDAs may opt to provide any of the following services: pharmacological management, psychiatric diagnostic interviews, community crisis supports, collateral contact, Intensive Behavioral Intervention (IBI), and supportive counseling. All services must be provided by qualified individuals in accordance with the requirements in Section 657 of these rules. ( )

**08. 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. ( )

**09. Psychiatric Diagnostic Interview.** A psychiatric diagnostic interview must include a history, a current mental status examination, and offer recommendations for treatment interventions needed, if any. If the

interview exam results in a recommendation for additional intervention and the recommendation is accepted by the participant and his parent or legal guardian, if applicable, the recommendation must be incorporated into the participant's plan of service with the type, amount, frequency, and duration of service specified. ( )

**a.** Physician Requirement. In order for a DDA to conduct a psychiatric diagnostic interview, the agency must have a physician on contract for the purpose of overseeing the services on the plan. ( )

**b.** On Plan of Service. A psychiatric diagnostic interview must be incorporated into the participant's plan of service. ( )

**c.** Staff Qualifications. A psychiatric diagnostic interview must be conducted by one (1) of the following professionals, in direct face-to-face contact with the participant: ( )

i. Psychiatrist; ( )

ii. Physician or other practitioner of the healing arts; ( )

iii. Psychologist; ( )

iv. Clinical social worker; or ( )

v. Clinical professional counselor. ( )

**10.** **Community Crisis Supports.** Community crisis supports are interventions for adult 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. DDAs that choose to provide these services must do so in accordance with Sections 507 through 515 of these rules. ( )

**11.** **Collateral Contact.** Collateral contact is consultation with or treatment direction given to a person with a primary relationship to a participant for the purpose of assisting the participant to live in the community. Collateral contact must be: ( )

**a.** Conducted by Agency Professionals. Be conducted by agency professionals qualified to deliver services and be necessary to gather and exchange information with individuals having a primary relationship to the participant. ( )

**b.** Face to Face or by Telephone. Be conducted either face-to-face or by telephone when telephone contact is the most expeditious and effective way to exchange information. Collateral contact does not include general staff training, general staffings, regularly scheduled parent-teacher conferences, general parent education, or treatment team meetings, even when the parent is present. ( )

**c.** On the Plan of Service. Have a goal and objective stated on the plan of service that identifies the purpose and outcome of the service and is conducted only with individuals specifically identified on the plan of service. Program Implementation Plans are not required for collateral contact objectives. ( )

**12.** **Intensive Behavioral Intervention.** DDA's that choose to offer Intensive Behavioral Intervention (IBI) must provide IBI services in accordance with Sections 656 of these rules. ( )

**a.** IBI is limited to a lifetime limit of thirty-six (36) months. ( )

**b.** The DDA must receive prior authorization from the Department prior to delivering IBI services. ( )

**c.** IBI must only be delivered on an individualized, one-to-one (1 to 1) basis. ( )

**d.** Established Developmental Therapy Program. After July 1, 2006, agencies must have provided developmental therapy for at least one (1) year and not be operating under a provisional certification prior to



providing IBI services. ( )

**e.** Exception. Agencies that were providing IBI services prior to July 1, 2006, are exempt from the requirement under Subsection 651.12.d. of these rules. ( )

**f.** IBI Consultation. IBI consultation, as described in Section 656 of these rules, is included in the thirty-six (36) month IBI limitation. The DDA must receive prior authorization from the Department prior to providing IBI Consultation. ( )

**13. 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. ( )

**a.** Psychological Assessment. The initial and ongoing need for the service of supportive counseling must be recommended in a current psychological assessment. ( )

**b.** On Plan of Service. Supportive counseling must be provided in accordance with the requirements for the plan of service. The type, amount, frequency, and duration of this service must be specified on the plan of service. ( )

**c.** Staff Qualifications. Supportive counseling must be provided by a professional listed under Subsection 651.03.e. of these rules or by a licensed social worker (LSW). ( )

**14. Excluded Services.** The following services are excluded for Medicaid payments: ( )

**a.** Vocational services; ( )

**b.** Educational services; and ( )

**c.** Recreational services. ( )

**15. Limitations on DDA Services.** Therapy services may not exceed the limitations as specified below. ( )

**a.** The combination of therapy services listed in Subsections 651.02 through 651.06 and 651.12 and 651.13 of these rules must not exceed twenty-two (22) hours per week. ( )

**b.** Therapy services listed in Subsections 651.02 through 651.06 and 651.12 and 651.13 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. ( )

**c.** When an 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. ( )

**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. ( )

**REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES AGENCIES PROVIDING SERVICES  
(Sections 652 through 659)**

**652. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO PERSONS EIGHTEEN YEARS OF AGE OR OLDER.**

This Section does not apply to adults who receive IBI or additional DDA services prior authorized under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program as described in IDAPA 16.03.09, "Medicaid

Basic Plan Benefits.” DDAs must comply with the requirements under Section 653 of these rules for those adults. ( )

**01. Eligibility Determination.** Prior to the delivery of any DDA services, the person must be determined to be eligible as defined under Section 66-402, Idaho Code, for DDA services. ( )

**a.** For persons seeking Medicaid-funded DDA services who are eighteen (18) years of age or older, the Department or its designee determines eligibility for services. ( )

**b.** For persons eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 653.01 of these rules. ( )

**02. Intake.** ( )

**a.** For participants eighteen (18) years of age or older and who are not listed under Subsection 652.01.b prior to the delivery of any Medicaid-funded DDA services: ( )

**i.** The Department or its designee will have provided the DDA with current medical, social, and developmental information; and ( )

**ii.** The participant must have an ISP that is authorized in accordance with IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” Sections 507 through 515. ( )

**b.** Participants eighteen (18) years of age or older receiving DDA services and who are using the Home and Community Based Services (HCBS) Waiver for the Aged and Disabled (A&D), State Plan PCS, or are living in a nursing facility must: ( )

**i.** Have DDA services prior authorized by the Department or its designee; and ( )

**ii.** DDAs must complete an Individual Program Plan (IPP) that meets the standards described in Subsections 653.04 through 653.06 of these rules. IPPs for these individuals do not require the signature of a physician or other practitioner of the healing arts. ( )

**c.** For participants eighteen (18) years of age or older who are not Medicaid participants, the DDA must follow the requirements under Subsection 653.02 of these rules. ( )

**03. Assessments.** Requirements for assessments are found under Sections 600 through 605 of these rules. ( )

**04. Individual Service Plan (ISP).** For participants eighteen (18) years of age or older any services provided by the DDA must be included on the plan of service and be prior authorized by the Department or its designee before a participant can receive the service from the agency. ( )

**05. Documentation of Plan Changes.** Documentation of changes in the required plan of service or Program Implementation Plan must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to a Program Implementation Plan that affect the type or amount of service on the plan of service, an addendum to the plan of service must be completed. ( )

**653. REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN AGES THREE THROUGH SEVENTEEN AND ADULTS RECEIVING IBI OR ADDITIONAL DDA SERVICES PRIOR AUTHORIZED UNDER THE EPSDT PROGRAM.**

**01. Eligibility Determination.** Prior to the delivery of any DDA services, the DDA must determine and document the participant's eligibility in accordance with Section 66-402, Idaho Code. For eligibility determination, the following assessments must be obtained or completed by the DDA: ( )

**a.** Medical Assessment. This must contain medical information that accurately reflects the current status of the person and establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code; or ( )

**b.** Psychological Assessment. If the medical assessment does not establish categorical eligibility, the DDA must obtain or conduct a psychological assessment that accurately reflects the current status of the person and establishes categorical eligibility in accordance with Section 66-402(5)(a), Idaho Code. ( )

**c.** Standardized Comprehensive Developmental Assessment. This must contain developmental information regarding functional limitations that accurately reflects the current status of the person and establishes functional eligibility based on substantial limitations in accordance with Section 66-402(5)(b), Idaho Code. ( )

**02.** Intake. The DDA must obtain information that accurately reflects the current status and needs of the participant prior to the delivery of services. ( )

**a.** The person must have been determined by the DDA to be eligible for DDA services. ( )

**b.** The DDA must obtain or complete a comprehensive medical and medical/social history. ( )

**03.** Assessments. Requirements for assessments are found under Subsections 655.02 through 655.05 of these rules. ( )

**04.** Individual Program Plan (IPP) Definitions. The delivery of each service on a plan of service must be defined in terms of the type, amount, frequency, and duration of the service. ( )

**a.** Type of service refers to the kind of service described in terms of: ( )

**i.** Discipline; ( )

**ii.** Group, individual, or family; and ( )

**iii.** Whether the service is home, community, or center-based. ( )

**b.** Amount of service is the total number of service hours during a specified period of time. This is typically indicated in hours per week. ( )

**c.** Frequency of service is the number of times service is offered during a week or month. ( )

**d.** Duration of service is the length of time. This is typically the length of the plan year. For ongoing services, the duration is one (1) year; services that end prior to the end of the plan year must have a specified end date. ( )

**05.** Individual Program Plan (IPP). For participants three (3) through seventeen (17) years of age and for adults receiving EPDST services, the DDA is required to complete an IPP. ( )

**a.** The IPP must be developed following obtainment or completion of all applicable assessments consistent with the requirements of this chapter. ( )

**b.** The planning process must include the participant and his parent or legal guardian, if applicable, and others the participant or his parent or legal guardian chooses. The participant's parent or legal guardian must sign the IPP indicating his participation in its development. The parent or legal guardian must be provided a copy of the completed IPP. If the participant and his parent or legal guardian are unable to participate, the reason must be documented in the participant's record. A physician or other practitioner of the healing arts and the parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan, except as provided under Subsection 652.02.b.ii. of these rules. ( )

**c.** The planning process must occur at least annually, or more often if necessary, to review and update

the plan to reflect any changes in the needs or status of the participant. Revisions to the IPP requiring a change in type, amount, or duration of the service provided must be recommended by the physician or other practitioner of the healing arts prior to implementation of the change. Such recommendations must be signed by the physician or other practitioner of the healing arts and maintained in the participant's file. A parent or legal guardian must sign the IPP prior to initiation of any services identified within the plan. ( )

**d.** The IPP must be supported by the documentation required in the participant's record in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)" record requirements. ( )

**e.** The IPP must promote self-sufficiency, the participant's choice in program objectives and activities, encourage the participant's participation and inclusion in the community, and contain objectives that are age-appropriate. The IPP must include: ( )

**i.** The participant's name and medical diagnosis; ( )

**ii.** The name of the assigned Developmental Specialist, the date of the planning meeting, and the names and titles of those present at the meeting; ( )

**iii.** The dated signature of the physician or other practitioner of the healing arts indicating his recommendation of the services on the plan; ( )

**iv.** The type, amount, frequency, and duration of therapy to be provided. For developmental therapy, the total hours of services provided cannot exceed the amount recommended on the plan. The amount and frequency of the type of therapy must not deviate from the IPP more than twenty percent (20%) over a period of a four (4) weeks, unless there is documentation of a participant-based reason; ( )

**v.** A list of the participant's current personal goals, interests and choices; ( )

**vi.** An accurate, current, and relevant list of the participant's specific developmental and behavioral strengths and needs. The list will identify which needs are priority based on the participant's choices and preferences. An IPP objective must be developed for each priority need; ( )

**vii.** A list of measurable behaviorally stated objectives, which correspond to the list of priority needs. A Program Implementation Plan must be developed for each objective; ( )

**viii.** The discipline professional or Developmental Specialist responsible for each objective; ( )

**ix.** The target date for completion of each objective; ( )

**x.** The review date; and ( )

**xi.** A transition plan. The transition plan is designed to facilitate the participant's independence, personal goals, and interests. The transition plan must specify criteria for participant transition into less restrictive, more integrated settings. These settings may include integrated classrooms, community-based organizations and activities, vocational training, supported or independent employment, volunteer opportunities, or other less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. ( )

**06. Documentation of Plan Changes.** Documentation of required plan of service or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum: ( )

**a.** The reason for the change; ( )

**b.** Documentation of coordination with other services providers, where applicable; ( )

**c.** The date the change was made; and ( )

d. The signature of the professional making the change complete with date, credential, and title. Changes to the IPP require documented notification of the participant or the participant's parent or legal guardian, if applicable. Changes in type, amount, or duration of services require written authorization from a physician or other practitioner of the healing arts and the participant or the participant's parent or legal guardian prior to the change. If the signatures of the participant or the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. ( )

**654.—655. (RESERVED) REQUIREMENTS FOR A DDA PROVIDING SERVICES TO CHILDREN BIRTH TO THREE YEARS OF AGE (INFANT TODDLER).**

Services provided by a DDA to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include: adherence to procedural safeguards and time lines, use of multi-disciplinary assessments and Individualized Family Service Plans (IFSPs), provision of early intervention services in the natural environment, transition planning, and program enrollment and reporting requirements. For children birth to age three (3), the IFSP will be used in lieu of the Individual Program Plan (IPP). ( )

**01. Eligibility Determination.** For a child birth to three (3) years of age, prior to the delivery of any DDA services: ( )

a. In accordance with 34 CFR 303.321(e), the Department's regional Infant Toddler Program will determine eligibility for DDA services in accordance with Section 66-402, Idaho Code. ( )

b. Upon request from the DDA, and after receiving consent from the parent or legal guardian for release of information, the Department's regional Infant Toddler Program will provide the DDA with documentation of the child's eligibility including a copy of the current IFSP, addendum(a) to the IFSP, assessments, and service records related to current DDA services. ( )

**02. Intake.** Prior to the delivery of DDA services: ( )

a. The DDA must obtain both a copy of the current IFSP and a copy of all current assessment(s) used by the Department's regional Infant Toddler Program to determine eligibility for DDA services; and ( )

b. The DDA must conduct a meeting with the child's family, in cooperation with the child's service coordinator, to review the current IFSP and confirm the family's resources, priorities, and concerns with regard to the child's current developmental status and therapeutic needs. ( )

**03. Individualized Family Service Plan (IFSP).** The Department or its designee will develop the initial IFSP for each eligible child, birth to three (3) years of age. Each DDA that provides DDA services to an eligible child, birth to three (3) years of age, must implement services according to the IFSP for that child as required by the Individuals with Disabilities Education Act, (P.L. 108-446, December 2004), Part C, Section 636 (d) and Title 16, Chapter 1, Idaho Code. The DDA must use the Department-approved IFSP form in accordance with 34 CFR 303.344. The procedures for IFSP development, review, and assessment must be in accordance with 34 CFR 303.342. ( )

a. Development of the IFSP. For a child who has been evaluated for the first time and has been determined to be eligible for DDA services, the initial IFSP developed by the Department must be completed within a forty-five (45) day time period in accordance with 34 CFR 303.321(e). ( )

b. Periodic Reviews. In cooperation with the child's service coordinator and other service providers, the DDA must participate in a review of the IFSP to be conducted every six (6) months, or more frequently, if conditions warrant or if the family requests such a review. The purpose of the periodic review is to identify progress made toward each objective and to determine whether these current outcomes and objectives need modification or revision. The review may be carried out in a meeting or by another means that is acceptable to the parent or legal guardian and other participants. These reviews must include the degree to which progress toward achieving the

outcomes is being made. ( )

i. The DDA must provide the child's service coordinator with any current assessments and other information from the ongoing assessment of the child to determine what services are needed and will be provided. ( )

ii. The DDA must identify outcomes and objectives for inclusion in the IFSP for any services to be provided through the DDA. ( )

c. Participants in the IFSP meetings and periodic reviews must be in accordance with 34 CFR 303.343. IFSP meetings and periodic reviews must include the parent or legal guardian, the service coordinator working with the family, persons providing direct services to the child and family as appropriate, and persons directly involved in conducting the assessments of the child. The family is encouraged to invite any family member, advocate, or friend to the meeting to assist in the planning process. ( )

d. The IFSP or IFSP addendum must be in accordance with 34 CFR 303.344, and include the following: ( )

i. A statement of the outcome; ( )

ii. Steps to support transitions; ( )

iii. Behaviorally-stated objectives toward meeting that outcome; ( )

iv. Frequency, intensity, and method of delivering a service to meet the outcome; ( )

v. Measurability criteria, strategies, and activities; ( )

vi. Start and end dates; ( )

vii. A description of the natural environments in which early intervention services are appropriately provided, including a justification of the extent, if any, to which services will not be provided in a natural environment; and ( )

viii. A list of who will be involved in the direct intervention. ( )

e. There must be an order by a physician or other practitioner of the healing arts for all DDA services included on the IFSP. ( )

f. Transition to preschool programs must be in accordance with 34 CFR 303.148. ( )

i. At the IFSP review closest to the child's second birthday, outcomes must be written to address the steps needed to ensure appropriate services for the child at age three (3). ( )

ii. At least six (6) months prior to the child's third birthday, the DDA must document contact with the child's service coordinator and participation in the transition planning process at the time of referral of the child to his local school district for IDEA, Part B, eligibility determination. ( )

**04. Parental Consent and Right to Decline Service.** Written parental consent must be obtained before: ( )

**a. Conducting the assessment of a child; and** ( )

**b. Initiating the provision of services.** ( )

**05. Ongoing Assessment of the Child.** The assessment of each child must: ( )

- a.** Be conducted by personnel trained to utilize appropriate methods and procedures; ( )
- b.** Be based on informed clinical opinion; and ( )
- c.** Include the following: ( )
  - i.** A review of pertinent records related to the child's current health status and medical history. ( )
  - ii.** An assessment of the child's level of functioning in cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development. ( )
  - iii.** An assessment of the unique needs of the child in terms of each of the developmental areas mentioned above in Subsection 654.05.c.ii. of this rule, including the identification of services appropriate to meet those needs. ( )

**06. Services in the Natural Environment.** Natural environments are settings that are natural or normal for the child's age peers who have no disability. To the maximum extent appropriate, in order to meet the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. ( )

**07. Documentation of Program Changes.** Documentation of required plan or Program Implementation Plan changes must be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other services providers, where applicable, the date the change was made, and the signature of the professional making the change complete with date, credential, and title. If there are changes to the Program Implementation Plan that affect the IFSP, an addendum to the IFSP must be completed. ( )

- a.** In cooperation with the service coordinator; ( )
- b.** With consent of the parent; ( )
- c.** With an order by the child's physician or other practitioner of the healing arts; ( )
- d.** With all changes documented on the enrollment form; and ( )
- e.** A copy of the addendum and the enrollment form must be submitted to the Department. ( )

**655. DDA SERVICES: PROCEDURAL REQUIREMENTS.**

**01. 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: ( )

- a.** Comprehensive Developmental Assessment; ( )
- 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 Subsection 655.01; ( )
- c.** Occupational Therapy Assessment; ( )
- d.** Physical Therapy Assessment; ( )

**e.** Speech and Language Assessment: ( )

**f.** Medical/Social History; and ( )

**g.** Psychological Assessment. Includes psychological testing and psychiatric diagnostic interview. ( )

**02.** Comprehensive Assessments Conducted by the DDA. Assessments must be conducted by qualified professionals defined under Section 657 of these rules for the respective discipline or areas of service. ( )

**a.** Comprehensive Assessments. A comprehensive assessment must: ( )

**i.** Determine the necessity of the service; ( )

**ii.** Determine the participant's needs; ( )

**iii.** Guide treatment; ( )

**iv.** Identify the participant's current and relevant strengths, needs, and interests when these are applicable to the respective discipline; and ( )

**v.** For medical or psychiatric assessments, formulate a diagnosis. For psychological assessments, formulate a diagnosis and recommend the type of therapy necessary to address the participant's needs. For other types of assessments, recommend the type and amount of therapy necessary to address the participant's needs. ( )

**b.** Current Assessments Required. When the DDA determines developmental disabilities eligibility, current assessments must be completed or obtained as necessary. ( )

**c.** Date, Signature, and Credential Requirements. Assessments must be signed and dated by the professional completing the assessment and include the appropriate professional credential or qualification of that person. ( )

**d.** Assessment must be completed within forty-five (45) days. ( )

**i.** With the exception noted under Subsection 60.04.b. of this rule, each assessment must be completed within forty-five (45) calendar days of the date it was recommended by the physician or other practitioner of the healing arts. If the assessment is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. ( )

**ii.** This forty-five (45) day requirement does not apply to participant plans of service authorized under Sections 507 through 515 of these rules. ( )

**03.** Requirements for Current Assessments. Assessments must accurately reflect the current status of the participant. ( )

**a.** Current Assessments for Ongoing Services. To be considered current, assessments must be completed or updated at least annually for service areas in which the participant is receiving services on an ongoing basis. ( )

**b.** Updated Assessments. Assessments or updates are required in disciplines in which services are being delivered and when recommended by a professional. At the time of the required review of the assessment(s), the qualified professional in their respective discipline must determine whether a full assessment or an updated assessment is required for the purpose of reflecting the participant's current status in that service area. If, during the required review of the assessment(s), the latest assessment accurately represents the status of the participant, the file must contain documentation from the professional stating so. ( )



**c.** Medical/Social Histories and Medical Assessments. Medical/social histories and medical assessments must be completed at a frequency determined by the recommendation of a professional qualified to conduct those assessments. ( )

**d.** Intelligence Quotient (IQ) Tests. Once initial eligibility has been established, annual assessment of IQ is not required for persons whose categorical eligibility for DDA services is based on a diagnosis of mental retardation. IQ testing must be reconducted on a frequency determined and documented by the agency psychologist or at the request of the Department. ( )

**e.** Completion of Assessments. Assessments must be completed or obtained prior to the delivery of therapy in each type of service. ( )

**f.** Psychological Assessment. A current psychological assessment must be completed or obtained: ( )

i. When the participant is receiving a behavior modifying drug(s); ( )

ii. Prior to the initiation of restrictive interventions to modify inappropriate behavior(s); ( )

iii. Prior to the initiation of supportive counseling; ( )

iv. When it is necessary to determine eligibility for services or establish a diagnosis; ( )

v. When a participant has been diagnosed with mental illness; or ( )

vi. When a child has been identified to have a severe emotional disturbance. ( )

**04.** Assessments for Adults. DDA s must obtain assessments required under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515 of these rules. All specific skill assessments must be conducted in accordance with Subsection 655.06 of these rules. ( )

**05.** Types of Comprehensive Assessments. ( )

**a.** Comprehensive Developmental Assessment. A comprehensive developmental assessment must be conducted by a qualified Development Specialist and reflect a person's developmental status in the following areas: ( )

i. Self-care; ( )

ii. Receptive and expressive language; ( )

iii. Learning; ( )

iv. Gross and fine motor development; ( )

v. Self-direction; ( )

vi. Capacity for independent living; and ( )

vii. Economic self-sufficiency. ( )

**b.** Comprehensive Intensive Behavioral Intervention (IBI) Assessment. The requirements for the comprehensive IBI assessment are found under Subsection 656.03 of these rules. ( )

**c.** Occupational Therapy Assessment. Occupational therapy assessments must be conducted by an occupational therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. ( )

d. Physical Therapy Assessment. Physical therapy assessments must be conducted by a physical therapist qualified under Section 657 of these rules and include gross and fine motor abilities, and recommendation of therapy necessary to address the participant's needs. ( )

e. Speech and Language Assessment. Speech and language assessments must be conducted by a Speech-Language Pathologist who is qualified under Section 657 of these rules. ( )

f. Medical Assessments. Medical assessments must be completed by a physician or other practitioner of the healing arts who is qualified in accordance with Section 657 of these rules and accurately reflects the current status and needs of the person. ( )

g. Medical/Social History. Medical/social histories must be completed by a licensed social worker or other qualified professional working within the scope of his license. The medical/social history is a narrative report that must include: ( )

i. Medical history including age of onset of disability, prenatal and postnatal birth issues, other major medical issues, surgeries, and general current health information; ( )

ii. Developmental history including developmental milestones and developmental treatment interventions; ( )

iii. Personal history including social functioning/social relationships, recreational activities, hobbies, any legal and criminal history, and any history of abuse; ( )

iv. Family history including information about living or deceased parents and siblings, family medical history, relevant family cultural background, resources in the family for the participant; ( )

v. Educational history including any participation in special education; ( )

vi. Prevocational or vocational paid and unpaid work experiences; ( )

vii. Financial resources; and ( )

viii. Recommendation of services necessary to address the participant's needs. ( )

h. Hearing Assessment. A hearing assessment must be conducted by an audiologist who is qualified under Section 657 of these rules. ( )

i. Psychological Assessment. A psychological assessment includes psychological testing for diagnosis and assessment of personality, psychopathology, emotionality, or intellectual abilities (IQ test). The assessment must include a narrative report. Psychological assessment encompasses psychological testing and the psychiatric diagnostic interview. ( )

j. Psychological Testing. Psychological testing refers to any measurement procedure for assessing psychological characteristics in which a sample of a person's behavior is obtained and subsequently evaluated and scored using a standardized process. This does not refer to assessments that are otherwise conducted by a professional within the scope of his license for the purposes of determining a participant's mental status, diagnoses, or functional impairments. ( )

i. Psychological testing may be provided when in direct response to a specific assessment question. ( )

ii. The psychological report must contain the reason for the performance of this service. ( )

iii. Agency staff may deliver this service if they meet one (1) of the following qualifications: ( )

- (1) Licensed Psychologist: ( )
- (2) Psychologist Extender; or ( )
- (3) A qualified therapist listed in Subsection 651.03.e. of these rules who has documented evidence of education or training qualifying him to administer, score, interpret, and report findings for the psychological test he will be performing. ( )
- k.** Psychiatric Diagnostic Interview. A psychiatric diagnostic interview must be conducted in accordance with Subsection 651.09 of these rules. ( )
- 06. Requirements for Specific Skill Assessments.** Specific skill assessments must: ( )
- a.** Further Assessment. Further assess an area of limitation or deficit identified on a comprehensive assessment. ( )
- b.** Related to a Goal. Be related to a goal on the IPP, ISP, or IFSP. ( )
- c.** Conducted by Qualified Professionals. Be conducted by qualified professionals for the respective disciplines as defined in this chapter. ( )
- d.** Determine a Participant's Skill Level. Be conducted for the purposes of determining a participant's skill level within a specific domain. ( )
- e.** Determine Baselines. Be used to determine baselines and develop the program implementation plan. ( )
- 07. DDA Program Documentation Requirements.** Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. ( )
- a.** General Requirements for Program Documentation. For each participant the following program documentation is required: ( )
- i. Daily entry of all activities conducted toward meeting participant objectives. ( )
- ii. Sufficient progress data to accurately assess the participant's progress toward each objective; and ( )
- iii. A review of the data, and, when indicated, changes in the daily activities or specific implementation procedures by the qualified professional. The review must include the qualified professional's dated initials. ( )
- iv. When a participant receives developmental therapy, documentation of six (6) month and annual reviews by the Developmental Specialist that includes a written description of the participant's progress toward the achievement of therapeutic goals, and the reason(s) why he continues to need services. ( )
- b.** Additional Requirements for Participants Eighteen Years or Older. For participant's eighteen (18) years of age or older, DDAs must also submit provider status reviews to the plan monitor in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 507 through 515. ( )
- c.** Additional Requirements for Participants Seven Through Sixteen. For participants ages seven (7) through sixteen (16), the DDA must also document that the child has been referred to the local school district in accordance with the collaboration requirements in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )
- d.** Additional Requirements for Participants Birth to Three Years of Age. For participants birth to age three (3), the following are required in addition to those requirements in Subsection 654.01 of these rules: ( )

- i. Documentation of the six (6) month and annual reviews: ( )
- ii. Documentation of participation in transition planning at the IFSP developed closest to the child's second birthday to ensure service continuity and access to community services as early intervention services end at age three (3): ( )
- iii. Documentation that participant rights have been met in accordance with IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )
- iv. Documentation of participation in the transition meeting with the school district; and ( )
- v. Documentation of consultation with other service providers who are identified on the IFSP. ( )

**08. DDA Program Implementation Plan Requirements.** For each participant, the DDA must develop a Program Implementation Plan for each DDA objective included on the participant's required plan of service. All Program Implementation Plans must be related to a goal or objective on the participant's plan of service. The Program Implementation Plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the Program Implementation Plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The Program Implementation Plan must include the following requirements in Subsections 655.08.a. through 655.08.g. of this rule: ( )

- a. Name. The participant's name. ( )
- b. Baseline Statement. A baseline statement addressing the participant's skill level and abilities related to the specific skill to be learned. ( )
- c. Objectives. Measurable, behaviorally-stated objectives that correspond to those goals or objectives previously identified on the required plan of service. ( )
- d. Written Instructions to Staff. These instructions may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement, and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. ( )
- e. Service Environments. Identification of the type of environment(s) where services will be provided. ( )
- f. Target Date. Target date for completion. ( )
- g. Results of the Psychological or Psychiatric Assessment. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. ( )

**656. REQUIREMENTS FOR THE DELIVERY OF INTENSIVE BEHAVIORAL INTERVENTION (IBI).**

**01. Individualized and Comprehensive Interventions.** IBI consists of individualized, comprehensive interventions that have been shown to be effective and are used on a short term, one-to-one basis. These interventions: ( )

- a. Produce measurable outcomes that diminish behaviors that interfere with the development and use of language and appropriate social interaction skills; or ( )

- b.** Broaden an otherwise severely restricted range of interest; and ( )
- c.** Increase the child's ability to participate in other therapies and environments. ( )
- 02. IBI Authorization and Review.** IBI services must be reviewed and prior authorized for each service year as follows: ( )

  - a.** Initial IBI Authorization. The Department determines IBI eligibility based on information submitted by the DDA and other information gathered by the Department as deemed necessary. At least twenty (20) working days prior to the intended start date of IBI services, the DDA must use Department-approved forms to submit; ( )

    - i.** Evidence of the child's eligibility for Intensive Behavioral Intervention; ( )
    - ii.** The comprehensive IBI assessments; ( )
    - iii.** The Program Implementation Plans; ( )
    - iv.** The number of hours of service requested; and ( )
    - v.** Measurable objectives. ( )
  - b.** Three- (3) Month Review. The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )
  - c.** Six- (6) Month Review and Authorization. At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: ( )

    - i.** The three- (3) month review; ( )
    - ii.** Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for those six (6) months; and ( )
    - iii.** When continuing IBI services are requested, the Program Implementation Plans, the number of hours of service requested, and the measurable objectives, using Department-approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. ( )
  - d.** Nine- (9) Month Review. The agency must conduct and document a formal review of therapy objectives and direction for future therapy for each objective. ( )
  - e.** Annual Review and Authorization. At least fifteen (15) working days prior to the expiration of prior authorized IBI services the agency must submit: ( )

    - i.** The nine- (9) month review; ( )
    - ii.** Documentation of the child's progress on IBI goals and outcomes of the IBI objectives for that year; and ( )
    - iii.** When continuing IBI services are requested; ( )
- (1)** A new SIB-R that reflects the child's current status and any additional information required to establish continuing eligibility; ( )
- (2)** The Program Implementation Plans; and ( )
- (3)** The number of hours of service requested and the measurable objectives, using Department-

approved forms. Continued services will not be authorized when little or no progress has been documented and justification is inadequate to continue IBI services. ( )

**03. Comprehensive IBI Assessment.** A comprehensive IBI assessment must be completed by a certified IBI professional prior to the initial provision of IBI or IBI Consultation. The results of the assessment must form the basis for planning interventions. The assessment must include the following: ( )

- a.** Review of Assessments and Relevant Histories. ( )
  - i.** Medical history, medications, and current medical status; ( )
  - ii.** Medical/social history that includes a developmental history and onset of developmental disability; ( )
  - iii.** Comprehensive developmental assessment reflecting the child's current status; ( )
  - iv.** Specific skill assessment, when such an assessment is completed; ( )
  - v.** SIB-R Maladaptive Index and a list of the child's maladaptive behaviors; ( )
  - vi.** Baseline of the child's maladaptive behavior(s), if available; ( )
  - vii.** Psychological assessments and results of psychometric testing, or for very young children, a developmental assessment with equivalent age-appropriate social-emotional status, if available; ( )
  - viii.** A mental health or social and emotional assessment, such as the Child and Adolescent Functional Assessment Scale (CAFAS), when one has been completed; ( )
  - ix.** Public school or Infant Toddler Program records including relevant birth records, multidisciplinary team assessments, recommendations, and Individualized Education Programs (IEPs) or Individualized Family Service Plans (IFSPs); and ( )
  - x.** Other relevant assessments that may be available, including those for speech and hearing and physical and occupational therapy. ( )
- b.** Interviews. Interviews must be conducted with the child, if possible, and to the extent of the child's abilities; the child's parent or legal guardian, or the primary care provider; and any other individuals who spend significant amounts of time with the child. These interviews must result in a written summary of the findings of each interview and include the following: ( )
  - i.** Description of the child's desired and problem behaviors; ( )
  - ii.** Opinion about environmental stimuli that appear to precede problem behaviors; ( )
  - iii.** Opinion about the internal states or setting events that precede desired and problem behaviors; ( )
  - iv.** Opinion about identification of stimuli that maintain the desired or problem behaviors; and ( )
  - v.** Opinion about factors that alleviate problem behaviors and increase desired behaviors. ( )
- c.** Observation of the Child. Observations of the child must occur in environments in which the child spends significant amounts of time and where problem behaviors have been reported. Results of the observations must include the following: ( )
  - i.** Specific descriptions and frequencies of problem behaviors; ( )

- ii. Identification of environmental stimuli that appear to precede problem behaviors: ( )
- iii. Identification of internal states or setting events that appear to precede problem behaviors: ( )
- iv. Identification of stimuli that maintain the desired or problem behaviors; and ( )
- v. Identification of factors that alleviate problem behaviors and increase desired behaviors. ( )
- d. Clinical Opinion. Clinical opinion about the underlying causes, antecedents, motivations, and communicative intent of desired and problem behaviors. ( )

**04. IBI Program Implementation Plans Requirements.** In addition to the requirements under Subsections 655.08.a. through 655.08.g. of these rules, the following are also required for IBI Implementation Plans: ( )

- a. All IBI Implementation Plans must be completed on the Department-approved form. ( )
- b. On all IBI Implementation Plan cover sheets, the signature of a parent or legal guardian is required. If the signatures of the parent or legal guardian cannot be obtained, then the agency must document in the participant's record the reason the signatures were not obtained. ( )

**05. IBI Transition Plan.** An IBI transition plan must be developed when it is anticipated that IBI services will be terminated within the next Department or agency review period and the child will be moving into natural learning environments or less intensive therapy settings. The IBI transition plan may not be used as a substitute for, nor does it replace the transition plans required under Sections 653 and 654 of these rules. IBI transition plans must include the following steps to support the transition and the timelines for those steps: ( )

- a. Setting. The setting to which the child will be moving and the therapists or persons who will be interacting with the child; and ( )
- b. Training of New Therapists or Other Persons. How behavioral intervention techniques will be shared with new therapists or other persons in the new environments to encourage generalization and maintenance of appropriate behavior and action to be taken if the child demonstrates regression in the new setting in skills learned through IBI. ( )

**06. IBI Consultation.** Professionals may provide IBI consultation to parents and other family members, professionals, paraprofessionals, school personnel, child care providers, or other caregivers who provide therapy or care for an IBI eligible child in other disciplines to ensure successful integration and transition from IBI to other therapies, services, or types of care. IBI consultation objectives and methods of measurement must be developed in collaboration with the person receiving IBI consultation. ( )

- a. Service Delivery Qualification. IBI consultation must be delivered by an IBI professional who meets the requirements in Section 657 of these rules. ( )
- b. Measurable Progress. IBI consultation must result in measurable improvement in the child's behavior. It is not intended to be used for educational purposes only. ( )
- c. Evidence of Progress. Persons who receive IBI consultation must meet with the IBI professional, agree to follow an IBI Implementation Plan, and provide evidence of progress. ( )
- d. Individualized. IBI consultation may not be reimbursed when it is delivered to a group of parents. IBI consultation is specific to the unique circumstances of each child. ( )

**657. DDA SERVICES: DDA PROVIDER QUALIFICATIONS AND DUTIES.**

- 01. Audiologist, Licensed.** A person licensed to conduct hearing assessment and therapy, in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who either

possesses a certificate of clinical competence in audiology from the American Speech, Language and Hearing Association (ASHA) or will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. ( )

**02. Counselor, Licensed Clinical Professional.** A person licensed to practice as a clinical professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." ( )

**03. Counselor, Licensed Professional.** A person licensed to practice as a professional counselor in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." ( )

**04. Marriage and Family Therapist.** ( )

**a. Licensed Marriage and Family Therapist.** A person licensed to practice as a marriage and family therapist in accordance with Title 54, Chapter 34, Idaho Code and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." ( )

**b. Registered Marriage and Family Therapist Intern.** A person registered to practice as a marriage and family therapist intern under the direct supervision of a Licensed Marriage and Family Therapist, in accordance with Title 54, Chapter 34, Idaho Code, and IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists." ( )

**05. Developmental Specialist for Adults.** To be qualified as a Developmental Specialist for adults, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with individuals who have developmental disabilities and either: ( )

**a.** Possess a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation; or ( )

**b.** Possess a bachelor's or master's degree in an area not listed above in Subsection 420.05.a. of this rule and have: ( )

**i.** Completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies that relates to the job requirements of a Developmental Specialist; and ( )

**ii.** Passed a competency examination approved by the Department. ( )

**c.** Any person employed as a Developmental Specialist in Idaho prior to May 30, 1997, unless previously disallowed by the Department, will be allowed to continue providing services as a Developmental Specialist as long as there is not a gap of more than three (3) years of employment as a Developmental Specialist. ( )

**06. Developmental Specialist for Children Three Through Seventeen.** A Developmental Specialist providing developmental assessment and therapy services to children ages three (3) through seventeen (17) must meet the requirements for a Developmental Specialist for adults, and must also meet the following requirements: ( )

**a.** Successfully complete a competency course approved by the Department that relates to developmental assessment and therapy for children; and ( )

**b.** Pass a competency examination approved by the Department. ( )

**07. Developmental Therapy Paraprofessionals Delivering Services to Participants Age Three and Older.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children age (3) and older if they are under the supervision of a Developmental Specialist. A



developmental therapy paraprofessional must be at least seventeen (17) years of age. ( )

**08. Developmental Specialist for Children Birth to Three.** ( )

**a.** To provide developmental assessments and therapy to children birth to three (3) years of age, a person must have a minimum of two hundred forty (240) hours of professionally-supervised experience with young children who have developmental disabilities and one (1) of the following: ( )

**i.** An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or ( )

**ii.** A Blended Early Childhood/Early Childhood Special Education (EC/ECSE) Certificate; ( )

**iii.** A bachelor's or masters degree in special education, elementary education, speech-language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty-four (24) semester credits in Early Childhood/Early Childhood Special Education (EC/ECSE) from an accredited college or university. Courses taken must appear on college or university transcripts and must cover the following standards in their content: ( )

**(1)** Promotion of development and learning for children from birth to three (3) years; ( )

**(2)** Assessment and observation methods for developmentally appropriate assessment of young children; ( )

**(3)** Building family and community relationships to support early interventions; ( )

**(4)** Development of appropriate curriculum for young children, including IFSP and IEP development; ( )

**(5)** Implementation of instructional and developmentally effective approaches for early learning, including strategies for children who are medically fragile and their families; and ( )

**(6)** Demonstration of knowledge of policies and procedures in special education and early intervention and demonstration of knowledge of exceptionalities in children's development. ( )

**b.** Electives closely related to the content under Subsection 420.08.a.iii. may be approved by the Department with a recommendation from an institution of higher education. ( )

**c.** A developmental specialist who possesses a bachelor's or master's degree listed above under Subsection 420.08.a.ii. of this rule, must have completed a minimum of twenty (20) semester credits in EC/ECSE, and with Department approval are serving children under three (3) years of age as of July 1, 2005, will be allowed to continue providing services in accordance with his approved, conditional hiring agreement. ( )

**d.** When the Department in its role as lead agency for implementation of Part C of the Individuals with Disabilities Education Act (IDEA) has determined that there is a shortage of such qualified personnel to meet service needs in a specific geographic area: ( )

**i.** The Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individual's approved plan to meet the required standard within three (3) years of being hired. ( )

**ii.** Satisfactory progress will be determined on an annual review by the Department. ( )

**iii.** An individual who has an approved plan for completion of twenty (20) semester credits in EC/ECSE prior to July 1, 2005, will be allowed to continue providing services so long as he demonstrates satisfactory progress on the plan and complete the requirements on the plan within three (3) years of his date of hire. ( )

**09. Developmental Therapy Paraprofessionals Delivering Services to Children Birth to Three.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental therapy to children birth to three (3) years of age if they are under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. Developmental therapy paraprofessionals serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )

- a.** Be at least eighteen (18) years of age: ( )
- b.** Be a high school graduate or have a GED; and ( )
- c.** Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) semester credits from an accredited college or university in child development, special education or closely-related coursework; or ( )
- d.** Have three (3) years of documented experience providing care to infants, toddlers, or children less than five (5) years of age with developmental delays or disabilities under the supervision of a child development professional, certified educator, licensed therapist, or Developmental Specialist. ( )

**10. Intensive Behavioral Intervention (IBI) Professional Delivering Services to Participants Three to Twenty-One.** A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: ( )

- a.** Degree. A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college. ( )
- b.** Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )
- c.** Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under Section 415 of these rules. ( )

**11. IBI Paraprofessionals Delivering Services to Participants Three to Twenty-One.** A certified IBI paraprofessional may be used to provide IBI under the supervision of a certified IBI professional and must comply with Section 405 of these rules. An IBI paraprofessional must also: ( )

- a.** Be at least eighteen (18) years of age: ( )
- b.** Experience. An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year of supervised experience working with children with developmental disabilities. The year of experience must be gained through paid employment or university practicum experience or internship and be documented to include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context. ( )
- c.** Training and Certification. Qualified IBI professionals and paraprofessionals must comply with the requirements under Section 415 of these rules. ( )

**12. IBI Professionals Delivering Services to Children Birth to Three.** A person qualified to provide or direct the provision of IBI to children under three (3) years of age must meet the staff qualifications described under Subsections 420.08.a.ii. through 420.08.d. and 420.10.b. through 420.10.d. of these rules and the certification and training requirements above under Subsections 415.03 and 415.04 of these rules. ( )

**13. IBI Paraprofessionals Delivering Services to Children Birth to Three.** A paraprofessional serving infants and toddlers from birth to three (3) years of age must meet the following qualifications: ( )

- a.** Be at least eighteen (18) years of age; ( )
- b.** Be a high school graduate or have a GED; and ( )
- c.** Have transcribed courses for a minimum of a Child Development Associate degree (CDA) or the equivalent through completion of twelve (12) credits in child development, special education, or closely-related coursework; or ( )
- d.** Have three (3) years of documented experience providing care to infants, toddlers or children under five (5) years of age under the supervision of a child development professional, certified educator, or licensed therapist or Developmental Specialist. ( )
- e.** Qualified IBI professionals and paraprofessionals must comply with their requirements under Section 415 of these rules. ( )
- 14. Nurse Practitioner.** A licensed professional nurse (RN) who has met all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." ( )
- 15. Occupational Therapist.** A person qualified to conduct occupational therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.09, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants." ( )
- 16. Physical Therapist.** A person qualified to conduct physical therapy assessments and therapy in accordance with the requirements in IDAPA 22.01.05, "Licensure of Physical Therapists Idaho State Board of Medicine and Physical Therapist Assistants." ( )
- 17. Physician.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code. ( )
- 18. Physician Assistant.** A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: ( )
- a.** Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or ( )
- b.** Has satisfactorily completed a program for preparing physician's assistants that: ( )
- i.** Was at least one (1) academic year in length; and ( )
- ii.** Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health care; and ( )
- iii.** Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation. ( )
- 19. Psychiatric Nurse, Certified.** A licensed professional nurse (RN), licensed in accordance with Title 54, Chapter 14, Idaho Code, or certified by a recognized national certification organization, and have a minimum of a master's degree. ( )
- 20. Psychiatrist.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Title 54, Chapter 18, Idaho Code, and who meets the requirements for certification in psychiatry by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. ( )
- 21. Psychologist.** A person licensed to practice psychology in Idaho under Title 54, Chapter 23, Idaho

Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." ( )

**22. Psychologist Extender.** A person who practices psychology under the supervision of a licensed psychologist as required under Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners," and who is registered with the Bureau of Occupational Licenses. ( )

**23. Social Worker, Licensed.** A person licensed in accordance with the Social Work Licensing Act, Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." ( )

**24. Masters Social Worker, Licensed.** A person who is licensed as a masters social worker (LMSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." ( )

**25. Clinical Social Worker, Licensed.** A person who is licensed as a clinical social worker (LCSW) in accordance with Title 54, Chapter 32, Idaho Code and IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners." ( )

**26. Speech-Language Pathologist, Licensed.** A person licensed to conduct speech-language assessment and therapy in accordance with the Speech and Hearing Services Practice Act, Title 54, Chapter 29, Idaho Code, who possesses a certificate of clinical competence in speech-language pathology from the American Speech, Language and Hearing Association (ASHA) or who will be eligible for certification within one (1) year of employment. The agency's personnel records must reflect the expected date of certification. ( )

**658. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Standards for Paraprofessionals Providing Developmental Therapy and IBI.** When a paraprofessional provides either developmental therapy or IBI, the agency must ensure adequate supervision by a qualified professional during its service hours. All paraprofessionals must meet the training requirements under Section 415 of these rules and must meet the qualifications under Section 420 of these rules. A paraprofessional providing IBI must be supervised by an IBI professional; a paraprofessional providing developmental therapy must be supervised by a Developmental Specialist. Paraprofessionals providing developmental therapy to children birth to three (3) years of age must work under the supervision of a Developmental Specialist fully qualified to provide services to participants in this age group. For paraprofessionals to provide developmental therapy or IBI in a DDA, the agency must adhere to the following standards: ( )

**a. Limits to Paraprofessional Activities.** The agency must ensure that paraprofessionals do not conduct participant assessments, establish a plan of service, develop a Program Implementation Plan, or conduct collateral contact or IBI consultation. These activities must be conducted by a professional qualified to provide the service. ( )

**b. Frequency of Supervision.** The agency must ensure that a professional qualified to provide the service must, for all paraprofessionals under his supervision, on a weekly basis or more often if necessary: ( )

i. Give instructions; ( )

ii. Review progress; and ( )

iii. Provide training on the program(s) and procedures to be followed. ( )

**c. Professional Observation.** The agency must ensure that a professional qualified to provide the service must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional under his supervision, to ensure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ( )

**d. Limitations to Service Provision by an IBI Paraprofessional.** IBI provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time, per individual participant. The remaining ten percent

(10%) of the direct intervention time must be provided by the professional qualified to provide and direct the provision of IBI. ( )

**e.** Additional Training Requirements for IBI Professionals and IBI Paraprofessionals. Qualified IBI professionals and IBI paraprofessionals must complete and pass a Department-approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of IBI and ethical standards. Specifically, the curriculum must include: ( )

i. Assessment of individuals; ( )

ii. Behavioral management; ( )

iii. Services or treatment of individuals; ( )

iv. Supervised practical experience; and ( )

v. Successful completion of a student project that includes an observation of demonstrated competencies for all individuals applying for initial certification or recertification after July 1, 2003. ( )

**f.** Continuing Training Requirements for IBI Professionals and IBI Paraprofessionals. Each IBI professional and IBI paraprofessional, in order to maintain certification, must complete at least twelve (12) hours of yearly training, six (6) hours of which must cover behavior methodology or interventions shown to be effective. ( )

i. The initial IBI certification training meets the yearly training requirement for the calendar year in which the IBI professional or paraprofessional was first certified. ( )

ii. If the individual has not completed the required training during any yearly training period, he may not provide IBI services beginning with the anniversary date of the following period, and thereafter, until the required number of training hours have accumulated. As training hours accumulate, they will be accounted first to an y training-deficient prior yearly period before being applied to the current annual training period. Training hours may not be earned in a current annual training period to be applied to a future training period. ( )

iii. An individual may remain IBI certified, despite being unable to bill for services, through two (2) consecutive annual training periods during which that individual has deficient training hours. A DDA may begin billing for the certified IBI Professional or Paraprofessional again after the required training hours are accumulated. ( )

iv. If an individual completes three (3) consecutive annual training periods without having accumulated sufficient training to satisfy the training requirement for the first of those periods, that individual's IBI certification is automatically rescinded and will no longer be recognized. To be recertified, the individual must retake the state IBI exam and complete the IBI Student Project, if not previously completed. ( )

**02. General Staffing Requirements for Agencies.** ( )

**a.** Administrative Staffing. Each DDA must have an agency administrator who is accountable for all service elements of the agency and who must be employed on a continuous and regularly scheduled basis. The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. ( )

i. When the administrator is not a Developmental Specialist as defined in these rules, the DDA must employ a Developmental Specialist on a continuous and regularly scheduled basis who is responsible for the service elements of the agency; and ( )

ii. The Developmental Specialist responsible for the service elements of the agency must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with

developmental disabilities. ( )

**b.** Other required staffing. The agency must have available, at a minimum, the following personnel, qualified in accordance with Section 657 of these rules, as employees of the agency or through formal written agreement: ( )

i. Speech-language pathologist or audiologist: ( )

ii. Developmental Specialist: ( )

iii. Occupational therapist: ( )

iv. Physical therapist: ( )

v. Psychologist; and ( )

vi. Social worker, or other professional qualified to provide the required services under the scope of his license. ( )

**6569. DDA SERVICES: PROVIDER REIMBURSEMENT.**  
Payment for agency services must be in accordance with rates established by the Department. (3-19-07)

~~657. 699.~~ (RESERVED).

**CHILDREN'S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION**  
**(Sections 660 through 669)**

**660. CHILDREN'S HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**  
In accordance with 1915i of the Social Security Act, the Department will pay for home and community based services provided by individuals or agencies that have entered into a provider agreement with the Department. Services provided by a developmental disabilities agency to children birth to three (3) years of age must meet the requirements and provisions of the Individuals with Disabilities Education Act (IDEA), Part C; the Family Education Rights and Privacy Act; Sections 16-101, et seq., Idaho Code, regarding early intervention services; and the Idaho State Plan for Early Intervention Services under IDEA, Part C. These requirements include adherence to procedural safeguards and time lines, multi-disciplinary assessments, evaluations, individualized family service plans, provision of early intervention services in the natural environment, transition planning, and enrollment and reporting requirements. ( )

**661. CHILDREN'S HCBS STATE PLAN OPTION: DEFINITIONS.**  
For the purposes of these rules, the following terms are used as defined below: ( )

**01. Action Plan.** An initial or annual plan of service developed by the plan developer for providing developmental disability services to children from birth through seventeen (17) years of age. ( )

**02. Agency.** A developmental disabilities agency (DDA) as defined in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )

**03. Annual.** Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. ( )

**04. Community.** Natural, integrated environments outside of the home, school, or DDA center-based settings. ( )

**05. Developmental Disabilities Agency (DDA).** A DDA is an agency that is: ( )

**a.** A type of developmental disabilities facility, as defined in Section 39-4604(7), Idaho Code, that is non-residential and provides services on an outpatient basis; ( )

**b.** Certified by the Department to provide home and community based services to people with developmental disabilities, in accordance with these rules; ( )

**c.** A business entity, open for business to the general public; and ( )

**d.** Primarily organized and operated to provide home and community based services and the corresponding assessments to people with developmental disabilities. DDA services include evaluations, diagnostic, treatment, and support services that are provided on an outpatient basis to persons with developmental disabilities and may be community-based, home-based, or center-based in accordance with the requirements of this chapter. ( )

**06.** **Clinical Supervisor.** The professional responsible for the supervision of DDA staff as outlined in IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )

**07.** **Family-Centered Planning Process.** A process facilitated by the plan developer, comprised of the child participant (unless otherwise determined by the family-centered planning team), parent or legal guardian, and individuals significant to the participant who collaborate with the participant to develop the plan of service. ( )

**08.** **Family-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the parent or legal guardian and the plan developer. The family-centered planning team may include others identified by the family or agreed upon by the family and the Department as important to the process. ( )

**09.** **Home and Community Based Services State Plan Option.** The federal authority under section 1915(i) of the Social Security Act that allows a state to provide through a state plan amendment, medical assistance for home and community-based services for elderly and individuals with disabilities, without determining that without the provision of services the individuals would require institutional level of care. ( )

**10.** **Individualized Family Service Plan (IFSP).** An initial or annual plan of service, developed by the Department or its designee, for providing early intervention services to children birth to age three (3). This plan must meet the provisions of the Individuals with Disabilities Education Act (IDEA), Part C. The IFSP may serve as the action plan when meeting all of the components of the action plan. ( )

**11.** **Integration.** The process of promoting a life for individuals with developmental disabilities that is as much as possible like that of other citizens of the community, including living in the community and having access to community resources. A further goal of this process is to enhance the social image and personal competence of individuals with developmental disabilities. ( )

**12.** **Natural Environments.** Settings that are typical for peers of a relative age. The environment where the activity or behavior naturally occurs, such as the community where they live and according to the service environment indicated. ( )

**13.** **Paraprofessional.** A paraprofessional provides direct support services which include respite and habilitative supports. ( )

**14.** **Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing a service plan and subsequent addenda that covers all services and supports, based on a family-centered planning process. The plan developer acts as the plan monitor by overseeing the provision of services on the plan of service on a paid or non-paid basis. ( )

**15.** **Plan of Service.** An initial or annual plan that identifies services and supports. Plans are developed annually. In this chapter of rules, "plan of service" refers to the Action Plan or IFSP. ( )

**16.** **Prior Authorization (PA).** A process for determining a child's eligibility for services and medical necessity prior to the delivery or payment of services in accordance with Sections 520 through 528 of these rules.

( )

**17. Professional.** A professional provides direct intervention services which include habilitative intervention, therapeutic consultation, family education, family training, interdisciplinary training, and crisis intervention. ( )

**18. Support Services.** Support services are provided by a paraprofessional, or technician level staff, working under the supervision of an agency professional. Support services may provide supervision for a participant, as well as may provide assistance to a participant by facilitating integration into the community. ( )

**662. CHILDREN'S HCBS STATE PLAN OPTION: PARTICIPANT ELIGIBILITY.**

Children's Home and Community Based State Plan Option eligibility will be determined by the Department as described in Section 520 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 and Section 1915(i) of the Social Security Act. The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan. In addition, participants must meet the following requirements: ( )

**01. Age of Participants.** Participants eligible to receive children's HCBS must be birth through seventeen (17) years of age. ( )

**02. Eligibility Determinations.** The Department must determine that prior to receiving children's HCBS state plan option services, an individual must be determined to have a developmental disability under Sections 500 through 506 of these rules and Section 66-402, Idaho Code, and have a demonstrated need for Children's HCBS state plan option services. ( )

**663. CHILDREN'S HCBS STATE PLAN OPTION: COVERAGE AND LIMITATIONS.**

All children's home and community based services must be identified on a plan of service developed by the family-centered planning team, including the plan developer. The following services are reimbursable when provided in accordance with these rules: ( )

**01. Respite.** Respite provides supervision to the participant on an intermittent or short-term basis because of the need for relief of the primary unpaid caregiver. Respite is available in response to a family emergency or crisis, or may be used on a regular basis to provide relief to the caregiver. Respite may be provided in the participant's home, the private home of the respite provider, a DDA, or in the community. Payment for respite services are not made for room and board. ( )

**a.** Respite must only be offered to participants living with an unpaid caregiver who requires relief. ( )

**b.** Respite must not be provided at the same time other Medicaid services are being provided. ( )

**c.** Respite must not be provided on a continuous, long-term basis where it is part of daily services that would enable an unpaid caregiver to work. ( )

**d.** When respite is provided as group respite, the following applies: ( )

**i.** When group respite is center-based, there must be a minimum of one (1) qualified staff providing direct services to every six (6) participants. As the number and severity of the participants with functional impairments increases, the staff participant ratio shall be adjusted accordingly. ( )

**ii.** When group respite is home and community-based, there must be a minimum of one (1) qualified staff providing direct services to every three (3) participants. As the number and severity of the participants with functional impairments increases, the staff participant ratio shall be adjusted accordingly. ( )

**02. Habilitative Supports.** Habilitative Supports provides assistance to a participant with a disability by facilitating the participant's independence and integration into the community. This service provides an



opportunity for participants to explore their interests and improve their skills by participating in natural environments. Habilitative Supports is not active treatment. Instead, the participant learns through interactions in typical community activities. Integration into the community enables participants to expand their skills related to activities of daily living and reinforces skills to achieve or maintain mobility, sensory-motor, communication, socialization and relationship building, and participation in leisure and community activities. Habilitative Supports must: ( )

**a.** Only be provided in community settings and have integration into the community as an identified goal on the plan of service; ( )

**b.** Not supplant services provided in school or therapy, or supplant the role of the primary caregiver; ( )

**c.** Ensure the participant is actively participating in age appropriate activities and is engaging with typical peers; and ( )

**d.** Have a minimum of one (1) qualified staff providing direct services to every three (3) participants when provided as group habilitative supports. As the number and severity of the participants with functional impairments increases, the staff participant ratio shall be adjusted accordingly. ( )

**03. Family Education.** Family education is professional assistance to families to help them better meet the needs of the participant. It offers education to the parent or legal guardian that is specific to the individual needs of the family and child as identified on the plan of service. Family education is delivered to families to provide an orientation to developmental disabilities and to educate families on generalized strategies for behavioral modification and intervention techniques specific to their child's diagnoses. ( )

**a.** Family education may also provide assistance to the parent or legal guardian in educating other unpaid caregivers regarding the needs of the participant. ( )

**b.** The family education providers must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. ( )

**c.** Family education may be provided in a group setting not to exceed ten (10) individuals. ( )

**04. Family-Directed Community Supports.** Participants eligible for the children's home and community based state plan option may choose to family-direct their individualized budget rather than receive the traditional services described in this Section of rule. The requirements for this option are outlined in IDAPA 16.03.13 "Consumer-Directed Services." ( )

**05. Supervision.** Clinical supervisor(s) are professionals employed by a DDA on a continuous and regularly scheduled basis. ( )

**a.** The clinical supervisor is responsible for the oversight and supervision of service and support elements of the agency, including face-to-face supervision of agency staff providing direct services. ( )

**b.** The clinical supervisor must observe and review the direct services performed by all paraprofessional and professional staff on a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the services and support. ( )

**c.** Each DDA must employ an adequate number of clinical supervisors to ensure quality service delivery and participant satisfaction. ( )

**06. Limitations.** ( )

**a.** HCBS state plan option services are subject to the participant's individualized budget. ( )

**b.** HCBS state plan option services cannot be used to pay for special education and related services ( )

that are included in a child's Individual Educational Plan (IEP) under the provisions of Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The funding of such services is the responsibility of state and local education agencies. 19 03(c)(3) of the Social Security Act provides that federal financial participation (FFP) is available for service included in an IEP when such services are furnished as basic Medicaid benefits. HCBS state plan option services are not considered to be basic Medicaid benefits. ( )

**c.** For the children's HCBS state plan option services listed in Subsections 663.01 and 663.02, the following are excluded for Medicaid payment: ( )

i. Vocational services; and ( )

ii. Educational services. ( )

**664. CHILDREN'S HCBS STATE PLAN OPTION: PROCEDURAL REQUIREMENTS.**

**01. General Requirements for Program Documentation.** The provider must maintain records for each participant served. Each participant's record must include documentation of the participant's involvement in and response to the services provided. For each participant, the following program documentation is required: ( )

**a.** Direct service provider information which includes written documentation of each visit made or service provided to the participant, and contains, at a minimum, the following information: ( )

i. Date and time of visit; and ( )

ii. Intervention and support services provided during the visit; and ( )

iii. A statement of the participant's response to the service including any changes in the participant's condition; and ( )

iv. Length of visit, including time in and time out; and ( )

v. Specific place of service. ( )

vi. A copy of the above information will be maintained by the independent provider or DDA. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. ( )

**02. Habilitative Supports Documentation.** In addition to the general requirements listed in Subsection 664.01 of this rule, the following must be completed: ( )

**a.** Monthly Summary. On a monthly basis, the habilitative support staff must complete a narrative summary of the participant's response to the support service and submit the monthly summary to the clinical supervisor. ( )

**b.** Review and Recommendations. The clinical supervisor reviews the summary on a monthly basis and when recommendations for changes to the type and amount of support are identified, submits the recommendations to the plan developer. ( )

**03. Family Education Documentation.** In addition to the general requirements listed in Subsection 664.01 of this rule, the DDA must survey the parent or legal guardian's satisfaction of the service immediately following a family education session. ( )

**04. Reporting Requirements.** The clinical supervisor must complete at a minimum, six- (6) month and annual reviews for services provided at a frequency determined on the plan of service. Documentation of the six- (6) month and annual reviews must be submitted to the plan developer. ( )

**665. CHILDREN'S HCBS STATE PLAN OPTION: PROVIDER QUALIFICATIONS AND DUTIES.**

All providers of HCBS state plan options services must have a valid provider agreement with the Department. Performance under this agreement will be monitored by the Department. ( )

**01. Respite.** Respite services may be provided by an agency that is certified as a DDA under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," and is capable of supervising the direct services provided, or by an independent respite provider. An independent respite provider is an individual who has entered into a provider agreement with the Department. Providers of respite services must meet the following minimum qualifications: ( )

- a.** Must be at least sixteen (16) years of age when employed by a DDA; or ( )
- b.** Must be at least eighteen (18) years of age and be a high school graduate or have a GED to act as an independent respite provider; and ( )
- c.** 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 the participant's guardian; ( )
- d.** Have received care-giving instructions in the needs of the participant who will be provided the service; ( )
- e.** Demonstrate the ability to provide services according to a plan of service; ( )
- f.** Have good communication and interpersonal skills and the ability to deal effectively, assertively, and cooperatively with a variety of people; ( )
- g.** Be willing to accept training and supervision; ( )
- h.** Be free of communicable diseases; and ( )
- i.** Respite care service providers who provide direct care and services must satisfactorily complete a criminal history background check in accordance with IDAPA 16.05.06 "Criminal History and Background Checks." ( )

**02. Habilitative Support Staff.** Habilitative supports must be provided by an agency certified as a DDA under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," with staff who are capable of supervising the direct services provided. Providers of habilitative supports must meet the following minimum qualifications: ( )

- a.** Must be at least eighteen (18) years of age; ( )
- b.** Must be a high school graduate or have a GED; ( )
- c.** Demonstrate the ability to provide services according to a plan of service; ( )
- d.** Have good communication and interpersonal skills and the ability to deal effectively, assertively, and cooperatively with a variety of people; ( )
- e.** Be willing to accept training and supervision; ( )
- f.** Be free of communicable diseases; ( )
- g.** Demonstrate knowledge of infection control methods; ( )
- h.** Agree to practice confidentiality in handling situations that involve participants; ( )
- i.** Habilitative Supports providers who provide direct care and services must satisfactorily complete a criminal history background check in accordance with IDAPA 16.05.06 "Criminal History and Background Checks"; ( )

( )

**j.** Experience. The individual must have six (6) months supervised experience working with children with developmental disabilities. This can be achieved in the following ways: ( )

**i.** Previous work experience. Experience gained through paid employment or university practicum experience or internship; or ( )

**ii.** On the job supervised experience. Experience gained through employment at a DDA with increased supervision. Increased supervision includes, but is not limited to, six (6) hours of job shadowing prior to delivery of direct support services, and a minimum of weekly face-to-face supervision with the clinical supervisor for a period of six (6) months. ( )

**k.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide habilitative supports. ( )

**03.** Family Education. Family education must be provided by an agency certified as a DDA under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," with staff who are capable of supervising the direct services provided. Providers of family education must meet the following minimum qualifications: ( )

**a.** Must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college and has: ( )

**i.** One (1) year experience providing care to children with developmental disabilities; ( )

**ii.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide family education; and ( )

**iii.** Must complete a supervised practicum; or ( )

**b.** Individuals certified as Developmental Specialists for children ages birth through three (3) or three (3) through seventeen (17), and individuals certified as Intensive Behavioral Interventionists prior to July 1, 2011, are qualified to provide family education until June 30, 2013. Prior to June 30, 2013, the individual must meet the requirements of the Department-approved competency coursework. ( )

**04.** Requirements for Clinical Supervisor. All DDA services must be provided under the supervision of a clinical supervisor. The clinical supervisor must meet the qualifications of a habilitative interventionist as defined in Section 685 of these rules. ( )

**05.** Requirements for Collaboration. Providers of home and community based services must coordinate regularly with the family-centered planning team as specified on the plan of service. ( )

**06.** Requirements for Quality Assurance. Providers of children's home and community based state plan option services must demonstrate high quality of services through an internal quality assurance review process. ( )

**07.** DDA Services. In order for a DDA to provide respite, habilitative supports, and family education the DDA must be certified to provide support services. Each DDA is required to provide habilitative supports. In addition, the DDA may also opt to provide respite, habilitative intervention, therapeutic consultation, family education, family training, interdisciplinary training, and crisis intervention. ( )

**666. CHILDREN'S HCBS STATE PLAN OPTION: PROVIDER REIMBURSEMENT.**

**01.** Fee-for-Service. Children's HCBS State Plan Option service providers will be paid on a fee-for-service basis, based on the type of service provided as established by the Department. ( )

**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. ( )

**03. Rates.** The reimbursement rates calculated for children's HCBS 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. ( )

**667. -- 679. (RESERVED).**

**CHILDREN'S WAIVER SERVICES**  
**(Sections 680 through 699)**

**680. CHILDREN'S WAIVER SERVICES.**

Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible children 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/ID. ( )

**681. CHILDREN'S WAIVER SERVICES: DEFINITIONS.**

Definitions in Section 661 of the rules apply. Additionally, the following definitions apply to children's waiver services: ( )

**01. Baseline.** A participant's skill level prior to intervention written in measurable, behaviorally-stated terms. ( )

**02. Crisis.** An unanticipated event, circumstance, or life situation that places a participant at risk of at least one of the following: ( )

**a. Hospitalization:** ( )

**b. Loss of housing:** ( )

**c. Loss of employment:** ( )

**d. Incarceration; or** ( )

**e. Physical harm to self or others, including family altercation or psychiatric relapse.** ( )

**03. Intervention Services.** Intervention services are outcome-based, therapeutic services delivered by a professional working under the supervision of the agency delivering the intervention services. ( )

**04. Objective.** A behavioral outcome statement developed to address a particular need identified for a participant. An objective is written in measurable terms that specify a target date for completion, no longer than one (1) year in duration, and include criteria for successful attainment of the objective. ( )

**05. Probe.** A probe is data gathered on an intermittent basis, after a baseline is established, to measure a participant's level of independent performance as related to an identified objective. ( )

**06. Program Implementation Plan.** A plan that details how intervention goals from the plan of service will be accomplished. ( )

**07. Specific Skill Assessment.** A type of assessment used to determine the baseline or the need for further supports or intervention for the discipline area being assessed. ( )

**08. Provider Status Review.** The written documentation that identifies a participant's progress toward

goals defined in the plan of service. ( )

**682. CHILDREN'S WAIVER SERVICES: ELIGIBILITY.**

Waiver eligibility will be determined by the Department as described in Section 522 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: ( )

**01. Age of Participants.** The following waiver programs are available for children: ( )

**a.** Children's DD Waiver. Children's DD waiver participants must be birth through seventeen (17) years of age. ( )

**b.** Act Early Waiver. Act Early waiver participants must be three (3) through six (6) years of age. ( )

**02. Eligibility Determinations.** The Department must determine that: ( )

**a.** The participant would qualify for ICF/ID level of care as set forth in Section 584 of these rules, if the waiver services listed in Section 683 of these rules were not made available; and ( )

**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. ( )

**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/ID care and other medical costs. ( )

**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. ( )

**03. Additional Act Early Waiver Requirements.** In addition to the requirements listed in Subsections 682.01 and 682.02 of this rule, a participant must have the following characteristics to qualify for Act Early waiver services: ( )

**a.** An autism spectrum diagnosis; or ( )

**b.** Self-injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department and a severe deficit, defined as having a composite full scale functional age equivalency of fifty percent (50%) or less of the participant's chronological age. ( )

**04. Children's Waiver Eligible Participants.** A participant who is determined by the Department to be eligible for services under the children's waivers may elect not to utilize waiver services, but may choose admission to an ICF/ID. ( )

**05. Home and Community-Based Waiver Participant Limitations.** The number of Medicaid participants to receive waiver services under the children's waivers for participants with developmental disabilities 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 June 30th of each new waiver year. ( )

**683. CHILDREN'S WAIVER SERVICES: COVERAGE AND LIMITATIONS.**

All children's DD waiver services must be identified on a plan of service developed by the family-centered planning team, including the plan developer. In addition to the children's home and community based state plan option services described in Section 663 of these rules, the following services are available for waiver eligible participants and are reimbursable services when provided in accordance with these rules: ( )

**01. Family Training.** Family training is professional one-on-one (1 on 1) instruction to families to help them better meet the needs of the waiver participant receiving intervention services. ( )

**a.** Family training is limited to training in the implementation of intervention techniques as outlined in the plan of service. ( )

**b.** Family training must be provided to the participant's parent or legal guardian when the participant is present. ( )

**c.** The family training provider must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. ( )

**d.** The parent or legal guardian of the waiver participant is required to participate in family training when the participant is receiving habilitative interventions. The following applies for each waiver program: ( )

**i.** For participants enrolled in the Children's DD Waiver, the amount, duration, and frequency of the training must be determined by the family-centered planning team and the parent or legal guardian, and must be listed as a service on the plan of service. ( )

**ii.** For participants enrolled in the Act Early Waiver, the parent or legal guardian will be required to be present and actively participate during the intervention service session for at least twenty percent (20%) of the intervention time provided to the child. ( )

**02. Interdisciplinary Training.** Interdisciplinary training is professional instruction to the direct service provider. Interdisciplinary training must only be provided during the provision of a support or intervention service. Interdisciplinary training is provided to assist the direct provider to meet the needs of the waiver participant. ( )

**a.** Interdisciplinary training includes: ( )

**i.** Health and medication monitoring; ( )

**ii.** Positioning and transfer; ( )

**iii.** Intervention techniques; ( )

**iv.** Positive Behavior Support; ( )

**v.** Use of equipment; ( )

**b.** Interdisciplinary training must only be provided to the direct service provider when the participant is present. ( )

**c.** The interdisciplinary training provider must maintain documentation of the training in the participant's record documenting the provision of activities outlined in the plan of service. ( )

**d.** Interdisciplinary training between a habilitative interventionist and a therapeutic consultant is not a reimbursable service. ( )

**e.** Interdisciplinary training between employees of the same discipline is not a reimbursable service. ( )

**03. Habilitative Intervention Evaluation.** The purpose of the habilitative intervention evaluation is to guide the development of objectives and intervention strategies related to goals identified through the family-centered planning process. The habilitative interventionist must complete an evaluation prior to the initial provision of habilitative intervention services. The evaluation must include: ( )

**a.** Specific skills assessments for deficit areas identified through the eligibility assessment; ( )

**b.** Functional behavioral assessment; ( )

**c.** Review of all assessments and relevant histories provided by the plan developer; and ( )

**d.** Clinical Opinion. Professional summary that interprets and integrates the results of the testing. This summary includes functional, developmentally appropriate recommendations to guide treatment. ( )

**04. Habilitative Intervention.** Habilitative intervention services must be consistent, aggressive, and continuous and are provided to improve a child's competencies and discourage problem behavior. Services include individual or group behavioral interventions and skill development activity. Habilitative intervention must be based upon the well-known and widely regarded principles of evidence-based treatment. Evidence-based treatment (EBT) refers to the use of mental and behavioral health interventions for which systematic empirical research has provided evidence of statistically significant effectiveness as treatments for specific problems. As "promising practices" meet statistically significant effectiveness, they could be included as approved approaches. ( )

**a.** Habilitative intervention must be provided to address at least one (1) of the following areas: ( )

**i.** Diminish Maladaptive Behaviors. When goals to address maladaptive behavior are identified on the plan of service, the intervention must include the development of replacement behavior rather than merely the elimination or suppression of maladaptive behavior that interferes with the child's overall general development, community, and social participation. ( )

**ii.** Develop Adaptive Skills. When goals to address skill development are identified on the plan of service, the intervention must provide for the acquisition of skills that are functional. ( )

**b.** Settings. Habilitative intervention must be provided in the participant's home or community setting, and in addition may be provided in a center-based setting. ( )

**c.** Group Interventions. When habilitative intervention is provided as group intervention, the following applies: ( )

**i.** There must be a minimum of one (1) qualified staff providing direct services for every three (3) participants. As the number and severity of the participants with functional impairments increases, the staff participant ratio shall be adjusted accordingly. ( )

**ii.** When group intervention is community-based, the child must be integrated in the community in a natural setting with typically developing peers. ( )

**iii.** Group intervention must be directly related to meeting the needs of the child, and be identified as an objective in accordance with a plan of service goal. ( )

**05. Therapeutic Consultation.** Therapeutic consultation is provided when a participant receiving habilitative intervention has been assessed as requiring a more sophisticated level of training and assistance based on the participant's complex needs. A participant requires therapeutic consultation when current best practice interventions are not demonstrating outcomes and it is anticipated that a crisis event may occur without the consultation service. The therapeutic consultant assists the habilitative interventionist by: ( )

**a.** Performing advanced assessments; ( )

**b.** Developing and overseeing the implementation of a positive behavior support plan; ( )



- c. Monitoring the progress and coordinating the implementation of the plan across environments; and ( )
- d. Providing consultation to other service providers and families. ( )
- e. Therapeutic Consultation Services Limitations. Therapeutic consultation providers are subject to the following limitations: ( )
- i. Therapeutic consultation cannot be provided as a direct intervention service. ( )
- ii. Participants must be receiving habilitative intervention services prior to accessing therapeutic consultation, with the exception of crisis situations authorized by the Department. ( )
- iii. Therapeutic consultation is limited to twelve (12) hours per year per participant. ( )
- iv. Therapeutic consultation must be prior authorized by the Department. ( )
- 06. Crisis Intervention.** Crisis intervention services provide direct consultation and clinical evaluation of participants who are currently experiencing or may be expected to experience a psychological, behavioral, or emotional crisis. The need for crisis intervention must meet the definition of crisis in Section 681 of these rules. This service may provide training and staff development related to the needs of a participant, and also provides emergency back-up involving the direct support of the participant in crisis. ( )
- a. Children's crisis intervention services are provided in the home or other placement authorized by the Department. ( )
- b. Children's crisis intervention is provided on a short-term basis typically not to exceed thirty (30) days. ( )
- c. Children's crisis intervention services must be prior authorized by the Department. ( )
- 07. Family-Directed Community Supports.** Participants eligible for children's waiver services may choose to family-direct their individualized budget rather than receive the traditional services described in this Section of rule. The requirements for selecting and participating in this option are outlined in IDAPA 16.03.13 "Consumer Directed Services." ( )
- 08. Service limitations.** Children's waiver services are subject to the following limitations: ( )
- a. Place of Service Delivery. Waiver services may be provided in the participant's personal residence, community, or DD A. The following living situations are specifically excluded as a place of service for waiver services: ( )
- i. Licensed skilled or intermediate care facilities, certified nursing facility (NF) or hospital; and ( )
- ii. Licensed Intermediate Care Facility for persons with Intellectual Disabilities (ICF/ID); and ( )
- iii. Residential Care or Assisted Living Facility; ( )
- iv. Additional limitations to specific services are listed under that service definition. ( )
- b. Medicaid Waiver services cannot be used to pay for special education and related services that are included in a child's Individual Educational Plan (IEP) under the provisions of Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The funding of such services is the responsibility of state and local education agencies. Section 1903(c)(3) of the Social Security Act provides that federal financial participation (FFP) is available for services, included in an IEP when such services are furnished as basic Medicaid benefits. Waiver

services are not considered to be basic Medicaid benefits. ( )

**c.** Children's waiver services are subject to the participant's individualized budget, excluding crisis intervention. ( )

**d.** For the children's waiver services listed in Subsections 683.01 through 683.07 of these rules, the following are excluded for Medicaid payment: ( )

**i.** Vocational services; ( )

**ii.** Educational services; and ( )

**iii.** Recreational services. ( )

**684. CHILDREN'S WAIVER SERVICES: PROCEDURAL REQUIREMENTS.**

**01. Authorization of Services on a Written Plan.** All children's waiver services must be identified on the plan of service and authorized by the Department. The plan of service must be reviewed by a plan developer at least every six (6) months or at a frequency determined by the family-centered planning team. ( )

**02. General Requirements for Program Documentation.** Children's waiver providers must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. For each participant the following program documentation is required: ( )

**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: ( )

**i.** Date and time of visit; and ( )

**ii.** Services provided during the visit; and ( )

**iii.** A statement of the participant's response to the service, including any changes in the participant's condition; and ( )

**iv.** Length of visit, including time in and time out; and ( )

**v.** Specific place of service. ( )

**b.** A copy of the above information will be maintained by the independent provider or DDA. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. ( )

**03. Program Implementation Plan Requirements.** For each participant receiving intervention services, the DDA must develop a program implementation plan to determine objectives to be included on the participant's required plan of service. All program implementation plan objectives must be related to a goal on the participant's plan of service. The program implementation plan must be written and implemented within fourteen (14) days after the first day of ongoing programming and be revised whenever participant needs change. If the intervention plan is not completed within this time frame, the participant's records must contain participant-based documentation justifying the delay. The program implementation plan must include the following requirements: ( )

**a.** Name. The participant's name. ( )

**b.** Baseline. A participant's skill level prior to intervention written in measurable, behaviorally-stated terms. ( )

**c.** Objectives. Measurable, behaviorally-stated objectives that correspond to those goals or objectives

previously identified on the required plan of service. ( )

**d.** Written Instructions to Staff. These instructions may include curriculum, interventions, task analyses, activity schedules, type and frequency of reinforcement and data collection including probe, directed at the achievement of each objective. These instructions must be individualized and revised as necessary to promote participant progress toward the stated objective. ( )

**e.** Specific Service Environments. Identification of the type of environment(s) and specific location(s) where services will be provided. ( )

**f.** Target Date. Target date for completion. ( )

**g.** Supervisor Approval. The program implementation plan must be reviewed and approved by the DDA clinical supervisor. ( )

**04. Reporting Requirements.** The DDA must complete six (6) month and annual reviews for services provided. Documentation of the six (6) month and annual reviews must be submitted to the plan developer. ( )

**05. Provider Responsibility for Notification.** It is the responsibility of the service provider to notify the 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. ( )

**06. Records Maintenance.** 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. ( )

**685. CHILDREN'S WAIVER SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.**

**01. Family Training.** Providers of family training must meet the following requirements: ( )

**a.** Habilitative intervention provider as defined in Subsection 685.03 of these rules; ( )

**b.** Therapeutic consultation provider as defined in Subsection 685.04 of these rules. ( )

**02. Interdisciplinary Training.** Providers of interdisciplinary training must meet the following requirements: ( )

**a.** Occupational Therapist, as defined in Section 734 under IDAPA 16.03.09, "Medicaid Basic Plan Benefits"; ( )

**b.** Physical Therapist, as defined in Section 734 under IDAPA 16.03.09, "Medicaid Basic Plan Benefits"; ( )

**c.** Speech-Language Pathologist, as defined in Section 734 under IDAPA 16.03.09, "Medicaid Basic Plan Benefits"; ( )

**d.** Advanced Registered Nurse Practitioner; ( )

**e.** Physician Assistant; ( )

**f.** Licensed Psychiatrist; ( )

**g.** Habilitative intervention provider as defined in Subsection 685.03 of these rules; ( )

**h.** Therapeutic consultation provider as defined in Subsection 685.04 of these rules. ( )

**03. Habilitative Intervention.** Habilitative intervention must be provided by a DDA certified to

provide both support and intervention services under IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)," and is capable of supervising the direct services provided. Providers of habilitative intervention must meet the following minimum qualifications: ( )

**a.** Must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college; ( )

**b.** Must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. Experience must be gained through paid employment or university practicum experience or internship; ( )

**c.** Must complete competency coursework approved by the Department to demonstrate competencies related to the requirements to provide habilitative intervention; and ( )

**d.** Must complete a supervised practicum; or ( )

**e.** Individuals certified as Developmental Specialists for children age birth through three (3) or three (3) through 17, and individuals certified as Intensive Behavioral Interventionists prior to July 1, 2011, are qualified to provide habilitative intervention until June 30, 2013. Prior to June 30, 2013, the individual must meet the requirements of the Department-approved competency coursework. ( )

**04. Therapeutic Consultation.** Therapeutic consultation may be provided by a DDA certified to provide both supports and intervention services under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," or by an independent Medicaid provider under agreement with the Department. Providers of therapeutic consultation must meet the following minimum qualifications: ( )

**a.** Doctoral or Master's degree in psychology, education, applied behavioral analysis, or have a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and ( )

**b.** Two (2) years relevant experience in designing and implementing comprehensive behavioral therapies for children with DD and challenging behavior. ( )

**c.** Therapeutic 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." ( )

**05. Crisis Intervention.** Crisis intervention may be provided by a DDA certified to provide support and intervention services under IDAPA 16.03.21, "Developmental Disabilities Services (DDA)," or by an independent Medicaid provider under agreement with the Department. Providers of crisis intervention must meet the following minimum qualifications: ( )

**a.** Doctoral or Master's degree in psychology, education, applied behavioral analysis, or have a degree in a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and ( )

**b.** Two (2) years relevant experience in designing and implementing comprehensive behavioral therapies for children with DD and challenging behavior. ( )

**c.** Emergency intervention technician providers must meet the minimum habilitative support provider qualifications described under Section 665 of these rules. ( )

**d.** Crisis intervention 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." ( )

**06. Service Supervision.** The plan of service which includes all waiver services is monitored by the plan developer. ( )

**07. Requirements for Collaboration with Other Providers.** Providers of waiver services must coordinate regularly with the family-centered planning team as specified on the plan of service. When a participant has had a psychological or psychiatric assessment, the results of the psychological or psychiatric assessment must be used when developing objectives to ensure therapies provided in the DDA accommodate the participant's mental health needs and to ensure that none of the therapeutic methods are contra-indicated or delivered in a manner that presents a risk to the participant's mental health status. ( )

**08. Requirements for Quality Assurance.** Providers of children's waiver services must demonstrate high quality of services through an internal quality assurance review process. ( )

**09. DDA Services.** In order for a DDA to provide waiver services, the DDA must be certified to provide both support and intervention services. Each DDA is required to provide habilitative supports. In addition, the DDA may also opt to provide respite, habilitative intervention, therapeutic consultation, family education, family training, interdisciplinary training, and crisis intervention. When a DDA opts to provide habilitative intervention services, the DDA must also provide habilitative supports and family training. ( )

**686. CHILDREN'S 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. ( )

**02. Claim Forms.** Provider claims for payment will be submitted on claim forms provided by or approved by the Department. Billing instructions will be provided by the Department. ( )

**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. ( )

**687. -- 699. (RESERVED).**

**ADULTS WITH DEVELOPMENTAL DISABILITIES WAIVER SERVICES**  
**(Sections 700 through 719)**

**700. INDIVIDUALS ADULTS WITH DEVELOPMENTAL DISABILITIES WAIVER SERVICES.**  
Under 42 CFR Section 440.180, it is the intention of the Department to provide waiver services to eligible adult 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 an adult 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/ID. (3-29-10)( )

**701. (RESERVED).**

**702. ADULT DD 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: (3-29-10)

**01. Age of Participants.** DD waiver participants must be eighteen (18) years of age or older. (3-29-10)

- 02. Eligibility Determinations.** The Department must determine that: (3-19-07)
- a.** The participant would qualify for ICF/ID 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/ID 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 DD may elect not to utilize waiver services but may choose admission to an ICF/ID. (3-29-10)
- 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/ID, 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 of each new waiver year. (3-29-10)

**703. ADULT DD 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's 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 16.043.421, "Developmental Disabilities Agencies (DDA)." (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 16.043.421, "Developmental Disabilities Agencies (DDA)." (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 Intellectual Disabilities (ICF/ID); 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. ADULT DD 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. ADULT DD 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 I DAPA 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 Intellectual Disabilities Professional (QIDP) 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 Subsection may only be provided by an agency capable of supervising the direct service and must: ~~(3-19-07)~~( ) (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 Intellectual Disabilities Professional (QIDP). (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. ADULT DD 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)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

#### DOCKET NO. 16-0310-1003

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 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(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Bills 701 and 708 passed by the 2010 legislature.

**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 September 15, 2010.

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

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

Rule changes are being made in these rules to implement the legislative intent in House Bills 701 and 708 passed by the 2010 legislature. Rule changes for this docket include:

1. Clarification of nursing facility coverage and limitations;
2. Nursing facility inflation freeze;
3. Nursing facility efficiency incentive;
4. Nursing facility special rate payment offset clarification; and
5. Incentive changes for Intermediate Care Facilities for the Mentally Retarded (ICF/MR).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs.

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

Changes related to House Bill 701 will result in a reduction of \$193,000 to the state general fund (cost reduction of \$965,000 in total funds (state and federal combined)).

Changes related to House Bill 708 will result in a cost reduction of \$1.09 million to the state general fund (cost reduction of \$5.4 million in total funds (state and federal combined)).

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are being made to implement the legislative intent in H0701 and H0708 passed by the 2010 legislature.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Robert Kellerman at (208) 364-1994.

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 September 22, 2010.

DATED this 13th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0310-1003**

**039. ACCOUNTING TREATMENT.**

Generally accepted accounting principles, concepts, and definitions will be used except as otherwise specified. Where alternative treatments are available under GAAP, the acceptable treatment will be the one that most clearly attains program objectives. (3-19-07)

**01. Final Payment.** A final settlement will be made based on the reasonable cost of services as determined by audit, limited in accordance with other sections of this chapter. *In addition, an efficiency incentive will be allowed to low cost providers in accordance with the provisions of Section 296 of these rules. (3-19-07)(7-1-10)T*

**02. Overpayments.** As a matter of policy, recovery of overpayments will be attempted as quickly as possible consistent with the financial integrity of the provider. (3-19-07)

**03. Other Actions.** Generally, overpayment will result in two (2) circumstances: (3-19-07)

**a.** If the cost report is not filed, the sum of the following will be due: (3-19-07)

i. All payments included in the period covered by the missing report(s). (3-19-07)

ii. All subsequent payments. (3-19-07)

**b.** Excessive reimbursement or non-covered services may precipitate immediate audit and settlement for the period(s) in question. Where such a determination is made, it may be necessary that the interim reimbursement rate (IRR) will be reduced. This reduction will be designated to effect at least one (1) of the following: (3-19-07)

i. Discontinuance of overpayments (on an interim basis). (3-19-07)

ii. Recovery of overpayments. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**225. NURSING FACILITY: COVERAGE AND LIMITATIONS.**



An institution must provide, on a regular basis, health-related care and services to individuals; who because of their mental or physical condition require care and services above the level of room, board, and supervision. (3-19-07)

**01. Nursing Facility Care.** The minimum content of care and services for nursing facility patients must include the following: (3-19-07)

- a. Room and board; (3-19-07)
- b. Bed and bathroom linens; (3-19-07)
- c. Nursing care, including special feeding if needed; (3-19-07)
- d. Personal services; (3-19-07)
- e. Supervision as required by the nature of the patient's illness and duration of his stay in the nursing facility; ~~(3-19-07)~~(7-1-10)T
- f. Special diets as prescribed by a patient's physician; (3-19-07)
- g. All common medicine chest supplies ~~which do not require a physician's prescription~~ that are over-the-counter including ~~but not limited to~~ mouthwashes, analgesics, laxatives, emollients, burn ointments, first aid cream, protective creams and liquids, cough and cold preparations, and simple eye preparations; ~~(3-19-07)~~(7-1-10)T
- h. Dressings; (3-19-07)
- i. Administration of intravenous, subcutaneous, or intramuscular injections and infusions, enemas, catheters, bladder irrigations, and oxygen; (3-19-07)
- j. Application or administration of all drugs; (3-19-07)
- k. All medical supplies including but not limited to gauzes, bandages, tapes, compresses, cottons, sponges, hot water bags, ice bags, disposable syringes, thermometers, cellucotton, incontinent supplies, or any other type of pads used to save labor or linen, and disposable gloves; ~~(3-19-07)~~(7-1-10)T
- l. Social and recreational activities; and (3-19-07)
- m. Each item ~~which are that is~~ utilized by individual patients ~~but which are~~ and is reusable and expected to be available, such as bed rails, canes, crutches, walkers, wheel chairs, traction equipment, and other durable medical equipment. ~~(3-19-07)~~(7-1-10)T

**02. Skilled Services.** Skilled services include services which could qualify as either skilled nursing or skilled rehabilitative services, which include: (3-19-07)

a. Overall management and evaluation of the care plan. The development, management, and evaluation of a resident's care plan, based on the physician's orders, constitute skilled services when, in terms of the patient's physical or mental condition, such development, management, and evaluation necessitate the involvement of technical or professional personnel to meet his needs, promote his recovery, and assure his medical safety. This would include the management of a plan involving only a variety of personal care services where, in light of the patient's condition, the aggregate of such services necessitates the involvement of technical or professional personnel. Where the patient's overall condition would support a finding that his recovery and safety could be assured only if the total care he requires is planned, managed, and evaluated by technical or professional personnel, it would be appropriate to infer that skilled services are being provided. (3-19-07)

b. Observation and assessment of the resident's changing condition. When the resident's condition is such that the skills of a licensed nurse or other technical or professional person are required to identify and evaluate the patient's need for possible modification of treatment and the initiation of additional medical procedures until his condition is stabilized, such services constitute skilled services. (3-19-07)

- 03. Direct Skilled Nursing Services.** Direct skilled nursing services include the following: (3-19-07)
- a.** Intravenous injections; intravenous feedings; intramuscular or subcutaneous injection required on more than one (1) shift; (3-19-07)
  - b.** Nasopharyngeal feedings; (3-19-07)
  - c.** Nasopharyngeal and tracheotomy aspiration; (3-19-07)
  - d.** Insertion and sterile irrigation and replacement of catheters; (3-19-07)
  - e.** Application of dressings involving prescription medications or aseptic techniques; (3-19-07)
  - f.** Treatment of extensive decubitus ulcers or other widespread skin disorders; (3-19-07)
  - g.** Heat treatments which have been specifically ordered by a physician as part of treatment and which require observation by nurses to adequately evaluate the resident's progress; and (3-19-07)
  - h.** Initial phases of a regimen involving administration of oxygen. (3-19-07)
- 04. Direct Skilled Rehabilitative Services.** Direct skilled rehabilitative services include the following: (3-19-07)
- a.** Ongoing assessment of rehabilitation needs and potential, services concurrent with the management of a resident's care plan, including tests and measurements of range of motion, strength, balance, coordination, endurance, functional ability, activities of daily living, perceptual deficits, speech and language or hearing disorders; (3-19-07)
  - b.** Therapeutic exercises or activities which, because of the type of exercises employed or the condition of the resident, must be performed by or under the supervision of a qualified physical therapist or occupational therapist to ensure the safety of the resident and the effectiveness of the treatment; (3-19-07)
  - c.** Gait evaluation and training furnished by a physical or occupational therapist to restore function in a resident whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality; and (3-19-07)
  - d.** Ultrasound, short-wave, and microwave therapy treatments by a licensed physical therapist. (3-19-07)
- 05. Other Treatment and Modalities.** Other treatment and modalities which include hot pack, hydroculator, infrared treatments, paraffin baths, and whirlpool, in cases where the resident's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications, and the skills, knowledge, and judgement of a licensed physical therapist are required. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**257. NURSING FACILITY: DEVELOPMENT OF THE RATE.**

Nursing facility rates are prospective, with new rates effective July 1st of each year, and are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.09 of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. (5-8-09)

- 01. Applicable Case Mix Index (CMI).** The Medicaid CMI used in establishing each facility's rate is

calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1 are used to establish the CMI needed to establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

**02. Applicable Cost Data.** The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

**03. Interim Rates.** Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

**04. Direct Care Cost Component.** The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

**a.** The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility or rural hospital-based nursing facility) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (3-19-07)

**b.** The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

**i.** If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

**ii.** If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

**05. Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities, or rural hospital-based nursing facilities. (3-19-07)

~~**06. Efficiency Incentive.** The efficiency incentive is available to those providers, both free-standing and hospital-based, which have inflated per diem indirect care costs less than the indirect per diem cost limit for that type of provider. The efficiency incentive is calculated by multiplying the difference between the per diem indirect cost limit and the facility's inflated per diem indirect care costs by fifty percent (50%) not to exceed nine dollars and fifty cents (\$9.50) per patient day. There is no incentive available to those facilities with per diem costs in excess of the indirect care cost limit, or to any facility based on the direct care cost component. (3-19-10)~~

~~**07. Costs Exempt From Limitation.** Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)~~

~~**08. Property Reimbursement.** The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)~~

**098. Revenue Offset.** Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of these rules. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**270. NURSING FACILITY: SPECIAL RATES.**

A special rate consists of a facility's daily reimbursement rate for a patient plus an add-on amount. Section 56-117, Idaho Code, provides authority for the Department to pay facilities an amount in addition to the daily rate when a patient has needs that are beyond the scope of facility services and when the cost of providing for those additional needs is not adequately reflected in the rates calculated pursuant to the principles found in Section 56-102, Idaho Code. This special rate add-on amount for such specialized care is in addition to any payments made in accordance with other provisions of this chapter and is excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules. (3-19-07)

**01. Determination.** The Department determines to approve a special rate on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request must be based on an identified condition that will continue for a period greater than ~~two~~ thirty (30) weeks ~~(3-19-07)~~(7-1-10)T ~~days~~.

**02. Effective Date.** Upon approval, a special rate is effective on the date the application was received, ~~unless the provider requests a retroactive effective date. Special rates may be retroactive for up to thirty (30) days prior to receipt of the application.~~ ~~(3-19-07)~~(7-1-10)T

**03. Reporting.** Costs equivalent to "grossed up" payments for special rate add-on amounts must be removed from the cost components subject to limits, and be reported separately by the provider. The grossed up amount is determined by dividing the Medicaid incremental revenue by Medicaid days and multiplying the result by total patient days. ~~(3-19-07)~~(7-1-10)T

**04. Limitation.** A special rate cannot exceed the provider's charges to other patients for similar services. (3-19-07)

**05. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 270.06 and 270.07 of these rules provide clarification of how special rates are paid under the prospective payment system. (3-19-07)

**06. Determination of Payment for Qualifying Residents.** Special rate add-on amounts are calculated using one (1) of the methods described in Subsections 270.06.a. through 270.06.e. of these rules. (3-19-07)

**a. Special Care Units.** If a facility operates a special care unit, such as a behavioral unit or a Traumatic Brain Injury (TBI) unit, reimbursement is determined as described in Subsections 270.06.a.i. through 270.06.a.v. of these rules. (3-19-07)

**i.** If the facility is below the direct care cost limit with special care unit costs included, no special rate is paid for the unit. (3-19-07)

**ii.** If the facility is over the direct care cost limit with special care unit costs included, a special rate add-on amount will be calculated. The special rate add-on amount for the unit is the lesser of the per diem amount by which direct care costs exceed the limit or a calculated add-on amount. The calculated special rate add-on is derived as follows: each Medicaid resident is assigned a total rate equal to the Medicare rate that would be paid if the resident were Medicare eligible. The resident's acuity adjusted Medicaid rate, based on each resident's individual Medicaid CMI, is subtracted from the Medicare rate. The average difference between the Medicaid and the Medicare rates for all special care unit residents is the calculated special rate add-on amount. The calculated special rate add-on amount is compared to the per diem amount by which the provider exceeds the direct care limit. The lesser of these two amounts is allowed as the special rate add-on amount for the unit. (3-19-07)

iii. **New Unit Added After July 1, 2000.** The Department must approve special rates for new special care units or increases to the number of licensed beds in an existing special care unit. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. New units approved for special rates will have their special add-on amount calculated as the difference between the applicable Medicare price under PPS, and the acuity adjusted Medicaid rate for all unit residents as explained in Section 311.06.a.iii. of these rules. However, the average of these amounts is not limited to the amount the provider is over the direct care cost limit, as the costs of the unit are not in the rate calculation. (3-19-07)

iv. **One Hundred Percent (100%) Special Care Facility Existing July 1, 2000.** If on July 1, 2000, an entire facility was a special care unit which included Medicaid residents, the facility's direct care cost per diem will not be subject to the direct care cost limit. However, the direct care costs are case mix adjusted based on the ratio of the facility's Medicaid CMI for the rate period to the facility-wide CMI for the cost reporting period. (3-19-07)

v. **Unit Routine Customary Charge.** If the cost to operate a special care unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for a semi-private room in the unit on the quarterly reporting form, in addition to the semi-private daily room rate for the general nursing home population. A weighted average routine customary charge is computed to represent the composite of all Medicaid residents in the facility based on the type of rooms they occupy, including the unit. (3-19-07)

b. **Equipment and Non-Therapy Supplies.** Equipment and non-therapy supplies not addressed in Section 225 of these rules or adequately addressed in the current RUG system, as determined by the Department, are reimbursed at invoice cost in accordance with IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 755, as an add-on amount. (3-19-07)(7-1-10)T

c. **Ventilator Dependent Residents and Residents Receiving Tracheostomy Care.** The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheostomy care. In the case of ventilator dependent and tracheostomy residents, a two (2) step approach is taken to establish an add-on amount. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents that is higher than the amount indicated on the resident's most recent Medicaid RUG score. The add-on is calculated following the provisions in Subsection 270.06.d. of ~~these~~ this rules, adjusted for the appropriate skill level of care staff. The second step is the calculation of an add-on for equipment, ~~supplies, or both up to the invoice cost or rental amount~~ and non-therapy supplies following the provision in Subsection 270.06.b. of this rule. The combined amount of these two (2) components is considered the special add-on amount to the facility's rate for approved residents receiving this care. (3-19-07)(7-1-10)T

d. **Residents Not Residing in a Special Care Unit Requiring One-to-One Staffing Ratios.** Facilities may at times have residents who require unusual levels of staffing, such as one-to-one staffing ratios to meet the exceptional needs of that resident. If the staffing level is higher than the amount indicated on the resident's most recent Medicaid RUG score, the facility may request a special rate. If the resident qualifies for a special rate for additional direct care staff required to meet the exceptional needs of that resident, an hourly add-on rate is computed for reimbursement of approved one-to-one (1 to 1) hours in excess of the minimum staffing requirements in effect for the period. The hourly add-on rate is equal to the current WAHR CNA wage rate plus a benefits allowance ~~of thirty percent (30%)~~ based on annual cost report data, then weighted to remove the CNA Minimum daily staffing time. (3-19-07)(7-1-10)T

e. **Varying Levels of One to One Care.** ~~For varying levels of one to one care, such as eight (8) hours or twenty four (24) hours, the total special rate add-on amount is calculated as the number of hours approved for one to one care times the hourly add-on rate as described in Subsection 270.06.d. The WAHR CNA wage rate as described in Section 307 of these rules will be updated prior to the July 1st rate setting each year. Should the WAHR survey be discontinued, the Department may index prior amounts forward, or conduct a comparable survey.~~ (3-19-07)

**07. Treatment of the Special Rate Cost for Future Rate Setting Periods.** Special rates are established on a prospective basis similar to the overall facility rate. When the cost report used to set a prospective rate contains non-unit special rate cost, an adjustment is made to "offset," or reduce costs by an amount equal to total "grossed up" incremental revenues, or add-on payments received by the provider during the cost reporting period.

The amount received is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. This calculated Medicaid amount will be grossed up by dividing the Medicaid incremental revenue by Medicaid days and multiplying the result by total patient days. No related adjustment is made to the facility's CMI's. ~~(3-19-07)~~(7-1-10)T

**(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/ID, 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 in calculating the reimbursement rate to be effective on July 1st of that year. (3-29-10)

**04. Payment for Personal Assistance Agency.** (7-1-10)T

**a.** The Department will establish Personal Assistance Agency rates for personal assistance services 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:~~ in accordance with Section 39-5606, Idaho Code. For State Fiscal Year 2011, this rate will only be adjusted if the prevailing hourly rate for comparable positions is less than the rate paid during State Fiscal Year 2010.

|                              |   |   |                |
|------------------------------|---|---|----------------|
| Personal Assistance Agencies | WAHR x <del>1.55</del><br><u>supplemental</u><br><u>component</u> | = | \$ amount/hour |
|------------------------------|---|---|----------------|

~~(3-29-10)~~(7-1-10)T

**b.** Beginning with State Fiscal Year 2011, every five (5) years the Department will conduct a survey of all Personal Assistance Agencies which requests the number of hours of all Direct Care Staff and the costs involved for all travel, administration, training, and all payroll taxes and fringe benefits. Based on the survey conducted, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. (7-1-10)T

**c.** Based on the survey conducted, provided that at least eighty-five percent (85%) of all Personal Assistance Agencies respond, the Department will calculate a supplemental component using costs reported for travel, administration, training, and all payroll taxes and fringe benefits. The survey data is the cost information collected during the prior State Fiscal Year. If less than eighty-five percent (85%) of all Personal Assistance Agencies respond, the rate will remain at the WAHR rate without the supplemental component. (7-1-10)T

**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, intellectual disability, or Alzheimer's disease. If an individual is assessed as Level III with a diagnosis of mental illness, intellectual disability, 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:~~ in accordance with Section 39-5606, Idaho Code. Beginning with State Fiscal Year 2011, every five (5) years the Department will conduct a survey of all Personal Assistance Agency's which requests the number of hours of all Direct Care Staff and the indirect costs involved such as administration, and training. Based on the survey conducted, the Department will calculate a supplemental component using costs reported for administration, and training. The survey data is the cost information collected during the prior State Fiscal Year.

|                                |   |   |                |
|--------------------------------|---|---|----------------|
| PCS Family Alternate Care Home | Children's PCS Assessment Weekly Hours x (WAHR x <del>1.55</del> <u>minus payroll taxes and fringe benefits cost percentage</u> <u>supplemental component</u> ) | = | \$ amount/week |
|--------------------------------|---|---|----------------|

~~(3-29-10)~~(7-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**625. ~~ICF/ID EFFICIENCY INCREMENT (RESERVED).~~**  
~~An efficiency increment will be included as a component of the prospective rate, or retrospective settlement if the allowable capped per diem costs are less than the cap.~~ (3-19-07)

~~01. **Computing Efficiency Increment.** The efficiency increment will be computed by subtracting the projected or, for facilities subject to retrospective settlement the actual allowable per diem costs incurred by the provider, from the applicable cap. This difference will be divided by five (5). The allowable increment is twenty cents (\$.20) per one dollar (\$1) below the cap up to a maximum increment of three dollars (\$3) per participant day.~~ (7-1-97)

~~02. **Determining Reimbursement.** Total reimbursement determined by adding amounts determined to be allowable, will not exceed the provider's usual and customary charges for these services as computed in accordance with this chapter and PRM. In computing participant days for the purpose of determining per diem costs, in those cases where the Medicaid Program or the participant is making payment for holding a bed in the facility, the participant will not be considered to be discharged and thus those days will be counted in the total.~~ (3-19-07)



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

### **16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1004**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010. This temporary rule will cease to be in effect June 30, 2011, in accordance with H0701 (2010).

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Bills 701 and 708, passed by the 2010 legislature.

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

Rule changes are being made in these rules to implement the legislative intent in House Bills 701 and 708 passed by the 2010 legislature. Rule changes for this docket include:

1. Nursing facility inflation freeze (H0708); and
2. Intermediate Care Facility for the Mentally Retarded (ICF/MR) inflation rate freeze (H0701).

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law or federal programs. Temporary rulemaking is also being done under the authority granted in House Bill 701 (2010), Section 13.

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

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

Changes related to House Bill 701 will result in a reduction of \$180,000 to the state general fund (cost reduction of \$900,000 in total funds (state and federal combined)).

Changes related to House Bill 708 will result in a cost reduction of \$500,000 to the state general fund (cost reduction of \$2.5 million in total funds (state and federal combined)).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Robert Kellerman at (208) 364-1994.

DATED this 13th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 16-0310-1004**

**257. NURSING FACILITY: DEVELOPMENT OF THE RATE.**

Nursing facility rates are prospective, with new rates effective July 1st of each year, and are recalculated annually with quarterly adjustments for case mix. The rate for a nursing facility is the sum of the cost components described in Subsection 257.04 through 257.09 of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. For the rate period of July 1, 2010, through June 30, 2011, rates will be calculated using cost reports ended in calendar year 2009 with no allowance for inflation to the rate period of July 1, 2010, through June 30, 2011. ~~(5-8-09)~~(7-1-10)T

**01. Applicable Case Mix Index (CMI).** The Medicaid CMI used in establishing each facility's rate is calculated based on the most recent assessment for each Medicaid resident in the nursing facility on the first day of the month of the preceding quarter (for example, assessments as of April 1 are used to establish the CMI needed to establish rates for the quarter beginning July 1st). Facility-wide CMI is calculated based on the most recent assessment for all residents in the nursing facility. The CMI is recalculated quarterly and each nursing facility's rate is adjusted accordingly. A facility-wide CMI is also established each year by averaging four (4) calendar quarter CMIs for the cost reporting period from historical data to represent each fiscal quarter in the cost reporting period (for example, an October 1 CMI would represent the fiscal quarter ended September 30th). (3-19-07)

**02. Applicable Cost Data.** The cost data used in establishing the cost components of the rate calculation are from the audited or unaudited cost report which ended during the previous calendar year (for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 are used in setting rates effective July 1, 1999). The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (3-19-07)

**03. Interim Rates.** Nursing facilities with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (3-19-07)

**04. Direct Care Cost Component.** The direct care cost component of a nursing facility's rate is determined as follows: (3-19-07)

**a.** The direct care per diem cost limit applicable to the rate period for a nursing facility type (free-standing and urban hospital-based nursing facility or rural hospital-based nursing facility) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the nursing facility's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (3-19-07)

**b.** The adjusted direct care per diem cost limit is compared to the nursing facility's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (3-19-07)

**i.** If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the nursing facility's facility-wide CMI for the cost reporting period, and then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (3-19-07)

**ii.** If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the nursing facility's facility-wide CMI for the cost reporting period, then multiplied by the nursing facility's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (3-19-07)

**05. Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect per diem cost limit for that type of provider -- free-standing and urban hospital-based nursing facilities, or rural hospital-based nursing facilities. (3-19-07)

**06. Efficiency Incentive.** The efficiency incentive is available to those providers, both free-standing and hospital-based, which have inflated per diem indirect care costs less than the indirect per diem cost limit for that

type of provider. The efficiency incentive is calculated by multiplying the difference between the per diem indirect cost limit and the facility's inflated per diem indirect care costs by fifty percent (50%) not to exceed nine dollars and fifty cents (\$9.50) per patient day. There is no incentive available to those facilities with per diem costs in excess of the indirect care cost limit, or to any facility based on the direct care cost component. (3-29-10)

**07. Costs Exempt From Limitation.** Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 264 of these rules. (3-19-07)

**08. Property Reimbursement.** The property reimbursement component is calculated in accordance with Section 275 and Subsection 240.19 of these rules. (3-19-07)

**09. Revenue Offset.** Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 257 of these rules. (3-19-07)

**258. NURSING FACILITY: COST LIMITS BASED ON COST REPORT.**

Each July 1st cost limitations will be established for nursing facilities based on the most recent audited cost report with an end date of June 30th of the previous year or before. Calculated limitations will be effective for a one (1) year period, from July 1 through June 30th of each year, which is the rate year. For the rate period of July 1, 2010, through June 30, 2011, the direct and indirect cost limits will be fixed at the cost limits established for the rate period July 1, 2009, through June 30, 2010. (~~5-8-09~~)(7-1-10)T

**01. Percentage Above Bed-Weighted Median.** Prior to establishing the first "shadow rates" at July 1, 1999, the estimated Medicaid payments under the previous retrospective system for the year period from July 1, 1999, through June 30, 2000, will be calculated. This amount will then be used to model the estimated payments under the case mix system set forth in Sections 255 through 257 of these rules. The percentages above the bed-weighted median, for direct and indirect costs, will be established at a level that approximates the same amount of Medicaid expenditures as would have been produced by the retrospective system. The percentages will also be established to approximate the same distribution of total Medicaid dollars between the hospital-based and freestanding nursing facilities as existed under the retrospective system. Once the percentage is established, it will be used to calculate the limit by multiplying the bed-weighted median per diem direct cost times the calculated percentage for that class of provider. There will be a direct and indirect percentage that is applied to freestanding and urban hospital-based nursing facilities, and a higher direct and indirect percentage that is applied to rural hospital-based nursing facilities. Once established, these percentages will remain in effect for future rate setting periods. (3-19-07)

**02. Direct Cost Limits.** The direct cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be normalized and arrayed from high to low, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed. (3-19-07)

**03. Indirect Cost Limits.** The indirect cost limitation will be calculated by indexing the selected cost data forward by the inflation adjustment from the midpoint of the cost report period to the midpoint of the period for which the limit will be applicable. The indexed per diem costs will then be arrayed, with freestanding and hospital-based nursing facilities included in the same array, and the bed-weighted median will be computed. (3-19-07)

**04. Limitation on Increase or Decrease of Cost Limits.** Increases in the direct and indirect cost limits will be determined by the limitations calculated in the most recent base year, indexed forward each year from the midpoint of the base year to the midpoint of the rate year by the inflation factor plus one percent (1%) per annum. The calculated direct and indirect cost limits will not be allowed to decrease below the limitations effective in the base year. The maximum rate of growth on the cost limits, and the minimum cost limitation, will be examined by the oversight committee periodically to determine which factors to use in the calculation of the limitations effective in the new base year and forward. (3-29-10)

**05. Costs Exempt From Limitations.** Costs exempt from limitations include property taxes, property insurance, and utilities. These costs will be reimbursed on a per diem basis and will not be included in the calculation of the direct or indirect care component. However, property taxes and property insurance will be subject to minimum

occupancy levels as defined in Section 278 of these rules.

(3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**622. ICF/ID - PRINCIPLE PROSPECTIVE RATES.**

Providers of ICF/ID facilities will be paid a per diem rate which, with certain exceptions, is not subject to an audit settlement. The per diem rate for a fiscal period will be based on audited historical costs adjusted for inflation. The provider will report these cost items in accordance with other provisions of this chapter or the applicable provisions of PRM consistent with this chapter. Sections 622 through 628 of these rules provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the payment system for ICF/ID providers. Total payment will include the following components: Property reimbursement, capped costs, ~~an efficiency increment~~, exempt costs, and excluded costs. Except as otherwise provided in this section, ~~ICF/ID providers will be reimbursed in rates calculated for state fiscal year 2010<sup>1</sup> (July 1, 2009<sup>10</sup> through June 30, 2010<sup>1</sup>) at the same rate of reimbursement that was paid in state fiscal year 2009 (July 1, 2008 through June 30, 2009) will be calculated by using finalized cost reports ended in calendar year 2008 with no cost or cost limit adjustments for inflation to the rate period of July 1, 2010, through June 30, 2011.~~ ~~(3-29-10)(7-1-10)T~~

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-1002

### 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, 56-203, and 56-250 through 257, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

| Wednesday, September 15, 2010<br>6:00 p.m. PDT   | Wednesday, September 15, 2010<br>6:00 p.m. MDT  | Wednesday, September 15, 2010<br>6:00 p.m. MDT   |
|--|---|--|
| Dept. of Health & Welfare-Reg. 1<br>1120 Ironwood Drive, Suite 102<br>Lower Level Large Conf. Rm.<br>Coeur d'Alene, ID | Dept. of Health & Welfare-Reg. 4<br>1720 Westgate Drive<br>Suite A, Room 131<br>Boise, ID | Dept. Health & Welfare-Reg. 7<br>150 Shoup Avenue<br>2nd Floor, Large Conf. Rm.<br>Idaho Falls, ID |

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

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

These proposed rules for the redesign of children's developmental disabilities benefits include a Family-Directed Services (FDS) option as part of Home and Community Based Services (HCBS) waivers for children and a related State Plan option. This option is very similar to the Consumer-Directed (CD) option available under the Adult DD Waiver program. Changes are being made to this chapter to incorporate the new FDS option and to update the definitions section.

**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 is cost neutral, because the individualized budgets and limitations for participants are being based on historical costs of developmental disabilities agency (DDA) services for children.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010. The notice for this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, p. 27](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**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 September 22, 2010.

DATED this 11th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0313-1002

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.13, "Consumer-Directed Services." (3-29-10)

**02. Scope.** ~~Self-Consumer-Directed Community Supports (SCDCS)~~ is a flexible program option for participants eligible for the Children's Home and Community Based Services –~~Developmental Disabilities~~ (HCBS-~~DD~~) State Plan Option, and Adult and Children's Developmental Disabilities (DD) waivers. CDCS is not a covered option for participants enrolled in the Children's Act Early Waiver. The ~~SCDCS~~ 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. (3-30-07)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. Consumer-Directed Community Supports (CDCS).** For the purposes of this chapter, consumer-directed supports include Self-Directed Community Supports (SDCS) and Family-Directed Community Supports (FDCS). (\_\_\_\_)

**05. Family-Directed Community Supports (FDCS).** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver and the Children's Home and Community Based Services State Plan Option described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (\_\_\_\_)

**046. Financial Management Services (FMS).** Services provided by a fiscal employer agent that include: (3-29-10)

**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)

**057. Fiscal Employer Agent (FEA).** An agency that provides financial management services to participants who have chosen the SCDCS option. The fiscal employer agent (FEA) is selected by the participant. The duties of the FEA are defined under Section 3504 of the Internal Revenue Code (26 USC 3504). (~~3-29-10~~)( )

**068. Goods.** Tangible products or merchandise that are authorized on the support and spending plan. (3-30-07)

**079. Guiding Principles for the SCDCS Option.** Self-Consumer-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)

**10. Participant.** For the Family-Directed Community Supports option, “participant” refers to both the participant and his parent or legal guardian. ( )

**081. Readiness Review.** A review conducted by the Department to ensure that each fiscal employer agent is prepared to enter into and comply with the requirements of the provider agreement and this chapter of rules. (3-29-10)

**12. Self-Directed Community Supports (SDCS).** A program option for adults eligible for the Adult Home and Community-Based Services Developmental Disabilities (HCBS-DD) Waiver described in IDAPA 16.03.10, “Medicaid Enhanced Plan Benefits.” ( )

**0913. 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-consumer-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. (~~3-29-10~~)( )

**104. 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)

**115. 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)

**126. Support Broker Services.** Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (3-30-07)

**137. Traditional HCBS Adult DD Waiver Services.** A program option for participants eligible for the Home and Community-Based Services Adult’s Developmental Disabilities (HCBS-DD) Waiver consisting of the

specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsections 703.01 through 703.12. (3-29-10)(\_\_\_\_)

**18. Traditional Children's DD Waiver Services.** A program option for children eligible for the Children's Developmental Disabilities (DD) Waiver consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 683. (\_\_\_\_)

**19. Traditional Children's HCBS State Plan Option Services.** A program option for children eligible for the Children's Home and Community-Based Services (HCBS) State Plan Option consisting of the specific Medicaid Enhanced Plan Benefits described in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 663. (\_\_\_\_)

~~1420.~~ **Waiver Services.** A collective term that refers to services provided under a Medicaid Waiver program. (3-29-10)

011. -- 099. (RESERVED).

**100. ~~SELF~~CONSUMER-DIRECTED COMMUNITY SUPPORTS (SCDCS) OPTION.**

The SCDCS option requires the participant to have a support broker to assist the participant to make informed choices, participate in a person-centered planning process, and become skilled at managing his own supports. The participant must use a fiscal employer agent to provide Financial Management Services (FMS) for payroll and reporting functions. (3-30-07)(\_\_\_\_)

**101. ELIGIBILITY.**

**01. Determination of Medicaid and Home and Community Based Services - DD Requirements.** In order to choose the SCDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing ~~(HCBS-DD)~~ waiver programs or HCBS State Plan Option 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 SCDCS 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 SCDCS option. (3-30-07)(\_\_\_\_)

102. -- 109. (RESERVED).

**110. PAID ~~SELF~~CONSUMER-DIRECTED COMMUNITY SUPPORTS.**

The participant must purchase Financial Management Services (FMS) and support broker services to participate in the SCDCS option, except for under the family-directed services option where the qualified parent or legal guardian may act as an unpaid support broker. The participant must purchase goods and community supports through the fiscal employer agent who is providing the FMS. (3-29-10)(\_\_\_\_)

**01. Financial Management Services.** The Department will 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~~consumer-directed option. (3-29-10)(\_\_\_\_)



- 02. Support Broker.** Support broker services are provided by a qualified support broker. (3-30-07)
- 03. 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 participant's preference for: (3-30-07)
- 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)

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

**120. 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)

- 01. Guiding Principles.** Accepting and honoring the guiding principles for the ~~SCDCS~~ 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.** Negotiating payment rates for all paid community supports 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)
- 04. 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)
- 05. 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)

**06. Plan.** Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (3-30-07)

**07. Time Sheets and Invoices.** Reviewing and verifying that supports being billed were provided and indicating that he approves of the bill by signing the timesheet or invoice. (3-29-10)

**08. 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 workers. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**131. 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)

**01. Payroll and Accounting.** Providing pay roll and accounting supports to participants that have chosen the ~~Self~~Consumer-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. SUPPORT BROKER REQUIREMENTS AND LIMITATIONS.**

**01. Initial Application to Become a Support Broker.** Individuals interested in becoming a support broker must complete the Department-approved application to document that he: (3-30-07)

**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 at least two (2) years verifiable experience with the target population and knowledge of services and resources in the developmental disabilities field. (3-30-07)

**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. Under Family-Directed Community Supports (FDCS), children's support brokers must attend the initial training. 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 a provider agreement with the Department. (~~3-30-07~~)(\_\_\_\_)

**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 may terminate the provider agreement when the support broker: (3-30-07)

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 under Section 150 of these rules to the same participant; and (3-30-07)

b. For Self-Directed Community Supports (SDCS), ~~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. 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)

c. 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; and (~~3-30-07~~)(\_\_\_\_)
- i. Assist children enrolled in the Family-Directed Community Supports (FDCS) Option as they transition to adult DD services. (\_\_\_\_)

**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 supports; (3-30-07)
- 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 supports; (3-30-07)
- 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 a 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. COMMUNITY SUPPORT WORKER LIMITATIONS.**

A paid community support worker must not be the spouse of the participant, ~~and, for FDCS, must not be the parent or legal guardian 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)( )

**01. Self-Directed Community Supports (SDCS).** A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following: ( )

~~01a. 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)( )

~~01b. 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)( )

**02. Family-Directed Community Supports (FDCS).** A parent or legal guardian cannot be a paid community support worker. A paid community support worker: ( )

**a. Must not supplant the role of the parent or legal guardian:** ( )

**b. Cannot be paid to fulfill any obligations that the parent or legal guardian is legally responsible to fulfill for their child.** ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**160. 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)

**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-consumer-~~directed community supports that focus on the participant's wants, needs, and goals in the following areas: (3-30-07)( )

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)

**02. Support and Spending Plan Limitations.** Support and spending plan limitations include: (3-30-07)

**a.** Traditional Medicaid waiver and traditional rehabilitative or rehabilitative services must not be purchased under the SCDCS option. Because a participant cannot 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 services and the SCDCS option; (3-30-07)(\_\_\_\_)

**b.** Paid community supports must not be provided in a group setting with recipients of traditional Medicaid waiver, rehabilitative or rehabilitative services. This limitation does not preclude a participant who has selected the ~~self-consumer~~-directed option from choosing to live with recipients of traditional Medicaid services; (3-30-07)(\_\_\_\_)

**c.** All paid community supports must fit into one (1) or more types of community supports described in Section 110 of these rules. Community supports 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)

**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)

**(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 performs on behalf of the participant are not paid. (3-29-10)

**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. ~~For the SDCS, 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)

**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 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. (3-29-10)

**01. 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~~ to appeal the set budget amount determined by the Department. (~~3-30-07~~)(\_\_\_\_)

**02. 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~~consumer-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~~consumer-directed services utilizing the PES.

(3-30-07)(\_\_\_\_)

**02. 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)

- 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)

**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, and other supports have the opportunity to readily report instances of abuse, neglect, exploitation, or other complaints regarding the HCBS program. (3-30-07)

**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. CONTINUATION OF THE SELF-CONSUMER-DIRECTED COMMUNITY SUPPORTS (SCDCS) OPTION.**

The following requirements must be met or the Department may require the participant to discontinue the SCDCS option: (3-30-07)(\_\_\_\_)

**01. Required Supports.** The participant is willing to work with a support broker and a fiscal employer agent. (3-30-07)

a. The participant can only change FEA services by providing a written request to his current FEA provider at least sixty (60) days in advance, and this change must occur at the end of a fiscal quarter. The request must include the name of the new FEA chosen by the participant and provide the specific date the change will occur. (3-29-10)

b. When a participant provides a written request to his current FEA provider to change to a different



FEA provider, the current FEA provider must notify the participant of the specific date that the last payroll run will occur at the end of the fiscal quarter. (3-29-10)

**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 through 314)**

**300. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: DEFINITIONS.**  
For purposes of Sections 300 through 314, the following definitions apply: (3-29-10)

**01. Employee.** A community support worker employed by a participant receiving services under the §CDCS option. (~~3-29-10~~)(\_\_\_\_)

**02. Employer.** A participant receiving services under the §CDCS option. (~~3-29-10~~)(\_\_\_\_)

**03. Provider.** The term "provider" specifically refers to the fiscal employer agent providing financial management services to individuals participating in selfconsumer-direction. (~~3-29-10~~)(\_\_\_\_)

**04. SFTP.** Secure File Transfer Protocol. A secure means of transferring data that allows certain Department staff to access information regarding selfconsumer-direction participants. (~~3-29-10~~)(\_\_\_\_)

**05. Vendor.** Provides goods and services rendered by agencies and independent contractors in accord with a participant's support and spending plan. (3-29-10)

**06. Medicaid Billing Report.** A report generated every payroll period by the provider; it provides a list and count of unduplicated participants and payroll expenditures by service code, based on the date of service time frame specified by the user. (3-29-10)

**301. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES: SELFCONSUMER-DIRECTED COMMUNITY SUPPORTS.**

**01. Federal Tax ID Requirement.** The fiscal employer agent must 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: (3-29-10)

**a.** Maintain copies of the participant's FEIN, IRS FEIN notification letter, and Form SS-4 Request for FEIN in the participant's file. (3-29-10)

**b.** Retire participant's FEIN when the participant is no longer an employer under selfconsumer-directed community supports (§CDCS). (~~3-29-10~~)(\_\_\_\_)

**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; (3-29-10)

**03. Procedures Restricting FMS to Adult and Children's DD Waiver and Children's HCBS State Plan Option Participants.** The provider must not act as a fiscal employer agent and provide fiscal management services to a ~~an~~ HCBS DD waiver or Children's HCBS State Plan Option participant for whom it also provides any other services funded by the Department. (3-29-10)(\_\_\_\_)

**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. (3-29-10)

**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. (3-29-10)

**06. Face-to-Face Transitional Participant Enrollment.** The provider must conduct face-to-face transitional participant enrollment sessions in group settings or with individual participants in their homes or other designated locations. The provider must work with the regional Department staff to coordinate and conduct enrollment sessions. (3-29-10)

**07. SFTP Site.** The provider must provide an SFTP site for the Department to access. The site must 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. (3-29-10)

**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: (3-29-10)

- a. IRS Form 2678; (3-29-10)
- b. IRS Approval Letter; (3-29-10)
- c. IRS Form 2678 revocation process; (3-29-10)
- d. Initial IRS Form 2848; and (3-29-10)
- e. Renewal IRS Form 2848. (3-29-10)

**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. (3-29-10)

**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. (3-29-10)

**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: (3-29-10)

- a. Provide staff with customer service training with an emphasis on ~~self~~consumer-direction. (3-29-10)(\_\_\_\_)
- b. Ensure staff are trained and have the skills to assist participants with enrollment and to help them understand their account statements. (3-29-10)
- c. Ensure that fiscal employer agent personnel are available during regular business hours, 8 a.m. to 5

- p.m. Mountain Time, Monday through Friday, excluding state holidays. (3-29-10)
- d.** Provide translation and interpreter services (i.e., American Sign Language and services for persons with limited English proficiency). (3-29-10)
  - e.** Provide prompt and consistent response to verbal and written communication. Specifically: (3-29-10)
    - i.** All voice mail messages must be responded to within one (1) business day; and (3-29-10)
    - ii.** All written and electronic correspondence must be responded to within five (5) business days. (3-29-10)
  - 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. (3-29-10)
  - g.** Maintain a toll-free fax line that is available all day, every day, exclusively for participants and their employees. (3-29-10)
- 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: (3-29-10)
- a.** Respond to all written and electronic correspondence within five (5) days. (3-29-10)
  - b.** Respond to verbal complaints within one (1) business day. (3-29-10)
  - 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. (3-29-10)
  - d.** Log and track complaints received from the Department pertaining to fiscal employer agent services. (3-29-10)
  - 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. (3-29-10)
  - f.** Post the complaint to the SFTP site within twenty-four (24) hours any day a complaint is received Monday through Friday. 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 fifty dollar (\$50) penalty payable to Medicaid within ninety (90) days of incident. (3-29-10)

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

**16.03.19 - CERTIFIED FAMILY HOMES**

**DOCKET NO. 16-0319-1001**

**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 39-3505, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

| <b>Wednesday, September 8, 2010<br/>6:00 p.m. PDT</b>   | <b>Wednesday, September 8, 2010<br/>6:00 p.m. MDT</b>   | <b>Wednesday, September 8, 2010<br/>6:00 p.m. MDT</b>   |
|---|---|---|
| <b>Dept. of Health &amp; Welfare-Reg. 2<br/>1118 "F" Street<br/>3rd Floor Conf. Room<br/>Lewiston, ID</b> | <b>Dept. of Health &amp; Welfare-Reg. 3<br/>3402 Franklin Road<br/>Main Conf. Room<br/>Caldwell, ID</b> | <b>Dept. of Health &amp; Welfare-Reg. 6<br/>1070 Hilina<br/>2nd Floor, Large Conf. Room<br/>Pocatello, ID</b> |

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

These rule changes update safety and sanitation requirements for certified family homes. Manufactured homes and modular homes must meet certain requirements at the time of manufacture. Recreational vehicles, commercial coaches, or unregulated or unapproved modifications to approved manufactured or modular homes, and manufactured housing constructed prior to June 15, 1976, are prohibited for use as a certified family home without Department assessment and approval. Non-municipal sewage disposal requirements for proof of the septic tank was pumped has been changed from 3 to 5 years. Also, rules governing guardianship of residents by the certified family home provider have been amended.

**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:

This rulemaking has no anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with certified family home providers, residents, and advocacy groups.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Karen Vasterling at (208) 239-6260.

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 September 22, 2010.

DATED this 29th day of July, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0319-1001**

**100. CERTIFICATION REQUIREMENTS.**

Certification is required in order to operate a certified family home in the State of Idaho. The Department will issue a certificate to a home when all certification requirements are met. (4-11-06)

**01. Certificate Issued in the Name of Provider.** The certificate is issued in the name of the provider applying for certification, and only to the address of the home stated in the application. A new certificate is required if the provider or the location of the certified family home changes. (4-11-06)

**02. Accessibility to the Home.** The home, physical premises, and all records required under these rules, must be accessible at all times to the Department for the purposes of inspection, with or without prior notification. (4-11-06)

**03. Number of Residents in the Home.** A home cannot be certified for more than two (2) residents. An exception may be granted by the Department as described in Section 140 of these rules. (4-11-06)

**04. Certification Limitations.** (4-11-06)

**a.** A home cannot be certified if it also provides room or board to any person who is not a resident as defined by these rules or a family member. A waiver may be granted by the Department when the individual receiving room or board is the spouse of the resident and does not require certified family home care or any higher level of care; (4-11-06)

**b.** A home cannot be certified as a certified family home and a child foster home at the same time. (4-11-06)

**c.** A certified family home provider may not be the guardian of any resident unless the guardian is a parent, child, sibling, or grandparent of the resident. ( )

**05. Certification Study Required.** Following receipt of an acceptable application and other required documents, the Department will begin a certification study within thirty (30) days. The certification study, along with the application and other required material, will serve as the basis for issuing or denying a certificate. The study will include the following: (4-11-06)

**a.** A review of all material submitted; (4-11-06)

**b.** A scheduled home inspection; (4-11-06)

**c.** An interview with the proposed provider; (4-11-06)

**d.** An interview with provider's family, if necessary; (4-11-06)

**e.** A review of the number, age, and sex of children or other adults in the home to evaluate the appropriateness of a placement to meet the needs of the resident; (4-11-06)

**f.** A medical or psychological examination of the provider or family members, if the Department determines it is necessary; and (4-11-06)

**g.** Other information necessary to verify that the home is in compliance with these rules. (4-11-06)

**06. Provider Training Requirements.** As a condition of initial certification, all providers must receive training in the following areas: (4-11-06)

- a. Resident rights; (4-11-06)
- b. Certification in first aid and Cardio-Pulmonary Resuscitation (CPR) which must be kept current; (4-11-06)
- c. Emergency procedures; (4-11-06)
- d. Fire safety, fire extinguishers, and smoke alarms; (4-11-06)
- e. Completion of approved "Assistance with Medications" course; and (4-11-06)
- f. Complaint investigations and inspection procedures. (4-11-06)

**07. Effect of Previous Revocation or Denial of Certificate or License.** The Department is not required to consider the application of any applicant who has had a health care certificate or license denied or revoked until five (5) years have elapsed from the date of denial or revocation according to Section 39-3525, Idaho Code. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. EXCEPTION TO THE TWO RESIDENT LIMIT.**

**01. Application for Exception.** A home may apply to the Department for an exception to the two (2) resident limit to care for three (3) or four (4) residents. (4-11-06)

**02. Criteria for Determination.** The Department will determine if safe and appropriate care can be provided based on resident needs. The Department will consider, at a minimum, the following factors in making its determination: (4-11-06)

- a. Each current or prospective resident's physical, mental and behavioral status and history; (4-11-06)
- b. The household composition including the number of adults, children and other family members requiring care from the provider; (4-11-06)
- c. The training, education, and experience of the provider to meet each resident's needs; (4-11-06)
- d. Potential barriers that might limit resident safe access to and exit from the rooms in the home; (4-11-06)
- e. The number and qualifications of care givers in the home; (4-11-06)
- f. The desires of the prospective and current residents; (4-11-06)
- g. The individual and collective hours of care needed by the residents; (4-11-06)
- h. The physical layout of the home and the square footage available to meet the needs of all persons living in the home; and (4-11-06)
- i. If an exception to the two (2) resident limit would result in two (2) or more residents who require nursing facility level of care living in the home, then the application must also include the information required in Section 130 of these rules. (4-11-06)

**03. Other Employment.** Providers of three (3) or four (4) bed homes must not have other gainful employment unless: (4-11-06)

a. The total direct care time for all residents, as reflected by the plan of service and assessments, does not exceed eight (8) hours per day; (4-11-06)

b. The provider is immediately available to meet resident needs as they arise; and (4-11-06)

c. Each resident is supervised at all times unless the assessment or plan of service indicates the resident may be left unattended for designated periods of time. (4-11-06)

**04. Additional Training.** Providers of three (3) or four (4) bed homes must obtain additional training to meet the needs of the residents as determined necessary by the Department. (4-11-06)

~~**05. Guardianship.** A provider applying to care for three (3) or four (4) residents may not be the guardian of any resident unless either of the following applies: (4-11-06)~~

~~a. The guardianship was established prior to July 1, 2001; or (4-11-06)~~

~~b. The proposed guardian is a parent, child, sibling, or grandparent of the resident. (4-11-06)~~

~~**065. Exception Nontransferable.** An exception to care for more than two (2) residents will not be transferable to another provider, address, or resident. (4-11-06)~~

~~**076. Reassessment of Exception.** An exception to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: (4-11-06)~~

~~a. Each time a new admission is considered; or (4-11-06)~~

~~b. When there is a significant change in any of the factors specified in Subsection 140.02 of these rules. (4-11-06)~~

~~**087. Annual Home Inspection.** A home with an exception to care for more than two (2) residents must have a home inspection at least annually. (4-11-06)~~

~~**098. Shared Sleeping Rooms.** In addition to the requirements in Section 700 of these rules, no more than two (2) residents will be housed in any multi-bed sleeping room. (4-11-06)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. ENVIRONMENTAL SANITATION STANDARDS.**

The home is responsible for disease prevention and maintenance of sanitary conditions. (4-11-06)

**01. Water Supply.** The water supply for the home must be adequate, safe, and sanitary. (4-11-06)

a. The home must use a public or municipal water supply or a Department-approved private water supply; (4-11-06)

b. If water is from a private supply, water samples must be submitted to a private accredited laboratory or the District Public Health Laboratory for bacteriological examination at least annually or more frequently if deemed necessary by the Department. Copies of the laboratory reports must be kept on file at the home; and (4-11-06)

c. There must be enough water pressure to meet the sanitary requirements at all times. (4-11-06)

**02. Sewage Disposal.** The sewage disposal system must be in good working order. All sewage and

liquid wastes must be discharged, collected, treated, and disposed of in a manner approved by the Department. (4-11-06)

**03. Nonmunicipal Sewage Disposal.** For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every ~~three~~ five (35) years thereafter the home must provide proof that the septic tank has been pumped or that pumping was not necessary. In addition, at the time of initial certification: ~~(4-11-06)~~(\_\_\_\_)

**a.** The home must obtain a statement from the local health district indicating that the sewage disposal system meets local requirements. The statement must be kept on file at the home; or (4-11-06)

**b.** If the local health district does not issue these statements, the home must obtain a statement to that effect from the health district. The statement must be kept on file at the home. (4-11-06)

**04. Garbage and Refuse Disposal.** Garbage and refuse disposal must be provided by the home. (4-11-06)

**a.** Garbage containers outside the home used for storage of garbage and refuse must be constructed of durable, nonabsorbent materials and must not leak or absorb liquids. Containers must be provided with tight-fitting lids. (4-11-06)

**b.** Garbage containers must be maintained in good repair. Sufficient containers must be available to hold all garbage and refuse which accumulates between periods of removal from the premises. Storage areas must be kept clean and sanitary. (4-11-06)

**05. Insect and Rodent Control.** The home must be maintained free from infestations of insects, rodents and other pests. Chemicals (pesticides) used in the control program must be selected, stored, and used safely. (4-11-06)

**a.** The chemical must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer; (4-11-06)

**b.** The home must take the necessary precautions to protect residents from obtaining toxic chemicals. (4-11-06)

**06. Yard.** The yard surrounding the home must be safe and maintained. (4-11-06)

**07. Linen-Laundry Facilities and Services.** A washing machine and dryer must be provided for the proper and sanitary washing of linen and other washable goods. (4-11-06)

**08. Housekeeping and Maintenance.** Sufficient housekeeping and maintenance must be provided to maintain the interior and exterior of the home in a clean, safe, and orderly manner. (4-11-06)

**a.** A sleeping room must be thoroughly cleaned including the bed, bedding, and furnishings before it is occupied by a new resident; and (4-11-06)

**b.** Deodorizers must not be used to cover odors caused by poor housekeeping or unsanitary conditions. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**701. MANUFACTURED HOMES AND MODULAR BUILDINGS.**

**01. Use of Manufactured Homes and Modular Buildings.** ~~A late model manufactured home~~ Idaho Division of Building Safety (BDS) approved modular buildings or U.S. Department of Housing and Urban



Development (HUD) approved buildings may be approved for use as a certified family home when the home meets the following requirements. (4-11-06)()

**a.** The manufactured or modular home meets the requirements of HUD or BDS requirements in accordance with state and federal regulations as of the date ~~the home was~~ of manufacture ~~is within eighteen (18) years of the date of initial certification.~~ (4-11-06)()

**b.** The home meets the adopted standards and requirements of the local jurisdiction in which the home is located. ~~If no local standard has been established, the home must be installed according to the Idaho Manufactured Home Installation standard.~~ (4-11-06)()

**c.** Recreational vehicles, commercial coaches, unregulated or unapproved modifications or additions to approved manufactured housing or modular buildings; and manufactured housing constructed prior to June 15, 1976, are prohibited for use as a certified family home without DHW assessment and approval. ()

**02. Previously Certified.** A manufactured home approved for use as a certified family home before July 1, 2005~~1~~, may continue to be certified when evaluated on a case-by-case basis. (4-11-06)()

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.21 - DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

### DOCKET NO. 16-0321-1001 (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 39-4605, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

| Wednesday, September 15, 2010<br>6:00 p.m. PDT   | Wednesday, September 15, 2010<br>6:00 p.m. MDT  | Wednesday, September 15, 2010<br>6:00 p.m. MDT   |
|--|---|--|
| Dept. of Health & Welfare-Reg. 1<br>1120 Ironwood Drive, Suite 102<br>Lower Level Large Conf. Rm.<br>Coeur d'Alene, ID | Dept. of Health & Welfare-Reg. 4<br>1720 Westgate Drive<br>Suite A, Room 131<br>Boise, ID | Dept. Health & Welfare-Reg. 7<br>150 Shoup Avenue<br>2nd Floor, Large Conf. Rm.<br>Idaho Falls, ID |

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

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

This chapter of rules replaces the existing licensing and certification requirements under IDAPA 16.04.11, "Developmental Disabilities Agencies (DDAs)." This rewritten DDA chapter is needed to provide the necessary certification requirements for providers, and the qualifications necessary to meet those requirements. The existing chapter for Developmental Disabilities Agencies (IDAPA 16.04.11) is being repealed in this Bulletin under Docket 16-0411-1001, and rewritten as a Division of Medicaid, Licensing and Certification chapter of rule, under IDAPA 16.03.21, "Developmental Disabilities Agencies."

**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:

This rulemaking has no anticipated fiscal impact to state general funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010. The notice for this negotiated rulemaking published in the July 7, 2010, Idaho Administrative Bulletin, [Vol. 10-7, p. 35, under Docket No. 16-0411-1001](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy May (208) 334-5747.

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 September 22, 2010.

DATED this 19th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0321-1001**

**IDAPA 16  
TITLE 03  
CHAPTER 21**

**16.03.21 - DEVELOPMENTAL DISABILITIES AGENCIES (DDA)**

**000. LEGAL AUTHORITY.**

The Idaho Board of Health and Welfare is authorized under the "Idaho Developmental Disabilities Services and Facilities Act," Section 39-4605, Idaho Code, to adopt rules governing Developmental Disabilities Agencies in Idaho. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.21, "Developmental Disabilities Agencies (DDA)." ( )

**02. Scope.** These rules govern: ( )

**a.** The certification of Developmental Disabilities Agencies that provide services to persons with developmental disabilities; and ( )

**b.** The provision for services to individuals who meet minimum eligibility criteria under Section 66-402, Idaho Code. ( )

**c.** All agencies that meet the definition of a Developmental Disabilities Agency (DDA) in Section 010 of these rules must be certified by the Department in accordance with the requirements in this chapter of rules. ( )

**002. WRITTEN INTERPRETATIONS.**

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

**003. ADMINISTRATIVE APPEALS.**

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

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this chapter of rules. ( )

**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. ( )

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

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

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**06. Licensing and Certification Unit.** The Department's Licensing and Certification Unit, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**07. Licensing and Certification Unit Website.** <http://www.healthandwelfare.idaho.gov/Medical/LicensingCertification/tabid/124/Default.aspx>. ( )

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

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

**007. -- 008. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Verification of Compliance.** The agency must verify that all employees, subcontractors, agents of the agency, and volunteers delivering DDA services have complied with IDAPA 16.05.06, "Criminal History and Background Checks." ( )

**02. When Agency Employees May Begin Working.** Once an employee, subcontractor, agent of the agency, or volunteer delivering DDA services has completed a self-declaration form and has been fingerprinted, he may begin working for the agency on a provisional basis while awaiting the results of the criminal history check. ( )

**03. Requirement to Report Additional Criminal Convictions, Pending Investigations, or Pending Charges.** Once an employee, subcontractor, agent of the agency, or volunteer delivering DDA services has received a criminal history clearance, any additional criminal convictions, pending investigations, or pending charges must be reported to the Department or its designee when the agency learns of the convictions, investigations, or charges. ( )

**010. DEFINITIONS -- A THROUGH Z.**

For the purposes of this chapter of rules, the following terms apply. ( )

**01. ADA.** The "Americans with Disabilities Act Accessibility Guidelines," under 28 CFR Part 36, Appendix A. ( )

- 02. Adult.** A person who is eighteen (18) years of age or older. ( )
- 03. Agency.** A developmental disabilities agency (DDA) as defined in Section 010 of this rule. ( )
- 04. Board.** The Idaho State Board of Health and Welfare. ( )
- 05. Communicable Disease.** A disease that may be transmitted from one (1) person or an animal to another person either by direct contact or through an intermediate host, vector, inanimate object, or other means that may result in infection, illness, disability, or death. ( )
- 06. Comprehensive Assessment.** A narrative assessment used for diagnostic and evaluation purposes that contains uniform criteria used to identify the need for services and guide therapy. ( )
- 07. Deficiency.** A determination of non-compliance with a specific rule or part of rule. ( )
- 08. Department.** The Idaho Department of Health and Welfare. ( )
- 09. Developmental Disabilities Agency (DDA).** A DDA is an agency that is: ( )
- a.** A type of developmental disabilities facility, defined in Section 39-4604, Idaho Code, that is non-residential and provides services on an outpatient basis; ( )
  - b.** Certified by the Department to provide services to people with developmental disabilities, according to this chapter of rules; and ( )
  - c.** A business entity, open for business to the general public. ( )
- 10. Developmental Disability.** A developmental disability, defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ( )
- a.** Is attributable to an impairment, such as intellectual disability, 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; and ( )
  - b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and ( )
  - 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. ( )
- 11. Measurable Objective.** A statement in specific and concrete terms that describes the observable results of the skill to be acquired. ( )
- 12. Paraprofessional.** A person delivering support services who meets the qualifications required in Section 400 of these rules. ( )
- 13. Participant.** A person who has been identified as having a developmental disability defined in Section 010 of this rule, and who is receiving services through a DDA. ( )
- 14. Practitioner of the Healing Arts, Licensed.** A licensed physician, physician assistant, or nurse practitioner. ( )
- 15. Professional.** A professional delivering services within the scope of his practice and who meets the qualifications required in Section 400 of these rules. ( )

**16. Provider.** An agency, or an individual working for an agency, that furnishes DDA services under the provisions of these rules. ( )

**17. Provisional Certificate.** A certificate issued by the Department to a DDA with deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, but not to exceed, six (6) months. ( )

**18. Repeat Deficiency.** A violation or deficiency found on a resurvey or revisit to a DDA that was also found during the previous survey or visit. ( )

**19. Staff.** Employees or contractors of an agency who deliver services. ( )

**20. Substantial Compliance.** A facility is in substantial compliance with these rules when no core issues have been cited as a deficiency during any survey. ( )

**21. Supervision.** Initial direction and procedural guidance by a professional and periodic inspection of the actual work performed at the service delivery site. ( )

**22. Survey.** A review conducted by the Department to determine compliance with statutes and rules. ( )

**011. -- 074. (RESERVED).**

**SERVICES PROVIDED BY DEVELOPMENTAL DISABILITIES AGENCIES  
(Sections 075 Through 099)**

**075. DDA SERVICES.**

A DDA provides services that include evaluation, diagnostic, training, treatment, and support services that are provided on an outpatient basis to persons with developmental disabilities and may be community-based, home-based, or center-based in accordance with the requirements of this chapter. A DDA may provide the following services as specified on its certificate under Section 120 of these rules. ( )

**01. Support Services.** Support services are provided by a paraprofessional, working under the supervision of a professional. Support services may include supervision for a participant, as well as assisting and facilitating the participant's integration into the community. ( )

**02. Intervention Services.** Intervention services are outcome-based, therapeutic services delivered by a professional working under the supervision of the agency delivering the intervention services. ( )

**076. -- 099. (RESERVED).**

**CERTIFICATION REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES AGENCIES  
(Sections 100 Through 199)**

**100. DDA CERTIFICATION.**

**01. Certification Required.** Before any agency can operate as a DDA, it must obtain DDA certification from the Department. No agency may provide services until the Department has approved the application for certification. No agency may provide services without a current certificate. ( )

**02. Application for Certification.** All DDAs must apply for certification under Section 101 of these rules. ( )

**03. Restriction on Certification.** A business entity established by a parent for the sole purpose of

providing DDA services to his own child cannot be certified as a DDA. ( )

**04. Effect of Previous Revocation or Denial of a Certificate or License.** The Department is not required to consider the application of any operator, administrator, or owner of an agency who has had his license or certification denied or revoked until five (5) years have lapsed from the date of denial or revocation. ( )

**101. APPLICATION FOR INITIAL CERTIFICATION.**

**01. Open Application.** An application for certification from new agencies will be accepted on an open and continuous basis. ( )

**02. National Accreditation.** The Department may accept national accreditation in lieu of state certification for developmental disabilities agencies. ( )

**03. Content of Application for Certification.** Application for certification must be made on the Department-approved form available by contacting the Department as described in Subsection 005.06 of these rules. The application and supporting documents must be received by the Department at least sixty (60) days prior to the planned opening date. The application must include all of the following: ( )

- a.** Name, address, and telephone number of the agency; ( )
- b.** Types of services to be provided by the agency and the anticipated capacity of each service; ( )
- c.** The geographic service area of the agency as indicated by counties that will be served; ( )
- d.** The anticipated date for the initiation of services; ( )
- e.** An accurate and complete statement of all business names of the agency as filed with the Secretary of State, whether an assumed business name, partnership, corporation, limited liability company or other entity, that identifies each owner with more than five percent (5%) interest in the agency, and the management structure of the agency; ( )
- f.** A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency complies with pertinent state and federal requirements governing equal opportunity and nondiscrimination; ( )
- g.** A written code of ethics policy that must articulate basic values, ethical principles and standards for confidentiality, conflict of interest, exploitation, and inappropriate boundaries including an owner's in appropriate financial gain for services delivered in an agency's relationship with participants, relatives, or with other agencies. This code of ethics must reflect nationally-recognized standards of practice; ( )
- h.** A copy of the proposed organizational chart or plan for staffing of the agency; ( )
- i.** Staff qualifications including resumes, job descriptions, evidence of compliance with criminal history and background check requirements in Subsections 009.01 through 009.03 of these rules, and copies of state licenses and certificates for staff when applicable; ( )
- j.** Written transportation safety policies and procedures required in Section 501 of these rules; ( )
- k.** Staff and participant illness policy, communicable disease policy, and other health-related policies and procedures required in Section 510 of these rules; ( )
- l.** Written policies and procedures that address special medical or health care needs of participants required in Section 510 of these rules; ( )
- m.** Written medication policies and procedures to meet requirements in Section 511 of these rules; ( )

- n. Written admission, transfer, and transition policies and procedures; ( )
- o. Written description of the agency's quality assurance program developed to meet requirements in Section 900 of these rules; ( )
- p. Written participant grievance policies and procedures to meet requirements in Section 905 of these rules; ( )
- q. Written policies and procedures for reporting incidents to the adult or child protection authority and to the Department to meet requirements in Section 910 of these rules; ( )
- r. Written policies and procedures that address the development of participants' social skills and the management of participants' inappropriate behavior to meet requirements in Section 915 of these rules; ( )
- s. Written description of the program records system including a completed sample of a plan of service for participants, program implementation plan, and a monitoring record; ( )
- t. Written description of the fiscal record system including a sample of program billing; and ( )
- u. Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which certification is requested. ( )
- v. When center-based services are to be provided, the following are also required for each service location: ( )
  - i. A site review must be completed by the Department prior to the initiation of center based services; ( )
  - ii. Address and telephone number for each service location; ( )
  - iii. A checklist that verifies compliance with the ADA requirements under Section 500 of these rules; ( )
  - iv. Evidence of a local fire safety inspection; ( )
  - v. Evidence of compliance with local building and zoning codes, including occupancy permit; ( )
  - vi. Written policies and procedures covering the protection of all persons in the event of fire and other emergencies under Section 500 of these rules; and ( )
  - vii. Written policies and procedures regarding emergency evacuation procedures. ( )

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

**110. DEPARTMENT REVIEW OF APPLICATION FOR CERTIFICATION.**

Upon receipt of the application form and initial application materials, the Department will review the materials to determine if the agency has systems in place, that if properly implemented, would result in regulatory compliance. ( )

**111. DEPARTMENT'S WRITTEN DECISION REGARDING APPLICATION FOR CERTIFICATION.**

The Department will provide to the agency, within thirty (30) days of the date the completed application packet is received, a written decision regarding certification. An application is considered completed when all required documents are received and in compliance with these rules. ( )

**112. -- 114. (RESERVED).**



**115. CHANGES EACH DDA IS REQUIRED TO REPORT.**

**01. Change of Ownership or Physical Location. ( )**

**a.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change in ownership or physical location. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change. An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**b.** When an agency plans to provide center-based services in a new physical location, on a temporary or permanent basis, the Department will conduct a site review within thirty (30) days after the agency has relocated. Included with the notification required under Subsection 115.01.a. of this rule, the agency must provide: ( )

**i.** Evidence of review and approval by the local fire and building authorities, including issuance of occupancy permit; and ( )

**ii.** A checklist that verifies compliance with the ADA requirements under Section 500 of these rules. ( )

**02. Change in Geographic Service Area.** The DDA must notify the Department at least thirty (30) days prior to any anticipated change(s) in the geographic service area including counties served. In order to continue operation after any such anticipated change, the DDA must receive an updated certificate from the Department that reflects the change(s). An agency that fails to notify the Department of such changes is operating without a certificate. ( )

**116. -- 119. (RESERVED).**

**120. INITIAL ISSUANCE OF CERTIFICATE.**

**01. Initial Certification.** When the Department determines that all application requirements have been met, a certificate is issued for a period of up to six (6) months from the initiation of services. During this period, the Department evaluates the agency's ongoing capability to provide services and to comply with these rules. The Department will resurvey the agency prior to the end of the initial certification period. ( )

**02. Return of Certificate.** The certificate is the property of the state and must be returned to the state if it is revoked or suspended. ( )

**03. Certificate Not Transferable.** The certificate is issued only to the agency named thereon, only for the period specified on the certificate, and only to the owners and operators as expressed on the application submitted to the Department, and may not be transferred or assigned to any other person or entity. ( )

**04. Availability of Certificate.** The certificate must be posted in a conspicuous location in the DDA where it may be seen readily by the participants and members of the public. ( )

**05. Service Specific Certification.** The certificate must indicate the type of service the agency is qualified to provide prior to the delivery of service. Endorsements to the certificate include: ( )

**a.** Support Services; ( )

**b.** Intervention Services; or ( )

**c.** Intervention and Support Services. ( )

**121. -- 124. (RESERVED).**

**125. RENEWAL AND EXPIRATION OF THE CERTIFICATE.**

An agency must request renewal of its certificate no less than ninety (90) days before the expiration date of the

certificate, to ensure there is no lapse in certification. The request must contain any changes in optional services provided and outcomes of the internal quality assurance processes required under Section 900 of these rules. ( )

**01. Issuance of Certificate.** The Department issues certificates that are in effect for a period of no longer than three (3) years. ( )

**a.** The Department will survey each agency seeking renewal of its certificate. ( )

**b.** The Department will renew the certificate of an agency it finds to be in substantial compliance with statutes and these rules. ( )

**02. Renewal of Certificate.** A certificate may be renewed by the Department when it determines the agency requesting recertification is in substantial compliance with the provisions of this chapter of rules. A certificate issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ( )

**03. Expiration Without Timely Request for Renewal.** Expiration of a certificate without a timely request for renewal automatically rescinds the agency's certificate to deliver services under these rules. ( )

**126. TYPES OF CERTIFICATES ISSUED.**

**01. Provisional Certificate.** When a DDA is found to be out of substantial compliance with these rules but does not have deficiencies that jeopardize the health or safety of participants, a provisional certificate may be issued by the Department for up to a six- (6) month period. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. Before the end of the provisional certification period, the Department will determine whether areas of concern have been corrected and whether the agency is in substantial compliance with these rules. If so, then certification will be granted. If not, the certificate will be denied or revoked. ( )

**02. One-Year Certificate.** A one- (1) year certificate is issued by the Department when it determines the agency is in substantial compliance with these rules, but there may be areas of deficient practice which would impact the agency's ability to provide effective care. An agency is prohibited from receiving consecutive one- (1) year certificates. ( )

**03. Three-Year Certificate.** A three- (3) year certificate is issued by the Department when it determines the agency requesting certification is in substantial compliance with these rules and has no areas of deficient practice that would impact safe and effective care. ( )

**127. -- 299. (RESERVED).**

**RULE ENFORCEMENT PROCESS AND REMEDIES  
(Sections 300 Through 399)**

**300. ENFORCEMENT PROCESS.**

The Department may impose a remedy or remedies, when it determines a DDA has not met the requirements in this chapter of rules. ( )

**01. Determination of Remedy.** In determining which remedy or remedies to impose, the Department will consider the DDA's compliance history, change of ownership, the number of deficiencies, the scope and severity of the deficiencies, and the potential risk to participants. Subject to these considerations, any of the following remedies, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal: ( )

**a.** Require the DDA to submit a plan of correction that must be approved in writing by the Department; ( )

- b. Issue a provisional certificate with a specific date for correcting deficient practices; ( )
- c. Ban enrollment of all participants with specified diagnoses; ( )
- d. Ban any new enrollment of participants; ( )
- e. Summarily suspend the certificate and transfer participants; or ( )
- f. Revoke the DDA's certificate. ( )

**02. Immediate Jeopardy.** If the Department finds a DDA's deficiency or deficiencies immediately jeopardize the health or safety of its participants, the Department may summarily suspend the DDA's certificate. ( )

**03. Repeat Deficiencies.** If the Department finds a repeat deficiency in a DDA, it may impose any of the remedies listed in Subsection 300.01 of this rule. The Department may monitor the DDA on an "as needed" basis, until the DDA has demonstrated to the Department's satisfaction that it is in compliance with these rules. If so, then certification will be granted. If not, the certificate will be denied or revoked. ( )

**04. Failure to Comply.** If after three (3) months from the date of survey, the DDA has not fully implemented the DDA's approved Plan of Correction and remains out of compliance with the identified rule, the Department may impose one (1) or more of the remedies specified in Subsection 300.01 of this rule. ( )

### **301. REVOCATION OF CERTIFICATE.**

**01. Revocation of the DDA's Certificate.** The Department may revoke a DDA's certificate when persuaded by the preponderance of the evidence that the DDA is not in substantial compliance with the requirements in this chapter of rules. ( )

**02. Causes for Revocation of the Certificate.** The Department may revoke any DDA's certificate for any of the following causes: ( )

- a. The certificate holder has willfully misrepresented or omitted information on the application for certification or other documents pertinent to obtaining a certificate; ( )
- b. When persuaded by existing conditions in the agency that endanger the health or safety of any participant; ( )
- c. Any act adversely affecting the welfare of participants is being permitted, performed, or aided and abetted by the person or persons supervising the provision of services in the agency. Such acts include neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; ( )
- d. The provider has demonstrated or exhibited a lack of sound judgment that jeopardizes the health, safety, or well-being of participants; ( )
- e. The agency has failed to comply with any of the conditions of a provisional certificate; ( )
- f. The agency has one (1) or more major deficiencies. A major deficiency is a deficiency that endangers the health, safety, or welfare of any participant; ( )
- g. An accumulation of minor deficiencies that, when considered as a whole, indicate the agency is not in substantial compliance with these rules; ( )
- h. Repeat deficiencies by the agency of any requirement of these rules or of the Idaho Code; ( )
- i. The agency lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of participants served at the agency; ( )

**j.** The agency is not in substantial compliance with the provisions for services required in these rules or with the participants' rights under Section 905 of these rules; ( )

**k.** The agency is delivering services outside the scope of its certificate; or ( )

**l.** The certificate holder refuses to allow the Department or protection and advocacy agencies full access to the agency environment, agency records, or the participants. ( )

**302. -- 309. (RESERVED).**

**310. NOTICE OF ENFORCEMENT REMEDY.**

The Department will notify the following of the imposition of any enforcement remedy on a DDA: ( )

**01. Notice to DDA.** The Department will notify the DDA in writing, transmitted in a manner that will reasonably ensure timely receipt. ( )

**02. Notice to Public.** The Department will notify the public by sending the DDA printed notices to post. The DDA must post all the notices on the premises of the DDA in plain sight in public areas where they will readily be seen by participants and their representatives, including exits and common areas. The notices must remain in place until all enforcement remedies have been officially removed by the Department. ( )

**03. Notice to the Professional Licensing Boards.** The Department will notify professional licensing boards, as appropriate. ( )

**311. HEARING RIGHTS.**

A DDA may request a hearing following any enforcement action taken by the Department, under Section 003 of these rules. ( )

**312. -- 399. (RESERVED).**

**STAFFING REQUIREMENTS AND PROVIDER QUALIFICATIONS  
(Sections 400 Through 499)**

**400. GENERAL STAFFING REQUIREMENTS FOR AGENCIES.**

Each DDA is accountable for all operations, policy, procedures, and service elements of the agency. ( )

**01. Agency Administrator Duties.** The agency administrator is accountable for the overall operations of the agency including ensuring compliance with this chapter of rules, overseeing and managing staff, developing and implementing written policies and procedures, and overseeing the agency's quality assurance program. ( )

**02. Agency Administrator Qualifications.** An agency administrator must have two (2) years of supervisory or management experience in a developmental disabilities services setting. ( )

**03. Clinical Supervisor Duties.** A clinical supervisor must be employed by the DDA on a continuous and regularly scheduled basis and is responsible for: ( )

**a.** The supervision of service elements of the agency, including face to face supervision of agency staff providing direct care services. ( )

**b.** The observation and review of the direct services performed by all paraprofessional and professional staff on at least a monthly basis, or more often as necessary, to ensure staff demonstrate the necessary skills to correctly provide the service and support. ( )

**04. Clinical Supervisor Qualifications.** A person qualified to act as clinical supervisor of a DDA must meet the following requirements: ( )

**a.** Must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college; and ( )

**b.** Must provide documentation of one (1) year's supervised experience working with participants with developmental disabilities; and ( )

**c.** Must demonstrate competencies related to the requirements to provide intervention services as required by the Department; and ( )

**d.** Must complete a supervised practicum or additional coursework as required by the Department. ( )

**e.** The agency administrator and clinical supervisor can be the same individual. ( )

**05. Limitations.** An agency administrator or a clinical supervisor cannot provide direct services to participants enrolled with a DDA. ( )

**06. Professionals.** The agency must ensure that staff providing intervention services have the appropriate licensure or certification required to provide services. A person qualified to provide intervention services must also meet the following minimum requirements: ( )

**a.** Must hold at least a bachelor's degree in a health, human services, educational, behavioral science, or counseling field from a nationally accredited university or college; ( )

**b.** Must provide documentation of one (1) year's supervised experience working with participants with developmental disabilities; ( )

**c.** Must demonstrate competencies related to the requirements to provide intervention services as required by the Department; and ( )

**d.** Must complete a supervised practicum or additional coursework as required by the Department. ( )

**07. Paraprofessionals.** A person qualified to provide support services must meet the following minimum requirements: ( )

**a.** Meet the qualifications prescribed for the type of services to be rendered; ( )

**b.** Have received care giving instructions in the needs of the participant who will be provided the service; ( )

**c.** Demonstrate the ability to provide services according to a plan of service; ( )

**d.** Have good communication and interpersonal skills and the ability to deal effectively, assertively, and cooperatively with a variety of people; ( )

**e.** Be willing to accept training and supervision; and ( )

**f.** Be free of communicable diseases. ( )

**08. Records of Licenses or Certifications.** The agency must maintain documentation of the staff qualifications, including copies of applicable licenses and certificates. ( )

**09. Parent or Legal Guardian of Participant.** A DDA may not hire the parent or legal guardian of a participant to provide services to the parent's child. ( )

**401. -- 409. (RESERVED).**

**410. GENERAL TRAINING REQUIREMENTS FOR DDA STAFF.**

Each DDA must ensure that all training of staff specific to service delivery to the participant must be completed by a Clinical Supervisor. ( )

**01. Yearly Training.** The DDA must ensure that staff or volunteers who provide DDA services complete a minimum of twelve (12) hours of formal training each calendar year. Each agency staff providing services to participants must: ( )

**a.** Participate in fire and safety training upon employment and annually thereafter; and ( )

**b.** Be certified in CPR and first aid within ninety (90) days of hire and maintain current certification thereafter; and ( )

**i.** The agency must ensure that CPR and first-aid trained staff are present or accompany participants when services or DDA-sponsored activities are being provided. ( )

**ii.** Each agency staff person must have age appropriate CPR and first aid certification for the participants he serves. ( )

**c.** Be trained to meet any special health or medical requirements of the participants they serve. ( )

**02. Sufficient Training.** Training of all staff must include the following as applicable to their work assignments and responsibilities: ( )

**a.** Optimal independence of all participants is encouraged, supported, and reinforced through appropriate activities, opportunities, and training; ( )

**b.** Correct and appropriate use of assistive technology used by participants; ( )

**c.** Accurate record keeping and data collection procedures; ( )

**d.** Adequate observation, review, and monitoring of staff, volunteer, and participant performance to promote the achievement of participant goals and objectives; ( )

**e.** Participant's rights, advocacy resources, confidentiality, safety, and welfare; and ( )

**f.** The proper implementation of all policies and procedures developed by the agency. ( )

**03. Additional Training for Professionals.** Training of all professional staff must include the following as applicable to their work assignments and responsibilities: ( )

**a.** Correct and consistent implementation of all participants' individual program plans and implementation plans, to achieve individual objectives; ( )

**b.** Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques. ( )

**411. -- 419. (RESERVED).**

**420. VOLUNTEER WORKERS IN A DDA.**

If volunteers are utilized by a DDA, the agency must establish written policies and procedures governing the screening, training, and utilization of volunteer workers. ( )

**421. -- 499. (RESERVED).**

**FACILITY, SAFETY, AND HEALTH STANDARDS  
(Sections 500 Through 599)**

**500. FACILITY STANDARDS FOR AGENCIES PROVIDING CENTER-BASED SERVICES.**

The requirements in Section 500 of this rule, apply when an agency is providing center-based services. ( )

**01. Accessibility.** Agencies designated under these rules must be responsive to the needs of persons receiving services and accessible to persons with disabilities as defined in Section 504 of the federal Rehabilitation Act, the Americans with Disabilities Act (ADA) Accessibility Guidelines, and the uniform federal accessibility standard. The DDA must submit a completed checklist to the Department to verify compliance with the ADA requirements. This checklist must be provided to the Department with the application for certification. ( )

**02. Environment.** The facilities of the agency must be designed and equipped to meet the needs of each participant including factors such as sufficient space, equipment, lighting, and noise control. ( )

**03. Fire and Safety Standards.** ( )

**a.** Buildings on the premises must meet all local and state codes concerning fire and life safety that are applicable to a DDA. The owner or operator of a DDA must have the center inspected at least annually by the local fire authority and as required by local city or county ordinances. In the absence of a local fire authority, such inspections must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection must be made available to the Department upon request and must include documentation of any necessary corrective action taken on violations cited; ( )

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

**c.** On the premises where natural or man-made hazards are present, suitable fences, guards, or railings must be provided to protect participants; ( )

**d.** The premises must be kept free from the accumulation of weeds, trash, and rubbish; and ( )

**e.** Portable heating devices are prohibited except those units that have heating elements that are limited to not more than two hundred twelve degrees Fahrenheit (212°F). The use of unvented, fuel-fired heating devices of any kind is prohibited. All portable space heaters must be approved by Underwriters Laboratories as well as approved by the local fire or building authority and covered in the local fire or building inspections; and ( )

**f.** All hazardous or toxic substances must be properly labeled and stored under lock and key; and ( )

**g.** Water temperatures in areas accessed by participants must not exceed one hundred twenty degrees Fahrenheit (120°F); and ( )

**h.** There must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers must be posted near the telephone. ( )

**04. Evacuation Plans.** Evacuation plans must be posted throughout the center. Plans must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of the building. ( )

**a.** The DDA must conduct quarterly fire drills. At least two (2) times each year these fire drills must include complete evacuation of the building. The DDA must document the amount of time it took to evacuate the building; and ( )

**b.** A brief summary of each fire drill conducted must be written and maintained on file. The summary must indicate the date and time the drill occurred, participants and staff participating, problems encountered, and

corrective action(s) taken. ( )

**05. Food Safety and Storage.** ( )

**a.** When the agency provides food service for participants and meets the definition of a “food establishment,” in Section 39-1602, Idaho Code, the agency must comply with IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments.” Compliance is verified through inspection by the local District Health Department. ( )

**b.** When the agency does not provide food service for participants, it must keep refrigerators and freezers used to store participant lunches and other perishable foods in good repair and equipped with an easily readable thermometer. Refrigerators must be maintained at forty-one degrees Fahrenheit (41°F) or below. Freezers must be maintained at ten degrees Fahrenheit (10°F) or below. ( )

**c.** When medicines requiring refrigeration are stored in a food refrigerator, medicines must be stored in a package and kept inside a covered, leak-proof container that is clearly identified as a container for the storage of medicines. ( )

**06. Housekeeping and Maintenance Services.** ( )

**a.** The interior and exterior of the center must be maintained in a clean, safe, and orderly manner and must be kept in good repair; ( )

**b.** Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; ( )

**c.** The center must be maintained free from infestations of insects, rodents, and other pests; and ( )

**d.** The center must maintain the temperature and humidity within a normal comfort range by heating, air conditioning, or other means. ( )

**501. VEHICLE SAFETY REQUIREMENTS.**

Each DDA that transports participants must: ( )

**01. Preventative Maintenance Program.** Establish a preventative maintenance program for each agency-owned or leased vehicle, including vehicle inspections and other regular maintenance to ensure participant safety. ( )

**02. Transportation Safety Policy.** Develop and implement a written transportation safety policy. ( )

**03. Licenses and Certifications for Drivers and Vehicles.** Obtain and maintain licenses and certifications for drivers and vehicles required by public transportation laws, regulations, and ordinances that apply to the agency to conduct business and to operate the types of vehicles used to transport participants. Agencies must maintain documentation of appropriate licensure for all employees who operate vehicles. ( )

**04. Applicable Laws, Rules, and Regulations.** Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. ( )

**05. Liability Insurance.** Continuously maintain liability insurance that covers all passengers and meets the minimum liability insurance requirements under Idaho law. If an agency employee transports participants in the employee’s personal vehicle, the agency must ensure that adequate liability insurance coverage is carried to cover those circumstances. ( )

**502. -- 509. (RESERVED).**



**510. HEALTH REQUIREMENTS.**

- 01. Required Health Policies and Procedures.** Each DDA must develop policies and procedures that: ( )
- a.** Describe how the agency will ensure that each staff person is free from communicable disease; ( )
  - b.** Describe how the agency will protect participants from exposure to individuals exhibiting symptoms of illness. ( )
  - c.** Address any special medical or health care needs of particular participants being served by the agency. ( )
- 02. Services that Require Licensed Professionals.** Some services are of such a technical nature that they must always be performed by, or under the supervision of, a licensed nurse or other licensed health professional. The agency must ensure all such care is provided within the scope of the care provider's training and expertise. These limitations are outlined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." ( )
- 03. Employees.** Each employee who has direct contact with participants must be free of communicable disease and infected skin lesions while on duty. ( )
- 04. Incident Reports.** Each DDA must complete incident reports for all accidents, injuries, or other events that endanger a participant or require the participant to be hospitalized. Each report must document the adult participant's legal guardian, if he has one, or, in the case of a minor, the minor's parent or legal guardian, has been notified or that the participant's care provider has been notified if the participant or the participant's parent or legal guardian has given the agency permission to do so. A documented review by the agency of all incident reports must be completed at least annually with written recommendations. These reports must be retained by the agency for five (5) years. ( )
- 05. Reporting Incidents as Mandatory Reporters.** DDA's must notify appropriate authorities of any health- and safety-related incident they are obligated to report to adult or child protection authorities, or law enforcement as mandatory reporters as required in Section 910 of these rules. ( )
- 06. Reporting Incidents to the Department.** If a DDA reports a health- and safety-related incident to protective or legal authorities, they must also notify the Department of this incident within twenty-four (24) hours. ( )

**511. MEDICATION STANDARDS AND REQUIREMENTS.**

- 01. Medication Policy.** Each DDA must develop written medication policies and procedures that outline in detail how the agency will ensure appropriate handling and safeguarding of medications. An agency that chooses to assist participants with medications must also develop specific policies and procedures to ensure this assistance is safe and is delivered by qualified, fully-trained staff. Documentation of training must be maintained in the staff personnel file. ( )
- 02. Handling of Participant's Medication.** ( )
- a.** The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately, unless in a Mediset, blister pack, or similar system. ( )
  - b.** Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the participant's record. Medisets filled and labeled by a pharmacist or licensed nurse can serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use can also serve as written evidence of an order from the physician or other ( )

practitioner of the healing arts. ( )

**c.** The agency is responsible to safeguard the participant's medications while the participant is at the agency or in the community. ( )

**d.** Medications that are no longer used by the participant must not be retained by the agency or agency staff for longer than thirty (30) calendar days. ( )

**03. Self-Administration of Medication.** When the participant is responsible for administering his own medication without assistance, a written approval stating that the participant is capable of self-administration must be obtained from the participant's primary physician or other practitioner of the healing arts. The participant's record must also include documentation that a physician or other practitioner of the healing arts, or a licensed nurse has evaluated the participant's ability to self-administer medication and has found that the participant: ( )

**a.** Understands the purpose of the medication; ( )

**b.** Knows the appropriate dosage and times to take the medication; ( )

**c.** Understands expected effects, adverse reactions or side effects, and action to take in an emergency; and ( )

**d.** Is able to take the medication without assistance. ( )

**04. Assistance with Medication.** An agency may choose to assist participants with medications; however, only a licensed nurse or other licensed health professional may administer medications. Prior to unlicensed agency staff assisting participants with medication, the following conditions must be in place: ( )

**a.** 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, a course approved by the Idaho State Board of Nursing, or other Department-approved training; ( )

**b.** The participant's health condition is stable; ( )

**c.** The participant's health status does not require nursing assessment, as outlined in IDAPA 23.01.01, "Rules for the Idaho Board of Nursing," before receiving the medication or nursing assessment of the therapeutic or side effects after the medication is taken; ( )

**d.** The medication is in the original pharmacy-dispensed container with proper label and directions, or in an original over-the-counter container, or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; ( )

**e.** Written and oral instructions from a licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; ( )

**f.** Written instructions are in place that outline required documentation of assistance and who to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; ( )

**g.** Procedures for disposal or destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course. ( )

**05. Administration of Medications.** Only a licensed nurse or an other licensed health professional working within the scope of his license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." ( )

**512. -- 519. (RESERVED).**

**520. SETTING REQUIREMENTS FOR AGENCIES DELIVERING COMMUNITY-BASED SERVICES.**

The requirements in Section 520 of these rules apply when a DDA is providing community-based services. ( )

**01. Accessibility.** The community-based setting must be accessible, safe, and appropriate for each participant. ( )

**02. Environment.** The community-based setting must be designed and equipped to meet the needs of each participant including factors such as sufficient space, equipment, lighting, and noise control. ( )

**03. Training Group Session Size.** The community-based services must occur in integrated, inclusive settings and with no more than three (3) participants per trainer at each training session. ( )

**04. Image Enhancement.** The community-based services must enhance each participant's social image and personal competencies. ( )

**05. Promote Inclusion.** The community-based services must promote the participant's inclusion in the natural community. ( )

**06. Natural Environment.** The environment where an activity or behavior naturally occurs that is typical for peers of the participant's age, such as the community where they live and according to the service environment indicated. ( )

**521. -- 599. (RESERVED).**

**PROGRAM REQUIREMENTS  
(Sections 600 Through 699)**

**600. PROGRAM DOCUMENTATION REQUIREMENTS.**

Each DDA must maintain records for each participant the agency serves. Each participant's record must include documentation of the participant's involvement in and response to the services provided. ( )

**01. Requirements for Participants Seven Through Sixteen.** For participants ages seven (7) through sixteen (16), the DDA must document that the child has been referred to the local school district. ( )

**02. Requirements for Participants Three to Twenty-One.** For participants ages three (3) to twenty-one (21), the following applies: ( )

**a.** For participants who are children enrolled in school, the local school district is the lead agency as required under Individuals with Disabilities Education Act (IDEA), Part B. The DDA must inform the child's home school district if it is serving the child during the hours that school is typically in session. ( )

**i.** The DDA participant's record must contain an Individualized Education Plan (IEP), including any recommendations for an extended school year. ( )

**ii.** The DDA must document that it has provided a current copy of the child's plan of service to the child's school. ( )

**iii.** The DDA may provide additional services beyond those the school is obligated to provide during regular school hours. ( )

**b.** For participants of mandatory school attendance age, seven (7) through sixteen (16), who are not enrolled in school, the DDA must document that it has referred the child to the local school district for enrollment in educational and related services under the provisions of the Individuals with Disabilities Education Act (IDEA).

( )

**601. RECORD REQUIREMENTS.**

Each DDA certified under these rules must maintain accurate, current, and complete participant and administrative records. These records must be maintained for at least five (5) years. Each participant record must support the individual's choices, interests, and needs that result in the type and amount of each service provided. Each participant record must clearly document the date, time, duration, and type of service, and include the signature of the individual providing the service, for each service provided. Each signature must be accompanied both by credentials and the date signed. Each agency must have an integrated participant records system to provide past and current information and to safeguard participant confidentiality under these rules. ( )

**01. General Records Requirements.** Each participant record must contain the following information: ( )

**a.** An order by a physician or other practitioner of the healing arts for each DDA service the participant is receiving on an ongoing basis; ( )

**b.** Authorized plan of service as required for the participant. ( )

**c.** Program implementation plans that include participant's name, baseline statement, measurable objectives, written instructions to staff, service environments, target date, and corresponding program documentation and monitoring records when intervention services are delivered to the participant. ( )

**d.** When a participant has had a psychological or psychiatric assessment, the results of the assessment must be maintained in the participant's record. ( )

**e.** Current profile sheet containing the identifying information about the participant, including residence and living arrangement, contact information, emergency contacts, physician, current medications, allergies, special dietary or medical needs, and any other information required to provide safe and effective care; ( )

**f.** Current medical, social, and developmental information and assessments that are no more than three hundred sixty-five (365) days old; and ( )

**g.** Intervention evaluation. An evaluation must be completed or obtained by the agency prior to the delivery of the intervention service. The evaluation must include the results, test scores, and narrative reports signed with credentials and dated by the respective evaluators. ( )

**02. Status Review.** Written documentation that identifies the participant's progress toward goals defined on his plan, and includes why the participant continues to need the service. ( )

**03. Case Record Organization.** The case record must be divided into program and discipline areas identified by tabs, including plan of service, medical, social, psychological, speech, and developmental, as applicable. ( )

**602. -- 609. (RESERVED).**

**610. ACCESSIBILITY OF AGENCY RECORDS.**

The DDA and records required under these rules must be accessible to the Department during normal operations of the agency for the purpose of inspection and copying, with or without prior notification, under Section 39-4605(4), Idaho Code. ( )

**611. -- 899. (RESERVED).**

**QUALITY ASSURANCE, PARTICIPANT RIGHTS, REQUIRED POLICIES, ETC.  
(Sections 900 Through 999)**

**900. REQUIREMENTS FOR AN AGENCY'S QUALITY ASSURANCE PROGRAM.**

Each DDA defined under these rules must develop and implement a quality assurance program. ( )

**01. Purpose of the Quality Assurance Program.** The quality assurance program is an ongoing, proactive, internal review of the DDA designed to ensure: ( )

**a.** Services provided to participants produce measurable outcomes, are high quality, and are consistent with individual choices, interests, needs, and current standards of practice; ( )

**b.** Sufficient staff and material resources are available to meet the needs of each person served;( )

**c.** The environment in which services are delivered is safe and conducive to learning; ( )

**d.** Skill training activities are conducted in the natural setting where a person would commonly learn and utilize the skill, whenever appropriate; and ( )

**e.** The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. ( )

**02. Quality Assurance Program Components.** Each DDA's written quality assurance program must include: ( )

**a.** Goals and procedures to be implemented to achieve the purpose of the quality assurance program as described in Subsection 900.01 of this rule; ( )

**b.** Person, discipline, or department responsible for each goal; ( )

**c.** A system to ensure the correction of problems identified within a specified period of time; ( )

**d.** A method for assessing participant satisfaction annually including minimum criteria for participant response and alternate methods to gather information if minimum criteria is not met; ( )

**e.** An annual review of the agency's code of ethics, identification of violations, and implementation of an internal plan of correction; ( )

**f.** An annual review of agency's policy and procedure manual to specify date and content of revisions made; and ( )

**g.** Review of participant progress and revisions when changes in daily activities or specific implementation procedures are indicated by the professional. ( )

**03. Additional Requirements.** The quality assurance program must ensure that DDA services provided to participants: ( )

**a.** Are developed with each participant, parent, or legal guardian, where applicable, and actively promote the participation, personal choice, and preference of the participant; ( )

**b.** Are age appropriate; ( )

**c.** Promote integration; ( )

**d.** Provide opportunities for community participation and inclusion; ( )

**e.** Offer opportunities for participants to exercise their rights; and ( )

**f.** Are observable in practice. ( )

**901. -- 904. (RESERVED).**

**905. PARTICIPANT RIGHTS.**

Each DDA must ensure the rights provided under Sections 66-412 and 66-413, Idaho Code, as well as the additional rights listed in Subsection 905.02 of this rule, for each participant receiving DDA services. ( )

**01. Participant Rights Provided Under Idaho Code.** Section 66-412, Idaho Code, provide the following rights for participants: ( )

- a.** Humane care and treatment; ( )
- b.** Not be put in isolation; ( )
- c.** Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; ( )
- d.** Be free of mental and physical abuse; ( )
- e.** Voice grievances and recommend changes in policies or services being offered; ( )
- f.** Practice his own religion; ( )
- g.** Wear his own clothing and retain and use personal possessions; ( )
- h.** Be informed of his medical and habilitative condition, of services available at the agency, and the charges for the services; ( )
- i.** Reasonable access to all records concerning himself; ( )
- j.** Refuse services; and ( )
- k.** Exercise all civil rights, unless limited by prior court order. ( )

**02. Additional Participant Rights.** The agency must also ensure the following rights for each participant: ( )

- a.** Privacy and confidentiality; ( )
- b.** Receive courteous treatment; ( )
- c.** Receive a response from the agency to any request made within a reasonable time frame; ( )
- d.** Receive services that enhance the participant's social image and personal competencies and, whenever possible, promote inclusion in the community; ( )
- e.** Refuse to perform services for the agency. If the participant is hired to perform services for the agency the wage paid must be consistent with state and federal law; ( )
- f.** Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; ( )
- g.** All other rights established by law; and ( )
- h.** Be protected from harm. ( )

**03. Method of Informing Participants of Their Rights.** Each DDA must ensure and document that each person receiving services is informed of his rights in the following manner: ( )

**a.** Upon initiation of services, the DDA must provide each participant and his parent or guardian, where applicable, with a packet of information which outlines rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This packet must be written in easily understood terms. ( )

**b.** When providing center-based services, a DDA must prominently post a list of the rights contained in this chapter. ( )

**c.** The DDA must provide each participant and his parent or guardian, where applicable, with a verbal explanation of their rights in a manner that will best promote individual understanding of these rights. ( )

**d.** Parents of infants and toddlers under three (3) years of age must be provided with a copy of their parental rights consistent with the requirements of 34 CFR 303.400 through 303.460, and 303.510 through 303.512. ( )

**906. -- 909. (RESERVED).**

**910. OBLIGATION TO REPORT ABUSE, NEGLECT, EXPLOITATION, AND INJURIES.**

Each agency must report all confirmed or suspected incidents of mistreatment, neglect, exploitation, or abuse of participants to the adult or child protection authority in accordance with the "Child Protective Act," Section 16-1619, Idaho Code, and the "Adult Abuse, Neglect and Exploitation Act," Section 39-5303, Idaho Code, or law enforcement as mandatory reporters. ( )

**911. -- 914. (RESERVED).**

**915. POLICIES AND PROCEDURES REGARDING DEVELOPMENT OF SOCIAL SKILLS AND MANAGEMENT OF INAPPROPRIATE BEHAVIOR.**

Each DDA must develop and implement written policies and procedures that address the development of participants' social skills and management of inappropriate behavior. These policies and procedures must include statements that: ( )

**01. Comprehensive Assessment of Behavior.** Ensure a comprehensive assessment of participants' behaviors. ( )

**02. Positive Social Skills.** Focus on developing or increasing participants' positive social skills. ( )

**03. Prevention Strategies.** Ensure and document the use of positive approaches to increase social skills and decrease in appropriate behavior while using least restrictive alternatives and consistent, proactive responses to behaviors. ( )

**04. Function of Behavior.** Address the possible underlying causes or function of a behavior and identify what participants may be attempting to communicate by the behavior. ( )

**05. Behavior Replacement.** For intervention services, ensure that programs to assist participants with managing inappropriate behavior include teaching of alternative adaptive skills to replace the inappropriate behavior. ( )

**06. Protected Rights.** Ensure the safety, welfare, and human and civil rights of participants are adequately protected. ( )

**07. Objectives and Plans.** For intervention services, ensure that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior, and any other behaviors which significantly interfere with participants' independence or ability to participate in the community. Ensure that reinforcement selection is individualized and appropriate to the task and not contraindicated for medical reasons. ( )

**08. Participant Involvement.** Ensure plans developed by the DDA involve the participants, whenever possible, in developing the plan to increase social skills and to manage inappropriate behavior. ( )

**09. Written Informed Consent.** Ensure programs developed by an agency to assist participants with managing inappropriate behavior are conducted only with the written informed consent of a participant, parent, or legal guardian, where applicable. When programs used by the agency are developed by another service provider the agency must obtain a copy of the informed consent. ( )

**10. Review and Approval.** Ensure programs developed by an agency to manage inappropriate behavior are only implemented after the review and written approval of the professional. If the program contains restrictive or aversive components, a licensed individual working within the scope of their license, must also review and approve, in writing, the plan prior to implementation. When programs implemented by the agency are developed by another service provider, the agency must obtain a copy of these reviews and approvals. ( )

**11. Appropriate Use of Interventions.** Ensure interventions used to manage participants' inappropriate behavior are never used: ( )

- a. For disciplinary purposes; ( )
- b. For the convenience of staff; ( )
- c. As a substitute for a needed training program; or ( )
- d. By untrained or unqualified staff. ( )

**916. -- 919. (RESERVED).**

**920. ANNUAL PLAN.**

Each agency is required, as needed, to participate in the development of the state developmental disabilities plan by completing an annual needs assessment survey regarding services for Idahoans with developmental disabilities. ( )

**921. -- 999. (RESERVED).**



# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.04.11 - DEVELOPMENTAL DISABILITIES AGENCIES

### DOCKET NO. 16-0411-1001 - (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 Title 39, Chapter 48, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Three public hearings concerning this rulemaking will be held as follows:

| Wednesday, September 15, 2010<br>6:00 p.m. PDT   | Wednesday, September 15, 2010<br>6:00 p.m. MDT  | Wednesday, September 15, 2010<br>6:00 p.m. MDT   |
|--|---|--|
| Dept. of Health & Welfare-Reg. 1<br>1120 Ironwood Drive, Suite 102<br>Lower Level Large Conf. Rm.<br>Coeur d'Alene, ID | Dept. of Health & Welfare-Reg. 4<br>1720 Westgate Drive<br>Suite A, Room 131<br>Boise, ID | Dept. Health & Welfare-Reg. 7<br>150 Shoup Avenue<br>2nd Floor, Large Conf. Rm.<br>Idaho Falls, ID |

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

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

This chapter is being repealed under this docket and rewritten under IDAPA 16.03.21, "Developmental Disabilities Agencies," Docket 16-0321-1001 in this bulletin. This rewritten chapter will contain the Licensing and Certification requirements for developmental disabilities agencies. With this repeal, the benefits and services have been moved into Department rules under Docket 16-0310-1002, "Medicaid Enhanced Plan Benefits," and Docket 16-0313-1002, "Consumer-Directed Services," in this bulletin.

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders in a meeting held on Wednesday, July 14, 2010. The notice of this negotiated rulemaking published in the [July 7, 2010, Idaho Administrative Bulletin, Vol. 10-7, page 35](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Randy May at (208) 334-5747.

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 September 22, 2010.

DATED this 11th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor

P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**IDAPA 16.04.11 IS BEING REPEALED IN ITS ENTIRETY**

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1001

### 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 16-1629, 56-202(b), and 56-1003, Idaho Code; Section 56-803, Idaho Code, re: adoption and guardian assistance; Title IV, Parts B and E of the Social Security Act, as amended by Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) re: guardianship assistance; and Title IV, Part E of the Social Security Act, Section 475(a)(18)(A)&(B) as amended by the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (P.L. 103-382, 42 U.S.C. 622).

**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 September 15, 2010.

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 order to bring these rules into compliance with the Department's Title IV-E State Plan, rules are being added that:

(1) Address Title IV-E relative guardianship assistance in order to provide for a permanent living situation with a relative for older children, and (2) further detail the requirements of the Multiethnic Placement Act (MEPA).

The Fostering Connections to Success and Increasing Adoptions Act of 2008 has changed eligibility for Title IV-E adoption assistance. Within the next eight years (2010-2018), those changes could greatly expand the number of adopted children eligible for adoption assistance subsidies. As a result, it is being clarified in rule who is eligible to receive an adoption subsidy, so those children who are most in need will continue to be able to receive assistance.

In order to bring the rules into alignment with current practice, (1) the rules regarding contact requirements for foster children in out-of-state care are being clarified, (2) risk-oriented language in rule is being replaced with safety-oriented language, and (3) the requirement for parent signature on the alternate care plan is being removed from rules.

Since the category of "professional foster care" has been eliminated from rule, the Department is replacing this term with an actual dollar amount that establishes the maximum adoption assistance for children in foster care who are eligible for personal care services. This will simplify the foster care rate structure and reduce confusion for foster parents.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. These rule changes are being made to bring the rules into alignment with the Department's Title IV-E State Plan and applicable federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 September 22, 2010.

DATED this 4th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720, Boise, ID 83720-0036  
phone: (208) 334-5564; fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0601-1001**

**010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01.** **Adoption and Safe Families Act of 1997 (P.L. 105-89) (ASFA).** Federal law whose purpose is to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. ( )

**02.** **Adoption Assistance.** Funds provided to adoptive parent(s) of a child who has special needs or who could not be adopted without financial or medical assistance. (5-8-09)

**03.** **Adoption Services.** Protective services through which a child is provided with a permanent home, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (5-8-09)

**04.** **Alternate Care.** Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment, and institutional resources, under the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act, 25 U.S.C. Sections 1901-1963. (5-8-09)

**05.** **Alternate Care Plan.** A federally-required component of the Family Plan for a child in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, the child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical, and other information important to the day-to-day care of the child. (5-8-09)

**06.** **Area of Concern.** Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. (3-30-07)

**07.** **Assessment.** The first step in the planning process, the outcome of which is the systematic documentation of the family's areas of concern, their strengths, and desired outcomes. (3-30-07)

**08.** **Board.** The Idaho State Board of Health and Welfare. (3-18-99)

~~089.~~ **Case Management.** A change-oriented service to families that ~~ass~~ensures and coordinates the provision of family ~~risk~~ ongoing assessment, family service planning, treatment, planning for permanency, protection, advocacy, review and reassessment, documentation, and timely closure of a case. (5-8-09)(    )

~~0910.~~ **Certified Adoption Professional (formerly “qualified individual”).** An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

~~11.~~ **Child and Family Services.** Those programs and services provided to families and children administered by the Department in accordance with these rules. (    )

~~102.~~ **Child Protection.** All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter must be served without regard to income. (3-30-07)

~~113.~~ **Child Protective Services.** Services provided in response to potential, alleged, or actual abuse, neglect, or abandonment of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the “Child Protective Act.” (5-8-09)

~~124.~~ **Compact Administrator.** The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; “Interstate Compact on the Placement of Children,” Section 16-1901 et seq., Idaho Code; or the “Interstate Compact on Adoption and Medical Assistance,” Section 39-7501 et seq., Idaho Code. (5-8-09)

~~135.~~ **Daycare for Children.** Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child’s or children’s own home or homes. (3-18-99)

~~146.~~ **Department.** The Idaho Department of Health and Welfare. (3-18-99)

~~157.~~ **Deprivation.** One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the principal wage earner parent. (3-30-07)

~~168.~~ **Desired Result.** Behaviorally-specific description of how the family circumstances will look when the ~~risk~~ safety factors that brought a child and family to the Department’s attention, either no longer exist or are significantly reduced. (3-30-07)(    )

~~179.~~ **Director.** The Director of the Idaho Department of Health and Welfare or his designee. (3-30-07)

~~1820.~~ **Extended Family Member of an Indian Child.** As defined by the law, or custom of an Indian child’s tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

**011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.**  
For the purposes of these rules, the following terms are used: (5-8-09)

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

~~02.~~ **Child and Family Services.** *Those programs and services directed to families and children,*

*administered by the Department and provided in accordance with these rules.*

*(5-8-09)*

**032. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

**043. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

**054. Family (Case) Plan.** Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

**065. Family Services Worker.** Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

**06. Federally-Funded Guardianship Assistance for Relatives.** Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. ( )

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

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

~~**09. Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (3-30-07)~~

~~**10. Immediate Safety Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further Child and Family Services response. (5-8-09)~~

~~**109. Independent Living.** Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)~~

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

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

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

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

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

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

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

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1)

tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

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

**175. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

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

**197. Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

**2018. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

**012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.**

For the purposes of these rules, the following terms are used: (5-8-09)

**01. Legal Guardianship.** A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative ~~caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights.~~ (~~5-3-03~~)( )

**02. Licensed.** Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-30-07)

**03. Licensing.** See IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 100. (3-30-07)

**04. Medicaid.** See "Title XIX." (3-30-01)

**05. Multiethnic Placement Act of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

**06. Parent.** A person who, by birth or through adoption, is considered legally responsible for a child. The term "legal guardian" is not included in the definition of parent. (5-8-09)

**07. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**08. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and

medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

**09. P.L. 96-272.** Public Law 96-272, the federal “Adoption Assistance and Child Welfare Act of 1980.” (3-30-01)

**10. P.L. 105-89.** Public Law 105-89, the federal “Adoptions and Safe Families Act of 1997,” amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

**11. Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

**12. Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

**a.** A member of the Indian child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child-rearing practices; (3-18-99)

**b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child’s tribe; (3-18-99)

**c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community; or (3-18-99)

**d.** An individual regarded as being a qualified expert who is referred by the Indian child’s tribe, the Department’s ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

**13. Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)

**14. Relative Guardian.** A relative who is appointed a child’s legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. ( )

**145. Reservation.** Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d’Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

**156. Respite Care.** Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a licensed or agency-approved caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

**167. Responsible Party.** ~~A n individual such as a~~ Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. ~~(5-8-09)~~( )

**013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.**  
For the purposes of these rules, the following terms are used: (5-8-09)

**01. SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

**02. Safety Assessment.** A process and standardized tool for contact between a family services worker and a family to objectively determine if safety threats, or immediate service needs exist that require further Child and

Family Services response. ( )

**023. Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

**04. State-Funded Guardianship Assistance.** Benefits described in Subsection 702.04 and Section 704 of these rules provided to a legal guardian for the support of a child who meets the eligibility criteria. ( )

**035. TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

**046. Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

**057. Title IV-E Foster Care.** Child care provided in lieu of parental care in a foster home, children's agency, or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (5-8-09)

**068. Title XIX (Medicaid).** Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs." (3-18-99)

**079. Title XXI.** (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

**0810. Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

**0911. Unmarried Parents' Services.** Services aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for any unmarried parents who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (5-8-09)

**102. Voluntary Services Agreement.** A written and executed agreement between the Department and parents or legal guardians regarding the goal, areas of concern, desired results, and task responsibility, including payment. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. CORE CHILD AND FAMILY SERVICES.**

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

**01. Crisis Services.** Crisis Services are an immediate response to ~~ass~~ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess ~~risk~~ safety and place in alternate care, if necessary, to ~~ass~~ensure safety for the child. (5-8-09)( )

**02. Screening Services.** Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

**03. Assessment and Safety/Service Planning Services.** Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is



developed ~~together~~ by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (5-8-09)(\_\_\_\_\_)

**04. Preventative Services.** Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

**05. Court-Ordered Services.** These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

**06. Alternate Care (Placement) Services.** Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, approved or specified by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (5-8-09)

**07. Community Support Services.** Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

**08. Interstate Compact on Out-of-State Placements.** Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

**09. Independent Living.** Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

**a. Eligibility Requirements for Current Foster Youth.** To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be fifteen (15) to nineteen (19) years of age; (5-8-09)

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

**b. Eligibility Requirements for Former Foster Youth.** To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has

reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (5-8-09)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

c. Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

**10. Adoption Services.** Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

**11. Administrative Services.** Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

a. Child care licensing; (3-30-01)

b. Daycare licensing; (3-30-01)

c. Community development; and (5-8-09)

d. Contract development and monitoring. (5-8-09)

**031. -- 049. (RESERVED).**

**050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.**

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ensure timely permanency for children and to protect the rights of children, their families and their tribes. (~~3-30-01~~)(\_\_\_\_)

**01. Reasonable Efforts.** Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with ~~their~~ his family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (~~5-8-09~~)(\_\_\_\_)

a. Efforts to prevent or eliminate the need for a child to be removed from his home; (5-8-09)

b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)

c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

**02. Active Efforts.** For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. (5-3-03)

**03. ICWA Preferences.** If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (3-18-99)

**04. Least Restrictive Setting.** Efforts will be made to ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child.

(5-8-09)( )

**05. Legal Requirements for Indian Children.** In the case of an Indian child, notice of the pending proceeding must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement.

(3-30-07)

**06. Visitation for Child's Parent(s) or Legal Guardian(s).** Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety.

(3-30-07)

**07. Notification of Change in Placement.** Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA.

(5-3-03)

**08. Notification of Change in Visitation.** Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care.

(5-3-03)

**09. Notification of Right to Participate and Appeal.** Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation.

(3-30-07)

**10. ICWA Placement Preferences.** Compliance with the foster care placement preferences of the Indian Child Welfare Act.

(3-18-99)

**11. Compliance with Requirements of the Multiethnic Placement Act and of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996.**

(3-30-01)( )

**a.** MEPA/IEP prohibits states and other entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin.

( )

**b.** MEPA/IEP prohibits these states and other entities from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin;

( )

**c.** MEPA/IEP requires that, to remain eligible for federal assistance for their child welfare programs, states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes;

( )

**d.** A child's race, color, or national origin can not be routinely considered as a relevant factor in assessing the child's best interests;

( )

**e.** Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and

( )

**f.** Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978.

( )

- 12. Family Decision-Making and Plan Development.** (3-30-01)
- a.** A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)
- b.** Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)
- c.** Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)
- 13. Compelling Reasons.** Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)
- 14. ASFA Placement Preferences.** The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)
- a.** Return home if safe to do so; (3-30-01)
- b.** Adoption or legal guardianship by a relative or kin; (5-8-09)
- c.** Adoption or legal guardianship by non-relative; (3-30-01)
- d.** Another planned permanent living arrangement such as long-term foster care. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. ALTERNATE CARE CASE MANAGEMENT.**

Case management must continue while the child is in alternate care and must ensure the following: (3-30-07)

**01. Preparation for Placement.** Preparing a child for placement in alternate care is the joint responsibility of the child's family, the child (when appropriate), the family services worker, and the alternate care provider. (3-30-07)

**02. Information for Alternate Care Provider.** The Department and the family must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: (3-30-07)

- a.** Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems, and any other pertinent health information concerning the child; (3-18-99)
- b.** The name of the child's doctor; (3-18-99)
- c.** The child's current functioning and behaviors; (3-18-99)

- d.** The child's history and past experiences and reasons for placement into alternate care; (3-30-01)
- e.** The child's cultural and racial identity; (3-18-99)
- f.** Any educational, developmental, or special needs of the child; (3-18-99)
- g.** The child's interest and talents; (3-18-99)
- h.** The child's attachment to current caretakers; (3-18-99)
- i.** The individualized and unique needs of the child; (3-18-99)
- j.** Procedures to follow in case of emergency; and (3-18-99)
- k.** Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

**03. Consent for Medical Care.** Parent(s) or legal guardian(s) must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent must be documented in the family case record. (3-30-07)

**04. Financial Arrangements.** The family services worker must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (3-30-07)

**05. Contact with Child.** The family, the family services worker, and the alternate care provider must establish a schedule for frequent and regular visits with the child by the family and by the family services worker or designee. (5-8-09)

**a.** Face-to-face contact with a child by the responsible party must occur at least monthly or more frequently depending on the needs of the child or the provider, or both, and the stability of the placement. Face-to-face contact may be made in settings other than where the child resides as long as contact between the responsible party and the child occurs where the child resides a minimum of once every sixty (60) days. (5-8-09)

**b.** The Department will have strategies in place to detect abuse, neglect, or abandonment of children in alternate care. (5-8-09)

**c.** Face-to-face contact between the responsible party and a child placed in an in-state group or residential care facility, located a significant distance from the responsible party's office is required a minimum of once every ninety (90) days. Communication by phone between the responsible party and the child must occur at least monthly. (5-8-09)

**d.** Frequent and regular contact between the child and parents and other family members will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures, and the use of video and other technology as may be relevant and available. (3-30-07)

**e.** Children who are in out-of-state placements through the Interstate Compact on the Placement of Children (ICPC) must be contacted face-to-face no less frequently than every six (6) months, by either the responsible party in Idaho, by a representative of the state in which the child is placed, or by a private agency contracted by either. Idaho will request the state in which the child is placed to have face-to-face contact with the child on a monthly basis. If the policy of the state in which the child is placed allows only for face-to-face contact every six (6) months, the responsible party in Idaho will contact the child and the child's caregiver each month by phone to confirm the child's safety and well-being. (~~5-8-09~~)( )

**06. Discharge Planning.** Planning for discharge from alternate care will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's

return home or to the community. (5-8-09)

**07. Transition Planning.** Planning for discharge from alternate care into a permanent placement will be developed with all concerned parties. Discharge planning will be initiated at the time of placement and completed prior to the child's return home or to the community. (3-30-07)

**08. Financial and Support Services.** As part of the discharge planning, Departmental resources will be coordinated to expedite access to Department financial and medical assistance and community support services. (3-30-07)

**406. -- 421. (RESERVED).**

**422. ALTERNATE CARE PLANNING.**

The elements of ~~A~~alternate care planning ~~is~~ are mandated by the provisions of ~~Sections 471(a)(15) and 475, P.L. 96-272~~ Title IV-E, Sections 471(a)(16), 475(1), and 475(5)(A) and (D) of the Social Security Act. (~~3-18-99~~)( )

**01. Alternate Care Plan Required.** Each child receiving alternate care under the supervision of the state must have a standardized written alternate care plan. (5-8-09)

**a.** The purpose of the alternate care plan is to facilitate the safe return of the child to his ~~or her~~ own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (~~5-8-09~~)( )

**b.** The alternate care plan must be included as part of the family service plan. (5-8-09)

**02. Written Alternate Care Plan.** The Department must ~~have~~ completed a written alternate care plan within thirty (30) days after a child has been placed in alternate care and at least every six (6) months thereafter. A copy of the alternate care plan will be provided to the child's parent, legal guardian, foster parent, Indian custodian, tribe, and to the child if he is over twelve (12) years of age. (~~5-8-09~~)( )

~~**a.** A parent or legal guardian and the child, to the extent possible, are to be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement.~~ (5-8-09)

~~**b.** The alternate care plan must include documentation that a parent or legal guardian have been provided written notification of:~~ (5-8-09)

~~**i.** Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule;~~ (3-18-99)

~~**ii.** Any change of placement, when the child is relocated to another alternate care or institutional setting immediately, and no later than seven (7) days after placement; and~~ (5-8-09)

~~**iii.** Their right to discuss any changes and to seek recourse if they disagree with any changes in visitation or other alternate care arrangements.~~ (3-30-01)

~~**e.** All parties involved in developing the alternate care plan, including the alternate care provider, parent or legal guardian, and the child, if of appropriate developmental age:~~ (5-8-09)

~~**i.** Will be asked by the Department to sign the alternate care plan which includes a statement indicating that they have read and understood the alternate care plan; and~~ (5-8-09)

~~**ii.** Will receive a copy of the alternate care plan from the Department.~~ (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**553. ASSIGNING REPORTS FOR ~~RISK~~ SAFETY ASSESSMENT.**

The Department must assign all reports of possible abuse, neglect, or abandonment of children for ~~risk~~ safety assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt. (5-8-09)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**555. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.**

In all Priority I and II cases where the alleged victim of abuse, neglect, or abandonment is through the age of six (6), review by supervisory or team of all case documentation and other facts will be conducted within forty-eight (48) hours of initiation of the ~~risk~~ safety assessment. Such review will be documented in the file with the signature of the supervisor or team leader, time and date, whether additional ~~risk~~ safety-related issues will be pursued and by whom, and any planning for initiation of services. (5-8-09)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**559. CHILD PROTECTION ~~IMMEDIATE~~ SAFETY AND COMPREHENSIVE ASSESSMENTS.**

The Department's ~~immediate~~ safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) ~~or children~~ involved and the immediate family and a records check for history with respect to child protection issues. (3-30-07)(\_\_\_\_)

**01. Interview of a Child.** The interview of a child concerning a child protection report must be conducted: (3-30-07)

**a.** In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

**b.** By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

**c.** In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

**02. Interview of Family.** Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview must: (3-30-07)

**a.** Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

**b.** Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

**c.** Interview siblings who are identified as being at risk; and (3-18-99)

**d.** Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

**03. Collateral Interviews.** Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral

interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

**04. Completion of a Comprehensive Assessment.** ~~An Immediate Protection/~~ Safety Plan Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When ~~there are findings of moderate or higher risk~~ safety threats are identified in the safety assessment and ~~the case remains open for services,~~ a comprehensive assessment must be completed ~~within thirty (30) days of initial contact with the child of concern.~~ (3-30-07)( )

**05. Role of Law Enforcement.** Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

- a. Interviewing the alleged perpetrator; (3-18-99)
- b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)
- c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

**06. Notification of the Person Who Made the Referral.** The Department must notify the person who made the child protection referral when the ~~risk~~ safety assessment has been completed. (3-30-07)( )

**560. DISPOSITION OF CHILD PROTECTION REPORTS.**

Within five (5) days following completion of ~~risk~~ safety assessments, the Department will determine whether the reports are substantiated or unsubstantiated. All persons who are the subject of a child protection ~~risk~~ safety assessment will be notified of the disposition of the assessment. (4-2-08)( )

**01. Substantiated.** Child abuse, neglect, or abandonment reports are substantiated by one (1) or more of the following: (5-8-09)

- a. Witnessed by a family services worker, as defined in Section 011 of these rules; (4-2-08)
- b. A court determines, in an adjudicatory hearing, that a child comes within the jurisdiction of the Child Protective Act, Title 16, Chapter 16, Idaho Code; (5-8-09)
- c. A confession; (4-2-08)
- d. Corroborated by physical or medical evidence; or (4-2-08)
- e. Established by evidence that it is more likely than not that abuse, neglect, or abandonment occurred. (5-8-09)

**02. Unsubstantiated.** Child abuse, neglect, or abandonment reports are unsubstantiated when they are not found to be substantiated under Subsection 560.01 of this rule. For intradepartmental statistical purposes, the Department will indicate whether the unsubstantiated disposition of the ~~risk~~ safety assessment was due to: (5-8-09)( )

- a. Insufficient evidence; or (5-3-03)
- b. An erroneous report. (4-2-08)

**561. CHILD PROTECTION CENTRAL REGISTRY.**

The Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, July 27, 2006, 120 Stat. 587, has directed the states to establish a central registry for the purpose of sharing information about persons who have substantiated



reports of abuse, neglect, or abandonment against children. The Child Protection Central Registry was established under the authority of Section 16-1629(3), Idaho Code. The primary purpose of the Child Protection Central Registry is to aid the Department in protecting children and vulnerable adults from individuals who have previously abused, neglected, or abandoned children. The Child Protection Central Registry maintained by the Department is separate and apart from the central registry for convicted sexual offenders maintained by the Idaho State Police under Title 18, Chapter 83, Idaho Code. The Child Protection Central Registry provisions in this chapter of rules apply to ~~risk safety~~ assessments conducted by the Department after October 1, 2007. (~~5-8-09~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**568. COURT-ORDERED CHILD PROTECTION ~~RISK SAFETY~~ ASSESSMENT.**

When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court may order that an investigation/~~risk safety~~ assessment be conducted by the Department. Court orders for preliminary child protective ~~risk safety~~ assessment and for any subsequent assessment the court may deem necessary will be served on the Department's supervisor for child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor must immediately initiate the ~~risk safety~~ assessment and consult with the court promptly if there are any obstacles ~~preventing~~ its completion. Immediately upon completing the report, the Department must make a written report to the court. (~~4-2-08~~)( )

**569. PETITION UNDER THE CHILD PROTECTIVE ACT.**

If an ~~allegation~~ of child abuse, neglect, or abandonment is substantiated through an ~~immediate~~ safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department will request the prosecuting attorney to file a Child Protective Act petition. (~~5-8-09~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**571. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.**

When no other community resources are available and when ordered by the district courts, the Department will, for a fee of thirty-five dollars (\$35) per hour, conduct ~~immediate~~ safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. (~~3-30-07~~)( )

**01. Requests From Private Attorney.** If a parent's attorney requests an ~~immediate~~ safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (~~3-30-07~~)( )

**02. Conduct of the Assessment.** In conducting the assessment, the family services worker must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (3-30-07)

**03. Report to Court.** The family services worker will provide a report only to the Magistrate judge who ordered the assessment, and must use the Department's format for the assessment of need. The report must describe what was observed about the home conditions and the care of the child(ren). (3-30-07)

**04. Department Clients.** If the family is or has been a client of the Department, disclosure of information must comply with IDAPA 16.05.01, "Use and ~~Protection~~ Disclosure of Department Records."

(5-8-09)( )

(BREAK IN CONTINUITY OF SECTIONS)

**702. ~~SERVICES TO BE PROVIDED IN LEGAL CONDITIONS FOR GUARDIANSHIPS ASSISTANCE.~~**  
~~In addition to the family services provided under these rules, the Department will provide the following: The following conditions must be met for a child to be eligible for federally-funded or state-funded guardianship assistance.~~ (5-8-09)( )

**01. ~~Preparation for Placement.~~** ~~Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s).~~ **Assessment of Suitability.** The Department or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study. (5-3-03)( )

**02. ~~Eligibility for Guardianship Assistance.~~** The Department will determine eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally-funded subsidy. Should the child be found ineligible for a federally-funded subsidy, the child will then be considered for a state-funded subsidy. ( )

**023. ~~Guardianship and Foster Care Licensure.~~** To receive guardianship assistance, a potential legal guardian(s) must apply for and receive a foster care license ~~before any child in the guardianship of the Department can be placed in their home.~~ (5-3-03)( )

**04. ~~Guardianship Assistance Agreements and Payments.~~** The Department and the prospective legal guardian must enter into a written agreement prior to the finalization of the guardianship. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate a child would receive if living in family foster care in Idaho. Eligibility for guardianship assistance is based on the child's needs. ~~No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility.~~ The Department will provide the prospective legal guardian with a copy of the agreement. All Guardianship Assistance Agreements must contain the following: ( )

**a.** The amount and manner in which the guardianship assistance payment will be provided to the prospective legal guardian: ( )

**b.** The manner in which the payment may be adjusted periodically in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child: ( )

**c.** Any additional services and assistance for which the child and legal guardian will be eligible under the agreement: ( )

**d.** The procedure by which the legal guardian may apply for additional services: ( )

**e.** A statement that the agreement will remain in effect without regard to the state of residency of the legal guardian: ( )

**f.** The procedure by which the Department will make a mandatory annual evaluation of the need for continued assistance and the amount of the assistance: and ( )

**g.** Guardianship assistance payments are prospective only. There will be no retroactive benefits or payments. ( )

**03- ~~Financial Assistance to Obtain Guardianship.~~** ~~For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial~~

~~assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence.~~ (5-3-03)

~~**04. Eligibility for Guardianship Assistance.** A determination of eligibility for guardianship assistance must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility.~~ (3-30-07)

~~**05. Guardianship Assistance Agreement.** The region will negotiate a written guardianship assistance agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays.~~ (3-30-07)

~~**06. Revocation of Legal Guardianship.** Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship.~~ (5-3-03)

~~**07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s).** If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the military.~~ (5-3-03)

~~**08. Retroactive Benefits.** Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship.~~ (5-3-03)

**05. Termination of Guardianship Assistance.** Federally-funded or state-funded guardianship assistance benefits and cash payments are automatically terminated when: ( )

**a.** A court terminates the legal guardianship or removes the legal guardian; ( )

**b.** The child no longer resides in the home of the legal guardian, and the legal guardian no longer provides financial support for the child; ( )

**c.** The child has reached the age of eighteen (18) years, regardless of the child's educational status or physical or developmental delays; or ( )

**d.** The child marries, dies, or enters the military. ( )

**06. Administrative Review for Guardianship Assistance.** The prospective legal guardian has twenty-eight (28) days from the date of the Department's notification of the guardianship assistance determination, to request an administrative review. The determination will be reviewed by the FACS Division Administrator, and a decision will be rendered to either affirm, reverse, or modify, the decision. The Department will notify the individual, by mail, of the FACS Division Administrator's decision, of his right to appeal, and procedures for filing an appeal according to requirements in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

**703. FEDERALLY-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENTS, AND BENEFITS.**

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a federally-funded guardianship assistance for an eligible child and a relative guardian. ( )

**01. Eligibility.** A child is eligible for a federally-funded guardianship if the Department determines the child meets the following: ( )

**a.** Is fourteen (14) years of age, or older, sometime during the consecutive six- (6) month residence with the prospective relative legal guardian as specified in Subsection 703.01.c. of this rule: ( )

**b.** Has been removed from his or her home pursuant to a voluntary placement agreement, or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child: ( )

**c.** Being returned home or adopted are not appropriate permanency options for the child: ( )

**d.** Has been eligible for Title IV-E foster care maintenance payments during at least six (6) consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While it is not required that Title IV-E foster care maintenance payments have been paid on behalf of the child during the six-month timeframe, it is required the child meet all Title IV-E foster care maintenance payment eligibility criteria in the home of the fully licensed or approved relative foster parent for a consecutive six- (6) month period to be eligible for Title IV-E guardianship assistance payment with that prospective relative legal guardian: ( )

**e.** Has been consulted regarding the legal guardianship arrangement; and ( )

**f.** Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child. ( )

**02. Siblings of an Eligible Child.** ( )

**a.** The Department may make guardianship assistance payments in accordance with a guardianship assistance agreement on behalf of each sibling of an eligible child, under the age of eighteen (18), who is placed with the same relative under the same legal guardianship arrangement if the Department and the relative legal guardian agree that the placement is appropriate. ( )

**b.** Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's siblings are available to the extent the total cost does not exceed two thousand dollars (\$2,000). ( )

**c.** The agency is not required to place siblings with the relative legal guardian of the child at the same time with the eligible child for the siblings to qualify for a cash payment. ( )

**d.** A sibling of the eligible child does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment or for the relative legal guardian to receive nonrecurring expenses. ( )

**03. Medicaid.** A child who is eligible for federally-funded relative guardianship assistance is eligible for Title XIX Medicaid in the state where the child resides. ( )

**04. Case Plan Requirements.** A child who is eligible for federally-funded relative guardianship assistance must have a case plan that includes: ( )

**a.** How the child meets the eligibility requirements: ( )

**b.** Steps the agency has taken to determine that return to the home or adoption is not appropriate: ( )

c. The efforts the agency has made to discuss adoption with the child's relative foster parent and the reason why adoption is not an option: ( )

d. The efforts the agency has made to discuss the legal guardianship and the guardianship assistance with the child's parent or parents, or the reason the efforts were not made: ( )

e. The reason why a permanent placement with a prospective relative legal guardian and receipt of a guardianship assistance payment is in the child's best interests; and ( )

f. If the child is not placed with siblings, a statement as to why the child is separated from his siblings. ( )

**05. Criminal History and Background Checks.** To be eligible for a federally-funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary. ( )

**06. Nonrecurring Expenses.** The Department will reimburse the cost, up to two thousand dollars (\$2,000), of nonrecurring expenses associated with obtaining a federally-funded legal guardianship for an eligible child. ( )

**704. STATE-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENT, AND BENEFITS.**

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a state-funded guardianship assistance for an eligible child and his legal guardian. ( )

**01. Eligibility for State-Funded Guardianship Assistance.** A child is eligible for a state-funded guardianship assistance if the Department determines the child meets the following: ( )

a. Assistance is based on the child's identified needs: ( )

b. The child's parents have had their parental rights legally terminated; and ( )

c. There is documentation of unsuccessful efforts to place the child for adoption. ( )

**02. Limitations on State-Funded Guardianship Assistance.** State-funded guardianship assistance is subject to state appropriations and availability of state general funds. ( )

**03. Medicaid Benefits Under State-Funded Guardianship Assistance.** State-funded guardianship assistance may include Medicaid benefits for the child(ren) receiving payment. These Medicaid benefits may only be used in Idaho. If the legal guardian moves to another state, he will be required to apply for Medicaid for the child(ren) in the new state of residency. ( )

**04. Nonrecurring Expenses.** In cases where state-funded guardianship assistance is being considered, if the potential legal guardian is not able to afford the attorney and court costs to obtain legal guardianship of a child in the legal custody of the Department of Health and Welfare, financial assistance may be available from the Department. Financial assistance for legal fees may be provided regardless of the legal guardian's state of residence. ( )

**7035. -- 709. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.**

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family. (3-30-01)
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
  - a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
  - b.** ~~The Multi Ethnic Placement Act and Interethnic Placement Act and regulations~~ The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, ~~which must include~~ and requires individualized documentation regarding ~~this~~ the child's needs in permanent placement. (5-8-09)(\_\_\_\_)
- 08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)
  - a.** Notification of the pending proceedings by registered mail with return receipt requested, to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (5-3-03)
  - b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)
  - c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the right to court-appointed counsel; (5-8-09)
  - d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)
  - e.** A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)

**f.** Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**900. ADOPTION ASSISTANCE.**

The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Services, the Division will respond with a determination of the child's eligibility within forty-five (45) days. (3-30-07)

**01. Determination of Eligibility for Title IV-E Adoption Assistance.** Child and Family Services will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: (5-8-09)

**a.** Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria at the time of removal from his home. (5-8-09)

**i.** If the child is removed from his home in accordance with the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-8-09)

**ii.** If the child is removed from the home in accordance with a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be eligible for Title IV-E adoption assistance. (5-8-09)

**b.** Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. (5-3-03)

**i.** A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

**ii.** The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care ~~is~~ are not relevant. (~~5-3-03~~)(      )

**c.** Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

**i.** The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which ~~lead~~ to the removal of the child from his home; (~~5-3-03~~)(      )

**ii.** At the time of the voluntary relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-8-09)

**d.** Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

**i.** The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that

cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

**02. Special Needs Criteria.** The definition of special needs includes the following factors: (3-30-07)

a. The child cannot or should not be returned to the home of the parents as evidenced by an order from a court of competent jurisdiction terminating parents rights or its equivalent; and (3-29-10)

b. The child has a physical, mental, emotional, or medical disability, or is at risk of developing such disability based on ~~known information regarding the birth family and child's history;~~ the child's experience of documented physical, emotional, or sexual abuse, or neglect; or (3-18-99)(\_\_\_\_)

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is ~~a member of a sibling group that must not be placed apart~~ being placed for adoption with at least one (1) sibling; and (5-3-03)(\_\_\_\_)

e. The State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (5-3-03)(\_\_\_\_)

**03. Determination of Eligibility for State Funded Adoption Assistance.** Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. (3-30-07)

**04. Interjurisdictional Adoptions.** When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E adoption assistance benefits. (3-30-07)

**05. International Adoptions and Adoption Assistance.** A child who meets the criteria for special needs under Subsection 900.02 of this rule, who is not a citizen or resident of the United States, and who was adopted outside of the United States or was brought into the United States for the purpose of being adopted, is not eligible to receive adoption assistance. This restriction does not prohibit adoption assistance payments for a child described in this Subsection who is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of the child by the adoptive parents. (3-29-10)



(BREAK IN CONTINUITY OF SECTIONS)

**910. TYPES AND AMOUNTS OF ASSISTANCE.**

The needs of the child and the family, including any other children in the family, will be considered in determining the amount and type of support to be provided. Assistance may include the following: (3-30-07)

**01. Nonrecurring Adoption Reimbursement.** Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. (3-29-10)

**02. Monthly Cash Payment.** Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount must not exceed the rate for family foster care found in Subsections 483 and 484 of these rules, which would be made if the child were in a family foster home in Idaho. Payments received for treatment foster care, gifts, clothing, and school fees are not considered part of the family foster care rate. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk becomes evident. For children who are currently eligible for Personal Care Services (PCS), the professional treatment foster care rate of up to a maximum of one thousand dollars (\$1,000) per month may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. (~~3-30-07~~)( )

**03. Title XIX -- Medicaid Coverage.** Any child with special needs who has an adoption assistance agreement in effect is also eligible for medical coverage. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage must apply to the Idaho Health Insurance Premium Payment (HIPP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance has reached its benefit limit. All services reimbursed by Medicaid must be determined to be medically necessary. Prior authorization may be required for some Medicaid reimbursable services. Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. (3-30-07)

**04. Title XX -- Social Services.** Any child with special needs who has an Adoption Assistance Agreement is also eligible for state-authorized Title XX - Federal Social Services Block Grant funded services. (3-30-07)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING**

**DOCKET NO. 16-0602-1003**

**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 under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), 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 September 15, 2010.

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

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

Due to practice issues that have arisen in the process of licensing foster homes, the requirements for criminal history and background checks are being 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 fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted. These rule changes are being made to bring the rules into alignment with the Department's Title IV-E State Plan and applicable federal regulations.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference into these rules under this docket.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

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 September 22, 2010.

DATED this 18th day of August, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
phone: (208) 334-5564  
fax: (208) 334-6558  
e-mail: [dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0602-1003

**403. MEMBER OF HOUSEHOLD QUALIFICATIONS AND SUITABILITY.**

To assure the safety and well-being of children, a member of the household ~~shall~~ must be in compliance with the requirements specified in these rules. (3-30-01)( )

**404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.**

All applicants for a foster care license and other adult members of the household must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," and the following requirements: (3-30-07)

**01. Required Procedures.** Each applicant for a foster home license, and any other adult member of the household, must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

**02. Change in Household Membership.** By the next working day after another adult begins residing in a licensed foster home, a foster parent must notify the children's agency of the change in household membership and assure that the new adult member of the household will participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code. (3-30-07)

**03. Foster Parent's Child Turns Eighteen.** A foster parent's child who turns eighteen (18) and ~~continues to~~ lives continuously in the home is not required to have a criminal history and background check except as specified in Subsection 404.03.c. of this rule. (3-30-07)( )

**a.** After turning eighteen (18) years of age, if the foster parent's adult child moves out of/leaves the foster parent's home for longer than ninety (90) days or less and returns to live subsequently resumes residing in the licensed foster home as a permanent resident, he will be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days of his return from the date he became an adult member of the household. (3-30-07)( )

**b.** If the adult child leaves the foster home for the purpose of higher education or military service, and periodically returns to the home for less than ninety (90) days, he is not considered to ~~reside in the licensed foster home~~ be an adult member of the household and is not required to complete a criminal history and background check. While in the home, he cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for more than ninety (90) days or longer, he will immediately be considered an adult member of the household and must complete a criminal history and background check within fifteen (15) days from the date he became an adult member of the household. (3-30-07)( )

**c.** If the adult child continues to live in his parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21). This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). (3-30-07)

**04. Criminal History and Background Check at Any Time.** The Department retains the authority to require a criminal history and background check at any time on individuals who are ~~permanent residents of~~ residing in a licensed foster home or on the foster parent's property. (3-30-07)( )

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.25 - TITLE INSURANCE AND TITLE INSURANCE AGENTS AND ESCROW OFFICERS

DOCKET NO. 18-0125-1001

#### 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 Chapter 27, Title 41, Idaho Code, and Section 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

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

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

The purpose of the changes to this rule are to ensure escrow pricing is not being used as an illegal inducement to obtain title insurance business, to develop a system to determine the cost to deliver escrow services that is verifiable, and to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace.

**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(2), Idaho Code, formal negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with title industry representatives.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Freeman at (208) 334-4250.

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 September 22, 2010.

DATED this 28th day of July, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State Street, 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0125-1001**

**001. TITLE AND SCOPE.**

The purpose of these rules is to adopt with reference to title insurance and title insurance agents and escrow officers rules governing rates charged for various services and insurability on certain matters; rules governing procedural methods as to the way the title insurers, title insurance agents and their officers are to perform certain actions and rules governing actions of title insurance agents and employees acting as escrow agents. The purpose is to further protect consumers of title insurance industry products by ensuring that consumers are not injured by delivery of certain funds or documents (for recordation or otherwise) from an escrow without prior receipt of "collected funds" by the escrow agent and to preserve the financial stability of title insurers and title insurance agents. (7-1-93)

**01. Title.** The title of this chapter is IDAPA 18.01.25, "Title Insurance and Title Insurance Agents and Escrow Officers." ( )

**02. Application of Rule.** The provisions of this rule shall apply to all title insurers and title insurance agents. This rule does not limit the Director's authority to determine that other title insurance trade practices constitute violations of Section 41, Chapter 27, Idaho Code. ( )

~~002. — 003. (RESERVED).~~

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. ( )

**003. ADMINISTRATIVE APPEALS.**

There is no appeal to the Attorney General from application of this rule. All such appeals must be instituted by written demand for a hearing before the Director of Insurance, Section 41-232, Idaho Code. Further appeal from the Director's decision can be taken to district court pursuant to Section 67-5270, Idaho Code. ( )

*[Codified Section 004 is being moved and renumbered to proposed Section 010]*

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

*[Codified Section 005 is being moved and renumbered to proposed Section 011]*

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

**01. Office Hours.** The Idaho Department of Insurance is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. ( )

**02. Mailing Address.** The Department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. ( )

**04. Web Site Address.** The Department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

~~0067.~~ -- ~~0709.~~ (RESERVED).

**00410. PREMIUM RATES AND THEIR APPLICATION.**

**01. Schedule of Premium Rates.** Each title insurer shall file its schedule of premium rates (including both the taxable risk portion and the service portion) for title insurance charged the public for all policies, which premium rates shall commence with the lowest rate and shall advance by one thousand dollars (\$1,000) increments. The rate schedule shall include owner's, standard mortgagee and extended coverage mortgagee policies, and may include other rates. In addition, any charges made for special endorsements shall be listed and the type of policy to which applicable. Filed rates shall provide that where a preliminary report is issued, the order for the policy may be canceled prior to closing upon applicant being required to pay a cancellation charge of fifty per cent (50%) of the premium with a minimum of fifty dollars (\$50) provided that any portion of the charge in excess of one hundred dollars (\$100) may be waived, and provided the entire charge may be canceled if it is apparent that by inadvertence or error the customer entered duplicate orders with the same or competing companies. The premium rates for policies shall only include title examination and issuance of title insurance which shall be deemed to include any preliminary report, commitment to insure, binder or similar report (herein collectively called preliminary report) and the policy subsequently issued thereon. If more than one (1) chain of title is involved, an additional charge shall be made for each additional chain. An additional chain is one involving property in a different block or section or under a different ownership within the last five (5) years. (7-1-93)

**02. Rebates, Discounts, Credits.** No title insurer or title insurance agent shall: (7-1-93)

**a.** Charge a premium for a policy in one transaction and withhold issuance of a policy thereon; (7-1-93)

**b.** Charge a premium for a policy in one transaction and apply the premium, or any part thereof, applicable to the first transaction to a premium charged in a subsequent transaction; provided that a title insurer may file a temporary or construction mortgagee's policy rate allowing credit for such policy upon a permanent policy to the extent of the basic standard coverage charge only for the temporary policy provided that full applicable premium and fees have been charged and collected on the issuance of the first policy; and provided that a title insurer may file an owner's reissue rate under conditions prescribed by Subsection 010.06 infra; (7-1-93)

**c.** Provide or agree to provide closing or escrow services as a part of a title insurance premium charge for issuance of a policy; (7-1-93)

**d.** Issue a title insurance binder, commitment or preliminary report without an order and without making a charge therefor if a policy is not issued thereon, nor apply the charge or any part thereof toward the premium of a policy on any other tract of land; (7-1-93)

**e.** Issue a binder commitment or preliminary report, or title insurance policy for a charge which is less than that currently filed for such risk with the Department of Insurance; or (7-1-93)

**f.** In connection with transaction of any title insurance business received by or directed to such insurer or agent directly or indirectly, provide, or cause to be provided, to any person any payment, property or item of value, or division of a premium or fee; provided, contracts of reinsurance when no primary liability is assumed by the reinsurer are exempt here from. (7-1-93)

**03. Amount of Owner's Policy.** An owner's policy shall be issued for not less than (a) the amount of the current sales price of the land and any existing improvements appurtenant thereto, or (b) if no sale is being made, the amount equal to the value of the land and any existing improvements at the time of the issuance of the policy. If improvements are contemplated, the amount may include the cost of such improvements immediately contemplated to be erected thereon with a following pending improvement clause set forth in Schedule B of said policy and the full premium collected, which clause reduces the policy amount to the extent the improvements are not completed. The amount of policies covering leasehold estates for a term of fifty years or more shall be for the full value of the land

and existing improvements, and for less than fifty years shall be for an amount at the option of the insured based on (i) the total amount of the rentals payable for the primary term but not less than five (5) years, or (ii) the full value of the land and existing improvements together with any improvements immediately contemplated to be erected thereon. The amount of policies insuring contract purchasers shall be for the full value of the principal payments. Insurance of lesser estates shall be written for the amount of the value of the estate at the time the policy is issued. (7-1-93)

**04. Amount of Mortgagee Policies.** A mortgagee's policy shall be for not less than the full principal debt of the loan insured and at insured's request may include up to twenty percent (20%) in excess of the principal debt to cover interest, foreclosure costs, etc. Where the land covered represents only part of the security for the loan, the policy shall be written for the amount of the unencumbered value of the land or the amount of the loan, whichever is the lesser. (7-1-93)

**05. Simultaneous Issuance of Owner's and Mortgagee's Policy.** When an owner's policy and a mortgage policy covering identical land are simultaneously issued, the owner's policy shall bear the regular owner's rate. Premium for the mortgagee policy simultaneously issued may be for an amount less than the full mortgagee rate for the amount of insurance not in excess of the owner's policy. (7-1-93)

**06. Double Sale and Reissue.** No order will be held open to cover a double sale and the premium will be charged and the policy issued on each sale, unless the conveyance on resale is recorded at the same time as the original transaction. A title insurer may file an owner's reissue rate of not less than fifty percent (50%) of the basic rate which shall be applicable to any policy ordered within two (2) years of the effective date of a prior owner's or purchaser's policy naming applicant as the insured provided that the following conditions are met: (7-1-93)

**a.** The prior policy or a copy thereof is presented to the issuing company and shall be retained in the issuing company's file, or in the absence thereof, reasonable proof of issuance is provided the issuing company. (7-1-93)

**b.** The reissue premium shall be based on the schedule of fees in effect at the time of reissue. (7-1-93)

**c.** Increased liability is to be computed in accordance with the basic schedule of fees in the applicable brackets. (7-1-93)

**07. Amount on Litigation and Foreclosure Reports.** Where a preliminary report is made for an owner's policy to be issued after a quiet title action or after a foreclosure of contracts of sale, deeds of trust or mortgages, the premium charge shall be that on an owner's policy and the policy will be issued following the successful completion of the litigation or the foreclosure, and cancellation fee charged if the action is unsuccessful. Such fees shall include the examination of title as well as a check immediately prior to judgment or sale on foreclosure. Each such preliminary report shall bear on its face as the limit of liability of the insurer, the value upon which the premium charge is based. (7-1-93)

**00511. PROCEDURAL RULES AND DEFINITIONS.**

**01. Definitions.** (7-1-93)

**a.** Policy. Any contract or form of title insurance which prior to its issuance has been filed with the Director of Insurance. (7-1-93)

**b.** Preliminary Report. A binder of insurance, a commitment to insure, a preliminary report of title, and litigation reports including quiet title action, foreclosure actions of contracts of sale, deeds of trust or mortgages where a policy of title insurance will be issued on the successful completion thereof. There is excluded herefrom miscellaneous reports which do not insure title, such as judgment reports, lot book reports or property search reports which are governed by Subsection 011.02. (7-1-93)

**c.** Title Examination. A search and examination of the title and a determination of insurability of the title in accordance with sound title underwriting practices. Such examination of the public records shall be made only for the purpose of determining insurability of the described property and shall not be a report on the condition of the

record.

(7-1-93)

**d.** Issuance of a Policy. The preparation, execution and delivery of a title insurance policy which is hereby deemed to be only a contract of insurance up to the face amount of such policy and in no way shall create a tort liability as to the condition of the record insured from. The same shall include any necessary investigation just prior to actual issuance of a policy to determine if there has been proper execution, acknowledgement and delivery of any conveyances, mortgage papers, and other title instruments which may be necessary for the issuance of a policy. It shall also include determination of the status of taxes based on the latest available information and a final search of the title and that all necessary papers have been filed for record. Issuance of the policy shall not include services which are essentially escrow or closing services, such as receiving and disbursing money, prorating insurance and taxes, etc., for which an escrow fee shall be charged. The issuer of the policy may specify requirements necessary for the issuance of the title insurance, but it is the responsibility of the applicant for the insurance to meet such requirements and the title insurance agent shall not act for the applicant to satisfy the same. It is not the responsibility of the policy issuer to cure defects of title or remove liens or encumbrances, nor to perform services extraneous to the issuance of the policy. Title insurers and title insurance agents in the issuance of title insurance policies shall not do any acts which constitute the practice of law and the premiums shall not include the cost of legal services to be performed for the benefit of anyone other than the company. A title insurance agent who is also a licensed lawyer rendering any legal services in the transaction insured must render a separate legal billing therefor and the escrow fees shall not include such legal services. (7-1-93)

**e.** Tract Indexes and Abstract Records. See IDAPA 18.01.01, Rules of the Department of Insurance. The tract indexes and abstract records shall be maintained and posted to current date and shall include adequate maps that will enable a person working the title plant to locate a tract of land which is the subject of the title examination. (7-1-93)

**02. Miscellaneous Reports.** Where an insurer or its agent issues judgment reports, lot book reports or property search reports, each such report shall specifically contain the following statement: "This report is based on a search of our tract indexes of the county records. This is not a title or ownership report and no examination of the title to the property described has been made. For this reason, no liability beyond the amount paid for this report is assumed hereunder, and the company is not responsible beyond the amount paid for any errors and omissions contained herein." (7-1-93)

**03. Special Exceptions.** An insurer may insert such special exception(s) as shall develop from an examination of the title. A special exception shall in all cases specifically describe the item excepted to and shall not be general in terms. The printed provisions of a filed policy form, including exclusions from coverage, exceptions not insured against and stipulations and conditions shall not be deemed special exceptions. (7-1-93)

**04. Liens and Encumbrances, Standards of Insurability and Insuring Around.** The determination of insurability as to liens and encumbrances under Section 41-2708(1) and the risk prohibited under Section 41-2708(2), Idaho Code, intentionally omitting an outstanding enforceable recorded lien or encumbrance, are interpreted by the Insurance Director to mean: (7-1-93)

**a.** "Intentionally" omitting an outstanding enforceable recorded lien or encumbrance is the issuance of the policy with the intent to conceal information from any person by suppressing or withholding title information, the consequence of which could result in a monetary loss either to the title insurance company or to the insured under the policy or binder. (7-1-93)

**b.** "Outstanding enforceable recorded lien or encumbrance" and/or "determination of insurability" as to possible liens and encumbrances shall not be construed as prohibiting an insurer from issuing a policy without taking exception to a specific recorded, inchoate, or death tax item when sound underwriting standards and practices allow insurance against the item. Defects of title are not regulated by this provision. Specifically, a policy may be issued without taking exception to the following items on the conditions set out: (7-1-93)

**i.** Where a lien securing an obligation, though not released of record, to the satisfaction of the insurer has been discharged and the insurer or its agent has documentary evidence in its file that the obligation has been paid in full. (7-1-93)



ii. Where funds are in escrow to pay said item and a recordable release in form for filing is available for recording in the ordinary course of business. (7-1-93)

iii. Where liens, in the opinion of counsel, are barred by the statute of limitations. (7-1-93)

iv. Where inchoate liens may arise from improvements to the described property and may have priority over a mortgage being insured and a sufficient indemnity as herein defined made by a person or persons who are not the makers of the obligation secured by the insured mortgage or a guarantor thereof, has been delivered to and accepted by the insurer, or sufficient funds, including short term treasury bills and notes, have been deposited with the insurer or its agent to assure ultimate payment and release of such liens; provided, an exception as to such inchoate liens shall be shown on the policy with a provision insuring against the enforcement thereof. Sufficient indemnity as used herein shall mean a direct obligation to pay such liens in an amount judged adequate by the insurer executed by a financial institution regulated by the state or federal government or executed by a responsible person as hereinafter defined. This subsection shall also apply to recorded liens being contested if the indemnity is one hundred and fifty percent (150%) of the claim and is by such financial institution or in said funds. (7-1-93)

v. Where the insurer has previously issued a policy without taking exception to the specific item and is called upon to issue an additional policy where it is already obligated under such prior policy and where the new policy will not increase its liability or exposure; provided, an exception as to such item shall be shown on the policy with a provision insuring against the enforcement thereof. (7-1-93)

vi. When the mortgage policy issued insures validity and priority of a lien, the insurer shall not be required to itemize liens which are subordinate to the lien insured, whether by express subordination or operation of law, unless such subordinated matters must be shown to comply with a policy provision, or unless requested by the insured to do so; provided, when issuing a preliminary report, commitment or a binder for a mortgagee's policy all subordinate liens shall be shown but a statement may be made that they are subordinate. (7-1-93)

vii. With reference to federal estate taxes and state inheritance taxes which have not been paid, where the insurer has examined a balance sheet of the estate and determined more than adequate funds are on hand to pay such taxes, and the insurer has taken an indemnity from a responsible person protecting itself against such unpaid taxes, or where sufficient moneys or other securities to pay such taxes have been placed in escrow pending the payment thereof or pending receipt of waiver of lien from the taxing authority. (7-1-93)

viii. "Responsible person" is one (1), or more than one (1) if they are jointly and severally liable, each of whose current verified balance sheet upon examination is determined by the insurer to be sufficient for the purpose of the indemnity given. Verified copies of all statements shall be retained by the insurer or its agent. (7-1-93)

**05. Mechanics' Liens, Prohibited Risk.** Under the provisions of Section 41-2708, Idaho Code, the Insurance Director has determined under standards of insurability, prohibited risks and rebates, that under all forms of mortgage policies the risk insured shall not include unrecorded liens and encumbrances, including contractors', subcontractors' professional services, materialmen's and mechanics' liens, unless: (7-1-93)

**a.** The mortgage shall have been placed of record prior to commencement of any improvement on the premises and the insurer is satisfied that the mortgage and related documents with reference to such priority; or (7-1-93)

**b.** Unless the provisions of Subsections 011.04.b.ii., 011.04.b.iii. or 011.04.b.iv., and 011.04.b.viii. as applicable have been complied with; or (7-1-93)

**c.** Unless the insurer has satisfied itself and documented its file that construction has been completed and the time for filing liens has expired. (7-1-93)

**06. Usury, Truth in Lending Disclosures.** Protection against usury, or disclosures required in consumer credit protection acts, truth in lending acts, or similar acts imposing duties on lenders, do not constitute a part of the issuance of title insurance policies. Title insurers and their agents shall not prepare or pass judgment on documents as to usury nor on disclosure documents and notice of right of rescission documents required by any such acts or make any computations as required therein, in the issuance of title insurance policies; provided, an

endorsement to a mortgage policy insuring that the loan is one by definition of the Truth in Lending Act exempt from rescission is permissible. Nothing herein shall prohibit such title insurers or their agents from performing closing or escrow services involving such matters when a proper fee is obtained therefor. (7-1-93)

**07. Abstract Plant Information.** Each title insurance agent in making application for a license as such agent, or when paying his fee for renewal of such yearly license, shall submit on the original application and annually thereafter the attached form, marked Exhibit A, attached hereto, "Information re Abstract Plant" completed as to each question set forth herein. (7-1-93)

**08. Filing, Approval, Unique Contract or Rate.** Whenever a title insurer is requested to insure a unique kind or class of risk for which a premium rate or form of policy or endorsement has not been filed, neither of which lends itself to an advance filing and determination of said rate or form, pursuant to Section 41-2706(4) such title insurer may make a written application to the Director of Insurance for approval of said special rate or form without complying with the filing notice and thirty (30) day waiting provisions of Section 41-2707 upon complying with the following requirements: (7-1-93)

**a.** The insurer shall not have agreed to the special rates nor agreed to issue the special policy or endorsement, prior to making an application to the Director of Insurance as herein set out. (7-1-93)

**b.** The insurer shall make a written application to the Director of Insurance, requesting approval of the applicable special rate or special insurance policy or endorsement, wherein the insurer shall set forth why the particular rate or policy or endorsement is unique as to the risk or form, that such item has or has not ever arisen in the past five (5) years to the knowledge of said insurer, and the circumstances if it has previously arisen in said period, and the circumstances which now arise which necessitate said rate, policy or endorsement and an analysis comparing said unique rate, policy or endorsement to the nearest comparable filed rate, policy or endorsement and justifying the difference on the basis of Section 41-2706(1) and (2). Such application shall have attached to it the proposed policy or endorsement form. The Director of Insurance shall have ten (10) working days after the date of receipt of such application to disapprove the same, and the filing shall be deemed effective if the same is not disapproved within such time. The burden is upon the insurer to make inquiry after the expiration after said ten (10) days to determine whether a disapproval has been made, whether or not mailed notice of such disapproval has not yet been received by said insurer. (7-1-93)

**c.** The provisions hereof are only applicable to rates, policies and endorsements, which by reason of the rarity of the event, or the peculiarity of the circumstances, do not lend themselves to a general advance determination and filing of said item. Applications under this rule and the applicable statute shall not be approved if it appears either that said application does not meet the standards of the statute or is such a deviation from the usual policy form or rate most nearly applicable thereto as to be an unsound underwriting practice or an inadequate premium. (7-1-93)

**0142. TITLE INSURANCE AGENTS AND EMPLOYEES ACTING AS ESCROW AGENTS.**

**01. Written Instructions.** An escrow agent shall not accept funds or papers in escrow without a dated, written instruction signed by the parties or their authorized representatives adequate to administer the escrow account and without receiving at the time provided in the escrow instructions sufficient funds and documents to carry out terms of the escrow instructions. Funds and documents deposited shall be used only in accordance with such written instruction; and if additional specific instructions are needed, the agent shall obtain the consent of both parties or such representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties. (7-1-93)

**02. Notice of Conflict of Interest.** An escrow agent shall act without partiality to any of the parties to the escrow. An escrow agent may not close a transaction where he has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request the transaction be closed by some other escrow agent." (7-1-93)

**03. Closing Statement.** On completion of a n escrow transaction the agent s shall deliver to each principal a written closing statement signed by the agent of each principal's account. The same shall show all receipts and disbursements and any charge made by and disbursements to the escrow agent shall be clearly noted. A copy shall be retained. (7-1-93)

**04. Control of Funds.** An escrow agent shall maintain one or more "trust accounts" in a federally insured financial institution into which all escrow funds received shall be deposited and from which there shall be drawn escrow payments. No other funds shall be commingled with such trust account. Escrow fees shall not be drawn until the escrow is completely ready to close in accordance with the escrow instructions and must be withdrawn not later than the day on which the final disbursements are made for the escrow closing. (7-1-93)

**05. Escrow Accounting Procedures.** An escrow agent shall maintain on a current basis (a) an escrow ledger with a separate numbered sheet for each escrow agreement and (b) an escrow liability control account. Disbursements shall be posted from checks or other vouchers and each item, not the total of items, must be entered. Escrow liability control account shall balance with the escrow ledger at all times and shall equal the balance of funds in the "trust accounts" for escrows at the bank. Checks may not be drawn against an escrow account without sufficient credit balance for the particular escrow existing at the time. Funds shall not be transferred between escrow agents except by writing checks and receipts which are charged and credited respectively to accounts with the reason noted and the authority therefor. All services must be performed and the escrow account ready to close before any service or escrow fees may be charged and drawn from an escrow account (unless an escrow is a long term collection, and fees are payable monthly or annually). The escrow funds will be placed in the "trust accounts" for escrows and no other funds commingled therewith. All entries in any escrow account shall be posted the date of the entry without regard of the date of posting, but all entries should be posted daily. (7-1-93)

**06. Escrow Records.** Each escrow agent shall maintain in each escrow transaction: (3-15-02)

**a.** Evidence of all funds received including copies of all instruments, which shall include prenumbered cash receipts, copies of cashier's checks, wire transfer confirmations or evidence of unconditional payment of checks, as applicable; (3-15-02)

**b.** Complete evidence of all funds disbursed which shall include check stubs or check copies, and wire instructions for all disbursements as applicable; and (3-15-02)

**c.** A final ledger sheet for each escrow transaction listing all items received and disbursed. All records shall be made available for audit, inspection and examination by the Director upon demand, and all records shall be preserved for not less than six (6) years from the closing date of the escrow. (3-15-02)

**07. Escrow Audit.** Each escrow agent shall submit to the Director not less often than the end of every third year an audit by an independent public accountant of its escrow transactions, a verification of open escrows and whether the escrow agent's records are maintained in a manner to permit such audit. The audit report shall include a balance sheet as of the close of the audit period, which will be June 30th of the particular year, a list of all bank accounts of the escrow agent containing escrow funds showing the name, address and account number, a list of any closing escrows which have been open for more than one (1) year at the end of the audit period, showing the number of confirmations requested, number of discrepancies and approximate percentage of escrow accounts verified, and a statement that the escrow agent has complied with the rules of the Director as to escrow accounts listing any exceptions. As an alternative, the escrow agent may submit with the prior approval of the Department, a signed certification of review, in a standard format as approved by the Director, by its underwriter that it has been subjected to an escrow review performed by the title insurer. The scope of the escrow review shall include a limited review of escrow transactions and files. This signed certification must be received no later than December 31 of every third year. If the certification is not deemed adequate by the Director, he may require an escrow audit by an independent public accountant. (3-15-02)

**08. Bond.** Before a license shall be issued to a title insurance agent pursuant to Section 41-2710, Idaho Code, such agent must comply with the requirements for a bond for the title insurance agent, escrow officer and any of the employees of said agent thereof engaged in handling escrow accounts and funds or countersigning and issuing title insurance policies, except such employees whose duties are wholly clerical in relation thereto. Such bond need not be renewed each year, but may be in the form that continues from year to year until canceled. Such bond may be

for more than one county if the title insurance agent is licensed to do business in more than one county, but the liability under such bond shall be limited to the amount per county as required by Section 41-2711, Idaho Code. Such bond shall be for the benefit of all persons who have suffered any loss because of the breach of the terms of said bond and shall be enforceable on finding of the Director of Insurance upon hearing that the terms of the bond have been violated. Deposits in Lieu of Bonds: In lieu of such bond, cash or securities as herein defined may be deposited with the Director of Insurance. The Director of Insurance does hereby approve the following securities which are eligible for deposit in place of the bond required: Cash in the form of a cashier's check, any public obligation as defined in Section 41-707 and Section 41-708, Idaho Code, and the assignment of any savings deposits or certificates of deposit as defined in Section 41-720, Idaho Code. In each case, such deposit shall be accompanied by a statement that such deposit is made to meet the compliance of Section 41-2710, Idaho Code, and may be liquidated to meet the obligations of said section. Said cash or security in lieu of the bond shall be deposited with the director pursuant to Section 41-804, Idaho Code, except that the cash shall be deposited with the state treasurer for the account of the bond of said depositing agent. (7-1-93)

**09. Cancellation of Bond -- Cancellation of License.** A title insurance agent's bond may provide for cancellation thereof upon notice of not less than thirty days to the Insurance Director and to the licensed agent. Upon such notice being received, the licensed title insurance agent must provide a new bond in place thereof before the cancellation of the current bond, and in the event of failure to do so, the license of the title insurance agent shall be deemed suspended on the date of the expiration of such bond, and until a replacement bond has been issued and delivered to the Director of Insurance. (7-1-93)

**10. Disbursement of Funds or Documents From Escrow -- Requirement for Collected Funds.** (7-1-93)

**a. Definitions.** (7-1-93)

i. "Business Day" means a calendar day other than Saturday or Sunday, and also excluding most major holidays. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is also excluded from the definition of a business day. (7-1-93)

ii. "Collected Funds" means (a) cash (currency); (b) wired funds when unconditionally received by the escrow agent; (c) when identified as such, (1) cashier's check; (2) certified check; or (3) teller's check (official check) when any of the above are unconditionally received by the escrow agent; (d) U.S. Treasury checks, postal money orders, federal reserve bank checks, federal home loan bank checks, State of Idaho and local government checks, local or Idaho on-us checks, or local third party checks on the next business day after deposit; (e) local personal or corporate checks on the second business day after deposit; and (f) non-local State and government checks, non-local on-us checks, non-local personal or corporate checks or non-local third party checks on the fifth business day after deposit. For purposes of this section a deposit is considered made on (1) the same day the item is delivered in person to an employee of a federally insured financial institution, or (2) the first business day following an after business hours deposit of an item to a federally insured financial institution. (7-1-93)

iii. "Cashier's Check, Certified Check and Teller's Check (Official Check)" as identified above in Subsection 012.10.a.ii. means "checks" issued by a federally insured financial institution. (7-1-93)

iv. "Collection or Long-Term Escrow" means an escrow established for the purpose of receiving two (2) or more periodic payments over a total period of time after establishment in excess of thirty (30) days. (7-1-93)

v. "Escrow" includes any agreement (express, implied in fact or implied at law) pursuant to which funds or documents are delivered to an escrow agent to be held by the escrow agent until the happening of a contingency or until the performance of a condition, and then delivered by the escrow agent to another or recorded by the escrow agent. (7-1-93)

vi. "Escrow Agent" includes any person or entity described in Section 41-2704, Idaho Code, (and the rules promulgated thereunder), which accepts funds or documents for the purpose described in Subsection 012.10.a.v. (7-1-93)

vii. "Incidental Expenses" means direct expenses that are the obligation of one or more of the parties to

an escrow transaction but are not the purchaser's principal obligation. Incidental expenses would include, but not be limited to, advances to cover unexpected recording fees and additional interest occasioned by delays in closings or miscalculations. (7-1-93)

viii. "Local Checks" as identified above in Subsection 012.10.a.ii. means checks drawn against a federally insured financial institution located in the same check processing region as the title agent's depository federally insured financial institution. (7-1-93)

ix. "On-Ups Checks" as identified above in Subsection 012.10.a.ii. means checks drawn against the same federally insured financial institution or branch as the title agent's own depository federally insured financial institution. (7-1-93)

**b. Requirement of Collected Funds.** (7-1-93)

i. Notwithstanding any agreement to the contrary, no disbursement of funds or delivery of documents from an escrow for recording or otherwise may be made unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agent or its affiliates, sufficient to discharge all monetary conditions of the escrow. The requirement of collected funds does not apply to collection or long term escrows. (7-1-93)

ii. Notwithstanding any other provision of Section 012, an escrow agent may advance its own funds in an aggregate amount not to exceed one thousand dollars (\$1000) to pay incidental expenses incurred with respect to the escrow. (7-1-93)

**0123. ESCROW ~~FEES~~ CHARGES.**

**01. Fees.** A title entity shall not charge less than the rate filed with the Department of Insurance for a specified escrow service. Each title insurer and title insurance agent shall file its schedule of escrow rates charged for all escrow services and closing services rendered. Such services shall not include preparation of instruments. The fee shall be based upon the full sales price in the event of a sale, or the amount of the loan in the event of a mortgage. Property in different ownerships always, and noncontiguous properties generally, are rated separately. Additional fees will be charged where the minimum fee is inadequate because of the unusual complications of the transactions. It is the intent of the Department of Insurance that fees collected shall not be less than the title entities cost to produce escrow services. (7-1-93)( )

**02. Rate Classifications.** A title entity may file escrow rates for up to two (2) classifications which include a basic rate and a residential refinance rate. ( )

**a.** Basic Escrow Rate shall mean the rate charged on all escrow classifications regardless of customer or transaction classification unless a separate filing is made for the residential rate as defined below. ( )

**b.** Residential Refinance Rate shall mean the rate charged for an escrow closing involving improved real property with an existing single-family residential unit or multi-family structure with four (4) or less residential units, wherein an existing Deed of Trust/Mortgage of record is paid off with the proceeds from a new Deed of Trust/Mortgage on the same property, provided there is at least one (1) common Grantor on both the existing and the new Deed of Trust/Mortgage. ( )

**03. Rate Filing Procedure.** Escrow rates shall be filed on a yearly basis including written justification no later than May 1. The yearly escrow rate filings shall be effective June 1 each year unless otherwise notified by the Department of Insurance. Additionally, rate filings shall be filed as often as necessary if escrow costs exceed escrow revenues. Implementation of rates other than the yearly filings will occur thirty (30) days from the date filed unless otherwise notified by the Department of Insurance. An escrow rate filing, regardless of classification, shall include three (3) components: ( )

**a.** A Minimum Rate, which shall be a rate component and considered justified, as established in Subsection 013.04 below regarding rate justification, in an amount no less than seventy-five percent (75%) of the cost of closing, except that for a residential refinance rate where the minimum rate may be an amount no less than fifty percent (50%) of the cost of closing. ( )

**b.** A Basic Rate, which shall be a rate component and considered justified if it reflects the full sales price in the event of a sale or the amount of the loan in the event of a Deed of Trust/Mortgage. The basic rate shall be in addition to the minimum rate and be stated in increments per one thousand (1,000) of the transaction amount. ( )

**c.** A Minimum Negotiable Rate, which shall be a rate component and considered justified in an amount no less than five (5) times the Minimum Rate. ( )

**04. Rate Justification.** Escrow rates filed with the Department of Insurance must be accompanied by written justification which includes the cost of closing an escrow transaction. Written justification can be accomplished in either of the following: ( )

**a.** Actual Cost. Rates shall be based on the actual cost of the title entities' escrow operations using the last three (3) years as the source of the cost data. The cost analysis must be completed using activity-based cost accounting principles, and be certified by an independent Certified Public Accountant (CPA). ( )

**b.** The Department of Insurance will accept as actual costs an industry standard formula established each year by the Idaho Land Title Association (ILTA) that uses the title entities' direct compensation costs and industry standards for productivity and overhead costs to calculate the cost of an escrow closing. Each year the ILTA shall submit the industry standard formula to the Department of Insurance for review by April 1. ( )

**025. Rebates, Discounts, Credits.** Escrow fees charged by title insurers and title insurance agents for escrow work and for closings incident to any commitment, binder, preliminary report or the issuance of any contract or policy of title insurance pursuant to Section 41-2704, Idaho Code, are the business of title insurance regulated by Chapter 27 of Title 41 and are subject to the same prohibitions against rebates and illegal inducements as are applicable to the issuance of title insurance policies. Charging other than the full filed escrow fee for an escrow or closing is deemed to be a rebate and illegal inducement to the business of title insurance, the issuance of any title insurance policy or the performance of any escrow or closing work, or a combination of any of the same. No title insurer or title insurance agent shall: (7-1-93)

**a.** Perform escrow or closing services without charging the fee therefor as filed with the Insurance Director; (7-1-93)

**b.** Charge an escrow or closing fee for a transaction and perform the services, or any part thereof, for another closing or escrow transaction; (7-1-93)

**c.** Provide or agree to provide closing or escrow services as a part of a title insurance premium charge or as a part of any other service rendered by said party; (7-1-93)

**d.** Provide or agree to provide closing or escrow services without a signed escrow instruction and a proper accounting record established therefor and showing on such record the collection of the proper escrow fee therefor; or (7-1-93)

**e.** In connection with obtaining escrow business or the providing or agreeing to provide closing or escrow services, directly or indirectly, to provide or cause to be provided to any other person any payment, property or item of value, or any division of an escrow or closing fee. (7-1-93)

**0134. SEVERABILITY.**

If any provision of these rules, or the application thereof to any person or circumstance, is held invalid, such validity shall not affect other provisions of applications of these rules which can be given effect without the invalid provision or application, and to that end the provisions in these rules are severable. (7-1-93)

**0145. -- 999. (RESERVED).**

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.47 - VALUATION OF LIFE INSURANCE POLICIES INCLUDING THE INTRODUCTION AND USE OF NEW SELECT MORTALITY FACTORS

DOCKET NO. 18-0147-1001

#### 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 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

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

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

This updates the rule to agree with the National Association of Insurance Commissioners model regulation #830 to apply the same standards to Idaho insurers offering life insurance products as are imposed by other states that have adopted the model. This rule permits the recognition of company mortality experience in the development of deficiency reserves and removes some arbitrary limits that had been imposed on the recognition of company experience. It includes a requirement for disclosure by the appointed actuary of possible shortfalls in funding future required reserves.

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

This rulemaking does not impose any fees.

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports adoption of it.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208) 334-4314.

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 September 22, 2010.

DATED this 10th day of August, 2010.

Shad Priest, Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0147-1001**

**001. TITLE AND SCOPE.**

**01. Title.** This chapter shall be cited in full as IDAPA 18.01.47, "Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors." (3-30-01)

**02. Scope.** The purpose of this chapter is to provide: (3-30-01)

**a.** Tables of select mortality factors and rules for their use; (3-30-01)

**b.** Rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and (3-30-01)

**c.** Rules concerning a minimum standard for the valuation of plans with secondary guarantees. (3-30-01)

**03. Method.** The method for calculating basic reserves defined in this chapter will constitute the commissioners' reserve valuation method for policies to which this chapter is applicable. (3-30-01)

**04. Applicability.** This chapter shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after the effective date of this chapter, subject to the following exceptions and conditions. (3-30-01)

**a.** Exceptions: (3-30-01)

i. This chapter shall not apply to any individual life insurance policy issued on or after the effective date of this chapter if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this chapter, that guarantees the premium rates of the new policy. This chapter also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy. (3-30-01)

ii. This chapter shall not apply to any universal life policy that meets all the following requirements: (3-30-01)

(1) Secondary guarantee period, if any, is five (5) years or less; (3-30-01)

(2) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in Subsection 00410.06 and the applicable valuation interest rate; and ~~(3-30-01)~~( )

(3) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period. (3-30-01)

iii. This chapter shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. (3-30-01)

iv. This chapter shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. (3-30-01)

v. This chapter shall not apply to a group life insurance certificate unless the certificate provides for a



stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one (1) year. (3-30-01)

**b.** Conditions: (3-30-01)

i. Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with the provisions of Section ~~00612~~. (3-30-01)(\_\_\_\_)

ii. Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section ~~00713~~. (3-30-01)(\_\_\_\_)

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying *at cost in the main office and each regional or district office of this agency* in accordance with the public records act. (3-30-01)(\_\_\_\_)

**003. ADMINISTRATIVE APPEALS.**

*There is no appeal to the Attorney General from application of this chapter. All such appeals must be instituted by written demand for a hearing before the Director of the Department of Insurance, pursuant to Chapter 2, Title 41 and Chapter 52, Title 67, Idaho Code. Further appeal from the Director's decision can be taken to district court, pursuant to Chapter 52, Title 67, Idaho Code. All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General -- General Provisions."* (3-30-01)(\_\_\_\_)

**[Codified Section 009 is being moved and renumbered to proposed Section 004]**

**0094. INCORPORATION BY REFERENCE.**

The tables of select mortality factors are hereby incorporated by reference into IDAPA 18.01.47, "Valuation of Life Insurance Policies Including the Introduction and Use of the New Select Mortality Factors" that are the bases to which the respective percentage of Subsections ~~00511.01.b.~~, ~~00511.02.b.~~, and ~~00511.02.c.~~ are applied. The tables referenced are located on the Internet (~~www.doi.state.id.us~~ - select *Miscellaneous under the Company Assistance link*, <http://www.doi.idaho.gov> - select *Rates and Policy Forms under the Companies link*, see *Related Rules and Bulletins* - see Attachments to IDAPA 18.01.47). (3-30-01)(\_\_\_\_)

**01. Types of Tables.** The six (6) tables of select mortality factors incorporated herein by reference include: (3-30-01)

**a.** Male aggregate; (3-30-01)

**b.** Male nonsmoker; (3-30-01)

**c.** Male smoker; (3-30-01)

**d.** Female aggregate; (3-30-01)

**e.** Female nonsmoker; and (3-30-01)

**f.** Female smoker. (3-30-01)

**02. Age Basis.** These tables apply to both age last birthday and age nearest birthday mortality tables. (3-30-01)

**03. Computation for Sex-Blended Mortality Tables.** For sex-blended mortality tables, compute

select mortality factors in the same proportion as the underlying mortality. For example, for the 1980 CSO-B Table, the calculated select mortality factors are eighty percent (80%) of the appropriate male table as referenced in Section 0094, plus twenty percent (20%) of the appropriate female table, as referenced in Section 0094. (3-30-01)( )

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

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except weekends and legal holidays. ( )

**02. Mailing Address.** The Department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720. ( )

**04. Web Site Address.** The Department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

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

*[Codified Sections 004 through 008 are being moved and renumbered to proposed Sections 010 through 014, respectively.]*

**00410. DEFINITIONS.**

**01. Basic Reserves.** Reserves calculated in accordance with Section 41-612(5), Idaho Code. (3-30-01)

**02. Contract Segmentation Method.** Method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in this chapter, (or any other valuation mortality table adopted by the National Association of Insurance Commissioners (NAIC) after the effective date of this chapter and promulgated by rule by the Director for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves set forth in Subsection 011.02. The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows:

- Formulas -

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t = 1, 2, \dots$ ;  $t$  is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1} =$  Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$ , However,  $R_t$  may be increased or decreased by one percent (1%) in any policy year, at the company's option, but  $R_t$  shall not be less than one (1);

where:

$x, k$  and  $t$  are as defined above, and

$q_{x+k+t-1} =$  valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of Paragraph 011.02.b. if Paragraph 011.02.c. is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be deemed to be 0.

~~(3-30-01)~~( )

- 03. Deficiency Reserves.** Excess, if greater than zero (0), of (3-30-01)
- a.** Minimum reserves calculated in accordance with Section 41-612(10), Idaho Code, over (3-30-01)
- b.** Basic reserves. (3-30-01)
- 04. Guaranteed Gross Premiums.** Premiums under a policy of life insurance that are guaranteed and determined at issue. (3-30-01)
- 05. Maximum Valuation Interest Rates.** Interest rates defined in Section 41-612(4b), Idaho Code (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies. (3-30-01)
- 06. 1980 CSO Valuation Tables.** Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten (10) year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983. (3-30-01)
- 07. Scheduled Gross Premium.** Smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in ~~Subsection Paragraph 00713.01.c.~~, if any, or else the minimum premium described in ~~Subsection Paragraph 00713.01.d.~~ ~~(3-30-01)~~( )
- 08. Segmented Reserves.** (3-30-01)
- a.** Reserves calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals: (3-30-01)
- i.** The present value of the death benefits within the segment, plus (3-30-01)

ii. The present value of any unusual guaranteed cash value (see Subsection 00612.04) occurring at the end of the segment, less ~~(3-30-01)~~(\_\_\_\_\_)

iii. Any unusual guaranteed cash value occurring at the start of the segment, plus (3-30-01)

iv. For the first segment only, the excess of the Item one (1) over Item two (2), as follows: (3-30-01)

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. (3-30-01)

(2) A net one (1) year term premium for the benefits provided for in the first policy year. (3-30-01)

b. The length of each segment is determined by the “contract segmentation method,” as defined in this chapter. (3-30-01)

c. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. (3-30-01)

d. For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments. (3-30-01)

**09. Tabular Cost of Insurance.** The net single premium at the beginning of a policy year for one (1) year term insurance in the amount of the guaranteed death benefit in that policy year. (3-30-01)

**10. Ten Year Select Factors.** The select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law. (3-30-01)

**11. Unitary Reserves.** (3-30-01)

a. The present value of all future guaranteed benefits less the present value of all future modified net premiums, where: (3-30-01)

i. Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and (3-30-01)

ii. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item one (1) over Item two (2), as follows: (3-30-01)

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. (3-30-01)

(2) A net one (1) year term premium for the benefits provided for in the first policy year. (3-30-01)

b. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy. (3-30-01)

**12. Universal Life Insurance Policy.** Any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy. (3-30-01)

**00511. GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES.**

**01. Basic Reserves.** At the election of the company for any one (1) or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director for this purpose). If select mortality factors are elected, they may be: (3-30-01)

**a.** The ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law; (3-30-01)

**b.** The select mortality factors in the tables as referenced in Section 0094; or ~~(3-30-01)~~(\_\_\_\_)

**c.** Any other table of select mortality factors adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director for the purpose of calculating basic reserves. (3-30-01)

**02. Deficiency Reserves.** Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero (0), of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director). If select mortality factors are elected, they may be one of the following: (3-30-01)

**a.** The ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law; (3-30-01)

**b.** The select mortality factors in the tables as referenced in Section 0094; ~~(3-30-01)~~(\_\_\_\_)

**c.** For durations in the first segment, X percent of the select mortality factors in the tables as referenced in Section 0094, subject to the following: ~~(3-30-01)~~(\_\_\_\_)

**i.** X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience; (3-30-01)

~~ii.~~ ~~X shall not be less than twenty percent (20%);~~ ~~(3-30-01)~~

~~iii.~~ ~~X shall not decrease in any successive policy years;~~ ~~(3-30-01)~~

~~iv.~~ X is such that, when using the valuation interest rate used for basic reserves, Item one (1) is greater than or equal to Item two (2); (3-30-01)

(1) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X; (3-30-01)

(2) The actuarial present value of future death benefits calculated using an anticipated mortality experience without recognition of mortality improvement beyond the valuation date; (3-30-01)

~~v.~~ X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of

the first five (5) years after the valuation date; (3-30-01)

~~iv.~~ The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of ~~Subsection Paragraph 00511.02.c.~~; ~~(3-30-01)(\_\_\_\_)~~

~~vii.~~ The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of ~~Subsection Paragraph 00511.02.c.~~; and ~~(3-30-01)(\_\_\_\_)~~

~~viii.~~ The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums. (3-30-01)

~~viii.~~ If X is less than one hundred per cent (100%) at any duration for any policy, the following requirements shall be met: (3-30-01)

(1) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of the Actuarial and Memorandum Rule, IDAPA 18.01.77, Section 00822, "Statement of Actuarial Opinion Based on an Asset Adequacy Analysis"; ~~and~~ ~~(3-30-01)(\_\_\_\_)~~

(2) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one (1) or more interim periods; and (\_\_\_\_)

(23) The appointed actuary shall annually opine for all policies subject to this chapter as to whether the mortality rates resulting from the application of X meet the requirements of ~~Subsection Paragraph 00511.02.c.~~ This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience; ~~or~~. ~~(3-30-01)(\_\_\_\_)~~

**d.** Any other table of select mortality factors adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director for the purpose of calculating deficiency reserves. (3-30-01)

**03. Applicability.** Subsection 00511.03 applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten (10) year select mortality factors incorporated in to the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue. ~~(3-30-01)(\_\_\_\_)~~

**04. Gross Premiums.** In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves. (3-30-01)

**05. Changes in Guarantees.** Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one (1) year after the date of the change shall be the greatest of the following: (3-30-01)

**a.** Reserves calculated ignoring the guarantee; (3-30-01)

**b.** Reserves assuming the guarantee was made at issue; and (3-30-01)

**c.** Reserves assuming that the policy was issued on the date of the guarantee. (3-30-01)

**06. Reserve Adequacy.** The Director may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this chapter. This documentation may include a demonstration of the extent to which aggregation with other non-specified

blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of the Actuarial and Memorandum Rule, IDAPA 18.01.77, Section 00822, "Statement of Actuarial Opinion Based on an Asset Adequacy Analysis." (3-30-01)(\_\_\_\_)

**00612. CALCULATION OF MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (OTHER THAN UNIVERSAL LIFE POLICIES).**

**01. Basic Reserves.** Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described below may be made: (3-30-01)

**a.** Treat the unitary reserve, if greater than zero (0), applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero (0), applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or (3-30-01)

**b.** Treat the guaranteed cash surrender value, if greater than zero (0), applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero (0), applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment. (3-30-01)

**02. Deficiency Reserves.** (3-30-01)

**a.** The deficiency reserve at any duration shall be calculated: (3-30-01)

**i.** On a unitary basis if the corresponding basic reserve determined by Subsection 00612.01 is unitary; (3-30-01)(\_\_\_\_)

**ii.** On a segmented basis if the corresponding basic reserve determined by Subsection 00612.01 is segmented; or (3-30-01)(\_\_\_\_)

**iii.** On the segmented basis if the corresponding basic reserve determined by Subsection 00612.01 is equal to both the segmented reserve and the unitary reserve. (3-30-01)(\_\_\_\_)

**b.** Subsection 00612.02 shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in Subsection 00511.02 and rate of interest). (3-30-01)(\_\_\_\_)

**c.** Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero (0), for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Subsection 00511.02. (3-30-01)(\_\_\_\_)

**d.** For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves. (3-30-01)

**03. Minimum Value.** Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten (10) year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy. (3-30-01)

**04. Unusual Pattern of Guaranteed Cash Surrender Values.** (3-30-01)

**a.** For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where  $n$  is the number of years from the date of issue to the date the unusual cash surrender value is scheduled. (3-30-01)

**b.** The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where: (3-30-01)

**i.**  $n$  is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of: (3-30-01)

(1) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or (3-30-01)

(2) The mandatory expiration date of the policy; and (3-30-01)

**ii.** The net premium for a given year during the  $n$  year period is equal to the product of the net to gross ratio and the respective gross premium; and (3-30-01)

**iii.** The net to gross ratio is equal to Item One (1) divided by Item Two (2) as follows: (3-30-01)

(1) The present value, at the beginning of the  $n$  year period, of death benefits payable during the  $n$  year period plus the present value, at the beginning of the  $n$  year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the  $n$  year period. (3-30-01)

(2) The present value, at the beginning of the  $n$  year period, of the scheduled gross premiums payable during the  $n$  year period. (3-30-01)

**c.** For purposes of Subsection ~~00612.04~~, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of: (~~3-30-01~~)(\_\_\_\_)

**i.** One hundred ten percent (110%) of the scheduled gross premium for that year; (3-30-01)

**ii.** One hundred ten percent (110%) of one (1) year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and (3-30-01)

**iii.** Five percent (5%) of the first policy year surrender charge, if any. (3-30-01)

**05. Optional Exemption for Yearly Renewable Term (YRT) Reinsurance.** At the option of the company, the following approach for reserves on YRT reinsurance may be used: (3-30-01)

**a.** Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year; (3-30-01)

**b.** Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection ~~00612.03~~; (~~3-30-01~~)(\_\_\_\_)

**c.** Deficiency reserves. (3-30-01)



i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. (3-30-01)

ii. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with ~~Subsection~~ paragraph 00612.05.c.i.; (~~3-30-01~~)(\_\_\_\_)

d. For purposes of Subsection 00612.05, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this chapter by the NAIC and promulgated by rule by the Director for this purpose; (~~3-30-01~~)(\_\_\_\_)

e. A reinsurance agreement shall be considered YRT reinsurance for purposes of Subsection 00612.05 if only the mortality risk is reinsured; and (~~3-30-01~~)(\_\_\_\_)

f. If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies. (3-30-01)

**06. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies.**  
At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used: (3-30-01)

a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year. (3-30-01)

b. Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection 00612.03. (~~3-30-01~~)(\_\_\_\_)

c. Deficiency reserves: (3-30-01)

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. (3-30-01)

ii. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with ~~Subsection~~ paragraph 00612.06.c.i. (~~3-30-01~~)(\_\_\_\_)

d. For purposes of Subsection 00612.06, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this chapter by the NAIC and promulgated by rule by the Director for this purpose. (~~3-30-01~~)(\_\_\_\_)

e. A policy shall be considered an attained-age-based YRT life insurance policy for purposes of Subsection 00612.06 if: (~~3-30-01~~)(\_\_\_\_)

i. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and (3-30-01)

ii. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age. (3-30-01)

f. For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of Subsection 00612.06 may be used after the initial period if: (~~3-30-01~~)(\_\_\_\_)

i. The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(3-30-01)

ii. The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and (3-30-01)

iii. After the initial period of coverage, the policy meets the conditions of ~~Subsection Paragraph 00612.06.e.~~; and ~~(3-30-01)( )~~

g. If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this chapter. (3-30-01)

**07. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies.** Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met: (3-30-01)

a. The policy consists of a series of  $n$ -year periods, including the first period and all renewal periods, where  $n$  is the same for each period, except that for the final renewal period,  $n$  may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten (10) years and less than twice the size of the earlier  $n$ -year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level; (3-30-01)

b. The guaranteed gross premiums in all  $n$ -year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten (10) year select mortality factors; and (3-30-01)

c. There are no cash surrender values in any policy year. (3-30-01)

**08. Exemption From Unitary Reserves for Certain Juvenile Policies.** Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue: (3-30-01)

a. At issue, the insured is age twenty-four (24) or younger; (3-30-01)

b. Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and (3-30-01)

c. After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy. (3-30-01)

**00713. CALCULATION OF MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICY OWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD.**

**01. General.** The following general provisions apply. (3-30-01)

a. Policies with a secondary guarantee include: (3-30-01)

i. A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums; (3-30-01)

ii. A policy in which the minimum premium at any duration is less than the corresponding one (1) year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this chapter by the NAIC and promulgated by rule by the Director for this purpose; or (3-30-01)

iii. A policy with any combination of ~~Subsections paragraphs 00713.01.a.i. and 00713.01.a.ii.~~ ~~(3-30-01)( )~~

**b.** A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Subsections ~~00713.02~~ and ~~00713.03~~ below shall be recalculated from issue to reflect these changes. (3-30-01)(\_\_\_\_)

**c.** Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed. (3-30-01)

**d.** For purposes of Section ~~00713~~, the minimum premium for any policy year is the premium that, when paid into a policy with a zero (0) account value at the beginning of the policy year, produces a zero (0) account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue. (3-30-01)(\_\_\_\_)

**e.** The one (1) year valuation premium means the net one (1) year premium based upon the original schedule of benefits for a given policy year. The one (1) year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in ~~Subsections Paragraphs 00511.02.b., 00511.02.c., and 00511.02.d.~~ may not be used to calculate the one (1) year valuation premiums. (3-30-01)(\_\_\_\_)

**f.** The one (1) year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund. (3-30-01)

**02. Basic Reserves for the Secondary Guarantees.** Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Subsection ~~00410.02~~. (3-30-01)(\_\_\_\_)

**03. Deficiency Reserves for the Secondary Guarantees.** Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Subsection ~~00612.02~~ with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force. (3-30-01)(\_\_\_\_)

**04. Minimum Reserves.** The minimum reserves during the secondary guarantee period are the greater of: (3-30-01)

**a.** The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or (3-30-01)

**b.** The minimum reserves required by other rules or rules governing universal life plans. (3-30-01)

**~~00814~~. EFFECTIVE DATE.**

This chapter shall become effective January 1, 2000. (3-30-01)

*[Codified Section 009 has been moved and renumbered to proposed Section 004]*

**~~0105~~. -- 999. (RESERVED).**

# IDAPA 18 - DEPARTMENT OF INSURANCE

## 18.01.53 - CONTINUING EDUCATION

DOCKET NO. 18-0153-1001

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapter 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, no later than September 15, 2010.

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 forth continuing education requirements for insurance producers. The proposed changes remove the requirement that ethics courses be stand alone courses, and add a requirement that persons using self-study materials demonstrate their understanding of the materials by completing questions at the end of each chapter with a score of at least 70% before proceeding to the next chapter.

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

This rulemaking does not impose any fees.

**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 the proposed changes were developed in cooperation with members of the affected industry.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Gina McBride at (208-334-4340).

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 September 22, 2010.

DATED this 23rd day of July, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0153-1001

**012. BASIC REQUIREMENTS.**

**01. Proof of Completion.** As a condition for the continuation of a license, a licensee must furnish the Director of the Department of Insurance ("Director"), on or before the licensing renewal date, proof of satisfactory completion of approved subjects or courses meeting the following requirements: (4-5-00)

**a.** Twenty-four (24) hours of continuing education credit during each licensing period, which licensing period is for two (2) years. (3-20-04)

**b.** At least three (3) hours of continuing education credit in ethics must be earned each licensing period. ~~The ethics courses must be stand-alone courses and not part of other courses.~~ (3-19-10)( )

**c.** No more than four (4) hours of continuing education credit from courses approved for public adjusters shall apply toward the continuation of a producer license. (3-19-10)

**02. Relicensing Procedures After Voluntary Termination of License.** An insurance agent who voluntarily terminates his/her license can apply to be relicensed without testing if the application is received by the Department within twelve (12) months after the termination and if the continuing education requirements were completed during the licensing period prior to voluntary termination. Non-resident insurance agents who were former resident agents and who wish to obtain a resident license once again will be subject to the continuing education requirements on a pro-rata basis. (4-5-00)

**03. Completion Within Two Years.** Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two (2) year period immediately preceding renewal of the license. Courses may not have been duplicated in the same renewal period. The date of completion for a self-study course is the date of successful completion of exam. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. CREDIT FOR INDIVIDUAL STUDY PROGRAMS.**

**01. Requirements for Credit of Independent Study Programs.** All approved correspondence courses or independent study programs must include an examination which requires a score of seventy percent (70%) or better to earn a certificate of completion. For each approved course, the sponsoring organization shall maintain multiple tests (two (2) or more) sufficient to maintain the integrity of the testing process. A written explanation of test security and administration methods shall accompany the course examination materials. Each unit and/or chapter of a course must contain review questions that must be answered with a score of 70% or better before access to the following unit/chapter is allowed. ( )

**02. Completed Tests.** The examinations shall be administered, graded, and the results recorded by the organization to which approval was originally granted. Completed tests shall be retained by the sponsoring organization and shall not be returned to any licensee. (7-1-93)( )

**023. Prior Approval Required for Independent Study Programs.** All correspondence courses or individual study programs must be submitted for approval and must be approved prior to being offered to licensees for continuing education credit. (7-1-93)

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING TITLE INSURANCE BUSINESS RULES

DOCKET NO. 18-0156-1001

#### 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 41-211, 41-1314, and 41-2708, 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 September 15, 2010.

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

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

The purpose of the changes to this rule are to have rules relating to filing of escrow charges and fees all contained in one rule, rule 18.01.25, "Title Insurance and Title Insurance Agents and Escrow Officers," and to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace. This rulemaking deletes language from rule 18.01.56 that will be added to rule 18.01.25.

**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(2), Idaho Code, formal negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with representatives of the affected industry.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Freeman at (208) 334-4250.

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 September 22, 2010.

DATED this 23rd day of July, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State Street, 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0156-1001

**017. ~~ESCROW CLOSING CHARGES AND PREMIUM RATES.~~**

~~A title entity shall not charge less than the rate as filed with the Department of Insurance for a specified title or escrow service or for a policy of title insurance. A specified title service is any service defined in the title entity's filed schedule of rates and charges or the schedule in use by the title entity. A title entity shall also not waive or offer to waive all or any part of the title entity's established fee or charge for services which are not the subject of rates filed with the Department of Insurance. A filed charge or rate shall not be less than the title entity's cost for providing that service. Rates shall not reflect credits of any kind applicable with regard to different classifications of customers or to types of closings. Rates shall be filed with justification in accordance with Idaho Code, Section 41-2706. Justification shall clearly demonstrate that the title entity's filed rates for escrow services are not less than the title entity's cost to provide the escrow services. Escrow rates shall be refiled on or before December 15, 1988 establishing a title entity's basic rate including a minimum and negotiable rate. However, a title entity shall utilize its basic rate, minimum rate, and negotiable rate with respect to different classifications of customers or to types of closings effective December 1, 1988. Escrow rates shall be filed thereafter on a yearly basis due March 15 reflecting experience based on the calendar year. The first yearly filing will be due March 15, 1990 reflecting experience from January 1, 1989 to December 31, 1989. In addition, rates shall be filed as often as necessary if escrow costs exceed escrow revenues. Rates may also be filed in addition to the yearly filing for filings to increase revenues. Rate filings in these instances shall be filed at least thirty (30) days prior to implementation. All rate filings shall be based on twelve months experience.~~ (7-1-93)(\_\_\_\_)

**018. PENALTY.**

This Section shall emphasize and restate the general penalties authorized pursuant to Title 41, Idaho Code, (the Idaho Insurance Code) for violations of the anti-rebate and anti-illegal inducement laws. (7-1-93)

**01. Section 41-2708(3), Idaho Code.** ~~Section 41-2708(3) provides that each person and entity giving or receiving a rebate, illegal inducement, or a reduction in rate shall be liable for three (3) times the amount of such rebate, illegal inducement, or reduced rate.~~ In addition to this penalty penalties imposed by statute, a title entity may also be subject to an administrative penalty as outlined below. (7-1-93)(\_\_\_\_)

**02. Section 41-327, Idaho Code.** Section 41-327 provides that the Director may impose an administrative penalty not to exceed five thousand dollars (\$5,000) and/or suspend or revoke an insurer's certificate of authority if the Director finds, after a hearing thereon, that the insurer has either violated or failed to comply with the Insurance Code. (7-1-93)

**03. Section 41-1016, Idaho Code.** Section 41-1016 provides that the Director may impose an administrative penalty not to exceed one thousand dollars (\$1,000) and/or suspend or revoke an agent's license if the Director finds, after a hearing thereon, that the agent has either violated or failed to comply with the Insurance Code. (3-30-07)

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.66 - DIRECTOR'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

DOCKET NO. 18-0166-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapter 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, no later than September 15, 2010.

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

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

This rule sets forth the standards which the director may use for identifying insurers found to be in such financial condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance. The proposed changes provide additional standards for consideration by the director to determine whether the continued operations of an insurer might be deemed hazardous to the policyholders, creditors or the general public. It also gives the director the authority to issue an order to companies deemed to be in hazardous financial condition to take corrective action.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation and few companies fall into the category of hazardous financial condition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference in this rule: This rule incorporates by reference the full text of the National Association of Insurance Commissioners Financial Condition Examiners Handbook and the National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual, pursuant to Sections 41-223 and 41-335, Idaho Code. The referenced text provides standards the Director may use to identify insurers whose financial condition may be hazardous to the public or to holders of their policies or certificates of insurance.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208-334-4314).

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 September 22, 2010.

DATED this 28th day of July, 2010.

Shad Priest, Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398



THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0166-1001

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 18.01.66, "Director's Authority for Companies Deemed to be in Hazardous Financial Condition." ( )

**02. Scope.** The purpose of this rule is to set forth the standards which the Director may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance. This rule shall not be interpreted to limit the powers granted the Director by any laws or parts of laws of this state, nor shall this rule be interpreted to supersede any laws or parts of laws of this state. (10-1-93)( )

**002. (RESERVED) WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of this rule, or to the documentation of compliance with this rule. These documents will be available for public inspection and copying in accordance with the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. ( )

**003. ADMINISTRATIVE APPEALS.**

*Any order or decision of the Director shall be subject to appeal in accordance with Chapter 52, Title 67, Idaho Code, at the instance of any party to the proceedings whose interests are substantially affected.* All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General -- General Provisions." (10-1-93)( )

**004. INCORPORATION BY REFERENCE.**

This rule incorporates by reference the full text of the National Association of Insurance Commissioners Financial Condition Examiners Handbook and the National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual, pursuant to Sections 41-223 and 41-335, Idaho Code. Copies may be viewed at: ( )

**01. Department.** Idaho Department of Insurance, 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ( )

**02. Industry Documents.** NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. <http://www.naic.org>. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS, AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except weekends and legal holidays. ( )

**02. Mailing Address.** The Department's mailing address is Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ( )

**04. Web Site Address.** The department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with this rule are subject to the provisions of the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. ( )

0047. -- 010. (RESERVED).

**011. STANDARDS.**

The following standards, either singly or ~~a~~ in combination of two (2) or more, may be considered by the Director to determine whether the continued operation of any insurer transacting ~~an~~ insurance business in this state might be deemed to be hazardous to ~~the~~ its policyholders, ~~or~~ creditors or ~~to~~ the general public. The Director may consider:

(10-1-93)( )

**01. Examination Reports.** Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries. (10-1-93)( )

**02. NAIC Insurance Regulatory Information System.** The National Association of Insurance Commissioners Insurance Regulatory Information System and its ~~related reports~~ other financial analysis solvency tools and reports. (10-1-93)( )

**03. Expense Ratios.** ~~The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~ **Adequate Cash Provision.** Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts. (10-1-93)( )

**04. Asset Portfolio.** ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature.~~ (10-1-93)

**054. Reinsurance Program.** The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer. (10-1-93)

**065. Operating Loss (50% of Surplus).** Whether ~~the~~ the insurer's operating loss in the last twelve (12) month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of ~~such~~ the insurer's remaining surplus as regards policyholders in excess of the minimum required. (10-1-93)( )

**06. Operating Loss (20% of Surplus).** Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required. ( )

**07. Insolvency of Affiliate, Subsidiary or Reinsurer.** Whether ~~any affiliate, subsidiary or~~ a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which in the opinion of the Director may affect the solvency of the insurer. (10-1-93)( )

**08. Contingent Liabilities.** Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Director may affect the solvency of the insurer. (10-1-93)

**09. Controlling Person.** Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer. (10-1-93)

**10. Receivables.** The age and collectibility of receivables. (10-1-93)

**11. Competence of Management.** Whether the management of an insurer, including of officers,

directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position. (10-1-93)

**12. Failure to Respond to Inquiries.** Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry. (10-1-93)

**13. Failure to Meet Filing Requirements.** Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Director. ( )

**134. False or Misleading Financial Statements.** Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer. (10-1-93)

**145. Extensive Growth.** Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner. (10-1-93)

**156. Cash Flow.** Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems. (10-1-93)

**17. Reserves Compliance with Minimum Standards.** Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice. ( )

**18. Material Under-Reserving.** Whether management persistently engages in material under-reserving that results in adverse development. ( )

**19. Transactions Among Affiliates.** Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets, capital gains or both do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature. ( )

**20. Any Other Finding.** Any other finding determined by the Director to be hazardous to the insurer's policyholders or creditors or to the general public. ( )

**012. DIRECTOR'S AUTHORITY.**

**01. Determination of Financial Condition.** For the purposes of making a determination of an insurer's financial condition under this rule, the Director may: (10-1-93)

**a.** Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding; (10-1-93)

**b.** Make appropriate adjustments, including disallowance, to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates, consistent with the NAI C Accounting Policies and Procedures Manual, state laws, and regulations; (~~10-1-93~~)( )

**c.** Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; (10-1-93)

**d.** Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve (12) month period. (10-1-93)

**02. Issuance of Order.** If the Director determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or creditors or to the general public, then the Director may, upon ~~his~~ a determination, issue an order requiring the insurer to: (~~10-1-93~~)( )

- a. Reduce the total amount of present and potential liability for policy benefits by reinsurance; (10-1-93)
- b. Reduce, suspend or limit the volume of business being accepted or renewed; (10-1-93)
- c. Reduce general insurance and commission expenses by specified methods; (10-1-93)
- d. Increase the insurer's capital and surplus; (10-1-93)
- e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders; (10-1-93)
- f. File reports in a form acceptable to the Director concerning the market value of an insurer's assets; (10-1-93)
- g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Director deems necessary; (10-1-93)
- h. Document the adequacy of premium rates in relation to the risks insured; (10-1-93)
- i. File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Director; (10-1-93)
- j. Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the Director; ( )
- k. Provide a business plan to the Director in order to continue to transact business in the state; or ( )
- l. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the Director considers necessary to improve the financial condition of the insurer. ( )

**03. Hearing.** Any insurer subject to an order under Subsection 012.02 may request a hearing to review that order pursuant to Title 41, Chapter 2, Idaho Code. *The notice of hearing shall be served upon the insurer pursuant to Section 550 to the extent not inconsistent with this subsection. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Director based the order. Unless mutually agreed between the Director and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in Ada County or in some other place convenient to the parties designated by the Director. He shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.* (10-1-93)( )

**013. SEVERABILITY.**  
If any provisions of this rule ~~be~~ are held to be invalid, the remainder shall not be affected. (10-1-93)( )

# IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

## 18.01.77 - ACTUARIAL OPINION AND MEMORANDUM RULE

DOCKET NO. 18-0177-1001

### 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, 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

This updates the rule to agree with the National Association of Insurance Commissioners model Regulation #822 to apply the same standards to Idaho insurers offering life insurance products as are imposed by other states that have adopted the model. The rule removes outdated language in actuarial opinions, adds a date to the signature of actuary, provides directions on the rationale for degree of rigor in analyzing different blocks of business, provides directions for criteria for determining asset adequacy, and provides instructions to comment on the impact of the insufficiency of assets to support the payment of benefits.

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

This rulemaking does not impose any fees.

**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 the proposed changes are from a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports adoption of it.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208) 334-4314.

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 September 22, 2010.

DATED this 10th day of August, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0177-1001**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except ~~Saturday, Sunday~~  
~~weekends~~ and legal holidays. (3-30-07)(\_\_\_\_)

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box  
83720, Boise, ID 83720-0043. (3-30-07)

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho  
~~83702-0043.~~ (3-30-07)(\_\_\_\_)

**04. Web Site Address.** The department's web address is <http://www.doi.idaho.gov>. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS.**

**01. General Description.** The statement of actuarial opinion submitted in accordance with this section  
shall consist of; (3-30-07)

**a.** A paragraph identifying the appointed actuary and his qualifications (see Subsection 022.02.a. of  
this chapter); (3-30-07)

**b.** A scope paragraph identifying the subjects on which an opinion is to be expressed and describing  
the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items  
which have been analyzed for asset adequacy and the method of analysis, (see Subsection 022.02.b. of this chapter)  
and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;  
(3-30-07)

**c.** A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to  
other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned  
assets, including variation in cash flows according to economic scenarios (see Subsection 022.02.c. of this chapter),  
supported by a statement of each such expert in the form prescribed by Subsection 022.05 of this chapter; and  
(3-30-07)

**d.** An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of  
the supporting assets to mature the liabilities (see Subsection 022.02.f. of this chapter). (3-30-07)

**e.** One (1) or more additional paragraphs will be needed in individual company cases as follows;  
(3-30-07)

**i.** If the appointed actuary considers it necessary to state a qualification of his opinion; (7-1-97)

**ii.** If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset  
allocation used at the prior opinion date with that used for this opinion; (3-30-07)

**iii.** If the appointed actuary must disclose whether additional reserves of the prior opinion date are  
released as of this opinion date, and the extent of the release; or (3-30-07)

iv. If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion. (7-1-97)

**02. Recommended Language.** The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section. (7-1-97)

**a.** The opening paragraph should generally indicate the appointed actuary's relationship to the company and his qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies." (7-1-97)

**b.** The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, ~~1920~~[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

**TABLE 022.02.b.**

| Asset Adequacy Tested Amounts                        |                      |                                       | Reserves and Liabilities |                  |                              |
|--|----------------------|---------------------------------------|--------------------------|------------------|------------------------------|
| Statement Item                                       | Formula Reserves (1) | Additional Actuarial Reserves (a) (2) | Analysis Method (b)      | Other Amount (3) | Total Amount (1)+(2)+(3) (4) |
| Exhibit 5  |                      |                                       |                          |                  |                              |
| Life Insurance                                       |                      |                                       |                          |                  |                              |
| Annuities  |                      |                                       |                          |                  |                              |
| Supplementary Contracts Involving Life Contingencies |                      |                                       |                          |                  |                              |
| Accidental Death Benefit                             |                      |                                       |                          |                  |                              |
| Disability - Active                                  |                      |                                       |                          |                  |                              |
| Disability - Disabled                                |                      |                                       |                          |                  |                              |
| Miscellaneous  |                      |                                       |                          |                  |                              |
| Total (Exhibit 5 Item 1, Page 3)                     |                      |                                       |                          |                  |                              |

| Asset Adequacy Tested Amounts   |                      |                                       | Reserves and Liabilities |                  |                              |
|---|----------------------|---------------------------------------|--------------------------|------------------|------------------------------|
| Statement Item  | Formula Reserves (1) | Additional Actuarial Reserves (a) (2) | Analysis Method (b)      | Other Amount (3) | Total Amount (1)+(2)+(3) (4) |
| Exhibit 6<br>Active Life Reserve  |                      |                                       |                          |                  |                              |
| Claim Reserve   |                      |                                       |                          |                  |                              |
| Total (Exhibit 6 Item 2, Page 3)  |                      |                                       |                          |                  |                              |
| Exhibit 7<br>Premium and Other Deposit Funds<br>(Column 6, Line 14)   |                      |                                       |                          |                  |                              |
| Guaranteed Interest Contracts<br>(Column 2, Line 14)  |                      |                                       |                          |                  |                              |
| Annuities Certain (Column 3, Line 14)   |                      |                                       |                          |                  |                              |
| Supplemental Contracts<br>(Column 4, Line 14)   |                      |                                       |                          |                  |                              |
| Dividend Accumulations or Refunds<br>(Column 5, Line 14)  |                      |                                       |                          |                  |                              |
| Total Exhibit 7   |                      |                                       |                          |                  |                              |
| Exhibit 8 Part 1<br>Life (Page 3, Line 4.1)   |                      |                                       |                          |                  |                              |
| Health (Page 3, Line 4.2)   |                      |                                       |                          |                  |                              |
| Total Exhibit 8, Part 1   |                      |                                       |                          |                  |                              |
| Separate Accounts<br>(Page 3, Line 27)  |                      |                                       |                          |                  |                              |
| TOTAL RESERVES  |                      |                                       |                          |                  |                              |
| IMR (General Account, Page 3 Line 9.4)  |                      |                                       |                          |                  |                              |
| <del>IMR (General Separate Accounts, Page 3 Line 27)</del>  |                      |                                       |                          |                  |                              |
| AVR (Page 3 Line 24.1)  | (c)                  |                                       |                          |                  |                              |
| Net Deferred and Uncollected Premiums   |                      |                                       |                          |                  |                              |
| Notes:<br>(a) The additional actuarial reserves are the reserves established under <del>Subsection Paragraph</del> 021.05.b. or 021.05.c. of this chapter.<br>(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Subsection 021.04 of this chapter, by means of symbols which should be defined in footnotes to the table.<br>(c) Allocated amount. |                      |                                       |                          |                  |                              |



(3-30-07)( )

**c.** If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

“I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] or “certain critical aspects of the analysis performed in conjunction with forming my opinion”, as certified in the attached statement. I have reviewed the information relied upon for reasonableness.” ~~or~~

~~“I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement.”~~  
(3-30-07)( )

**i.** Such a statement of reliance on other experts should be accompanied by a statement by each of the experts of the form prescribed by Subsection 022.05. (3-30-07)

**d.** If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company’s current annual statement.” (3-30-07)

**e.** If the appointed actuary has not examined the underlying records, but has relied upon data (e.g. listings and summaries of policies in force and/or asset records) prepared by the company ~~or a third party~~, the reliance paragraph should include a sentence such as:

“In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company’s current annual statement. In other respects, my examination included such review of the actuarial assumptions and actuarial methods used and such tests of the ~~actuarial~~ calculations ~~as~~ I considered necessary.”  
(3-30-07)( )

**i.** Such a section must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 022.05 of this chapter. (3-30-07)

**f.** The opinion paragraph should include the following:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

- (a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
- (b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
- (c) Meet the requirements of the Insurance Law and rule of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.
- (d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);
- (e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such

reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.”; or

“The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

**Note:** Choose one (1) of the above two (2) paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company’s future experience may not follow all the assumptions used in the analysis.

\_\_\_\_\_  
Signature of Appointed Actuary

\_\_\_\_\_  
Address of Appointed Actuary

\_\_\_\_\_  
Telephone Number of Appointed Actuary”

\_\_\_\_\_  
Date

(3-30-07)(\_\_\_\_)

**03. Assumptions for New Issues.** The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 022 of this chapter. (3-30-07)

**04. Adverse Opinions.** If the appointed actuary is unable to form an opinion, then he shall refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, then he shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph. (7-1-97)

**05. Reliance on Data Furnished by Other Persons.** If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and

telephone number of the person rendering the certification, as well as the date on which it is signed. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS AND REGULATORY ASSET ADEQUACY ISSUES SUMMARY.**

**01. General.** (7-1-97)

**a.** In accordance with Section 41-612(12), Idaho Code, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his opinion regarding the reserves ~~under a Section 022 opinion~~. The memorandum shall be made available for examination by the Director upon his request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Director. (~~3-30-07~~)(\_\_\_\_)

**b.** In preparing the memorandum, the appointed actuary may rely on, and include as a part of his own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 021.02 of this chapter, with respect to the areas covered in such memoranda, and so state in their memoranda. (3-30-07)

**c.** If the Director requests a memorandum and no such memorandum exists or if the Director finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this Rule, the Director may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Director. (~~7-1-97~~)(\_\_\_\_)

**d.** The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Director; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as examination workpapers and shall be kept confidential to the same extent as is prescribed by Section 41-227, Idaho Code. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three (3) years. (7-1-97)

**e.** In accordance with Section 41-612(12), Idaho Code, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection 024.03 of this chapter. The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary will be maintained as confidential and not subject to public disclosure by the director in accordance with Section 41-612(12), Idaho Code, and Section 9-340D(5) of the Idaho Public Records Act. (3-30-07)

**f.** In accordance with Section 41-612(12)(d)(iv), the director will accept the regulatory asset adequacy issues summary of a foreign or alien company filed by that company with the insurance supervisory official of another state if the director determines that the summary reasonably meets the requirements applicable to a company domiciled in Idaho. Therefore, foreign or alien insurers required to file the regulatory asset adequacy issues summary in their home state are exempt from filing in this state, except upon request of the director, provided the other state has substantially similar reporting requirements and the summary is filed with the director of the other state within the time specified. (5-8-09)

**02. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 022).** When an actuarial opinion under Section 022 of this chapter is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 021.04 of this chapter and any additional standards under this rule. It shall specify; (3-30-07)

- a. For reserves; (3-30-07)
  - i. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant; (7-1-97)
  - ii. Source of liability in force; (7-1-97)
  - iii. Reserve method and basis; (7-1-97)
  - iv. Investment reserves; (7-1-97)
  - v. Reinsurance arrangements; and (3-30-07)
  - vi. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis. (3-30-07)
- b. Documentation of assumptions to test reserves for the following: (3-30-07)
  - i. Lapse rates (both base and excess); (3-30-07)
  - ii. Interest crediting rate strategy; (3-30-07)
  - iii. Mortality; (3-30-07)
  - iv. Policyholder dividend strategy; (3-30-07)
  - v. Competitor or market interest rate; (3-30-07)
  - vi. Annuitization rates; (3-30-07)
  - vii. Commissions and expenses; and (3-30-07)
  - viii. Morbidity. (3-30-07)
  - ix. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. (3-30-07)
- c. For assets: (7-1-97)
  - i. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets; (7-1-97)
  - ii. Investment and disinvestment assumptions; (7-1-97)
  - iii. Source of asset data; (7-1-97)
  - iv. Asset valuation bases. (7-1-97)
- d. Documentation of assumptions made for the following assets: (3-30-07)
  - i. Default costs; (3-30-07)
  - ii. Bond call function; (3-30-07)
  - iii. Mortgage prepayment function; (3-30-07)

- iv. Determining market value for assets sold due to disinvestment strategy; and (3-30-07)
- v. Determining yield on assets acquired through the investment strategy. (3-30-07)
- vi. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. (3-30-07)
- e. For the Analysis basis: (7-1-97)(\_\_\_\_)
- i. Methodology; (7-1-97)
- ii. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed; (7-1-97)
- iii. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business); (7-1-97)(\_\_\_\_)
- iv. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); (7-1-97)(\_\_\_\_)
- v. Effect of Whether the impact of federal income taxes, was considered and the method of treating reinsurance and other relevant factors in the asset adequacy analysis. (7-1-97)(\_\_\_\_)
- f. Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis; (3-30-07)
- g. Summary of Results; (7-1-97)
- h. Conclusion(s). (7-1-97)
- 03. Details of the Regulatory Asset Adequacy Issues Summary.** (3-30-07)
- a. The regulatory asset adequacy issues summary shall include: (3-30-07)
  - i. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force; (3-30-07)
  - ii. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis; (3-30-07)
  - iii. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion; (3-30-07)
  - iv. Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; (3-30-07)(\_\_\_\_)
  - v. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and (3-30-07)

vi. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis. (3-30-07)

b. The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion. (3-30-07)

**04. Conformity to Standards of Practice.** The memorandum shall include a statement:

“Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.” (7-1-97)

**05. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve.**

An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum. (7-1-97)

**06. Documentation.** The appointed actuary shall retain on file, for at least seven (7) years, sufficient

documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. (7-1-97)

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.79 - RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

DOCKET NO. 18-0179-1001

#### 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 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

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

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

This updates the rule to agree with the National Association of Insurance Commissioners model regulation #815 to apply the same standards to Idaho insurers offering life insurance products as are imposed by other states that have adopted the model. These revisions will allow the preferred mortality tables to be used as a valuation standard for any business issued using the 2001 CSO (Commissioners Standard Ordinary), as the valuation mortality table, with approval of the Director. Mortality tables are developed by studying mortality experience of insured people. The rule also includes a specific limitation related to the accounting used when there is a coinsurance treaty in effect.

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

This rulemaking does not impose any fees.

**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 the proposed changes are from a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports adoption of it.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208) 334-4314.

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 September 22, 2010.

DATED this 10th day of August, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0179-1001**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except ~~Saturday, Sunday~~ weekends and legal holidays. (4-2-08)(\_\_\_\_)

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (4-2-08)

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho ~~83702-0043~~ 83720. (4-2-08)(\_\_\_\_)

**04. Web Site Address.** The Department's web address is <http://www.doi.idaho.gov>. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. 2001 CSO PREFERRED CLASS STRUCTURE TABLE.**

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after January 1, 2004, and prior to January 1, 2007, these tables may be substituted with the consent of the Director and subject to the conditions of Section 012 of this chapter. In determining such consent, the Director may rely on the consent of the commissioner of the company's state of domicile. No such election shall be made until the company demonstrates at least twenty percent (20%) of the business to be valued on this table is in one (1) or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of IDAPA 18.01.59, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits." (4-2-08)(\_\_\_\_)

**012. CONDITIONS.**

**01. Preferred Nonsmoker and Residual Standard Nonsmoker Tables.** For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that: (4-2-08)

**a.** The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class. (4-2-08)

**b.** The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class. (4-2-08)

**02. Preferred Smoker and Residual Standard Smoker Tables.** For each plan of insurance with



separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that: (4-2-08)

**a.** The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table corresponding to the valuation table being used for that class. (4-2-08)

**b.** The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table. (4-2-08)

**03. Unless Exempted By the Director.** Every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the director, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the director, statistical reports showing mortality and such other information as the director may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the director or the director may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the director. (4-2-08)

**04. Reserve Credit for Policies Issued Prior to January 1, 2007.** The use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy censored, either of the following: ( )

**a.** In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (a) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (b) would be refunded to the ceding entity upon the termination of the policy. ( )

**b.** In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer. ( )

**05. Reserve Method.** For the purposes of the condition specified in Subsection 012.04 of this rule, the reserve (i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Table. ( )

## IDAPA 34 - SECRETARY OF STATE

### 34.05.01 - RULES GOVERNING FARM PRODUCTS CENTRAL FILING SYSTEM

DOCKET NO. 34-0501-1001

#### 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 67-903(9), 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 September 15, 2010.

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

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

In the interest of personal privacy, the Office of the Secretary of State will no longer request social security numbers and tax identification numbers on effective financing statements. To this end, the Office of the Secretary of State has requested amendment to its central filing status with the USDA to allow for the use of a unique identifier numbering system. The proposed changes include the new rules regarding the unique identifier system, update old information, and make corrections to previous errors.

**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:

The fees that have been removed from Paragraph 303.03.b. are for services that, due to technological improvements over the last 20 years, are no longer requested or provided. There will be no expected fiscal impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the noncontroversial nature of providing for a unique identifier numbering system.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

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 September 22, 2010.

DATED this 28th day of July 2010.

Jeff Harvey, UCC Supervisor  
Office of the Secretary of State  
450 N. 4th St.  
P. O. Box 83720  
Boise, ID 83720-0080  
Phone: (208) 332-2849  
Facsimile: (208)334-2847

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 34-0501-1001

**000. LEGAL AUTHORITY ~~AND REFERENCES.~~**

In accordance with Sections 67-903(9), 28-9-523(g), and 28-9-524, Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the duties of the Office of the Secretary of State. This authority includes rules to implement and maintain the USDA certified Idaho Central Filing System, in accordance with P.L. 99-198, Section 1324 of the Federal Food Security Act (1985) and Title 9, CFR Part 205 (2010). ( )

~~01. Public Law. P.L. 99-198, Section 1324. (7-1-93)~~

~~02. CFR. Title 9, C.F.R., Part 205 (1986). (7-1-93)~~

~~03. Sessions Laws. Session Laws 1986, Chapter 338. (7-1-93)~~

~~04. Idaho Code. Title 67, chapter 52, Idaho Code. (7-1-93)~~

~~05. USDA. USDA certification of the Idaho Central Filing System, and all amendments thereto. The certification and amendments are available for inspection and copying in the office of the Secretary of State. Copies will be provided on request. (7-1-93)~~

~~06. Rules of the Secretary of State. IDAPA 34.05.03, "Rules Governing Requests For Information -- Form UCC 4 -- Fees," Office of the Secretary of State. (7-1-93)~~

~~001. -- 003. (RESERVED).~~

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 34.05.01, "Rules Governing Farm Products Central Filing System," IDAPA 34, Title 05, Chapter 01. ( )

**02. Scope.** These rules shall govern the requirements for the filing of Farm Products Financing Statements, for the filing of amendments to Farm Products Financing Statements, and for the compilation and distribution of a master list of Farm Products Financing Statements, and portions of the master list. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, documents relating to the interpretation of these rules, or to the documentation of compliance with the rules of this chapter, are available for public inspection and copying at the Office of the Secretary of State. ( )

**003. ADMINISTRATIVE APPEALS.**

This chapter does not provide for appeal. ( )

*Codified Section 004 has been moved and renumbered to proposed Section 010*

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. ( )

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

The principal place of business for the Office of the Secretary of State is located at 700 W. Jefferson, Room E205, Boise, Idaho 83720-0080. The Commercial Division is located at 450 N. 4th Street, Boise, Idaho 83720-0080. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except for legal holidays. The mailing address for the office is P. O. Box 83720, Boise, Idaho 83720-0080. The telephone number for the office is (208) 334-2300. The telephone number for lien inquiries is (208) 334-3191. The facsimile number for the office is (208) 334-2847. The office's website address is <http://www.sos.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

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

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

*Codified Section 004 has been moved and renumbered to proposed Section 010*

**~~00410. DEFINITIONS AND ABBREVIATIONS.~~**

The definitions set forth in Section 28-9-102, Idaho Code, apply with full force and effect to all provisions and sections of these rules. Where terms used in this rule are not explicitly or completely defined herein, definitions and usage of terms from the *references* Legal Authority in Section 000 of these rules are applicable. (7-1-93)( )

- ~~051. Crop Year.~~** (7-1-93)
- ~~a.~~** For a plant or plant product, the calendar year in which it is harvested or to be harvested. (7-1-93)
  - ~~b.~~** For mammals, the calendar year in which they are born or acquired. (7-1-93)
  - ~~c.~~** For bees and worms, the calendar year in which they are alive in adult form. (7-1-93)
  - ~~d.~~** For poultry and the products of mammals, poultry, and bees (i.e., milk, eggs, and honey), the calendar year in which they are sold or to be sold. (7-1-93)( )
  - ~~e.~~** For fish and other aquaculture, the calendar year in which they are harvested or to be harvested. (7-1-93)
- ~~042. EFS Farm Products Financing Statement.~~** *An effective financing statement relating to covering farm products.* (7-1-93)( )
- ~~02.~~** *FP. A farm product produced in the state of Idaho.* (7-1-93)
- ~~03.~~** *SSN. Social security account number of an individual debtor listed on EFS.* (7-1-93)
- ~~04.~~** *TIN. The IRS taxpayer identification number assigned to a business entity debtor other than an individual.* (7-1-93)
- ~~043.~~** **~~Item on a ML Master List or PML Portion of a Master List.~~** *An entry on a ML master list or PML portion of a master list relating to one (1) EFS Farm Products Financing Statement and one (1) debtor listed thereon; there will be a separate item for each debtor name on an EFS; items on a PML will be numbered sequentially.* (7-1-93)( )
- ~~094.~~** **~~PML Grouping.~~** *That related group of FP's farm products which will appear on one (1) PML.* (7-1-93)( )
- ~~06.~~** *SP. A secured party indicated on an EFS.* (7-1-93)
- ~~07.~~** *ML. Master list of EFS's compiled by the Secretary of State.* (7-1-93)
- ~~08.~~** *PML. A portion of the master list which covers EFS's relating to a particular FP or group of FP's.* (7-1-93)
- ~~10.~~** *CS. A cumulative supplement to a PML which contains all additions to, changes to, and deletions from the PML which have been filed since the most recent publication of the complete PML.* (7-1-93)
- ~~12.~~** *CM. Commission merchant.* (7-1-93)

- ~~13.~~ ~~SA. Selling agent.~~ (7-1-93)
- ~~14.~~ ~~SOS. Secretary of State.~~ (7-1-93)
- ~~15.~~ ~~Debtor. For purposes of this rule, the term "debtor" shall mean any person subjecting a farm product to a security interest, whether or not such person is an actual debtor.~~ (7-1-93)
- ~~16.~~ ~~USDA. The United States Department of Agriculture.~~ (7-1-93)
- ~~005. -- 010.~~ ~~(RESERVED).~~

*Codified Sections 011 through 021 have been moved and renumbered to proposed Sections 100 through 303, respectively.*

**011. ABBREVIATIONS.**

Where abbreviations used in these rules are not explicitly or completely defined herein, definitions and usage of abbreviations from the Legal Authority in Section 000 of these rules are applicable. ( )

**01. CS.** A cumulative supplement to a PML which contains all additions to, changes to, and deletions from the PML which have been filed since the most recent publication of the complete PML. ( )

**02. PML.** A portion of the master list, which covers Farm Products Financing Statements relating to a particular farm product or group of farm products. ( )

**03. SOS.** Idaho Secretary of State. ( )

**04. USDA.** United States Department of Agriculture. ( )

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

**020. UNIQUE IDENTIFIER NUMBER (UIN).**

**01. UIN System.** The Secretary of State's Office shall use a UIN system that has been approved and certified by the USDA for the Idaho Central Filing System in place of the former use of complete social security numbers as a means of debtor identification. ( )

**02. Social Security Numbers and Tax Identification Numbers.** With the use of UINs, as approved by the USDA, the SOS will no longer require or accept social security numbers or tax identification numbers, in total, on Farm Products Financing Statements. Only the last four (4) digits shall be required and used. The SOS will not provide social security numbers or tax identification numbers, in total, to any person or business entity, in any format, from Farm Products Financing Statements. ( )

**021. -- 099. (RESERVED).**

*Codified Sections 011 through 021 have been moved and renumbered to proposed Sections 100 through 303, respectively.*

~~01100.~~ **EFS FARM PRODUCTS FINANCING STATEMENT REQUIREMENTS.**

**01. Form.** An ~~EFS~~ Farm Products Financing Statement must meet the requirements of Section 28-9-502, Idaho Code, and must be filed on ~~a form prescribed and approved by the SOS. The form shall be designated "UCC-1F."~~ (7-1-93)( )

**02. Debtor Name.** ~~The debtor name or names must be entered completely and precisely.~~ **Completion of Form.** Form UCC-1F must be completed in accordance with instructions provided by the SOS. (7-1-93)( )

- ~~a.~~ *The names of individuals must be entered in order of last name (surname), first name, and middle initial or name, if any.* (7-1-93)
- ~~b.~~ *Assumed business names and corporate names must be entered in full, without abbreviation.* (7-1-93)
- ~~03.~~ *SSN/TIN. The SSN or TIN for each debtor must be entered beside each debtor's name. If the debtor is a sole proprietorship which has adopted an assumed business name which is listed on the EFS, the SSN of the debtor should be entered beside the assumed business name; if both a husband and wife are liable on the debt, then both SSN's should be entered beside the assumed business name.* (7-1-93)
- ~~04.~~ *Debtor Address. The address of the debtor(s) must be entered. If there are multiple debtors and addresses, the respective debtors and addresses must be clearly tied together.* (7-1-93)
- ~~05.~~ *SP. The name and address of the SP must be entered.* (7-1-93)
- ~~06.~~ *Assignee. The name and address of the assignee, if any, must be entered.* (7-1-93)
- ~~07.~~ *FP. The three (3) digit product code for each FP subject to the security interest must be entered. A table of product codes appears on the back of the UCC-1F. Entry of the FP name following the FP code is permissible but not required. The SOS will consider and record only the FP code, and will not be responsible for discrepancies between the FP code and any FP name which may be entered by the filing party.* (7-1-93)
- ~~08.~~ *County. Within each FP so indicated, the two-digit county code for each county where the FP is growing, is to be grown, is located or is foreseen to be located while in possession of the debtor. A table of county codes appears on the back of the UCC-1F. If a county which is not in the table must be entered, code "99" should be entered, and the county name entered on an attached page.* (7-1-93)
- ~~09.~~ *Crop Year. If fewer than all crop years of a FP are covered by the EFS, the crop year(s) of the FP which is (are) covered must be entered. Only the last two (2) digits of the year are used.* (7-1-93)
- ~~10.~~ *Amount. If less than all of a particular FP for the specified crop year(s) is covered by the EFS, the amount which is covered must be entered, along with the code for the appropriate unit of measurement. A table of unit codes appears on the back of the UCC-1F. If all of the particular FP for the specified crop year(s) is covered by the EFS, no amount information should be entered.* (7-1-93)
- ~~11.~~ *Narrative. If less than all of a FP for the specified crop year(s) is covered, and if the coded information does not adequately identify that which is covered, such additional information as is necessary to identify the covered amount must be entered in narrative form on an attached supplement form prescribed and approved by the SOS. The supplement form shall be designated "UCC-2F." Each entry of additional collateral description on the UCC-2F must be tied to the item on the UCC-1F to which it relates by reference to the pre-numbered line of collateral information on the UCC-1F. The additional collateral description for each item must be limited to not more than a total of one hundred fifty (150) characters and spaces.* (7-1-93)
- ~~12.~~ *Signatures. The signatures of the debtor(s) and SP must be affixed to the UCC-1F. All debtors whose names appear in the debtor block of the UCC-1F must sign.* (7-1-93)
- ~~13.~~ *Legibility. All information other than the signatures must be typed or legibly printed.* (7-1-93)
- ~~14.~~ *Attachments. All attached pages must be printed on only one (1) side and must not exceed eight and one half by eleven inches (8 1/2" x 11") in size.* (7-1-93)

**012101. AMENDMENT, ASSIGNMENT, CONTINUATION, AND TERMINATION OF ~~EFS~~ A FARM PRODUCTS FINANCING STATEMENT.**

- 01. Form.** An amendment, assignment, or continuation of an ~~EFS~~ Farm Products Financing Statement

must be filed on a form prescribed and approved by the SOS. The form shall be designated "UCC-3F." A termination of an EFS may be filed on either the original UCC-1F termination block or on a UCC-3F. (7-1-93)( )

**02. EFS Number.** The document number assigned by the SOS to the EFS to which the action pertains must be entered. **Completion of Form.** Form UCC-3F must be completed in accordance with instructions provided by the SOS. (7-1-93)( )

**03. Parties.** The requirements for identification and signatures of the parties are the same as for an EFS. (7-1-93)

**04. Coded Information.** Amendment of coded collateral information on the EFS will be done by entry of action codes "A" for addition of a new line of coded information and "D" for deletion of an existing line of coded information. Following the action code, the coded information for FP, county, crop year and amount will be entered in the same manner as on an EFS. Amendment of a particular line of coded information will be done by deleting the existing line, followed by adding a new line to reflect the information as amended. Such an amendment must refer by number to the pre-numbered line of collateral information on the UCC-1F. When necessary, the UCC-2F will be used in the same manner as described in Subsection 011.11, supra. A release of collateral will be deemed to be an amendment. (7-1-93)

**05. Uncoded Information.** Amendment of uncoded information on the EFS will be entered in the appropriate space on the UCC-3F. (7-1-93)

**06. Assignment.** Assignment of a security interest covered by an EFS will be done by entry of the assignee's name and address in the assignee space on the UCC-3F. (7-1-93)

**07. Continuation.** Continuation of an EFS will be done by checking the continuation box on the UCC-3F. (7-1-93)

**08.3. Termination.** Termination of an EFS Farm Products Financing Statement will be done either by the SP's secured party's signature on the termination signature line on the original of the UCC-1F or by checking the termination box on the UCC-3F. (7-1-93)( )

**09. Obligation to Terminate.** The secured party is required to file a termination of an EFS with the SOS within one (1) month from the date on which the secured party no longer has a claim to a security interest under the EFS. If the secured party fails to file the termination statement within one (1) month from the date on which there is no longer an outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, he shall be liable to the debtor for one hundred dollars (\$100) in addition to any loss suffered by the debtor by the failure to file the termination statement. (7-1-93)

**102. FARM PRODUCTS FINANCING STATEMENTS UNDER THE UNIFORM COMMERCIAL CODE.**

Unless otherwise provided for in this chapter, Farm Products Financing Statements shall be governed by IDAPA 34.05.06, "Administrative Rules Governing Lien Filings Under the UCC," with the following exceptions: ( )

**01. IDAPA 34.05.06.101.05 "File Number."** Subsection 101.05 only applies in that a unique number shall be assigned. For Farm Products Financing Statements, the filing type shall be designated as "F" followed by a number that is assigned sequentially. The filing number bears no relation to the time of filing and is not an indicator of priority. ( )

**02. IDAPA 34.05.06.108 "Acceptable Forms."** Section 108 does not apply to Farm Products Financing Statements. ( )

**03. IDAPA 34.05.06.111 "Filing Fees."** Section 111 does not apply to Farm Products Financing Statements. ( )

**04. IDAPA 34.05.06.115.01 "Individually Identified Documents."** Subsection 115.01 does not apply to Farm Products Financing Statements. Copies of Farm Products Financing Statements shall be made available

either from a computer terminal in the reception area in the filing office or through any medium otherwise accepted by the filing office. There is a charge of one dollar (\$1) per page for copies of Farm Products Financing Statements pursuant to Section 28-9-523(k), Idaho Code. ( )

05. IDAPA 34.05.06.202.02 “Additional Debtor Identification.” Subsection 202.02 does not apply to Farm Products Financing Statements. ( )

06. IDAPA 34.05.06.301.01 “Identification Numbers.” Sub section 301.01 applies, however, each Farm Products Financing Statement is identified by its file number as described in Subsection 102.01 of these rules. ( )

07. IDAPA 34.05.06.301.05 “Status of Financing Statement.” Subsection 301.05 does not apply to Farm Products Financing Statements. ( )

08. IDAPA 34.05.06.302.01 “Individual Name Fields.” Subsection 302.01 applies, however, no indicator is used to distinguish the name as that of an individual. ( )

09. IDAPA 34.05.06.302.05 “No Assumed Business Names.” Subsection 302.05 does not apply to Farm Products Financing Statements. However, if an assumed business name is used as the debtor name, the required information shall be as indicated in Subsection 020.02 of these rules. ( )

10. IDAPA 34.05.06.303.01 “Single Field.” Subsection 303.01 applies, however, no indicator is used to distinguish the name as that of an organization. ( )

11. IDAPA 34.05.06.303.03 “No Assumed Business Name.” Subsection 303.03 does not apply to Farm Products Financing Statements. However, if an assumed business name is used as the debtor name, the required information shall be as indicated in Subsection 020.02 of these rules. ( )

12. IDAPA 34.05.06.306.02 “Status of Debtor.” Subsection 306.02 does not apply to Farm Products Financing Statements. ( )

13. IDAPA 34.05.06.306.03 “Status of Financing Statement.” Subsection 306.03 does not apply to Farm Products Financing Statements. ( )

14. IDAPA 34.05.06.310 “Termination.” Section 310 does not apply to Farm Products Financing Statements. ( )

15. IDAPA 34.05.06.312 “Procedure Upon Lapse.” Section 312 only applies to Farm Products Financing Statements in that a Farm Products Financing Statement lapses on its lapse date. Upon lapse of a Farm Products Financing Statement, the information management systems shall cause the Farm Products Financing Statement to no longer be made available to the searcher. ( )

16. IDAPA 34.05.06.407 “Data Entry of Names - Designated Fields.” Section 407 applies to Farm Products Financing Statements, however, the filer is not required to designate whether a name is an individual or an organization. ( )

17. IDAPA 34.05.06.408 “Data Entry of Names - No Designated Fields.” Section 408 does not apply to Farm Products Financing Statements. ( )

18. IDAPA 34.05.06.410.02 “Name and Address of Each Debtor.” Subsection 410.02 applies to Farm Products Financing Statements, however, each debtor name is removed from the searchable index upon lapse or termination. ( )

19. IDAPA 34.05.06.411.03 “Amendment Financing Statement Lapses.” Subsection 411.03 applies to Farm Products Financing Statements, however, each debtor name is removed from the searchable index upon lapse or termination. ( )



**20.** ~~IDAPA 34.05.06.413 through IDAPA 34.05.06.504.~~ Sections 413 through 504 do not apply to Farm Products Financing Statements. ( )

~~013103.~~ -- **199.** (RESERVED).

**014200. COLLATERAL INFORMATION CODES.**

**01.** ~~Use of Codes.~~ The ~~e~~Codes in Section 014 are used to describe ~~FP~~ farm product collateral on the ~~EPS~~ Farm Products Financing Statements and ~~ancillary statements~~ amendments, on the ~~ML~~ master list maintained by the SOS, and on the PML's distributed to registered buyers, ~~CM's~~ commission merchants, and ~~SA's~~ selling agents. (7-1-93)

**02.** ~~FP Codes.~~ ~~FP's covered by this rule shall be those certified by USDA. The FP's in the following table have been certified. FP's may be added by certification by USDA.~~ Assignment of ~~FP~~ farm product codes and PML ~~g~~Groupings, county codes, and farm product unit codes shall be done by the ~~Secretary of State as a matter of internal management~~ SOS. The SOS will provide a list of the established codes upon request. The table of PML ~~g~~Groupings, ~~FP's~~ farm products, and their codes is as follows:

| PML No. | PML Grouping        | FP Code | FP Name                   |
|---------|---------------------|---------|---------------------------|
| 01      | Wheat and Buckwheat | 010     | Wheat                     |
|         |                     | 011     | Buckwheat                 |
| 02      | Feed and Oil Grains | 020     | Barley                    |
|         |                     | 021     | Rye (including Triticale) |
|         |                     | 022     | Oats                      |
|         |                     | 023     | Sorghum Grain             |
|         |                     | 024     | Flaxseed                  |
|         |                     | 025     | Safflower                 |
|         |                     | 026     | Rape (including Canola)   |
|         |                     | 027     | Field Corn                |
| 03      | Hay                 | 028     | Millet                    |
|         |                     | 030     | Hay                       |
| 04      | Ensilage            | 040     | Ensilage                  |
| 05      | Potatoes            | 050     | Potatoes                  |
| 06      | Sugar Beets         | 060     | Sugar Beets               |
| 07      | Dry Beans           | 070     | Dry Beans                 |

| PML No. | PML Grouping                    | FP Code    | FP Name                            |
|---------|---------------------------------|------------|------------------------------------|
| 08      | Dry Peas, Lentils and Garbanzos | 080        | Dry Peas                           |
|         |                                 | 081        | Lentils                            |
|         |                                 | 082        | Garbanzos (Chick Peas)             |
|         |                                 |            |                                    |
| 09      | Sweet Corn                      | 090        | Sweet Corn                         |
|         |                                 |            |                                    |
| 10      | Onions and Garlic               | 100        | Onions                             |
|         |                                 | 101        | Onion Seed                         |
|         |                                 | 102        | Garlic                             |
|         |                                 |            |                                    |
| 11      | Mint                            | 110        | Mint                               |
|         |                                 |            |                                    |
| 12      | Hops                            | 120        | Hops                               |
|         |                                 |            |                                    |
| 13      | Popcorn & Sunflower Seeds       | 130        | Popcorn                            |
|         |                                 | 131        | Sunflower Seeds                    |
|         |                                 |            |                                    |
| 14      | Soybeans                        | 140        | Soybeans                           |
|         |                                 |            |                                    |
| 15      | Rice                            | 150        | Rice                               |
|         |                                 |            |                                    |
| 16      | Seeds                           | 160        | Grass for Seed                     |
|         |                                 | 161        | Alfalfa for Seed                   |
|         |                                 | 162        | Other Hay Legumes for Seed         |
|         |                                 | 163        | Garden Vegetables and Flower Seeds |
|         |                                 | <u>164</u> | <u>Seed Potatoes</u>               |
|         |                                 | <u>165</u> | <u>Row Crops for Seed</u>          |
|         |                                 |            |                                    |
| 17      | Vegetables & Melons             | 170        | Green Peas                         |
|         |                                 | 171        | Tomatoes                           |
|         |                                 | 172        | Lettuce                            |
|         |                                 | 173        | Cucumbers                          |
|         |                                 | 174        | Broccoli                           |
|         |                                 | 175        | Cauliflower                        |

| PML No. | PML Grouping     | FP Code | FP Name                          |
|---------|------------------|---------|----------------------------------|
|         |                  | 176     | Lima Beans                       |
|         |                  | 177     | Green Beans                      |
|         |                  | 178     | Melons                           |
|         |                  | 179     | Carrots                          |
|         |                  | 180     | Turnips                          |
|         |                  | 181     | Asparagus                        |
|         |                  | 182     | Spinach and Collards             |
|         |                  | 183     | Pumpkins and Squash              |
|         |                  | 184     | Radishes                         |
|         |                  | 185     | Peppers                          |
|         |                  | 186     | Herbs                            |
|         |                  |         |                                  |
| 19      | Fruits           | 190     | Apples                           |
|         |                  | 191     | Apricots                         |
|         |                  | 192     | Cherries                         |
|         |                  | 193     | Nectarines                       |
|         |                  | 194     | Peaches                          |
|         |                  | 195     | Pears                            |
|         |                  | 196     | Plums                            |
|         |                  |         |                                  |
| 20      | Berries          | 200     | Strawberries                     |
|         |                  | 201     | Raspberries                      |
|         |                  |         |                                  |
| 21      | Nursery Products | 210     | Sod                              |
|         |                  | 211     | Nursery Stock (Trees and Shrubs) |
|         |                  | 212     | Christmas Trees                  |
|         |                  | 213     | Flowers and Potted Plants        |
|         |                  |         |                                  |
| 22      | Mushrooms        | 220     | Mushrooms                        |
|         |                  |         |                                  |
| 23      | Grapes           | 230     | Grapes                           |
|         |                  |         |                                  |
| 50      | Beef Animals     | 500     | Beef Cattle and Calves           |
|         |                  | 501     | Beefalo                          |

| PML No. | PML Grouping               | FP Code | FP Name                           |
|---------|----------------------------|---------|-----------------------------------|
|         |                            | 502     | Bison                             |
|         |                            |         |                                   |
| 51      | Sheep, Wool                | 510     | Sheep and Lambs Goats and Llamas  |
|         |                            | 511     | Wool                              |
|         |                            | 512     | Goats                             |
|         |                            | 513     | Llamas                            |
|         |                            |         |                                   |
| 52      | Hogs                       | 520     | Hogs                              |
|         |                            |         |                                   |
| 53      | Dairy                      | 530     | Dairy Cattle                      |
|         |                            | 531     | Milk                              |
|         |                            |         |                                   |
| 54      | Equines                    | 540     | Horses                            |
|         |                            | 541     | Mules                             |
|         |                            | 542     | Donkeys and Burros                |
|         |                            |         |                                   |
| 55      | Chickens and Eggs          | 550     | Chickens                          |
|         |                            | 551     | Eggs                              |
|         |                            |         |                                   |
| 56      | Other Fowl                 | 560     | Turkeys                           |
|         |                            | 561     | Ducks                             |
|         |                            | 562     | Geese                             |
|         |                            | 563     | Game Birds                        |
|         |                            | 564     | <u>Ostriches, Emus, and Rheas</u> |
|         |                            |         |                                   |
| 57      | Mink, Rabbits and Fox      | 570     | Mink and Pelts                    |
|         |                            | 571     | Rabbits                           |
|         |                            | 572     | Fox and Pelts                     |
|         |                            |         |                                   |
| 58      | Apiary Products            | 580     | Bees                              |
|         |                            | 581     | Honey                             |
|         |                            | 582     | Bees Wax                          |
|         |                            |         |                                   |
| 59      | Fish and Other Aquaculture | 590     | Fish and Other Aquaculture        |

| PML No. | PML Grouping                    | FP Code           | FP Name                         |
|---------|---------------------------------|-------------------|---------------------------------|
| 60      | Big Game Animals (Deer and Elk) | <del>590600</del> | Big Game Animals (Deer and Elk) |
| 61      | Worms                           | 610               | Worms                           |
| 62      | Semen                           | 620               | Cattle Semen                    |
|         |                                 | 621               | Horse Semen                     |

(7-1-93)( )

**03. County Codes.** The table of county codes is as follows, Unless otherwise indicated, counties are in Idaho.

|    |            |    |            |    |             |    |                  |
|----|------------|----|------------|----|-------------|----|------------------|
| 01 | Ada        | 16 | Cassia     | 31 | Lewis       | 46 | Garfield, Wa.    |
| 02 | Adams      | 17 | Clark      | 32 | Lincoln     | 47 | Pond-Oriole, Wa. |
| 03 | Bannock    | 18 | Clearwater | 33 | Madison     | 48 | Spokane, Wa.     |
| 04 | Bear Lake  | 19 | Custer     | 34 | Minidoka    | 49 | Whitman, Wa.     |
| 05 | Bonewah    | 20 | Elmore     | 35 | Nez-Perce   | 50 | Malheur, Or.     |
| 06 | Bingham    | 21 | Franklin   | 36 | Oneida      | 51 | Elko, Nv.        |
| 07 | Blaine     | 22 | Fremont    | 37 | Owyhee      | 52 | Box Elder, Ut.   |
| 08 | Boise      | 23 | Gem        | 38 | Payette     | 53 | Cache, Ut.       |
| 09 | Bonner     | 24 | Gooding    | 39 | Power       | 54 | Rich, Ut.        |
| 10 | Bonneville | 25 | Idaho      | 40 | Shoshone    | 55 | Lincoln, Wv.     |
| 11 | Boundary   | 26 | Jefferson  | 41 | Teton       | 56 | Teton, Wv.       |
| 12 | Butte      | 27 | Jerome     | 42 | Twin Falls  | 57 | Beaverhead, Mt.  |
| 13 | Camas      | 28 | Kootenai   | 43 | Valley      | 58 | Lincoln, Mt.     |
| 14 | Canyon     | 29 | Latah      | 44 | Washington  | 59 | Sanders, Mt.     |
| 15 | Caribou    | 30 | Lemhi      | 45 | Asotin, Wa. | 99 | Not in Table     |

(7-1-93)

**04. Crop Year.** The crop year code is the last two digits of the calendar year. If no crop year code is entered, all crop years are deemed to be covered.

(7-1-93)

**05. Unit Codes.** The table for codes for units used to indicate the amount of a FP covered is as follows:

|                    |             |           |
|--------------------|-------------|-----------|
| A - acres          | G - gallons | T - tons  |
| B - bushels        | H - head    | V - hives |
| C - hundred weight | L - pounds  | W - lugs  |
| E - cases          | N - bins    | X - boxes |
| F - flats          | S - sacks   | Z - stubs |

(7-1-93)

**015201. REGISTRATION OF BUYERS, ~~CM'S~~ COMMISSION MERCHANTS, AND ~~SA'S~~ SELLING AGENTS -- SUBSCRIPTION TO A PML'S.**

**01. Form.** Registration of buyers, ~~CM's commission merchants,~~ and ~~SA's selling agents~~ must be on ~~a form prescribed and approved by the SOS. The form shall be designated~~ "UCC-5F." (7-1-93)(    )

**02. Right to Subscribe - Number.** Registration entitles the registrant to subscribe for PMLs. Each registrant will be assigned a permanent registration number by the SOS. (7-1-93)

**03. Duration.** Registration is effective for a period of one (1) year. Renewal of registration may be filed at any time after ninety (90) days prior to expiration of a current registration period. The registrant must indicate his registration number on the renewal registration form. (7-1-93)

**04. Change of Name or Address.** Notice of a registrant's change of name or address must be made in writing to the SOS. (7-1-93)

**05. Initial Subscription.** Subscriptions for PMLs may be made at the time of registration or at any time during the period for which the registrant is registered, provided that no subscription for a PML will run beyond the calendar quarter in which the registration period expires. Subscriptions made at the time of registration ~~will~~ must be made on the UCC-5F. (7-1-93)(    )

**06. Other Subscription.** Subscriptions made other than at the time of registration must be made on ~~a form prescribed and approved by the SOS. The form shall be designated~~ "UCC-6F." The registrant must indicate his registration number on the subscription form. (7-1-93)(    )

**07. Period of Subscription.** A subscription for any PML may be annual or by calendar quarter or quarters, which quarter or quarters may be at a specified time in the future. (7-1-93)

**08. Initial Distribution.** If a subscription starts at any time other than the start of a calendar quarter, the registrant will receive the most recent complete compilation of the PML, ~~the most recent CS,~~ and all distributions of PMLs ~~and CS's~~ for the remainder of the calendar quarter. (7-1-93)(    )

**09. Special Subscription.** If the registrant subscribes for a PML for fewer than all counties or crop years, ~~he~~ the registrant must indicate the county codes of the desired counties ~~and/or~~ the desired crop years ~~(s), or both.~~ If no county codes or crop years are indicated, the PML will cover all counties and crop years. (7-1-93)(    )

**10. Medium.** ~~For each PML for which there is a choice of media, the registrant must indicate "M" for microfiche or "P" for paper. A choice of media is available for PML's which cover all counties and crop years.~~ (7-1-93)

**110. Copy of Rules.** At the time of registration, each registrant will be ~~issued~~ provided with a copy of these rules. (7-1-93)(    )

**~~016202.~~ -- 299. (RESERVED).**

**017300. FORM AND DISTRIBUTION OF A PML'S AND CS'S.**

**01. Content of List.** Each PML includes data from all ~~EFS's~~ Farm Products Financing Statements which cover a particular ~~FP or one (1) or more of a group of related FP's~~ (PML ~~s~~ Grouping). (7-1-93)(    )

**02. Alphabetical Organization.** ~~Within each PML, EFS data are organized alphabetically by surname of individual debtors and the first word other than an article of speech in the names of non-individual debtors or in assumed business names. Items in a PML are numbered sequentially.~~ (7-1-93)

**03. Content of Each Item.** ~~For each item, the PML includes current information reflecting any~~

~~changes by amendment, continuation or assignment concerning: (7-1-93)~~

- ~~a. The address of the debtor; (7-1-93)~~
- ~~b. The document number of the EFS; (7-1-93)~~
- ~~c. The date and time of filing of the EFS; (7-1-93)~~
- ~~d. The SSN or TIN of the debtor; (7-1-93)~~
- ~~e. The name and address of the secured party; (7-1-93)~~
- ~~f. Each FP from the relevant PML grouping which is covered by the EFS; and (7-1-93)~~
- ~~g. For each FP, all crop year, location information, amount information, and other identifying information indicated on the EFS. (7-1-93)~~

~~04. **Cross Index.** At the end of the PML, there is a cross index organized in order of SSN and TIN, keyed to the item number in the PML. (7-1-93)~~

~~05. **Medium.** For PML's covering all counties and crop years, there is a choice of media between microfiche and paper. PML's covering fewer than all counties or crop years are available only on paper. (7-1-93)~~

**062. PML Publication Dates.** Each PML is published in complete form on the first regularly scheduled bi-weekly publication date in each calendar quarter. A PML may at other times be published in complete form at the discretion of the SOS when that appears to be more economical than to publish a CS. (7-1-93)

**073. Supplementation.** At bi-weekly intervals following the publication of each PML, the SOS publishes a CS for each PML. The CS includes all additions, deletions and changes which have occurred since the publication of the last complete PML. Additions are in the same form and cross-indexed in the same way as items on the PML. Deletions and changes need only refer to the affected item in either the PML or the "addition" section of the CS, and state what action has been taken or what change has been made to that item. (7-1-93)

**084. Cut-Off Date.** In order to be included on a PML or CS, ~~an EFS Farm Products Financing Statement~~ must be received by the SOS ~~not later than 8:00 a.m. on the at least one (1) business day prior to publication; i.e. an EFS received on Thursday will not be included on a PML published on Friday.~~ (7-1-93)(\_\_\_\_)

~~09. **Staggered Dates.** The SOS may stagger the publication dates of the various PML's and CS's at his discretion. (7-1-93)~~

~~105. **Schedule.** At the beginning of each calendar quarter, the SOS distributes to each registrant ~~with the quarterly PML's~~ a schedule of proposed publication dates for that calendar quarter ~~and for the next quarterly PML's~~. The SOS may, for good cause, deviate from the schedule, but every PML and CS will be clearly marked with the actual date of publication. In no case will there be more than eighteen (18) days between publications of PMLs and associated CSs. (7-1-93)(\_\_\_\_)~~

**018301. GENERATION OF AD HOC INFORMATION REPORTS.**

**01. Options.** Upon the request of any person, the SOS will provide a list organized or limited according to: (7-1-93)

- a. An individual ~~FP farm product~~ or a PML ~~g~~Grouping; (7-1-93)(\_\_\_\_)
- b. Alphabetical order by debtor name; (7-1-93)
- c. ~~Numerical~~ By order by SSN and TIN of UIN; (7-1-93)(\_\_\_\_)

- d. County; or (7-1-93)
- e. Crop year. (7-1-93)

**02. Internal Organization.** When the request is for organization or limitation on the criteria specified in ~~Subsections~~ Paragraphs ~~018301.01.a., 018301.01.d., and 018301.01.e., supra of these rules,~~ the list will be organized alphabetically within each resulting group unless the request specifies otherwise. (7-1-93)(\_\_\_\_)

**03. Additional Criteria.** The request may specify additional criteria for further organization or limitation within the first grouping. (7-1-93)

**~~019302.~~ REQUESTS FOR INFORMATION.**

Requests for information on ~~EFS's~~ Farm Products Financing Statements will comply with IDAPA 34.05.03, "Rules Governing Requests For Information -- Form UCC-4 -- Fees," ~~Office of the Secretary of State.~~ (7-1-93)(\_\_\_\_)

**~~020.~~ VERBAL REQUESTS FOR INFORMATION.**

~~Verbal requests for information on EFS's will comply with IDAPA 34.05.03, "Rules Governing Requests For Information -- Form UCC-4 -- Fees," Office of the Secretary of State.~~ (7-1-93)

**~~021303.~~ FEES.**

**01. EFS Farm Products Financing Statement.** ~~EFS Farm Products Financing Statement~~ and changes thereto (UCC-1F, UCC-2F and UCC-3F). (7-1-93)(\_\_\_\_)

**a.** The fee for filing either a UCC-1F or a UCC-3F is ~~ten dollars (\$10) if the form is typed or machine printed, and otherwise is fourteen dollars (\$14)~~ provided in IDAPA 34.05.06, "Administrative Rules Governing Lien Filings Under the UCC - Farm Product Liens," Section 606. (7-1-93)(\_\_\_\_)

**b.** ~~For each page of information attached to a form, there is an additional fee of one dollar (\$1). The UCC-2F is not counted as a page of attached information.~~ (7-1-93)

**eb.** There is no charge for filing a complete termination of ~~an~~ EFS Farm Products Financing Statement. (7-1-93)(\_\_\_\_)

**d.** ~~The fee for filing an EFS or change thereto must be paid at the time of filing.~~ (7-1-93)

**02. Registration of Buyers, CM's Commission Merchants, and SA's Selling Agents.** (7-1-93)(\_\_\_\_)

**a.** The fee for the annual registration of each buyer, CM commission merchant, or SA selling agent is thirty dollars (\$30). (7-1-93)(\_\_\_\_)

**b.** The registration fee must be paid at the time of registration. (7-1-93)

**c.** There is no fee for filing notice of a registrant's change of name or address. (7-1-93)

**03. Subscription to PMLs by Buyers, CM's Commission Merchants, and SA's Selling Agents.** (7-1-93)(\_\_\_\_)

**a.** The fee for subscribing for each PML ~~and its CS's by a registrant~~ is determined by the size of the PML. For the purpose of computing the fee, each PML ~~g~~Grouping is placed into a fee category based on the highest number of items on the PML during the prior calendar year. In December of each year the SOS will publish an index of the PML ~~g~~Groupings in each fee category to be used for the new year. Those fee categories are as follow:

| Category | No. of items on PML |
|----------|---------------------|
| X        | More than 7500      |



| Category | No. of items on PML |
|----------|---------------------|
| A        | 2501 - 7500         |
| B        | 1001 - 2500         |
| C        | 101 - 1000          |
| D        | 26 - 100            |
| E        | 0 - 25              |

(7-1-93)( )

b. The fees ~~in dollars~~ for each fee category, ~~by media, configuration, and period~~ are as follows:

**Fee Category**

| Configuration of PML                                    | Period  | X       | A       | B     | C     | D     | E    |
|---|---------|---------|---------|-------|-------|-------|------|
| All Counties, <del>Microfiche</del><br>Electronic Media | Quarter | \$25    | \$23    | \$15  | \$13  | \$13  | \$13 |
|   | Annual  | \$100   | \$90    | \$60  | \$50  | \$50  | \$50 |
| All Counties, Paper                                     | Quarter | \$330   | \$261   | \$95  | \$45  | \$18  | \$13 |
|   | Annual  | \$1,320 | \$1,040 | \$380 | \$180 | \$703 | \$50 |
| <del>First county when fewer than all, Paper**</del>    | Q       | 158     | 148     | 123   | 113   | 110   | 110  |
|   | A       | 630     | 590     | 490   | 450   | 440   | 440  |
| <del>Each additional** county</del>                     | Q       | 40      | 33      | 10    | 5     | 4     | 4    |
|   | A       | 160     | 130     | 40    | 20    | 2     | 2    |
| <del>Fewer than all crop years</del>                    | Q       | 485     | 400     | 208   | 150   | 115   | 110  |
|   | A       | 1940    | 1600    | 830   | 600   | 460   | 440  |

\* Q = cost per quarter

A = cost for an annual subscription.

\*\* If a PML is to include fewer than all counties and fewer than all crop years, these schedules apply.  
(7-1-93)( )

c. The subscription fee must be paid at the time the subscription is made. ~~If, due to a recent re-categorization of a PML grouping, the fee submitted is insufficient, the SOS may bill the registrant for a balance owing of up to fifty percent (50%) of the subscription fee.~~  
(7-1-93)( )

**04. Ad Hoc Lists.** (7-1-93)

a. The fee for generating an ad hoc list as provided in Section ~~018, supra~~ 301 of these rules, is thirty-five dollars (\$35) per hour for programming and analysis and eighty-five dollars (\$85) per hour of computer time required to produce the list. In addition thereto, there is a fee of one dollar (\$1) per printed page of the list so generated.  
(7-1-93)( )

b. The fee for the generation of the list must be paid prior to or upon receipt of the list. (7-1-93)

**05. Fees for Requests for Information.** The fees for requests for information on ~~EFFS's~~ Farm Products Financing Statements, both written and verbal, and for copies of ~~EFFS's~~ Farm Products Financing Statements reported on the certificate, are provided in IDAPA 34.05.03, "Rules Governing Requests For Information -- Form UCC-4 -- Fees;" ~~Office of the Secretary of State.~~  
(7-1-93)( )

~~022304.~~ -- 999. (RESERVED).

## IDAPA 34 - SECRETARY OF STATE

### 34.05.02 - RULES GOVERNING LIENS IN CROPS, FOR SEED, AND FARM LABOR

DOCKET NO. 34-0502-1001

#### 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 67-903(9), 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 September 15, 2010.

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

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

The proposed changes are necessary to bring a 17-year-old set of administrative rules up-to-date. The proposed changes revise the duration and extension information regarding Claim of Lien for Farm Labor, and Claim of Lien for Seed, to make consistent with statute; remove references to microfiche (no longer used); and make other minor corrections.

**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(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes to update the rules.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

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 September 22, 2010.

DATED this 28th day of July, 2010.

Jeff Harvey  
UCC Supervisor  
Office of the Secretary of State  
450 N. 4th St.  
P. O. Box 83720  
Boise, ID 83720-0080  
Phone: (208) 332-2849  
Facsimile: (208)334-2847

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 34-0502-1001

**000. LEGAL AUTHORITY AND REFERENCES.**

In accordance with Sections 67-903(9), 45-313(3), and 45-316, Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the duties of the Office of the Secretary of State. ( )

~~01. Title 45, Chapter 3, Idaho Code. (7-1-93)~~

~~02. Title 67, Chapter 52, Idaho Code. (7-1-93)~~

~~03. IDAPA 34, Title 05, Chapter 01. (7-1-93)~~

~~04. IDAPA 34, Title 05, Chapter 03. (7-1-93)~~

**001. TITLE AND SCOPE.**

01. Title. These rules shall be cited as IDAPA 34.05.02, "Rules Governing Liens in Crops for Seed or Liens in Crops for Farm Labor," IDAPA 34, Title 05, Chapter 02. ( )

02. Scope. These rules shall govern the requirements for the filing, amendment, or termination of liens in crops for seed or liens in crops for farm labor, as well as the creation and distribution of a master list of liens in crops for seed or liens in crops for farm labor. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, documents relating to the interpretation of these rules, or to the documentation of compliance with the rules of this chapter, are available for public inspection and copying at the Office of the Secretary of State. ( )

**003. ADMINISTRATIVE APPEALS.**

This chapter does not provide for appeal. ( )

*Codified Section 004 has been moved and renumbered to proposed Section 010*

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

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

The principal place of business for the Office of the Secretary of State is located at 700 W. Jefferson, Room E205, Boise, Idaho 83720-0080. The Commercial Division is located at 450 N. 4th Street, Boise, Idaho 83720-0080. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except for legal holidays. The mailing address for the office is P. O. Box 83720, Boise, Idaho 83720-0080. The telephone number for the office is (208) 334-2300. The telephone number for lien inquiries is (208) 334-3191. The facsimile number for the office is (208) 334-2847. The office's website address is <http://www.sos.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

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

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

**0010. DEFINITIONS AND ABBREVIATIONS.**

The definitions set forth in Section 45-302, Idaho Code, apply with full force and effect to all provisions and sections of these rules.

~~01. **Incorporation by Reference.** Where terms used in this rule are not defined herein, definitions and usage of terms from the ~~references~~ Legal Authority in Section 000 of these rules are applicable. (7-1-93)(\_\_\_\_)~~

~~02. **Claimant.** A provider of seed or a farm laborer who files a notice of claim of lien in the crop or crops which are produced from the seed or with the aid of the labor. A claimant may be an individual, corporation, partnership, or unincorporated association. (7-1-93)~~

~~03. **Producer.** A farm operator to whom a claimant has provided seed or farm labor used in the production of crops. A producer may be an individual, corporation, partnership, or unincorporated association. (7-1-93)~~

~~0501. **Family.** A group of related persons living together as one economic unit, comprised of parents and children, including step-children. (7-1-93)~~

~~0402. **Farm Laborer.** Anyone who provides farm labor used in the production of crops. When a business entity contracts for and provides such labor, e.g., aerial spraying or custom harvesting, the entity and not its individual employees shall be deemed to be the farm laborer. When individuals provide such labor directly to a producer, each individual is a farm laborer, whether or not they have been organized as a work crew or are members of a family which works as a unit. (7-1-93)~~

~~0703. **Notice of Claim of Lien.** A written notice on the public record of a claimant's lien in the crops of a producer. *It must be filed on a form prescribed by the Secretary of State.* (7-1-93)(\_\_\_\_)~~

~~0604. **SOS.** Idaho Secretary of State. (7-1-93)(\_\_\_\_)~~

~~005011. -- 04099. (RESERVED).~~

**Codified Sections 011 through 018 have been moved and renumbered to proposed Sections 100 through 301, respectively.**

**04100. REQUIREMENTS FOR NOTICE OF CLAIM OF LIEN.**

~~01. **Form.** A notice of claim of lien must be filed on a form prescribed and approved by the SOS. The form for a notice of claim of lien shall be designated "SL-1." (7-1-93)(\_\_\_\_)~~

~~a. Form SL-1 must be completed in accordance with instructions provided by the SOS. (\_\_\_\_)~~

~~b. Collateral information codes shall be used to indicate the crop and the county where the crop is grown. The collateral information codes shall be assigned by the SOS. The SOS will provide a list of the established codes upon request. (\_\_\_\_)~~

~~02. **Nature of Lien.** *The nature of the lien (farm laborer's or seed) must be indicated.* (7-1-93)~~

~~03. **Producer.** *The producer's name or names must be entered completely and precisely.* (7-1-93)~~

~~a. *The names of individuals must be entered in order of last name (surname), first name, and middle name or initial, if any.* (7-1-93)~~

~~b. *Corporate names and assumed business names must be entered in full, without abbreviation.* (7-1-93)~~

~~04. **Address.** *The address of the producer(s) must be entered, to include Zip Code, if known.* (7-1-93)~~

~~05. **Claimant.** *The name and address of the claimant(s) must be entered, to include Zip Code, if known.* (7-1-93)~~

~~06. **Crop.** The crop or crops in which the lien is claimed must be identified either by entering the three (3) digit code listed in the form's instructions or by entering the name of the crop in narrative form. The assignment of codes to crops shall be done by the SOS as a matter of internal management. (7-1-93)~~

~~07. **Crop Year.** If the crop year of the crop(s) is other than the calendar year in which the notice is filed, the crop year must be entered. (7-1-93)~~

~~08. **County.** The county or counties in which the crop(s) subject to the lien are growing or to be grown must be identified either by entering the two (2) digit code listed in the form's instructions or by entering the county name in narrative form. The assignment of codes to counties shall be done by the SOS as a matter of internal management. (7-1-93)~~

~~09. **Signature.** The notice of claim of lien shall be signed by or on behalf of the claimant(s) in any combination of the following ways, so long as all claimants are accounted for: (7-1-93)~~

~~a. The notice is signed by each individual, corporate or partnership claimant; corporations will sign by an officer and partnerships by a general partner. (7-1-93)~~

~~b. The notice is signed by an agent or attorney in fact for the claimant(s). (7-1-93)~~

~~c. If all or some of the claimants are members of the same family, any adult member of the family may sign as agent for all the members of the family. (7-1-93)~~

~~d. Any person who signs on behalf of any person other than himself or herself shall indicate the capacity in which he or she signs. (7-1-93)~~

~~10. **Certification.** Signature constitutes certification of the truth of the claim. (7-1-93)~~

~~102. **Supplement.** If there is insufficient space on the form SL-1 for a producer and claimant information, the excess will be entered on a supplement form designated "SL-2." (7-1-93)~~

~~012101. **DURATION AMENDMENT, ASSIGNMENT, EXTENSION, AND RELEASE OF CLAIM OF LIEN.**~~

~~01. **Duration of Farm Labor Lien.** A notice of claim of lien for farm labor is effective for six (6) months from the date of filing. It may not be extended. **Form.** The form for amendment, assignment, extension, and release of claim of lien shall be designated "SL-3." (7-1-93)( )~~

~~a. Form SL-3 must be completed in accordance with instructions provided by the SOS. ( )~~

~~b. Collateral information codes shall be used to indicate the crop and the county where the crop is grown. The collateral information codes shall be assigned by the SOS. The SOS will provide a list of the established codes upon request. ( )~~

~~02. **Duration of Seed Lien.** A notice of claim of lien for seed is effective for sixteen (16) months from the date of filing. It may be extended one (1) time for an additional six (6) months, provided: (7-1-93)~~

~~a. That the crop subject to the lien is not harvested within ten (10) months after the date of filing; and (7-1-93)~~

~~b. That the notice of extension is filed within sixty (60) days prior to the lapse of the original sixteen (16) month effective period. (7-1-93)~~

~~03. **Release.** When a lien has been satisfied by payment of the amount due to the claimant(s), the claimant(s) must within thirty (30) days thereafter file with the SOS a notice of release of lien, unless the period of effectiveness of the notice of claim of lien would lapse earlier than the end of thirty (30) days. (7-1-93)~~

~~04. **Notice of Extension or Release.** A notice of extension or release of claim of lien will be filed on a~~

~~form prescribed and approved by the SOS, and shall refer to the original notice of claim of lien by the SOS file number. The form prescribed for notice of extension or release shall be designated "SL 3." It shall be signed in the same manner as the notice of claim of lien, SL-1.~~ (7-1-93)

**0502. Supplement.** If there is insufficient space on the first page of the form SL-3 for all information, the excess shall be entered on an attached second page SL-3. (7-1-93)

~~013102. -- 199.~~ (RESERVED).

**014200. REGISTRATION AND SUBSCRIPTION FOR LIST OF LIENS IN CROPS FOR SEED OR LIENS IN CROPS FOR FARM LABOR.**

~~**01. Registration and Subscription.** Any person may register and subscribe for regular distribution of lists of all presently effective notices of claim of liens in crops for seed or liens in crops for farm labor which have been filed under this rule. Unless otherwise set forth in this chapter, the registration and subscription for the list of liens in crops for seed or liens in crops for farm labor shall be administered by the rules as set forth in IDAPA 34.05.01, "Rules Governing Farm Products Central Filing System," Section 201.~~ (7-1-93)( )

~~**02. Forms.** The registration and subscription forms for the lists are the forms UCC-5F and UCC-6F, which are described in IDAPA 34.05.01, Section 015, "Rules Governing Farm Products Central Filing System," Office of the Secretary of State.~~ (7-1-93)

~~**03. Eligibility to Subscribe.** Registration by filing a UCC-5F entitles the registrant to subscribe for the list of notices of claim of lien under this rule as well as the PML's described in IDAPA 34.05.01, Section 015, "Rules Governing Farm Products Central Filing System," Office of the Secretary of State. A person who is registered under IDAPA 34.05.01 to receive PML's need not re-register under this rule in order to subscribe to the list of notices of claim of lien. Each registrant will be assigned a permanent registration number by the SOS.~~ (7-1-93)

~~**04. Renewal.** Registration is effective for a period of one (1) year. Renewal of registration may be filed at any time after ninety (90) days prior to expiration of a current registration period. The registrant must indicate his registration number on the renewal registration form.~~ (7-1-93)

~~**05. Change of Name or Address.** Notice of registrant's change of name or address must be made in writing to the SOS.~~ (7-1-93)

~~**06. Subscription with Registration.** Subscriptions for the list of notices of claim of lien may be made at the time of registration or at any time during the period for which the registrant is registered; provided that no subscription for a list of notices will run beyond the calendar quarter in which the registration period expires. Subscriptions made at the time of registration will be made on the UCC-5F.~~ (7-1-93)

~~**07. Other Subscriptions.** Subscriptions made other than at the time of registration must be made on a form UCC-6F. The registrant must indicate his registration number on the subscription form.~~ (7-1-93)

~~**08. Coding.** A subscription for the list of notices of claim of lien will be made by entering the number "30" in the "PML No." column or by entering "Seed and farm labor liens" in the "PML Grouping" column.~~ (7-1-93)

~~**09. Duration.** A subscription may be annual or by calendar quarter or quarters, which quarter or quarters may be at a specified time in the future.~~ (7-1-93)

~~**10. Initial Distribution.** If a subscription starts at any time other than the start of a calendar quarter, the registrant will receive the most recent complete compilation of the list of notices, the most recent cumulative supplement, and all subsequent lists for the period of the subscription.~~ (7-1-93)

~~**11. Medium.** The registrant must choose the medium on which the list will be printed by entering either "M" for microfiche or "P" for paper.~~ (7-1-93)

~~12.~~ ~~Copy of Rules.~~ At the time of registration, each registrant will be issued a copy of these rules. (7-1-93)

~~015~~**201. LIST OF NOTICES OF CLAIM OF LIEN (LIST).**

**01. Compilation and Distribution.** The SOS shall compile and distribute to subscribers therefore, a list which shall include all presently effective notices of claim of liens in crops for seed or liens in crops for farm labor. (7-1-93)(\_\_\_\_)

~~02.~~ ~~Separate Entries.~~ There will be a separate entry on the list for each notice filed against each producer; e.g. each producer named on a notice will constitute a separate item on the list. (7-1-93)

~~03.~~ ~~Alphabetical Order.~~ The list will be arranged alphabetically by producer name, using the surnames of individuals and the first word other than "the" in the names of producers other than individuals. (7-1-93)

**04. Content.** Each item on the list will include: (7-1-93)

**a.** The producer's name and address; (7-1-93)

**b.** The date and time of filing; (7-1-93)

**c.** The document number assigned by the SOS; (7-1-93)

**d.** The type of lien (seed or farm labor); (7-1-93)

**e.** The name and address of each claimant; (7-1-93)

**f.** The name of each crop in which a lien is claimed; (7-1-93)

**g.** For each crop, the county(ies) in which it is growing or to be grown; and (7-1-93)

**h.** If the crop year is other than the calendar year of filing, the crop year. (7-1-93)

**05. Medium.** Subscribers may request distribution on either paper or microfiche. (7-1-93)

**0602. Schedule.** The list will be published ~~or supplemented~~ on a bi-weekly schedule to be established by the SOS. (7-1-93)(\_\_\_\_)

**07. Supplementation.** The list will be published in complete form at least on the first bi-weekly publication date in each calendar quarter and on such other bi-weekly publication dates as the SOS deems necessary. On the remaining bi-weekly publication dates, the SOS will publish a cumulative supplement relating to the most recent complete list. (7-1-93)

**0803. Cut-Off Time.** In order to be included on a list, a notice of claim of lien must be received by the SOS ~~no later than eight o'clock (8:00) a.m. on the~~ at least one (1) business day prior to publication. (7-1-93)(\_\_\_\_)

**0904. Notice of Schedule.** At the beginning of each quarter, the SOS will distribute to each registrant a schedule of proposed publication dates for that calendar quarter. The SOS may, for good cause, deviate from the schedule, but every list will be marked with the actual date of publication. In no case will there be more than eighteen (18) days between publications of lists. (7-1-93)(\_\_\_\_)

~~016~~**202. -- 299. (RESERVED).**

**017300. REQUEST FOR INFORMATION.**

Requests for information on notices of claim of liens in crops for seed or liens in crops for farm labor, both written and verbal, will comply with IDAPA 34.05.03, "Rule Governing Requests For Information -- Form UCC-4 -- Fees;" Office of the Secretary of State. (7-1-93)(\_\_\_\_)

~~019~~301. FEES.

- 01. Notice of Claim of Lien ~~and Notice of Extension.~~** (7-1-93)(\_\_\_\_)
- a.** The fee is four dollars (\$4) if the form is typed or machine printed, and ~~otherwise~~ is eight dollars (\$8) if hand written. (7-1-93)(\_\_\_\_)
- b.** The fee shall be paid at the time of filing. (7-1-93)
- 02. Notice of Amendment, Assignment, or Extension.** (7-1-93)(\_\_\_\_)
- a.** The fee is four dollars (\$4) if the form is typed or machine printed, and ~~otherwise~~ is eight dollars (\$8) if hand written. (7-1-93)(\_\_\_\_)
- b.** The fee shall be paid at the time of filing. (7-1-93)
- 03. Notice of Release.** No fee charged. (7-1-93)
- 04. Registration and Subscription for List of Notices.** The fees for registration and subscription shall be as set forth in IDAPA 34.05.01, "Rules Governing Farm Products Central Filing System," Subsections 303.02 and 303.03. (7-1-93)(\_\_\_\_)
- ~~**a.** If a person has not registered in the Farm Products Central Filing System, pursuant of IDAPA 34.05.01, Section 015, "Rules Governing Farm Products Central Filing System," Office of the Secretary of State, the annual registration fee is thirty dollars (\$30). (7-1-93)~~
- ~~**b.** The subscription fee for the list of notices of claim of lien is ninety dollars (\$90) per year or twenty-three dollars (\$23) per calendar quarter if on microfiche, and one thousand forty dollars (\$1,040) per year or two hundred sixty one dollars (\$261) per calendar quarter if on paper. (7-1-93)~~
- ~~**c.** Fees are payable at the time of registration or subscription. (7-1-93)~~
- 05. Fees for Requests for Information.** The fees for requests for information on notices of claim of liens in crops for seed or liens in crops for farm labor, both written and verbal, and for copies of notices of claim of liens in crops for seed or liens in crops for farm labor reported on the certificate, are provided in IDAPA 34.05.03, "Rules Governing Requests For Information -- Form UCC-4 -- Fees," ~~Office of the Secretary of State.~~ (7-1-93)(\_\_\_\_)
- ~~019~~302. -- 999. (RESERVED).



**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1001**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2010.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

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

Under Section 63-3022L, Idaho Code, an individual owner of a pass-through entity (entity) may elect to have the entity report and pay the tax on his income from that entity. The code doesn't specifically address how the entity will compute the tax when such election is made. Currently, Rule 291 denies certain deductions when the entity pays the tax for electing owners. The Tax Commission now believes the rule should be amended to allow deductions that arise from the activity of the applicable entity that would be allowed if the individual owner or beneficiary filed an Idaho individual income tax return, unless such deduction is specifically denied by Idaho law. Changes to the rule also clarify that duplicate deductions are not allowed. If a deduction is allowed in computing the owner's tax by the entity, the owner will not be allowed the same deduction in a later year on an Idaho individual income tax return.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Conferring a benefit.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Janice Boyd at (208) 334-7544.

DATED this 30th day of July, 2010.

Janice Boyd  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 35-0101-1001**

**291. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME (RULE 291).**  
Sections 63-3022L and 63-3026A, Idaho Code. ~~(3-30-07)(7-1-10)T~~

- 01. Compensation Reportable to Idaho.** (3-30-07)
- a.** C Corporations. A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member. (3-30-07)
- b.** S Corporations. An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. (3-30-07)
- c.** Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. (3-30-07)
- d.** Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. (3-30-07)
- e.** Compensation reportable to Idaho for an Idaho part-year resident or nonresident is determined pursuant to Rule 270 of these rules. (3-30-07)
- 02. Pass-Through Items Reportable to Idaho.** (3-30-07)
- a.** S Corporations. An S corporation may be required to pay the tax on the pass-through items reportable to Idaho by an individual shareholder. (3-30-07)
- b.** Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to Idaho by an individual who is a partner or member. (3-30-07)
- c.** Pass-through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. (3-30-07)
- 03. Distributable Net Income Reportable to Idaho.** (3-30-07)
- a.** Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. (3-30-07)
- b.** Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. (3-30-07)
- 04. ~~Deductions That Are Subject to Limitations or Elections by Individuals.~~** *A pass through entity is not allowed to deduct items that are subject to limitations or elections at the individual level. Examples of such items include the Section 179 deduction, research and experimental expenses, mining exploration and development costs, pre productive period expenses, and passive activity losses. Individuals may not bypass limitations on deductions by electing to have the pass-through entity pay the tax.* (3-30-07)
- 054. ~~Deductions That Are Not Allowed to S Corporations and Partnerships.~~** Entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (3-30-07)(7-1-10)T
- a.** Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)
- b.** Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)
- c.** *Nonbusiness Deductions. Deductions are not allowed for nonbusiness expenses of an individual, such as those claimed as itemized deductions, charitable contributions, or personal exemptions.* Idaho Capital Gains

Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (3-30-07)(7-1-10)T

**d.** Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (7-1-10)T

**e.** Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (7-1-10)T

**f.** Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (7-1-10)T

i. The standard deduction; (7-1-10)T

ii. Personal exemptions; (7-1-10)T

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (7-1-10)T

**05. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (7-1-10)T

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1002**  
**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 63-105A, Idaho Code.

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

**Tuesday, September 21, 2010 at 9:30 a.m.**

**Idaho State Tax Commission  
800 Park Blvd. Plaza IV  
Boise, ID 83712  
1st Floor, Conference Room 5**

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

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

Rule 316 will provide the enforcement and Rule 314 will provide the standards necessary to monitor the information provided in property records as part of the continuing valuation program. This will provide for better records with more information relevant to property appraisals available to taxpayers and the State Tax Commission.

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7544.

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 September 22, 2010.

DATED this 30th day of July, 2010.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0103-1002

- 314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR (RULE 314).** Sections 63-314 and 63-316, Idaho Code. (3-30-01)
- 01. Definitions.** (7-1-99)
- a.** Continuing Program of Valuation. "Continuing program of valuation" means the program by which each assessor completes the assessment of all taxable properties each year. (7-1-99)
- b.** Field Inspection. The "field inspection" shall include an observation of the physical attributes of all structures which significantly contribute to the property value, the visible land amenities, and a notation of any other factors which may influence the market value of any improvements. (7-1-99)
- c.** Index. "Index" refers to an annual adjustment or trending factor applied to existing assessed values to reflect current market value. Ratio studies or other market analyses can be used to develop indexes based on property type, location, size, age or other characteristics. (7-1-99)
- d.** Prediction of Market Value. As used in Section 63-314, Idaho Code, "prediction of market value" means an estimate of market value. (7-1-99)
- e.** Category to be Assessed at Current Market Value. The level of assessment of each category will be considered to be current market value unless there is reasonable statistical certainty that the category is not equalized pursuant to Section 63-109, Idaho Code, and ~~Rule~~ Section 131 of these rules. (3-30-01)(\_\_\_\_)
- 02. Plan for Continuing Program of Valuation.** The plan for continuing program of valuation shall include: (7-1-99)
- ~~**a.** *General Contents.* A parcel count by category, the number of parcels to be appraised each year, maps that show each of the market areas, an analysis of staff requirements, a budget analysis that provides adequate funding for labor costs, capital and supply costs, travel and education costs, and the method of program evaluation. The plan shall also include provisions for documenting the adequate appraisal of all taxable properties. (3-30-01)(\_\_\_\_)~~
- ~~**b.** *Market Data Bank.* A market data bank including collection, verification and analysis of sales, income and expense data, building cost information, and application of this information to estimate market value. To mail assessment notices by the first Monday in June as required by Section 63-308, Idaho Code, assessors should include income and expense data submitted by property owners by the first Monday in April. Income and expense data for low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code includes actual rents, the monetary benefit of income tax credits, and expenses. (4-2-08)~~
- ~~**c.** *Maps.* Maps prepared in accordance with Section 63-209, Idaho Code, which identify characteristics of each geographic area. (7-1-99)~~
- ~~**d.** *Property Record.* A property record for each parcel, complete with the property characteristics necessary for an estimate of the current market value. (7-1-99)~~
- 03. Date Plan Is Submitted.** The plan must be submitted to the State Tax Commission on or before the first Monday of February in ~~1997~~2007, and every fifth year thereafter. (7-1-99)(\_\_\_\_)
- 04. Request for Extension.** As provided in Section 63-314, Idaho Code, a county may request an extension to the current five (5) year county valuation plan. (3-30-01)
- a.** Amended Plan. Any request for an extension must include an amended plan incorporating an

inventory of the parcels to be appraised during the period of the approved extension. This inventory shall constitute the schedule of required appraisals for the initial year or years of the subsequent five (5) year valuation program. Parcels appraised during the extension will be considered appraised during both the current and subsequent five (5) year plan valuation program periods, maintaining the same five (5) year cycle for all counties. (3-30-01)

**b.** Approval of the Extension and Amended Plan. A county shall be notified of the State Tax Commission's decision regarding the granting of an extension as provided in Section 63-314, Idaho Code, within thirty (30) days of receipt of the written request for the extension when accompanied by an amended plan. (3-30-01)

**c.** Approval of the Amended Plan. The State Tax Commission's approval of any extension shall specify timing and nature of progress reports. (3-30-01)

**d.** Voiding of the Extension. The State Tax Commission can void an extension unilaterally. (3-30-01)

**05. Testing for Current Market Value.** Assessed values shall be tested annually by the State Tax Commission as described in Section 63-109, Idaho Code, and Rule 131 of these rules to determine whether the level of assessment reflects "current market value." (3-30-01)

**06. Documentation of Adequate Appraisal.** For each taxable property subject to appraisal or reappraisal beginning in 2011, the assessor shall maintain documentation sufficient to provide evidence of adequate appraisal following appraisal procedures as described in Subsection 217.03 of these rules. In addition to all other information needed to complete the required appraisals each year, for each parcel appraised beginning in 2011, the information contained in such files shall include or shall link to files which have, the date the property was last subject to field inspection, the name of the individual making the field inspection, and each index or a link to each index applied to that parcel since the last appraisal. Each parcel's file shall include explanation of any required information that has not been included. The documentation shall also include a market data bank, map records, and a property record. ( )

**a.** Market Data Bank. A market data bank shall include collection, verification, and analysis of sales, income and expense data, building cost information, and application of this information to estimate market value. In determining each year's assessed value, assessors should include income and expense data submitted by property owners by the first Monday in April. ( )

**b.** Map Records. Map records shall be prepared in accordance with plat record requirements pursuant to Section 218 of these rules. ( )

**c.** Property Record. A property record shall be maintained, or electronic links provided, for each parcel, to provide property characteristics and other information necessary for an adequate appraisal. Required property characteristics and other information shall include at a minimum: ( )

**i.** For land, other than agricultural or timber land, the size of the land or a description with sufficient detail to enable the location of the land to be determined. ( )

**ii.** For agricultural land, documentation demonstrating that the appraisal requirements of Section 645 of these rules have been met. ( )

**iii.** For forest land, documentation demonstrating that appraisal requirements of Chapter 17, Title 63, Idaho Code, have been met. ( )

**iv.** For improvements, the size of the improvement or, in the case of structures for which value is determined irrespective of size, a listing of such structures. ( )

**v.** For condominiums and multi-dwellings located on the same land parcel, characteristics indicated for improvements should be included for each dwelling unit. ( )

**vi.** For mobile homes and manufactured housing, characteristics should include those recommended for improvements and the make and model of the unit. ( )

vii. For personal property, characteristics should include those reported by the taxpayer on the lists required pursuant to Sections 63-302, 63-313, and 63-602Y, Idaho Code. ( )

d. Format for documentation. Documentation may be in any electronic or paper format, but must be accessible by the public and the State Tax Commission. ( )

~~0607.~~ **Cross Reference.** For clarification on tax credits when valuing low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code, see the case of Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**316. COMPLIANCE OF CONTINUING VALUATION PROGRAM (RULE 316).**  
Sections 63-314 and 63-316, Idaho Code. (5-3-03)

**01. Definitions.** (5-3-03)

a. Continuing Appraisal. "Continuing appraisal" means the program by which each assessor completes the assessment of all taxable properties each year. This term includes any appraising or indexing done to accomplish the continuing program of valuation as defined in ~~Rule~~ Section 314 of these rules. (~~5-3-03~~)( )

b. Monitor. "Monitor" means: ( )

i. eCollecting data and compiling statistical reports that show the number and percentage of parcels physically inspected at scheduled intervals within each year of each five (5) year appraisal cycle. ( )

ii. The term "monitor" also includes a ~~An~~ examination of and summary report of ~~on~~ compliance with the most recently completed ratio study under Section 63-109, Idaho Code, and ~~Rule~~ Section 131 of these rules showing the status of appraisal and indexing to achieve market value. (~~5-3-03~~)( )

iii. A review of the documentation as described in Subsection 314.06 of these rules. ( )

c. Progress Reports. "Progress reports" mean any informational or statistical report compiled and distributed by the State Tax Commission regarding the ~~physical~~ continuing appraisal progress of a county. (~~5-3-03~~)( )

d. Appraisal Cycle. "Appraisal cycle" means consecutive five (5) year periods beginning with appraisals completed for the 1998 property roll, as established by the requirement in Section 63-314, Idaho Code. (5-3-03)

e. Remediation Plan. "Remediation plan" means a written statement of the actions that will be taken by the county, not in compliance with the requirements of Section 63-314, Idaho Code, to bring the continuing program of valuation into compliance with said Section. (5-3-03)

f. Adequate Appraisal. An appraisal shall be considered adequate provided it is conducted in accordance with Subsection 217.03 of these rules and includes at a minimum the documentation required in Subsection 314.06 of these rules. ( )

**02. Monitoring Procedure.** Each county shall provide access to the State Tax Commission, which may review the appraisal documentation to ensure that an adequate appraisal has been accomplished. The State Tax Commission will monitor compliance with the continuing program of valuation including, beginning in 2011, the adequacy of the documentation provided for the parcels subject to the annual appraisal in each county no less than annually. The State Tax Commission will monitor the completion of the adequate appraisal of not less than fifteen percent (15%) of all parcels by the end of the first year of the appraisal cycle, not less than thirty-five percent (35%) by the end of the second year, not less than fifty-five percent (55%) by the end of the third year, not less than seventy-

five percent (75%) by the end of the fourth year, and not less than one hundred percent (100%) by the end of the fifth year in order that all parcels are appraised not less than every five (5) years. As a result of the monitoring process, the State Tax Commission will prepare and distribute progress reports to each county assessor at the end of each monitoring period. Each monitoring period will be conducted in the following manner: ~~(3-20-04)~~(\_\_\_\_)

**a.** The State Tax Commission will compile a progress report each July. The State Tax Commission will use this progress report in each county to determine compliance with Section 63-314, Idaho Code. This report will consist of an analysis of the county's progress within the current appraisal cycle as well as a summary report of the most recently completed ratio study showing the status of appraisal and indexing to achieve market value and a review of the adequacy of the documentation required in Subsection 314.06 of these rules. The State Tax Commission will notify each county assessor on or before August 15 each year of the current status of the continuing program of valuation progress and any necessary corrective action. The State Tax Commission will notify the board of county commissioners that this report has been provided to the county assessor. ~~(5-3-03)~~(\_\_\_\_)

**b.** Upon receipt of a written request from the county assessor, the State Tax Commission will complete and distribute a six (6) month progress report in January. This January report will address the adequacy of the documentation required in Subsection 314.06 of these rules and show the total parcels in the county, the number of parcels that need to be physically inspected for the current year's assessment, a summary report of the most recently completed ratio study, and the number of parcels upon which physical inspections were completed during the preceding six (6) months. The State Tax Commission will distribute any January progress report only to inform the county assessor of the status of the continuing program of valuation and will not use the data gathered for this report to determine compliance with Section 63-314, Idaho Code. The State Tax Commission will notify the board of county commissioners that this report has been provided to the county assessor. ~~(5-3-03)~~(\_\_\_\_)

**03. Remediation Plans.** If the results of any July report show that a county has not achieved the adequate appraisal of the required percent of the parcels, as stated in Subsection 316.02 of this rule, the assessor and board of county commissioners will be required to submit to the State Tax Commission, a remediation plan that demonstrates how compliance will be achieved. The remediation plan will be submitted to the State Tax Commission on or before September 15. The State Tax Commission will determine whether the plan is acceptable on or before October 1. Once a remediation plan has been approved, the continuing valuation program of the county will be considered in compliance so long as the county meets the terms of the remediation plan. The State Tax Commission will monitor progress toward successful completion of any remediation plan at intervals scheduled with the county assessor. (5-3-03)

**04. State Tax Commission To Ensure Corrective Action.** (5-3-03)

**a.** During the first four (4) years of any appraisal cycle, if any July progress report shows that a county assessor has not achieved the adequate appraisal of the required percent of parcels, as stated in Subsection 316.02 of this rule and implementation of the subsequent remediation plan does not achieve the required percent or the next July progress report shows the number of completed adequate appraisals continues to be less than the required percent, the State Tax Commission will begin proceedings to ensure corrective action is taken up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. ~~(5-3-03)~~(\_\_\_\_)

**b.** If, at the end of any appraisal cycle a county has not achieved adequate appraisal of all parcels, the State Tax Commission may begin proceedings to ensure corrective action is taken, up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. If, at the end of an appraisal cycle, a county has not met the requirements of Section 63-314, Idaho Code, and no extension has been granted pursuant to the provisions of Section 63-316(6), Idaho Code, the county plan for the next appraisal cycle submitted to the State Tax Commission must include provision for field inspection of those parcels not field inspected by the end of the expired appraisal cycle and an additional field inspection of the same parcels for the current plan for the continuing program of valuation. (5-3-03)

**05. Compliance Procedure Examples.** (5-3-03)

**a.** Example 1: The following chart outlines what will occur if a county assessor fails to complete the appraisal of the required number of parcels for 2003 and subsequently fails to complete the appraisal of the required



number of parcels for 2004.

|                              |   |   |
|------------------------------|---|---|
| January 2003 (If requested.) | - | Informational Progress Report   |
| July 2003                    | - | First Compliance Progress Report  |
| Compliance                   | - | No Action   |
| Noncompliance                | - | Remediation Plan and Monitoring   |
| January 2004 (If requested.) | - | Informational Progress Report   |
| July 2004                    | - | Second Compliance Progress Report   |
| Compliance                   | - | No Action   |
| Noncompliance                | - | Enforcement of Section 63-316, Idaho Code (State Tax Commission may start proceedings to take exclusive and complete control of the program.) |

(5-3-03)

**b.** Example 2 : The following chart outlines what will occur if a county assessor successfully completes the appraisal of the required number of parcels for 2003, 2004, and 2005 but fails to complete the appraisal of the required number of parcels for 2006 and subsequently fails to complete the appraisal of the required number of parcels for 2007.

|                              |   |   |
|------------------------------|---|---|
| January 2003 (If requested.) | - | Informational Progress Report   |
| July 2003                    | - | First Compliance Progress Report  |
| Compliance                   | - | No Action   |
| January 2004 (If requested.) | - | Second Informational Progress Report  |
| July 2004                    | - | Second Compliance Progress Report   |
| Compliance                   | - | No Action   |
| January 2005 (If requested.) | - | Informational Progress Report   |
| Compliance                   | - | No Action   |
| July 2005                    | - | Third Compliance Progress Report  |
| Compliance                   | - | No Action   |
| January 2006 (If requested.) | - | Informational Progress Report   |
| July 2006                    | - | Fourth Compliance Progress Report   |
| Compliance                   | - | No Action   |
| Noncompliance                | - | Remediation Plan and Monitoring   |
| January 2007 (If requested.) | - | Informational Progress Report   |
| July 2007                    | - | Fifth Compliance Progress Report  |
| Compliance                   | - | No Action   |
| Noncompliance                | - | Enforcement of Section 63-316, Idaho Code (State Tax Commission may start proceedings to take exclusive and complete control of the program.) |

(5-3-03)

## **IDAPA 37 - DEPARTMENT OF WATER RESOURCES**

### **37.02.03 - WATER SUPPLY BANK RULES**

#### **DOCKET NO. 37-0203-1001 (FEE RULE)**

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1762, Idaho Code.

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

**Tuesday, September 21, 2010 at 9:00 a.m.**

**Idaho Department of Water Resources  
322 East Front Street, Boise, Idaho  
6th floor conference room A**

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 statement in nontechnical language of the substance and purpose of the proposed rulemaking and the principle issues involved:

The Department of Water Resources (IDWR) manages the Water Supply Bank (Bank) for the Water Resource Board. The only fees currently associated with the Bank result from the rental of water from the Bank. In accordance with the Water Supply Bank Rules, IDWR retains 10% of the gross amount received from a rental. The remaining 90% is paid to the water right holder. However, under the current fee structure, the cost of operating the Bank exceeds the net revenue.

One of the more common uses of the Bank is to protect unused water rights from forfeiture. Interest in the Bank as a mechanism to protect water rights from forfeiture will continue to increase as partial decrees are issued in the Snake River Basin Adjudication. Many of those rights may no longer be in use and need protection from forfeiture. Under the current program structure, a right holder receives full protection from forfeiture, but processing lease applications requires a considerable amount of staff time and there are no fees associated with leasing a water right into the Bank. If a water right leased into the Bank is never rented from the Bank, IDWR is not compensated for the cost of processing the application and maintaining the lease.

IDWR does not have sufficient funding from the general appropriation to subsidize operation of the Bank for the Water Resource Board. IDWR has limited staff resources available to operate the Bank. Interest and activity in the Water Supply Bank has grown considerably over the past few years and IDWR has incurred a significant application backlog. If IDWR does not allocate additional staff resources to the program, the application backlog will continue to grow. The application backlog results in unfulfilled expectations for water users, loss of agricultural production, missed economic opportunity for local economies, and reduced tax revenue for the State of Idaho.

The proposed rule change is necessary to pay for additional staff to operate the Water Supply Bank and maintain the level of service essential to satisfy the purpose of the program.

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

1. Increase the rental fee percentage retained by IDWR from 10% to 25%.

Section 42-1763, Idaho Code, provides that the rental of water from the Water Supply Bank must be approved by the director of the Department of Water Resources. Subsection 37.02.03.035.01 of the Water Supply Bank Rules provides that 10% of the gross amount received from a rental shall be credited to the Department's Water Administration Account. In accordance with Section 42-1762, Idaho Code, the Board

has adopted rules governing the management, control and use of water to and from the water supply bank. The increase in the rental fee percentage being retained by IDWR is necessary for the orderly and proper management of the water supply bank and is consistent with Sections 42-1762, and 42-1763, Idaho Code, and the existing Water Supply Bank Rules.

2. Impose a lease application filing fee of \$250 per water right.

Section 42-1762(1), Idaho Code, directs the Water Resource Board to adopt rules and regulations governing the Water Supply Bank. Section 42-1762(2), Idaho Code, authorizes the Water Resource Board to contract with lessors and lessees to facilitate the rental of water. The lease application filing fee is being imposed as a rule is necessary to secure a source of money to provide an adequate workforce to efficiently operate and manage the water supply bank and is consistent with Sections 42-1762 and 42-1763, 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 resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule or the hearing schedule, contact Monica VanBussum at 208-287-4907 or [monica.vanbussum@idwr.idaho.gov](mailto:monica.vanbussum@idwr.idaho.gov).

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 30th day of July, 2010.

Shelley Keen, Section Manager  
Water Rights Section  
Idaho Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise, Idaho 83720-0098  
Phone: 208-287-4947  
FAX: 208-287-6700

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**THE FOLLOWING IS THE PROPOSED TEXT FOR FEE DOCKET NO. 37-0203-1001**

**025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK (RULE 25).**

**01. General.** The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks provided that there is no injury to other right holders, or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights to the

Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code, shall file a completed application with the Director on a form or in a format provided by the Department and provide such additional information as the Board or Director may require in evaluating the proposed transaction. The completed application form shall state the period of time a water right is offered for lease, or the period of time that storage water will be released for fish migration purposes in accordance with Section 42-1763A, Idaho Code, and the payment terms, if any, requested by the applicant. (7-1-93)

**02. Application.** Submitted with the completed application shall be: (7-1-93)

**a.** Evidence that the water right has been recorded through court decree, permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; (7-1-93)

**b.** Proof of current ownership of the water right by the applicant; (7-1-93)

**c.** Information that the water right has not been lost through abandonment, or forfeiture as defined by Section 42-222(2), Idaho Code; (7-1-93)

**d.** Evidence to demonstrate the relative availability of water in the source to fill the water right; and (7-1-93)

**e.** The written consent of such company, corporation or irrigation district to the proposed sale or lease must accompany the application if the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district. (7-1-93)

**f.** An application filing fee of two hundred fifty dollars (\$250) per water right. ( )

**03. Review.** Upon receipt of the completed application the Director will review it for completeness and make such further review as he deems necessary to adequately brief the Board on the proposed transaction. (7-1-93)

**04. Inadequate Application.** If an application is not complete, the Director will correspond with the applicant to obtain the needed information. If the requested information is not returned in thirty (30) days, the application will no longer be considered a valid request to place a water right into the Board's water supply bank. (7-1-93)

**05. Consideration.** The Board may consider an application at any regular or special meeting. (7-1-93)

**06. Criteria.** The Board will consider the following in determining whether to accept an offered water right into the Board's water supply bank: (7-1-93)

**a.** Whether the applicant is the current owner, title holder or contract water user of the water right proposed to be transferred to the Board's water supply bank or has authority to act on behalf of the owner; (7-1-93)

**b.** Whether all necessary consents have been filed with the Board; (7-1-93)

**c.** Whether the information available to the Board indicates that the water right has been abandoned or forfeited; (7-1-93)

**d.** Whether the offering price or requested rental rate is reasonable; (7-1-93)

**e.** Whether acquisition of the water right will be contrary to the State Water Plan; (7-1-93)

**f.** Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code; (7-1-93)

**g.** The probability of selling or renting the water right from the Board's water supply bank. (7-1-93)

**h.** Whether there are sufficient funds on hand to acquire the water right for the Board's water supply bank, provided that, if there are insufficient funds, or if in the opinion of the Board, existing funds should not immediately be expended for such acquisition, the Board may find that the water right should be acquired on a contingency basis, with payment to be made to the seller or lessor only after water is subsequently sold or rented from the Board's water supply bank, and (7-1-93)

**i.** Such other factors as determined to be appropriate by the Board. (7-1-93)

**07. Resolution of Board.** The Board may by resolution accept an application to sell or lease a water right to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code. An application to lease together with the resolution accepting it becomes a lease and the water right is placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell a right to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water right. The resolution may include conditions of approval, including but not limited to, the following: (7-1-93)

**a.** A condition providing the length of time the water right will be retained in the Board's water supply bank. (7-1-93)

**b.** A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank. (7-1-93)

**c.** Other conditions as the Board determines appropriate, including a condition recognizing that water is being made available through the water supply bank pursuant to the provisions of Section 42-1763A, Idaho Code, for purposes of fish migration. (7-1-93)

**08. Placement of Water Right.** Effect of placement of a water right into the Board's water supply bank. (7-1-93)

**a.** Upon acceptance of a water right into the Board's water supply bank, the owner of the right may withdraw the right within thirty (30) days of acceptance into the bank if the owner does not agree with the conditions of acceptance. (7-1-93)

**b.** Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank, unless the water right is for hydropower and is placed in the Board's water supply bank to be released for salmon migration and power production purposes. (7-1-93)

**c.** A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. (7-1-93)

**d.** The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right. (7-1-93)

**e.** The forfeiture provisions of Section 42-222(2), Idaho Code are tolled during the time period the water right is in the Board's water supply bank, pursuant to the provisions of Section 42-1764, Idaho Code. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK (RULE 35).**

Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: (7-1-93)

**01. Credited Amount.** ~~Fee~~ Twenty-five percent (~~25~~25%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. ~~(5-3-03)~~(    )

**02. Excess Funds.** Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01 shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board for the purposes of Rule 1. (7-1-93)

## **IDAPA 37 - DEPARTMENT OF WATER RESOURCES**

### **37.03.10 - WELL DRILLER LICENSING RULES**

**DOCKET NO. 37-0310-1001**

#### **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 42-238(6), 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 September 15, 2010.

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

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

Continuing education credits required for license renewal for licensed drillers will be reduced from the current sixteen units to fourteen units to coincide with the number of credits available through the various seminars and workshops.

Definitions will be updated to be consistent with those found IDAPA 37.03.09, "Well Construction Standards Rules," updated in 2009.

Application requirements relating to experience and compliance history of the applicant renewing or obtaining a license will be updated to be consistent with 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: 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 [July 7, 2010 Idaho Administrative Bulletin, Vol. 10-7](#). A public meeting was held on the negotiated rulemaking on Friday, July 9, 2010 at 9:00 am.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Chad Hersley @ 287-4930.

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 September 22, 2010.

DATED this July 30, 2010.

Chad Hersley, Technical Hydrogeologist  
Idaho Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise, Idaho 83720  
Telephone: 208-287-4930  
FAX 208-287-6700

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 37-0310-1001

**010. DEFINITIONS (RULE 10).**

Unless the context otherwise requires, the following definitions govern these rules. (4-5-00)

**01. Abandonment.** ~~Filling, plugging or otherwise rendering a well to a condition that it cannot be used to produce or dispose of water or other fluids and it is not a conduit for waste or contamination of ground water~~  
See Decommissioned Well. (4-5-00)(\_\_\_\_)

**02. Adequate Supervision.** Inspection and observation of each drilling operation and the associated drilling site by the licensed driller that has responsible charge during the critical phases of drilling to assure compliance with well construction standards and drilling permit conditions. (4-5-00)

**03. Applicant.** An individual that submits to the department a complete application for a license or operator's permit or a company that submits a complete application for a license. (4-5-00)

**04. Area of Drilling Concern.** An area designated by the director in accordance with Section 42-238, Idaho Code, within which special drilling procedures and equipment are needed to prevent waste or contamination of the ground water. (4-5-00)

**05. Auxiliary Equipment.** Powered equipment, other than the drill rig, used for grouting, installing or advancing casing, welding casings and screens, and other tasks necessary for drilling a well. (4-5-00)

**06. Board.** The Idaho Water Resource Board. (4-5-00)

**07. Bond.** A cash or surety bond obtained by a licensed driller or company payable to the director to provide funding for abandonment or repair should the driller fail to comply with well construction standards, and to allow information to be collected concerning the drilling of the well if the driller fails to submit a timely, accurate driller's report. (4-5-00)

**08. Bottom Hole Temperature of an Existing or Proposed Well.** The temperature of the ground water encountered in the bottom of a well or borehole. (\_\_\_\_)

~~09.~~ **Company.** A firm, co-partnership, corporation or association licensed in accordance with these rules to drill or contract to drill wells. (4-5-00)

~~10.~~ **Compliance History.** An applicant's record of compliance with the laws and rules of Idaho and other states relating to drilling of wells. The record includes, but is not limited to, the applicant's record of obtaining and complying with drilling permits; filing accurate and complete well driller's reports on time; adhering to well construction standards and other rules relating to drilling; and the number, nature and resolution of violations of laws, rules and conditions on licenses, operator's permits and drilling permits. (4-5-00)

~~11.~~ **Continuing Education.** Education or training pertinent to the drilling industry and the construction, modification or ~~abandonment~~ decommissioning of wells. (4-5-00)(\_\_\_\_)

~~12.~~ **Continuing Education Committee (CEC).** A committee ~~appointed by the director~~ whose purpose is to review and approve activities acceptable for related to continuing education credit. (4-5-00)(\_\_\_\_)

~~13.~~ **Credit Unit.** The unit of measurement for continuing education requirements. (4-5-00)

~~14.~~ **Critical Phases of Drilling.** Drilling tasks that require the added experience of a licensed driller to assure completion of the well in accordance with the well construction standards and conditions of drilling permits. These tasks include, but are not limited to, placement of required casings and seals, testing of casings and seals, and resolving problems such as casing or joint failures, heaving formations, lost circulation, and encroaching high



pressure or high temperature water. (4-5-00)

**15. Decommissioned (Abandoned) Well.** A ny w ell w hich has been perm anently remo ved fr om service and filled or p lugged in acco rdance with these rules so as to meet th e in tent of these rules. A properly decommissioned well will not: ( )

**a. Produce or accept fluids:** ( )

**b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or** ( )

**c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers.** ( )

~~14~~**16. Department.** The Idaho Department of Water Resources. (4-5-00)

~~15~~**17. Director.** T he d irector of t he I daho Department of Water Re sources or hi s du ly authorized representative. (4-5-00)

~~16~~**18. Drilling or Well Drilling.** The act of con structing a new w ell, or modif ying, changing the construction, or ~~abandoning~~ decommissioning an existing well. (~~4-5-00~~)( )

~~17~~**19. Drilling Permit.** Authorization by the department to drill a well as p rovided in Section 42-235, Idaho Code. (4-5-00)

~~18~~**20. Drilling Site.** The location of the drill rig and immediate area where the drill rig and auxiliary equipment are set up to drill a well. (4-5-00)

**21. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. ( )

~~19~~**22. License.** A certificate is sued by the director to an individual or a co mpany u pon meeting the requirements of Section 42-238, Idaho Code, and these rules authorizing the drilling of wells permitted in accordance with Section 42-235, Idaho Code. (4-5-00)

~~20~~**23. Licensed Driller.** An individual having a license to drill wells and is authorized and required to supervise operators in the state of Idaho. (~~4-5-00~~)( )

~~21~~**24. Modify.** To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liners, alter the seal between the casing and the well bore, or alter the well to not meet well construction standards. (4-5-00)

~~22~~**25. Operator.** An individual holding either a class I or class II operator's permit issued in accordance with these rules. (4-5-00)

~~23~~**26. Operator's Permit.** A certificate issued by the director upon meeting the requirements of Section 42-238, Idaho Code, and these rules allowing the holder to operate a drill rig as provided in these rules. (4-5-00)

~~24~~**27. Principal Driller.** A licensed driller in responsible charge of a company's drilling activities, which has been designated the principal driller by the company with the department. (4-5-00)

~~25~~**28. Responsible Charge.** The responsibility for direction and control of a drilling operation to meet the requirements of these rules including, but not limited to, the following activities: (4-5-00)

**a. Contracting to drill a well;** (4-5-00)

**b. Coordinate w ith p roperty owner to locate a wel l to comply with ap plicable wel l co nstruction standards;** (4-5-00)

- c. Setting up drilling equipment at the drilling site; (4-5-00)
- d. Drilling operations; and (4-5-00)
- e. Testing the adequacy of casing and seal; (4-5-00)
- f. Properly completing the well. ( )

**29.** Start Card. An expedited drilling permit process for the construction of cold water Single Family residential wells. ( )

**2630.** **Well.** An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules. Well also means any waste disposal and injection well as defined by Section 42-3902, Idaho Code. (4-5-00)

**2731.** **Well Construction Standards.** IDAPA 37.03.09, "Well Construction Standards Rules," adopted by the board. (4-5-00)

**2832.** **Well Driller's Report or Driller's Report.** A report required by Section 42-238, Idaho Code, describing drilling of the well and supplying information required on forms provided by the department. (4-5-00)

**2933.** **Well Log.** A diary maintained at the drilling site ~~on forms acceptable to the department to record the daily progress and nature of drilling operations and that describe, in particular, pertinent geologic conditions, any problems encountered and methods used to resolve them~~ consistent with Section 42-238, Idaho Code. (4-5-00)( )

**3034.** **Well Rig or Drill Rig.** Any power-driven percussion, rotary, boring, digging, jetting, or augering machine used in the drilling of a well. (4-5-00)

**011. -- 019. (RESERVED).**

**020. APPLICABILITY OF LICENSING REQUIREMENTS (RULE 20).**

**01. Licensing Requirements.** A well shall only be drilled by or under the responsible charge of a licensed driller except that a property owner, who is not licensed, can construct a well on his property for his own use without the aid of power-driven mechanical equipment. (4-5-00)

**02. Driller to Have Responsible Charge of Other Workers.** A licensed driller shall have responsible charge of all others engaged in a well drilling operation. (4-5-00)

**03. Operators to Have Permits.** An individual assisting a licensed driller whose duties include operation of a drill rig or auxiliary equipment shall possess an operator's permit as provided in these rules. If the driller is not present at the well site at all times that drilling operations are being conducted, one or more of those operating the equipment in the driller's absence shall have a class II operator's permit. The driller shall provide adequate supervision of class II operators. An individual having a class I operator permit shall be supervised by a licensed driller or a class II operator at all times when operating the drill rig or auxiliary equipment. (4-5-00)

**04. Laborer Exempted.** An individual whose duties at the drilling site do not include operation of the drill rig or auxiliary equipment at any time is not required to have either a driller's license or an operator's permit. (4-5-00)

**05. Company to be Licensed.** No company shall drill or contract to drill a well or wells unless the company has been issued a license and has employed a principal driller as described in accordance with these rules. (4-5-00)

**06. Drillers to Decommission (Abandon) Wells.** Only licensed drillers may decommission (abandon) wells, except that wells may be decommissioned (abandoned) by the owner after receiving a specific waiver from the Director. (4-5-00)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. OBTAINING A LICENSE FOR AN INDIVIDUAL DRILLER (RULE 30).**

**01. Application Requirements.** An individual desiring a license shall file with the department a completed application on a form provided by the department accompanied by the following: (4-5-00)

- a. The application fee required by Section 42-238, Idaho Code. (4-5-00)
- b. Written documentation of drilling experience, compliance history, and the names and addresses of three (3) references to confirm the applicant's drilling experience. (4-5-00)
- c. A list of all drill rigs used by or under the responsible charge of the applicant providing the make, model, and type. (4-5-00)
- d. The names and addresses of all licensed drillers and permitted operators that will work under the responsible charge of the applicant. (4-5-00)

**02. Experience Requirements.** (4-5-00)

a. An applicant shall have a minimum of ~~thirty~~ twenty-four (3024) months of drilling experience. An applicant will be credited with one (1) month of drilling experience for each one hundred sixty (160) hours of employment as a driller or operator, or the equivalent, as determined by the director. Experience drilling monitoring wells, geothermal wells or other cased wells will be credited as experience by the Director if the equipment and drilling methods are applicable to water well construction. (4-5-00)(\_\_\_\_)

b. An applicant for driller's license shall submit evidence to establish that the applicant, as an operator or driller, has successfully constructed a sufficient number of wells within the preceding ~~thirty~~ twenty-four (3024) months to demonstrate competency. Evidence of this experience can be demonstrated by the submission of driller's reports bearing the applicant's signature, well reports upon which the driller having responsible charge attests that the applicant drilled the wells or other documentation acceptable to the director. (4-5-00)(\_\_\_\_)

c. Twelve (12) of the ~~thirty~~ twenty-four (3024) months drilling experience must have occurred within the five (5) year period immediately preceding the filing of the application. (4-5-00)(\_\_\_\_)

d. Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twelve (12) months of drilling experience. The director will determine the number of months of classroom study, up to twelve (12), to be credited as experience. (4-5-00)

**03. Examination.** An applicant determined by the director to have adequate experience and an acceptable compliance history, as confirmed by references acceptable to the director, is eligible to take a written examination. The examination may include separate sections and shall test the applicant's knowledge of the following: (4-5-00)

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. (4-5-00)

b. Land description by government lot, quarter-quarter, section, township and range, and the use of

portable GPS units. (4-5-00)( )

- c. Geologic material identification including the use of correct terminology in describing the geologic material. (4-5-00)
- d. Well construction principles relating to the proper design, construction, development, and abandonment of wells. (4-5-00)
- e. The occurrence, nature, and movement of ground water. (4-5-00)
- f. The use of various types of drill rigs and auxiliary equipment. (4-5-00)

**031. OBTAINING A LICENSE FOR A COMPANY (RULE 31).**

**01. Application Requirements.** A company shall file with the department a complete application for a company license upon a form provided by the department to be accompanied by the following: (4-5-00)

- ~~a.~~ ~~The application fee required by Section 42-238, Idaho Code.~~ (4-5-00)
- ~~ba.~~ The names and addresses of three (3) ~~disinterested~~ persons not affiliated with the company, whom the department can contact for information regarding the company's past well drilling operations, if any, and related business activities. (4-5-00)( )
- ~~eb.~~ A complete record of the compliance history of the company and the owners and employees of the company. (4-5-00)
- ~~ec.~~ Designation of a principal driller who shall be a full time employee of the company and shall drill wells only for the company. A licensed driller who renders only occasional, part-time or consulting drilling services to or for a company may not be designated as the principal driller. (4-5-00)
- ~~ed.~~ The names and addresses of drillers and operators presently employed. (4-5-00)
- ~~fe.~~ A list of all drill rigs and other related equipment owned or used by the company providing the make, model, and type. (4-5-00)

**02. Application Processing.** Applications received under this rule will be processed in accordance with Rule 33. (4-5-00)

**032. OBTAINING AN OPERATOR'S PERMIT (RULE 32).**

**01. Application for Class I Operator's Permit.** A licensed driller or company proposing to employ a class I operator shall submit a completed application on a form provided by the director. The application shall: (4-5-00)

- a. Be accompanied by the fee required by Section 42-238, Idaho Code. (4-5-00)
- b. Be signed by the individual seeking the operator's permit and the licensed driller or principal driller of the company proposing to employ the operator. (4-5-00)

**02. Application for Class II Operator's Permit.** A licensed driller or company proposing to employ an individual who does not currently hold a class II operator's permit shall submit the following: (4-5-00)

- a. A completed application on a form provided by the department. (4-5-00)
- b. The fee required by Section 42-238, Idaho Code. No fee is required if the applicant is presently permitted as a class I operator, but the expiration date of the permit when converted to a class II operator's permit will remain as originally issued. (4-5-00)

c. Documentation that the operator has successfully constructed a sufficient number of wells, or has constructed wells for a sufficient length of time, or a combination of both to demonstrate competency. (4-5-00)

**03. Written Examination.** An examination is not required for a class I operator's permit. An otherwise qualified applicant for a class II operator's permit shall obtain a satisfactory score on an examination as provided in Rule 34. The examination may be comprised of separate sections and shall test the applicant's knowledge of the following: (4-5-00)

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. (4-5-00)

b. Land description by government lot, quarter-quarter, section, township, and range, and the use of portable GPS units. ~~(4-5-00)(\_\_\_\_\_)~~

c. Geologic material identification including the use of correct terminology in describing geologic material. (4-5-00)

d. Well drilling principles relating to proper design, construction, development, and abandonment of wells. (4-5-00)

e. The occurrence, nature, and movement of ground water. (4-5-00)

**04. Operator Drills Only for Licensed Driller or Company.** An operator shall only drill for the licensed driller or company approved by the director. If an operator changes employment to another licensed driller or company, an application for an operator's permit shall be filed as provided in this rule. ~~The director may waive the examination requirement if the operator has a history of complying with these rules and the well construction standards.~~ ~~(4-5-00)(\_\_\_\_\_)~~

**05. Processing an Application for Operator's Permit.** The department will process an application for operator's permit in accordance with Rule 33. (4-5-00)

**033. PROCESSING APPLICATION FOR A DRILLER'S LICENSE OR OPERATOR'S PERMIT (RULE 33).**

**01. Incomplete Application.** If an application is incomplete, not properly signed, or does not include the information required by these rules, the department will advise the applicant in writing of the deficiency. If the deficiencies are not satisfied within ~~one hundred twenty ninety (12090)~~ days of sending the notice of the deficiency, the application ~~and supporting documents will be returned to the applicant~~ will be void. The application fee is not refundable. ~~(4-5-00)(\_\_\_\_\_)~~

**02. Issuance of License.** If the director, upon review of the application, determines that an applicant for license is qualified and the driller has subsequently taken and passed an examination, a notice will be sent to the applicant requesting a bond in an amount determined in accordance with Rule 60 be filed with the department. Upon receipt of a satisfactory bond, the director will issue a license to the applicant. (4-5-00)

**03. Issuance of Operator's Permits.** If the director determines that an applicant is qualified and has passed an examination, if required, the department will mail a notice and operator's permit card to the principal driller on behalf of the applicant. (4-5-00)

**04. Driller's License or Operator's Permit Issued With Conditions or Denial of License or Operator's Permit.** The Director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. ~~If the director, after consulting with the Driller's Advisory Committee, established in Rule 80, determines that the applicant's compliance history includes significant violations of well drilling laws and/or rules, including well construction standards, the director may deny the license or permit, refuse to issue for a specified time, or issue with conditions. The director may only consider the applicant's~~

~~compliance history for the five (5) year period immediately preceding the application being filed.~~ The Director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. If the Director determines that the applicant is not qualified, the Director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (4-5-00)(\_\_\_\_)

**034. EXAMINATION PROCEDURES (RULE 34).**

**01. Written Examination.** Written examinations will be offered at department offices on the first Monday of each ~~month~~ quarter. If the first Monday is a legal holiday, written examination will be offered on the first Tuesday. Re-examination may be taken at a regularly scheduled examination date during a following ~~month~~ quarter and shall be scheduled with the department office originally testing the applicant. (4-5-00)(\_\_\_\_)

**02. Oral Examination.** Successful passage of an oral examination may satisfy all or a part of the written testing requirements under the following circumstances: (4-5-00)

**a.** The applicant requests an oral rather than a written examination and shows cause acceptable to the director why the examination should be oral rather than written. Applicants desiring to take the examination orally shall request that an oral examination be scheduled allowing at least fifteen (15) days to set an examination date. (4-5-00)

**b.** The director determines that because of the applicant's compliance history, additional testing is needed to determine the applicant's qualifications. (4-5-00)

**03. Examination Scoring.** The applicant shall pass each section of the examination with a score of seventy percent (70%) or higher. (4-5-00)

**04. Assistance Must Be Authorized.** The use of written materials, equipment or other individuals to assist an applicant during an examination is prohibited unless specifically authorized by the department. An applicant receiving unauthorized assistance during an examination may be disqualified and the application may be rejected. An application filed by a disqualified applicant will not be processed for a period of up to one (1) year from the time of disqualification. (4-5-00)

**035. EXPIRATION AND RENEWAL OF LICENSE (RULE 35).**

**01. Expiration of Licenses.** ~~All licenses shall expire on March 31 during the second year after issuance.~~ All licenses expire at the end of the licensing period for which they are issued. The licensing period begins April 1 and ends March 31 of the second year following issuance. (4-5-00)(\_\_\_\_)

**02. Renewal Application.** A license may be renewed by submitting a license renewal application including the following: (4-5-00)

**a.** A completed application on a form provided by the department. An application to renew a license for an individual licensed driller shall be signed by the individual and an application to renew a license for a company shall be signed by the principal driller. (4-5-00)

**b.** The renewal fee required by Section 42-238, Idaho Code. (4-5-00)

**c.** A new bond or continuation certificate for an existing bond covering the licensed driller or company. (4-5-00)

**d.** If the application is for renewal of a license held by an individual, the application shall include verification that the applicant has obtained the required continuing education credits. (4-5-00)

**03. Continuing Education Requirements.** ~~Eight (8) credit units are required for renewal of a license for an individual for the licensing period beginning April 1, 2001. Sixteen~~ Fourteen (164) credit units are required for

renewal of a license for an individual for any licensing period beginning on or after April 1, ~~2002~~2011. (4-5-00)(\_\_\_\_)

**04. Welding Competency.** A driller ~~that has been issued a Notice of Violation for welding that does not comply with the well construction standards~~ may be required to obtain a certificate of welding competency, from the American Welding Society or similar organization, ~~if the driller has been issued a Notice of Violation for welding that does not comply with the well construction standards.~~ (4-5-00)(\_\_\_\_)

**036. EXPIRATION AND RENEWAL OF AN OPERATOR'S PERMIT (RULE 36).**

**01. Expiration of Operator's Permits.** Class I and class II operator's permits shall expire on March 31 of the same year that the license of the licensed driller and company employing the operator expires. (4-5-00)

**02. Renewal Application.** An operator's permit may be renewed by submitting to the department an application for renewal including the following: (4-5-00)

**a.** A completed application on a form provided by the department. The operator seeking renewal and the driller under whose responsible charge the operator works shall sign the form. (4-5-00)

**b.** The renewal fee required by Section 42-238, Idaho Code. (4-5-00)

**c.** For renewal of a class II operator's permit, verification of the required continuing education credit units. (4-5-00)

**03. Continuing Education Required for Renewals.** ~~Eight credit units are required for renewal of a class II operator's permit for the two (2) year licensing period beginning April 1, 2001. Sixteen~~ Fourteen (14) credit units are required for renewal of a class II operator's permit for a licensing period beginning on or after April 1, ~~2002~~2011. (4-5-00)(\_\_\_\_)

**04. Welding Competency.** An operator's work that has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards may be required to obtain a certificate of welding competency, from the American Welding Society or similar organization, ~~if the operator's work has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards.~~ (4-5-00)(\_\_\_\_)

**037. PROCESSING APPLICATION TO RENEW LICENSE OR OPERATOR'S PERMIT (RULE 37).**

**01. Processing Applications for Renewal.** Applications for renewal will be processed in the order received by the department. The department shall receive a complete application for renewal no later than March 15 to assure that the license or operator's permit will remain in force without interruption. If the director determines that the application is complete and the applicant is qualified, the license or operator's permit will be renewed for the period ending on March 31 of the second year after approval of the renewal. (4-5-00)

**02. Regulatory Compliance Required for Renewals.** A license or operator's permit will not be renewed if the applicant has not submitted all required driller's reports, applications for drilling permits, fees, agreed civil penalties, has not complied with all orders requiring repair or abandonment of improperly constructed wells or is not otherwise in compliance with Sections 42-235 and 42-238, Idaho Code, and the applicable rules. (4-5-00)

**03. Compliance History.** If the Director determines, ~~after consulting the Driller's Advisory Committee,~~ that the applicant has exhibited an unacceptable compliance history, the Director may deny renewal, refuse renewal for a specified time, or renew with conditions, including but not limited to an increased bond amount. ~~Up to five (5) years of the most recent licensed or permitted history may be considered to determine compliance.~~ (4-5-00)(\_\_\_\_)

**04. Renewal of Expired Licenses or Operator's Permits.** A license or an operator's permit which has expired or otherwise not been in effect for a period not exceeding three (3) years shall be renewed in accordance with the requirements of Rule 35 or Rule 36 as appropriate. An applicant for renewal shall provide verification of earned credit units required for the entire period since the license or class II operator's permit was last issued. If a license or

operator's permit has been expired or otherwise not effective for a period of more than three (3) years, an application for a new license shall be submitted in accordance with Rule 30 for an individual license, Rule 31 for a company or Rule 32 for an operator's permit. The director may waive the examination requirement if the applicant has been previously licensed or permitted in the state of Idaho. (4-5-00)

**05. Reuse of Identification Numbers.** The identification number assigned to a license by the department will not be reused if the license has been expired or otherwise not in effect for three (3) years or more except, at the director's discretion, the number may be reissued to the original owner. (4-5-00)

**06. Condition or Denial of an Application for Renewal.** If the Director determines that the applicant has not or cannot fully comply with these rules, a license or operator's permit may be issued with conditions. If the Director determines that the applicant is not qualified, the Director will deny the application. When there are ~~significant~~ documented violations of well drilling laws and/or rules, including well construction standards, the Director ~~will~~ may consult with the Driller's Advisory Committee, created in accordance with Rule 80, prior to making a decision to issue a conditional license or operator's permit or to deny an application based on the applicant's compliance history. Notice of a denied application or a conditioned license will be given as provided in IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (4-5-00)(\_\_\_\_)

**038. -- 049. (RESERVED).**

**050. DUTIES AND RESPONSIBILITIES OF DRILLERS, COMPANIES AND OPERATORS (RULE 50).**

**01. Licensed Drillers and Principal Drillers.** All licensed drillers and principal drillers shall: (4-5-00)

**a.** Allow drilling only by those authorized by and under the supervision required by these rules and according to any conditions of the license or permit. (4-5-00)

**b.** Complete each well in compliance with IDAPA 37.03.09, "Well Construction Standards Rules," and drilling permit conditions. (4-5-00)(\_\_\_\_)

**c.** Have a valid cash or surety bond in effect, as defined in Rule 60. (4-5-00)

**d.** Have the license number displayed in a conspicuous place on the drill rig using a metal identification plate provided by the department or other permanent marking approved by the director. The displayed license number shall represent the company or individual driller license under which the well is being drilled. One plate will be issued upon initial licensure with replacement and additional plates available for a fee. (4-5-00)

**e.** Keep current the department's list of operators and drillers employed by the licensed driller or company, including current addresses for the company, drillers, and operators. The licensed driller or principal driller shall be held responsible for all drilling activity of a driller or operator under their supervision until such notification has been submitted in writing to the department that the driller or operator is no longer employed by the licensed driller or company. (4-5-00)

**f.** Have at the drilling site the driller's license and drilling permit or other written authorization from the director to drill the well. (4-5-00)

**g.** Only drill wells in contaminated areas identified by the department or in areas of drilling concern so designated by the department with specific written authorization of the director. Verbal authorizations to drill and pre-approved drilling permits (start cards) do not authorize drilling in these areas. (4-5-00)

**h.** Only drill a public drinking water supply well, as defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," low temperature geothermal resource or geothermal resource well with specific written authorization from the director. Verbal authorizations and ~~pre-approved~~ start card permits (start cards) are not authorized for these uses. (4-5-00)(\_\_\_\_)



i. Monitor and record bottom-hole temperature in areas where low temperature geothermal resources are known or suspected or when the well is being constructed pursuant to IDAPA 37.03.09, Rule 30, as a low temperature geothermal resource well. Bottom-hole temperature of every well being constructed pursuant to IDAPA 37.03.09, Rule 30, must be measured, recorded, and reported on the well drillers report. (4-5-00)

ii. Maintain a daily well log at the drilling site ~~on a form~~ acceptable to the department ~~bearing the initials of the driller or operator recording information during the work shift. The well log shall be available for review by department personnel at the well site. The following information shall be recorded:~~ and as required by Section 42-238(11), Idaho Code. Pertinent data required to be recorded on the daily log must include information sufficient to complete a well drillers report acceptable to the Director. (4-5-00)

~~i. Borehole lithology; (4-5-00)~~

~~ii. Water bearing zones; (4-5-00)~~

~~iii. Static water levels; (4-5-00)~~

~~iv. Bottom hole temperature; (4-5-00)~~

~~v. Casing and sealing placement status; (4-5-00)~~

~~vi. A description of problems encountered; and (4-5-00)~~

~~vii.~~ The driller shall retain the well log for at least one (1) year after the driller's report is submitted to the department. (4-5-00)( )

jk. Submit driller's reports, acceptable to the Director, on forms approved by the department within thirty (30) days following removal of the drill rig from the drilling site at completion of the well. Driller's reports shall be prepared from information recorded on the daily well log. Driller's reports returned to the driller due to deficiencies must be corrected and returned to the department within thirty (30) days of mailing by the department. (4-5-00)( )

kl. Attach a well tag supplied by the department to every well drilled for which a drilling permit is required. The tag shall be affixed permanently to the casing, or other permanent object attached to the well, by a method approved by the Director prior to removing the well rig from the drilling site. (4-5-00)

lm. Cause all drilling activity under the supervision of the driller to cease when the driller's license expires, becomes invalid, or is suspended or revoked. (4-5-00)

**02. Companies.** Companies shall: (4-5-00)

**a.** Have a principal driller designated with the department at all times. (4-5-00)

**b.** Notify the department within ten (10) days of the principal driller leaving employment with the company. The company's license shall immediately become void and of no effect when the principal driller leaves employment with the company and shall remain so until the department has been notified in writing that a new principal driller has been employed and designated by the company. Failure to designate a principal driller within ninety (90) days of the departure of the designated principal driller is cause for the director to take action to cancel the company's license. (4-5-00)

**c.** Maintain a bond in force at all time as required in Rule 60. (4-5-00)

**03. Operators.** Operators shall: (4-5-00)

**a.** Have in their possession a valid operator's permit while drilling wells. (4-5-00)

**b.** Only drill wells as authorized by the operator's permit. (4-5-00)

- c. Maintain a complete and accurate well log at the drilling site. (4-5-00)
- d. Co-sign with the driller a driller's report upon completion of the well. (4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

**070. CONTINUING EDUCATION (RULE 70).**

**01. Requirements.** Every licensed driller ~~and~~ or permitted operator ~~shall~~ must have earned at the time of ~~license or permit~~ renewal the applicable number of credit units required by these rules. The credit units shall have been obtained during the licensing period preceding the application for renewal. (4-5-00)(\_\_\_\_)

**02. Earning Credit Units.** ~~A~~ Credit units ~~is~~ may be earned for ~~each hour the applicant devotes to time spent in~~ attendance at workshops, seminars, short courses, and other educational opportunities devoted to drilling or related subjects acceptable to the Director ~~and approved by the continuing education committee (CEC) and in compliance with the CEC guidelines.~~ These may include completion of college courses, correspondence courses, videotaped courses, ~~active participation in professional organizations,~~ and other endeavors such as authoring appropriate publications. (4-5-00)(\_\_\_\_)

**03. ~~Record Keeping~~ Documentation.** Documentation to support credit units claimed is the responsibility of the licensed driller and permitted operator. Records required include but are not limited to: (4-5-00)(\_\_\_\_)

a. A log showing the type of activity claimed, sponsoring organization, duration, instructor's name, and credit units. (4-5-00)

b. Attendance verification records in the form of completion certificates or other official documents providing evidence of attendance and completion. (4-5-00)(\_\_\_\_)

**04. Submittal and Maintenance of Records.** Copies of continuing education records for the preceding license period shall be submitted with applications to renew licenses or permits. These records shall be maintained for a period of three (3) years and shall be available for review by the department at the request of the director. (4-5-00)

**05. Insufficient Credit Units.** If at the time of renewal, the applicant is unable to provide verification of the required credit units, the director will deny renewal of the driller's license or operator's permit, except as otherwise provided in the following: (4-5-00)

a. The director may withhold action on an application for renewal for a period not to exceed ninety (90) days to allow the applicant to provide verification of the required credit units. The applicant is not authorized to drill until the verification is provided and the renewal is issued. (4-5-00)

b. The director may exempt an applicant from all or part of the continuing education requirements if the applicant served on active duty in the armed forces of the United States for one hundred twenty (120) consecutive days or more during the licensing period prior to filing the application for renewal; or the applicant suffered physical disability, serious illness, or other extenuating circumstances that prevented the applicant from earning the required units. (4-5-00)

c. A licensed driller or operator who has chosen to allow his license or permit to expire or otherwise become of no effect shall be exempt from continuing education requirements unless an application for renewal is filed less than three (3) years after the license or permit expired or otherwise became of no effect. (4-5-00)

**06. Out-of-State Residents.** The continuing education requirements for a non-resident applicant for a

license or operator's permit shall be the same as for resident applicants. (4-5-00)

**07. Responsibility for Education Development and Implementation.** The Idaho Ground Water Association (IGWA) is delegated responsibility to develop and implement a program for continuing education for review and approval by the director. (4-5-00)

**071. CONTINUING EDUCATION COMMITTEE ~~(CEC)~~ CONTINGENCY PLAN (RULE 71).**  
Should the IGWA not submit a suitable program for continuing education or that program not be approved by the director the CEC shall be organized and administered as follows: memorandum of understanding (MOU) and/or the contract between the department and the IGWA be breached, revoked, or not renewed, the CEC shall be organized and administered by the department. (4-5-00)(\_\_\_\_)

~~**01. Purpose and Duties.** The CEC shall provide recommendations to the director concerning the amount and nature of continuing education required to maintain and improve driller and operator competency. The CEC shall provide recommendations to the director concerning the credit value to be assigned to continuing education opportunities. The CEC shall also encourage driller association(s) and the education and professional communities to make additional opportunities available. The director shall determine the value for all activities submitted to fulfill continuing education requirements. (4-5-00)~~

~~**02. Committee Membership.** The membership of the CEC shall be selected by the director from nominations provided by state driller association(s) and others. The CEC membership shall include: (4-5-00)~~

~~**a.** Three (3) individuals holding or who have held an Idaho well driller's license, at least two (2) of which shall hold a currently valid license. (4-5-00)~~

~~**b.** One (1) individual from the department. (4-5-00)~~

~~**c.** One (1) individual from either the higher education community or a consulting firm involved in designing wells. (4-5-00)~~

~~**03. Terms.** The committee members will be appointed to serve a term of two (2) or three (3) years, but may serve no more than six (6) years in any given ten (10) year period. (4-5-00)~~

~~**04. Reimbursement.** Travel and per diem expenses for members attending official meetings of the CEC will be paid in accordance with department policy. The department will establish meeting dates and locations for the CEC. (4-5-00)~~

**072. -- 079. (RESERVED).**

**080. DRILLER'S ADVISORY COMMITTEE (RULE 80).**

**01. Selection and Duties.** The Director may appoint a driller's advisory committee from the list of drillers holding valid licenses. The Director will solicit appointment recommendations from the IGWA and other licensed drillers. The Director will determine the term of appointment for members of the committee. The committee shall provide recommendations and suggestions concerning revision of these rules, the minimum standards for well construction, significant violations and other matters regarding well drilling. The committee members shall serve on a voluntary basis without compensation. The department will hold at least one (1) meeting of the advisory committee per year and will hold additional meetings as needed at the discretion of the Director. (4-5-00)(\_\_\_\_)

**02. Reimbursement.** Travel costs shall be paid to members of the advisory committee for travel and per diem and for costs associated with attendance of advisory committee meetings held by the department. Reimbursement shall be based on existing department policy covering travel and per diem expenses. (4-5-00)

## **IDAPA 41 - PUBLIC HEALTH DISTRICTS**

### **41.03.01 - RULES OF THE SOUTHWEST DISTRICT HEALTH DEPARTMENT**

#### **DOCKET NO. 41-0301-1001 (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 Section 39-416, 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 September 15, 2010.

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

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

This rulemaking is being done to repeal IDAPA 41.03.01, "Rules of the Southwest District Health Department," because this rule is outdated and is no longer being used by the Department.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees or charges being imposed through this rulemaking.

**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(2), Idaho Code, negotiated rulemaking was not conducted because of the need to repeal IDAPA 41.03.01 which is outdated and no longer being used. The proposed rulemaking is not anticipated to have interested stakeholders, thus negotiated rulemaking is not necessary.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no documents being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David M. Loper, REHS/RS, Director, Environmental Health Services, Southwest District Health, (208) 455-4501.

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 September 30, 2010.

DATED this 29th day of July, 2010.

David M. Loper, Director  
Environmental Health Services  
Southwest District Health  
920 Main Street  
Caldwell, ID 83605  
phone: (208)455-5401  
fax: 208.455.5405

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**IDAPA 41.03.01 IS BEING REPEALED IN ITS ENTIRETY**

# IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 - WATER QUALITY STANDARDS

### DOCKET NO. 58-0102-1001

#### 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. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before September 17, 2010. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The Clean Water Act requires Idaho to protect the existing uses of all state waters and to protect high quality waters from degradation that, upon public review, is not necessary and important. This is known as antidegradation. Federal law requires the state to have both an antidegradation policy and methods to implement the policy. Although Idaho has an antidegradation policy in rule, there are no procedures in the rules on how to implement the antidegradation policy.

In September 2009, the U.S. Environmental Protection Agency (EPA) was given a 60-day notice of intent to sue by the Idaho Conservation League over EPA's failure, in oversight of Idaho's water quality rules, to require Idaho to identify its antidegradation implementation procedure. If Idaho does not act, EPA may be forced to act, and this may result in a federal rule requiring antidegradation review. DEQ initiated negotiated rulemaking in an effort to forestall the pending legal action against EPA that would force EPA to take action with respect to Idaho's rule. DEQ held six rulemaking meetings in developing this proposed rule and intends to develop supporting guidance.

DEQ proposes to revise its Water Quality Standards, IDAPA 58.01.02, to include procedures for implementing efforts to limit degradation of water quality. This proposed rule addresses:

1. Activities subject to antidegradation review;
2. Definition of degradation and impairment and the information needed to determine them;
3. How it is decided where each of the three levels of protection from degradation is applied;
4. Exemptions to antidegradation review;
5. Determination of insignificant discharges not warranting an analysis of their degradation to high quality water;
6. How DEQ will evaluate changes in water quality;
7. Waste treatment alternatives analysis to identify least degrading option for significant degradation of high quality water;
8. Socioeconomic analysis needed to justify degradation of high quality water; and
9. What is needed to document existing sources of pollution are meeting required controls.

Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

Please note that language in proposed rule Subsection 052.10 is existing language that has been moved from Section 055, Outstanding Resource Waters, and Subsection 350.04., Restriction of Nonpoint Source Activities on Outstanding Resource Waters. With the exception of Subsection 052.10.g. and a few nonsubstantive revisions, the proposed text is the same as that found in Section 055 and Subsection 350.04 of the existing rules.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the November 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

**NEGOTIATED RULEMAKING:** The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On April 7, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-4, pages 26 through 27, and a preliminary draft rule was made available for public review. Meetings were held on April 22, May 12, June 2, June 15, July 8, and July 21, 2010. Members of the public participated in this negotiated rulemaking process by attending the meetings and submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at [http://www.deq.idaho.gov/rules/water/58\\_0102\\_1001\\_proposed.cfm](http://www.deq.idaho.gov/rules/water/58_0102_1001_proposed.cfm).

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**FISCAL IMPACT STATEMENT:** 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 when the pending rule will become effective: Implementation of this rule is estimated to annually require 1.6 FTE DEQ staff time at a cost of approximately \$145,500 in current dollars. In addition, one time startup costs for staff training are estimated to be about \$16,500. The workload strategy at this time is for the DEQ regional office surface water quality staff assigned to conduct Clean Water Act Section 401 Water Quality Certifications to implement the antidegradation rules in coordination with a state office water quality standards staff person. Existing surface water quality work such as monitoring and assessments will be reduced in order to shift duties to antidegradation review and analysis.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 1, 2010.

DATED this 30th day of July, 2010.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED RULE TEXT FOR DOCKET NO. 58-0102-1001**

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply: (4-11-06)

**01. Acute.** A stimulus severe enough to induce a rapid response. In aquatic toxicity tests, acute refers to a single or short-term (i.e., ninety-six (96) hours or less) exposure to a concentration of a toxic substance or effluent which results in death to fifty percent (50%) of the test organisms. When referring to human health, an acute effect is not always measured in terms of lethality. (3-30-07)

**02. Acute Criteria.** Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity due to exposure to the toxic substance or effluent. Acute criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Maximum Concentration (CMC). There are no specific acute criteria for human health; however, the human health criteria are based on chronic health effects and are expected to adequately protect against acute effects. (3-30-07)

**03. Aquatic Species.** Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

**04. Assigned Criteria.** In order to conduct an antidegradation review, it must be known what criteria are assigned to protect the water body which may be affected by the proposed activity or discharge. Assigned criteria are those associated with the designated, presumed, and any existing uses from Section 100 of these rules. ( )

**045. Background.** The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. (8-24-94)

**056. Basin Advisory Group.** Not less than one (1) advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

**067. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

**078. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

**089. Bioaccumulation.** The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

**0910. Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

**101. Board.** The Idaho Board of Environmental Quality. (7-1-93)

**112. Chronic.** A stimulus that persists or continues for a long period of time relative to the life span of an organism. In aquatic toxicity tests, chronic refers to continuous exposure to a concentration of a toxic substance or

effluent which results in mortality, injury, reduced growth, impaired reproduction, or other adverse effect to aquatic organisms. The test duration is long enough that sub-lethal effects can be reliably measured. When referring to human health, a chronic effect is usually measured in terms of estimated changes in rates (# of cases/ 1000 persons) of illness over a lifetime of exposure. (3-30-07)

**123. Chronic Criteria.** Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity due to exposure to the toxic substance or effluent. Chronic criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Continuous Concentration (CCC). Human health chronic criteria are based on lifetime exposure. (3-30-07)

**134. Compliance Schedule or Schedule Of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

**15. Cost-Effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources.** All approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis. ( )

**146. Daily Maximum (Minimum).** The highest (lowest) value measured during one (1) calendar day or a twenty-four (24) hour period, as appropriate. For ambient monitoring of dissolved oxygen, pH, and temperature, multiple measurements should be obtained at intervals short enough that the difference between consecutive measurements around the daily maximum (minimum) is less than zero point two (0.2) ppm for dissolved oxygen, zero point one (0.1) SU for pH, or zero point five (0.5) degree C for temperature. (3-30-07)

**157. Daily Mean.** The average of at least two (2) appropriately spaced measurements, acceptable to the Department, calculated over a period of one (1) day: (3-20-97)

**a.** Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

**b.** If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

**c.** In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

**d.** For ambient monitoring of temperature, the daily mean should be calculated from equally spaced measurements, at intervals such that the difference between any two (2) consecutive measurements does not exceed one point zero (1.0) degree C. (3-30-07)

**18. Degradation or Lower Water Quality.** For purposes of antidegradation review, degradation or lower water quality means a change in concentration of a pollutant that is measurable and adverse to beneficial uses that may be made of the water, as calculated upon appropriate mixing of the discharge and receiving water. ( )

**169. Deleterious Material.** Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

~~170.~~ **Department.** The Idaho Department of Environmental Quality. (7-1-93)

~~181.~~ **Design Flow.** The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

~~192.~~ **Designated Agency.** The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the



Department's division of environmental quality for all other activities. (3-20-97)

**203. Designated Beneficial Use or Designated Use.** Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Sections 110 through 160, whether or not the uses are being attained. (4-5-00)

**214. Desirable Species.** Species in digenous to th e area or thos e intro duced s pecies identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

**225. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

**236. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (8-24-94)

**247. Dissolved Oxygen (DO).** The m easure of t he amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

**258. Dissolved Product.** Petroleum product constituents found in solution with water. (8-24-94)

**269. Dynamic Model.** A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)

**2730. E. coli (Escherichia coli).** A co mmon fecal and intes tinal or ganism of the coliform g roup o f bacteria found in warm-blooded animals. (4-5-00)

**2831. Effluent.** Any wastewater discharged from a treatment facility. (7-1-93)

**2932. Effluent Biomonitoring.** The m easurement o f the b iological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)

**303. EPA.** The United States Environmental Protection Agency. (7-1-93)

**314. Ephemeral Waters.** A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-11-06)

**35. Existing Activity or Discharge.** An activity or discharge that has been previously authorized. ( )

**326. Existing Beneficial Use Or Existing Use.** Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards." (4-11-06)

**337. Facility.** As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)

**348. Four Day Average.** The av erage o f all meas urements within a p eriod o f n inety-six ( 96) consecutive hours. While a minimum of one (1) measurement per each twenty-four (24) hours is preferred, for toxic chemicals in Section 210, any number of data points is acceptable. (3-30-07)

**359. Free Product.** A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)

**3640. Full Protection, Full Support, or Full Maintenance of Designated Beneficial Uses of Water.** Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)

**3741. Geometric Mean.** The geometric mean of “n” quantities is the “nth” root of the product of the quantities. (7-1-93)

**3842. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-07)

**3943. Harmonic Mean Flow.** The number of daily flow measurements divided by the sum of the reciprocals of the flows (i.e., the reciprocal of the mean of reciprocals). (8-24-94)

**404. Hazardous Material.** A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

**45. Highest Statutory and Regulatory Requirements for Point Sources.** All applicable effluent limits required by the Clean Water Act and other permit conditions. It also includes any compliance schedules or consent orders. ( )

**416. Hydrologic Unit Code (HUC).** A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

**427. Hydrologically-Based Design Flow.** A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one (1) or more excursions below the design flow can occur. (8-24-94)

**438. Hypolimnion.** The bottom layer in a thermally-stratified body of water. It is fairly uniform in temperature and lays beneath a zone of water which exhibits a rapid temperature drop with depth such that mixing with overlying water is inhibited. (3-30-07)

**49. Impairment.** ( )

**a.** For the purpose of determining the appropriate level of antidegradation protection, impairment means: ( )

**i.** For aquatic life uses, that two or more major biological groups such as fish, macroinvertebrates, or algae have been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group; and ( )

**ii.** For recreational uses, non-compliance with those levels of water quality criteria listed in Sections 200, 210, 251, and 275 (where applicable). ( )

**b.** The Department shall utilize the current version of the “Water Body Assessment Guidance,” as published by the Idaho Department of Environmental Quality, as a guide to assist in making impairment decisions. ( )

**50. Integrated Report.** Refers to the consolidated listing and reporting of the state’s water quality status pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. ( )

**4451. Inter-Departmental Coordination.** Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

**452. Intermittent Waters.** A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-11-06)

**4653. LC-50.** The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific time of observation (e.g., ninety-six (96) hours). (3-20-97)

**4754. Load Allocation (LA).** The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

**4855. Loading Capacity.** The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

~~**49. Lower Water Quality.** A measurable and adverse anthropogenic change in a chemical, physical, or biological parameter of water relevant to a beneficial use, and which can be expressed numerically. Measurable change may be determined by a statistically significant difference using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.~~ (3-30-07)

**506. Lowest Observed Effect Concentration (LOEC).** The lowest concentration of a toxic substance or an effluent that results in observable adverse effects in the aquatic test population. (3-30-07)

**547. Man-Made Waterways.** Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water losses, and be operated or maintained to promote water conveyance. (3-30-07)

**528. Maximum Weekly Maximum Temperature (MWMT).** The weekly maximum temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period ending on the day of calculation. When used seasonally, e.g., spawning periods, the first applicable WMT occurs on the seventh day into the time period. The MWMT is the single highest WMT that occurs during a given year or other period of interest, e.g., a spawning period. (3-30-07)

**59. Measurable.** Refers to the practical ability to detect change in water quality taking into account limitations in an analytical technique and sampling variability. Because analytical techniques change and repeated sampling and application of statistics can enable detection of progressively smaller changes, the Department will generally consider measurable changes to be those that can be determined with ninety-five percent (95%) confidence based on detection limits and precisions of standard methods of analysis. Because the Department recognizes that in some cases smaller changes may be significant to human health or aquatic life protection, the Department will in those cases consider calculated changes to be measurable. ( )

**5360. Milligrams Per Liter (mg/l).** Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

**5461. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

**5562. National Pollutant Discharge Elimination System (NPDES).** Point source permitting program

established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

**563. Natural Background Conditions.** The physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, geologic disturbance, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions should be described and evaluated taking into account this inherent variability with time and place. (3-30-07)

**5764. Nephelometric Turbidity Units (NTU).** A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

**65. New Activity or Discharge.** An activity or discharge that has not been previously authorized. Existing activities or discharges not currently permitted or licensed will be presumed to be new unless the Director determines to the contrary based on review of available evidence. ( )

**5866. Nonpoint Source Activities.** Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

- a. Irrigated and nonirrigated lands used for: (7-1-93)
  - i. Grazing; (7-1-93)
  - ii. Crop production; (7-1-93)
  - iii. Silviculture; (7-1-93)
- b. Log storage or rafting; (7-1-93)
- c. Construction sites; (7-1-93)
- d. Recreation sites; (3-20-97)
- e. Septic tank disposal fields. (8-24-94)
- f. Mining; (3-20-97)
- g. Runoff from storms or other weather related events; and (3-20-97)
- h. Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

**5967. Nuisance.** Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

**608. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

**649. One Day Minimum.** The lowest daily instantaneous value measured. (3-20-97)

**6270. One Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)

**6371. Operator.** For purposes of Sections 851 and 852, any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (4-2-03)

**6472. Outstanding Resource Water (ORW).** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)

**6573. Outstanding Resource Water Mixing Zone.** An area or volume of an ORW where pollutants are allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a segment immediately upstream which contains man caused pollutants as a result of a nonpoint source activity occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of this chapter. (7-1-93)

**6674. Owner.** For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (4-2-03)

**75. Permit or License.** A permit or license for an activity that is subject to certification by the state under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and FERC licenses. ( )

**676. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

**6877. Petroleum Products.** Products derived from petroleum through various refining processes. (7-1-93)

**6978. Petroleum Storage Tank (PST) System.** Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

**709. Point Source.** Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)

**7180. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

**7281. Project Plans.** Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

**7382. Public Swimming Beaches.** Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. (4-11-06)

**7483. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

**7584. Reference Stream or Condition.** A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

**7685. Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

**7786. Resident Species.** Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

- a. Are usually present at the site; (8-24-94)
- b. Are present only seasonally due to migration; (8-24-94)
- c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)
- d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)
- e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

**787. Responsible Persons in Charge.** Any person who: (8-24-94)

- a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)
- b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)
- c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

**7988. Sediment.** Undissolved inorganic matter. (3-30-07)

**8092. Seven Day Mean.** The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

**8190. Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

**8291. Short-Term or Temporary Activity.** An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection

080.02. (3-30-07)

~~8392~~. **Silviculture.** Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

~~8493~~. **Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

~~8594~~. **Special Resource Water.** Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)

a. To preserve outstanding or unique characteristics; or (7-1-93)

b. To maintain current beneficial use. (7-1-93)

~~8695~~. **Specialized Best Management Practices.** Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

~~8796~~. **State.** The state of Idaho. (7-1-93)

~~8897~~. **State Water Quality Management Plan.** The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

~~898~~. **Suspended Sediment.** The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)

~~909~~. **Suspended Solids.** The undissolved organic and inorganic matter suspended in surface water. (3-30-07)

~~9100~~. **Technology-Based Effluent Limitation.** Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

~~92101~~. **Total Maximum Daily Load (TMDL).** The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

~~93102~~. **Toxicity Test.** A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

~~94103~~. **Toxic Substance.** Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

~~90104~~. **Treatment.** A process or activity conducted for the purpose of removing pollutants from

wastewater. (7-1-93)

**96105. Treatment System.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewer systems, pumping stations integral to such plants or sewer systems, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. (4-11-06)

**97106. Twenty-Four Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

**98107. Unique Ecological Significance.** The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

**99108. Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

**1009. Wastewater.** Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

**1010. Water Body Unit.** Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

**10211. Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

**10312. Water Quality-Based Effluent Limitation.** An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

**10413. Water Quality Limited Water Body.** After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

**10514. Waters and Waters Of The State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

**10615. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

**10716. Watershed Advisory Group.** An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with



an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

**10817. Whole-Effluent Toxicity.** The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

**10918. Zone of Initial Dilution (ZID).** An area within a Department authorized mixing zone where acute criteria may be exceeded. This area should be as small as practicable and as sure that drifting organisms are not exposed to acute concentrations for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**051. ANTIDegradation Policy.**

**01. Maintenance of Existing Uses for All Waters (Tier I Protection).** The existing in stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. (7-1-93)( )

**02. High Quality Waters (Tier II Protection).** Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure water quality adequate to protect existing uses fully. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control. In providing such assurance, the Department may enter together into an agreement with other state of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. (7-1-93)( )

**03. Outstanding Resource Waters (Tier III Protection).** Where high quality waters designated by the legislature constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected from the impacts of point and nonpoint source activities. (3-20-97)( )

**04. Thermal Discharges.** In those cases where potential water quality impairment associated with a thermal discharge is involved, antidegradation shall be implemented consistent with Section 316 of the Clean Water Act. ( )

**05. Waters Subject to the Antidegradation Policy.** Idaho's antidegradation policy only applies to waters subject to the jurisdiction of the Clean Water Act. ( )

**052. IMPLEMENTATION.**

The antidegradation policy shall be implemented as follows: ( )

**01. List of Waters Protected.** All waters receive Tier I protection. Waters receiving Tier II protection will be identified using a water body by water body approach during the antidegradation review. The Department will not maintain a list of Tier I or II waters. Waters given Tier III protection are designated in law. ( )

**02. Restoration Projects.** Changes in water quality may be allowed by the Department without an antidegradation review where determined necessary to secure long-term water quality improvement through restoration projects designed to trend toward natural characteristics and associated uses to a water body where those characteristics and uses have been lost or diminished. ( )

**03. Emergency Actions.** No thing in the antidegradation policy is intended to apply to emergency response actions taken to protect human life or property, irrespective of any temporary or permanent change in water quality. ( )

**04. General Permits.** For general permits issued on or after July 1, 2011, the Department will conduct antidegradation review, including a Tier II analysis, at the time at which general permits are certified. For general permits that adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that do not adequately address antidegradation, the Department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. ( )

**05. Initiation of Antidegradation Review.** Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for a new or reissued permit or license. ( )

**06. Identification of Tier I and Tier II Waters.** The Department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological, and other information regarding the water body. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows: ( )

**a.** Water bodies identified in the Integrated Report as supporting assessed uses will be provided Tier II protection. ( )

**b.** Water bodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. ( )

**c.** Water bodies identified in the Integrated Report as not supporting an assessed use will receive protection as follows: ( )

**i.** For aquatic life uses, if biological data show: ( )

(1) Impairment, then the water body shall receive Tier I protection for aquatic life; or ( )

(2) No impairment, then the water body shall receive Tier II protection for aquatic life; or ( )

(3) If biological data are insufficient to determine impairment, then the water body will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. ( )

**ii.** For recreational uses, if water quality data show impairment, then the water body shall receive Tier I protection for recreational uses. ( )

**07. Tier I Review.** Tier I review will be performed for all new or reissued permits or licenses. Existing uses and the water quality necessary to protect the existing uses must always be maintained and protected. No degradation of water quality may be allowed that would cause or contribute to violation of water quality criteria. ( )

**a.** If a receiving water does not meet as signed criteria, then the Department shall ensure that an activity or discharge authorized by a new or reissued permit or license meets criteria adopted to protect and maintain existing beneficial uses and shall ensure that the activity or discharge complies with the provisions of Section 055 of these rules. In making this determination, the Department shall rely upon the presumption that, if the numeric criteria established to protect specific uses are met, then the existing beneficial uses they were designed to protect are protected. ( )

**b.** If a receiving water meets or surpasses assigned criteria, then no change to an existing activity or discharge or commencement of a new activity or discharge may be allowed that would degrade ambient water quality so that it violates criteria established to protect beneficial uses. ( )

**08. Evaluation of Effect of an Activity or Discharge on Water Quality.** The Department will evaluate the effect on water quality for each parameter of concern. The Department will determine whether an activity or discharge results in an improvement, no change, or degradation of water quality. ( )

**a.** Effect on water quality will be based on the calculated change in concentration in the receiving water as a result of a new or reissued permit or license. With respect to a discharge, this calculation will take into account dilution using appropriate mixing of the receiving water under critical conditions coupled with the design flow of the discharge. For a reissued permit or license, the calculated change will be the difference in water quality that would result from the activity or discharge as authorized in the current permit or license and the water quality that would result from the activity or discharge as proposed in the reissued permit or license. For a new permit or license, the calculated change will be the difference between the existing receiving water quality and water quality that would result from the activity or discharge as proposed in the new permit or license. ( )

**i.** Current Discharge Quality. For parameters of concern that are currently limited, current discharge quality shall be based on limits in the current permit or license. For parameters of concern not currently limited, current discharge quality shall be based on available discharge quality data collected within five years of the application for a permit or license. ( )

**ii.** Proposed Quality for an Existing Discharge. Future discharge quality shall be based on proposed permit limits. For parameters of concern not limited in the proposed permit or license, future discharge quality will be estimated from available discharge quality data since the last permit or license was issued accounting for any changes in production, treatment or operation. For the proposed discharge of a new parameter or a proposed increased discharge of a parameter, future discharge quality will be estimated based on information provided by the applicant or other relevant information. ( )

**iii.** New Permit Limits for an Existing Discharge. When new permit limits are proposed for the first time for a parameter of concern in an existing discharge, then for purposes of calculating the change in water quality, any statistical procedures used to derive the proposed new limits will be applied to the current discharge quality as well, where appropriate. ( )

**iv.** Proposed Quality for a New Discharge. Future discharge quality shall be based on proposed permit limits. For parameters of concern not limited in the proposed permit or license, future discharge quality will be based on information provided by the applicant or other relevant information. ( )

**b.** Receiving water quality will be the quality measured, or modeled as appropriate, immediately above the discharge for flowing waters and outside any Department authorized mixing zone for lakes and reservoirs. ( )

**c.** Offsets. In determining the effect of an activity or discharge on water quality of Tier II or Tier III waters, the Department may take into account reductions in pollution from other sources that are tied to the proposed activity or discharge. These offsets in pollution must be upstream of the degradation in water quality due to the proposed activity or discharge and occur before the activity or discharge is allowed to begin. The applicant seeking a permit or license for an activity or discharge based on no offsets will be held responsible for assuring offsets are achieved and maintained as a condition of their permit or license. ( )

**d.** Measurable change. If a calculated change is not measurable, then it will be evaluated as no change. ( )

**09. Tier II Analysis.** A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. The Department may allow significant degradation of surface water quality that is better than criteria only if it is determined to be necessary to accommodate important economic or social development in the area in which the waters are located. The process and standard for this determination are set

forth below. ( )

**a.** Insignificant Discharge. The Department shall consider the size and character of a discharge or the magnitude of its effect on the receiving stream and may determine that it is insignificant. If a discharge is determined to be insignificant, then no further Tier II analysis, as set forth in Subsections 052.09.b., 052.09.c., and 052.09.d., shall be required. ( )

**i.** In no case will the Department determine insignificance when the proposed change in discharge, from conditions as of July 1, 2011, will: ( )

(1) Increase ambient concentrations by more than ten percent (10%); or ( )

(2) Cumulatively decrease assimilative capacity by more than ten percent (10%). ( )

**ii.** The Department reserves the right to request additional information from the applicant in making a determination a proposed change in discharge is insignificant. ( )

**b.** Other Source Controls. In allowing any degradation of high water quality, the Department must assure that there shall be achieved in the watershed the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source controls. In providing such assurance, the Department may enter together into an agreement with other State of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. ( )

**c.** Alternatives Analysis. Degradation will be deemed necessary only if there are no reasonable alternatives to discharging at the levels proposed. The applicant seeking authorization to degrade high water quality must provide an analysis of alternatives aimed at selecting the best combination of site, structural, managerial and treatment approaches that can be reasonably implemented to avoid or minimize the degradation of water quality. To identify the least degrading alternative that is reasonable, the following principles shall be followed: ( )

**i.** Controls to avoid or minimize degradation should be considered at the earliest possible stage of project design. ( )

**ii.** Alternatives that must be evaluated include (where appropriate), but are not limited to: ( )

(1) Relocation or configuration of outfall or diffuser; ( )

(2) Process changes/improved efficiency that reduces pollutant discharge; ( )

(3) Seasonal discharge to avoid critical time periods for water quality; ( )

(4) Non-discharge alternatives such as land application; and ( )

(5) Offsets to the activity or discharge's effect on water quality. ( )

**iii.** The Department retains the discretion to require the applicant to examine specific alternatives or provide additional information to conduct the analysis. ( )

**iv.** In selecting the preferred alternative the applicant shall: ( )

(1) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant reduction; ( )

(2) Consider the environmental costs and benefits across media and between pollutants; and ( )

(3) Select the least degrading option or show that a more degrading alternative is environmentally or economically justified. ( )

d. Socioeconomic Justification. Degradation of water quality deemed necessary must also be determined by the Department to accommodate important economic or social development. Therefore, the applicant seeking authorization to degrade water quality must at a minimum identify the important economic or social development for which lowering water quality is necessary and should use the following steps to demonstrate this: ( )

i. Identify the affected community: ( )

ii. Describe the important social or economic development associated with the activity: ( )

iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative. Benefits and costs that must be analyzed include, but are not limited to: ( )

(1) Economic benefits to the community such as changes in employment, household incomes and tax base: ( )

(2) Provision of necessary services to the community: ( )

(3) Potential health impacts related to the proposed activity: ( )

(4) Impacts to direct and indirect uses associated with high quality water, e.g., fishing, recreation, and tourism; and ( )

(5) Retention of assimilative capacity for future activities or discharges. ( )

iv. Factors identified in the socioeconomic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted; and ( )

v. If the Department determines that more information is required, then the Department may require the applicant to provide further information or seek additional sources of information. ( )

e. Process. ( )

i. Analysis. The Department in cooperation with State of Idaho designated management agencies and/or federal agencies will collect information regarding the other source controls specified in Subsection 052.09.b. The applicant for a new or reissued permit or license is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socioeconomic justification as appropriate and submitting them to the Department for review. ( )

ii. Departmental review. The Department shall review all pertinent information and, after intergovernmental coordination, public notice and input, make a determination as to whether there is assurance that the other source controls specified in Subsection 052.09.b. shall be achieved, and whether degradation of water quality is necessary to accommodate important economic or social development. ( )

iii. Public Involvement. The Department will satisfy the public participation provisions of Idaho's continuing planning process and, to the extent possible, public notice and review of an degradation will be coordinated with existing 401 certification notices for public review. ( )

**10. Tier III - Outstanding Resource Waters (ORWs).** ORWs are designated by the legislature. Subsection 052.10 describes the nomination, public notice and comment, public hearing, and board review process for directing the Department to develop legislation designating ORWs. Only the legislature may designate ORWs. Once designated by the legislature, the ORWs are listed in these rules. ( )

a. Nominations. Any person may request, in writing to the board, that a stream segment be considered for designation as an Outstanding Resource Water. To be considered for ORW designation, nominations must be received by the board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the

legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:

Idaho Board of Environmental Quality  
Department of Environmental Quality  
Outstanding Resource Water Nomination  
1410 N. Hilton  
Boise, Idaho 83706-1255

The nomination shall include the following information: ( )

- i. The name, description and location of the stream segment: ( )
- ii. The boundaries upstream and downstream of the stream segment: ( )
- iii. An explanation of what makes the segment a candidate for the designation: ( )
- iv. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports: ( )
- v. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and ( )
- vi. Any additional evidence to substantiate such a designation. ( )

**b.** Public Notice and Public Comment. The board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socioeconomic considerations; fish, wildlife or recreational values; and other beneficial uses. ( )

**c.** Public Hearing. A public hearing(s) may be held at the board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: ( )

- i. One (1) or more requests contain supporting documentation and valid reasons for designation: ( )
- ii. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges: ( )
- iii. A stream segment is generally recognized as waters of exceptional recreational or ecological significance: ( )
- iv. The board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsections 052.10.c.ii. and 052.10.c.iii.: ( )
- v. Requests for a hearing will be given due consideration by the board. Public hearings may be held at the board's discretion. ( )

**d.** Board Review. The board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 052.10.a. and information from the hearing record or other written record concerning the impacts the designation would have on socioeconomic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be

recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these rules without the need for formal rulemaking procedures, pursuant to Sections 67-5201, et seq., Idaho Code. ( )

e. Designated Waters. Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. ( )

f. Restriction of Nonpoint Source Activities on ORWs. Nonpoint source activities on ORWs shall be restricted as follows: ( )

i. The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered. ( )

ii. After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 052.10.e., existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations. ( )

g. Restriction of Point Source Discharges to ORWs and Their Tributaries. The water quality of ORWs shall be maintained and protected. Point source discharges that may cause degradation to ORWs may be allowed only if they are offset by reductions in other discharges per Subsection 052.08.c. ( )

**0523. PUBLIC PARTICIPATION.**

In providing general coordination of water quality programs within each basin, in carrying out the duties of the Basin Advisory Groups as signed, and in carrying out the provisions of Sections 39-3601, et seq., Idaho Code, the Director and the Basin Advisory Groups shall employ all means of public involvement deemed necessary, including the public involvement required under Section 67-2340 through Section 67-2347, Idaho Code, Section 051 of this rule or required in Chapter 52, Title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies. (3-20-97)

**0534. BENEFICIAL USE SUPPORT STATUS.**

In determining whether a water body fully supports designated and existing beneficial uses, the Department shall determine whether all of the applicable water quality standards are being achieved, including any criteria developed pursuant to these rules, and whether a healthy, balanced biological community is present. The Department shall utilize biological and aquatic habitat parameters listed below and in the current version of the "Water Body Assessment Guidance," as published by the Idaho Department of Environmental Quality, as a guide to assist in the assessment of beneficial use status. Revisions to this guidance will be made after notice and an opportunity for public comment. These parameters are not to be considered or treated as individual water quality criteria or otherwise interpreted or applied as water quality standards. The Department shall employ a weight of evidence approach in evaluating a combination of water quality data types (including, but not limited to, aquatic habitat and biological parameters), when such a combination of data are available, in making its final use support determination. (3-30-07)

**01. Aquatic Habitat Parameters.** These parameters may include, but are not limited to, stream width, stream depth, stream shade, measurements of sediment impacts, bank stability, water flows, and other physical characteristics of the stream that affect habitat for fish, macroinvertebrates or other aquatic life. (3-30-07)

**02. Biological Parameters.** These parameters may include, but are not limited to, evaluation of aquatic

macroinvertebrates including Ephemeroptera, Plecoptera and Trichoptera (EPT), Hilsenhoff Biotic Index, measures of functional feeding groups, and the variety and number of fish or other aquatic life to determine biological community diversity and functionality. (3-20-97)

**03. Use of Data Regarding pH, Turbidity, Dissolved Oxygen, and Temperature.** In making use support determinations, the Department may give less weight to departures from criteria in Section 250 for pH, turbidity, dissolved oxygen, and temperature that are infrequent, brief, and small if aquatic habitat and biological data indicate to the assessor that aquatic life beneficial uses are otherwise supported. Unless otherwise determined by the Department, "infrequent" means less than ten percent (10%) of valid, applicable, representative measurements when continuous data are available; "brief" means two (2) hours or less; and "small" means conditions that avoid acute effects. Subsection 05 ~~34~~.03 only applies to use of this data for determination of beneficial use support status. Subsection 05 ~~34~~.03 does not apply to or affect the application of criteria for any other regulatory purpose including, but not limited to, determining whether a particular discharge or activity violates water quality standards. (~~3-30-07~~)(\_\_\_\_)

**04. Natural Conditions.** There is no impairment of beneficial uses or violation of water quality standards where natural background conditions exceed any applicable water quality criteria as determined by the Department, and such natural background conditions shall not, alone, be the basis for placing a water body on the list of water quality limited water bodies described in Section 05 ~~45~~. (~~3-15-02~~)(\_\_\_\_)

**05. Rigor, Quality and Relevance of Data.** In making any use support determination, the Department shall consider the scientific rigor associated with the collection of samples or data (e.g., the scientific methods used to collect samples or data); the quality of measurements and/or analysis of the samples (e.g., methodology, instrumentation, accuracy, precision, and limits of detection where applicable); and the relevance of the data (e.g., the relationship to a water quality standard, beneficial use or cause of impairment, and how representative the samples or data are of the water body in question). (3-30-07)

**05 ~~45~~. WATER QUALITY LIMITED WATERS AND TMDLS.**

**01. After Determining That Water Body Does Not Support Use.** After determining that a water body does not fully support designated or existing beneficial uses in accordance with Section 05 ~~34~~, the Department, in consultation with the applicable basin and watershed advisory groups, shall evaluate whether the application of required pollution controls to sources of pollution affecting the impaired water body would restore the water body to full support status. This evaluation may include the following: (~~3-20-97~~)(\_\_\_\_)

**a.** Identification of significant sources of pollution affecting the water body by past and present activities; (3-20-97)

**b.** Determination of whether the application of required or cost-effective interim pollution control strategies to the identified sources of pollution would restore the water body to full support status within a reasonable period of time; (3-20-97)

**c.** Consultation with appropriate basin and watershed advisory groups, designated agencies and landowners to determine the feasibility of, and assurance that required or cost-effective interim pollution control strategies can be effectively applied to the sources of pollution to achieve full support status within a reasonable period of time; (3-20-97)

**d.** If pollution control strategies are applied as set forth in this Section, the Department shall subsequently monitor the water body to determine whether application of such pollution controls were successful in restoring the water body to full support status. (3-20-97)

**02. Water Bodies Not Fully Supporting Beneficial Uses.** After following the process identified in Subsection 05 ~~45~~.01, water bodies not fully supporting designated or existing beneficial uses and not meeting applicable water quality standards despite the application of required pollution controls shall be identified by the Department as water quality limited water bodies, and shall require the development of TMDLs or other equivalent processes, as described under Section 303(d)(1) of the Clean Water Act. A list of water quality limited water bodies shall be published periodically by the Department in accordance with Section 303(d) of the Clean Water Act and be



subject to public review prior to submission to EPA for approval. Informational TMDLs may be developed for water bodies fully supporting beneficial uses as described under Section 303(d)(3) of the Clean Water Act, however, they will not be subject to the provisions of this Section. (3-20-97)(\_\_\_\_\_)

**03. Priority of TMDL Development.** The priority of TMDL development for water quality limited water bodies identified in Subsection 0545.02 shall be determined by the Director in consultation with the Basin Advisory Groups as described in Sections 39-3601, et seq., Idaho Code, depending upon the severity of pollution and the uses of the water body, including those of unique ecological significance. Water bodies identified as a high priority through this process will be the first to be targeted for development of a TMDL or equivalent process. (3-20-97)(\_\_\_\_\_)

**04. High Priority Provisions.** Until a TMDL or equivalent process is completed for a high priority water quality limited water body, new or increased discharge of pollutants which have caused the water quality limited listing may be allowed if interim changes, such as pollutant trading, or some other approach for the pollutant(s) of concern are implemented and the total load remains constant or decreases within the watershed. Interim changes shall maximize the use of cost effective measures to cap or decrease controllable human-caused discharges from point and nonpoint sources. Once the TMDL or equivalent process is completed, any new or increased discharge of causative pollutants will be allowed only if consistent with the approved TMDL. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

**05. Medium and Low Priority Provisions.** Until TMDLs or equivalent processes are developed for water quality limited water bodies identified as medium or low priority, the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)

**a.** In determining the necessity for interim changes to existing activities and limitations upon proposed activities, the Department, in consultation with basin and watershed advisory groups, shall evaluate the water quality impacts caused by past regulated and unregulated activities in the affected watershed. (3-20-97)

**b.** Consideration of interim changes shall maximize the use of cost-effective and timely measures to ensure no further impairment of designated or existing uses. (3-20-97)

**06. Pollutant Trading.** Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards. (3-20-97)

**07. Idaho Agriculture Pollution Abatement Plan.** Use of best management practices by agricultural activities is strongly encouraged in high, medium and low priority watersheds. The Idaho Agriculture Pollution Abatement Plan is the source for best management practices for the control of nonpoint sources of pollution for agriculture. (3-20-97)

**~~055. OUTSTANDING RESOURCE WATERS (ORW).~~**

**~~01- Nominations for Outstanding Resource Water Designation.~~** *Any person may request, in writing to the Board, that a stream segment be considered for designation as an outstanding resource water. To be considered for ORW designation, nominations must be received by the Board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:*

*Idaho Board of Environmental Quality  
Department of Environmental Quality  
Outstanding Resource Water Nomination  
1410 N. Hilton  
Boise, Idaho 83706-1255*

*The nomination shall include the following information:* (3-23-98)

- ~~a. The name, description and location of the stream segment;~~ (7-1-93)
- ~~b. The boundaries upstream and downstream of the stream segment;~~ (7-1-93)
- ~~c. An explanation of what makes the segment a candidate for the designation;~~ (7-1-93)
- ~~d. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports;~~ (7-1-93)
- ~~e. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and~~ (7-1-93)
- ~~f. Any additional evidence to substantiate such a designation.~~ (7-1-93)

~~02. **Public Notice and Public Comment.** The Board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the Board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socio-economic considerations; fish, wildlife or recreational values; and other beneficial uses.~~ (7-1-93)

~~03. **Public Hearing.** A public hearing(s) may be held at the Board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria:~~ (7-1-93)

- ~~a. One (1) or more requests contain supporting documentation and valid reasons for designation;~~ (7-1-93)
- ~~b. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges;~~ (7-1-93)
- ~~c. A stream segment is generally recognized as waters of exceptional recreational or ecological significance;~~ (7-1-93)
- ~~d. The Board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsection 055.03.b. and 055.03.c.;~~ (3-20-97)
- ~~e. Requests for a hearing will be given due consideration by the Board. Public hearings may be held at the Board's discretion.~~ (7-1-93)

~~04. **Board Review.** The Board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The Board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 055.01 and information from the hearing record or other written record concerning the impacts the designation would have on socio-economic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these regulations without the need for formal rule-making procedures, pursuant to Sections 67-5200, et seq., Idaho Code.~~ (3-20-97)

~~05. **Designated Waters.** Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160.~~ (7-1-93)

~~06. **Restriction of Nonpoint Source Activities on Outstanding Resource Waters.** Nonpoint source~~

~~activities on ORWs shall be restricted as specified in Subsection 350.04.~~

~~(7-1-93)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**350. RULES GOVERNING NONPOINT SOURCE ACTIVITIES.**

**01. Implementation Policy.**

(7-1-93)

**a.** Nonpoint sources are the result of activities essential to the economic and social welfare of the state. The real extent of most nonpoint source activities prevents the practical application of conventional wastewater treatment technologies. Nonpoint source pollution management, including best management practices, is a process for protecting the designated beneficial uses and ambient water quality. Best management practices should be designed, implemented and maintained to provide full protection or maintenance of beneficial uses. Violations of water quality standards which occur in spite of implementation of best management practices will not be subject to enforcement action. However, if subsequent water quality monitoring and surveillance by the Department, based on the criteria listed in Sections 200, 210, 250, 251, 252, and 253, indicate water quality standards are not met due to nonpoint source impacts, even with the use of current best management practices, the practices will be evaluated and modified as necessary by the appropriate agencies in accordance with the provisions of the Administrative Procedure Act. If necessary, injunctive or other judicial relief may be initiated against the operator of a nonpoint source activity in accordance with the Director's authorities provided in Section 39-108, Idaho Code. In certain cases, revision of the water quality standards may be appropriate. (4-5-00)

**b.** As provided in Subsections 350.01.a. and 350.02.a. for nonpoint source activities, failure to meet general or specific water quality criteria, or failure to fully protect a beneficial use, shall not be considered a violation of the water quality standards for the purpose of enforcement. Instead, water quality monitoring and surveillance of nonpoint source activities will be used to evaluate the effectiveness of best management practices in protecting beneficial uses as stated in Subsections 350.01.a. and 350.02.b. (12-31-91)

**02. Limitation to Nonpoint Source Restrictions.** Nonpoint source activities will be subject to the following: (7-1-93)

**a.** Except as provided in Subsections 350.02.b. and 350.02.c., so long as a nonpoint source activity is being conducted in accordance with applicable rules, regulations and best management practices as referenced in Subsection 350.03, or in the absence of referenced applicable best management practices, conducted in a manner that demonstrates a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the activity will not be subject to conditions or legal actions based on Subsections 400.01.b. or 080.01. In all cases, if it is determined by the Director that imminent and substantial danger to the public health or environment is occurring, or may occur as a result of a nonpoint source by itself or in combination with other point or nonpoint source activities, then the Director may seek immediate injunctive relief to stop or prevent that danger as provided in Section 39-108, Idaho Code. (7-1-93)

**b.** If the Director determines through water quality monitoring and surveillance that water quality criteria are not being met, or that beneficial uses are being impaired as a result of a nonpoint source activity by itself or in combination with other point and nonpoint source activities then: (3-3-87)

**i.** For an activity occurring in a manner not in accordance with approved best management practices, or in a manner which does not demonstrate a knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the Director may with appropriate inter-Departmental coordination. (3-3-87)

(1) Prepare a compliance schedule as provided in Section 39-116, Idaho Code; and/or (2-2-83)

(2) Institute administrative or civil proceedings including injunctive relief under Section 39-108, Idaho Code. (3-3-87)

ii. For activities conducted in compliance with approved best management practices, or conducted in a manner which demonstrates knowledgeable and reasonable effort to minimize resulting adverse water quality impacts, the Director may, with appropriate inter-Departmental coordination: (3-3-87)

(1) For those activities with approved best management practices as listed in Subsection 350.03 formally request that the responsible agency conduct a timely evaluation and modification of the practices to insure full protection of beneficial uses. (12-31-91)

(2) For all other nonpoint source activities which do not have approved best management practices as listed in Subsection 350.03, develop and recommend to the operator control measures necessary to fully protect the beneficial uses. Such control measures may be implemented on a voluntary basis, or where necessary, through appropriate administrative or civil proceedings. (12-31-91)

(3) If, in a reasonable and timely manner the approved best management practices are not evaluated or modified by the responsible agency, or if the appropriate control measures are not implemented by the operator, then the Director may seek injunctive relief to prevent or stop imminent and substantial danger to the public health or environment as provided in Section 39-108, Idaho Code. (3-3-87)

c. The Director may review for compliance project plans for proposed nonpoint source activities, based on whether or not the proposed activity will fully maintain or protect beneficial uses as listed in Sections 200, 250, 251, 252, and 253. In the absence of relevant criteria in those Sections, the review for compliance will be based on whether or not the proposed activity: (4-5-00)

i. Will comply with approved or specialized best management practices; and (3-3-87)

ii. Provides a monitoring plan which, when implemented, will provide information to the Director adequate to determine the effectiveness of the approved or specialized best management practices in protecting the beneficial uses of water; and (3-3-87)

iii. Provides a process for modifying the approved or site-specific best management practices in order to protect beneficial uses of water. (3-3-87)

d. For projects determined not to comply with those requirements, the plan may be revised and resubmitted for additional review by the Department. Any person aggrieved by a final determination of the Director may, within thirty (30) days, file a written request for a hearing before the Board in accordance with the Idaho Administrative Procedures Act. In all cases, implementation of projects detailed in a plan shall be conducted in a manner which will not result in imminent and substantial danger to the public health or environment. (3-3-87)

**03. Approved Best Management Practices.** The following are approved best management practices for the purpose of Subsection 350.02: (12-31-91)

a. "Rules Pertaining to the Idaho Forest Practices Act," IDAPA 20.02.01, as adopted by Board of Land Commissioners; (12-31-91)

b. Idaho Department of Environmental Quality Rules, IDAPA 58.01.06, "Solid Waste Management Rules and Standards"; (7-1-93)

c. Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules"; (7-1-93)

d. "Stream Channel Alteration Rules," IDAPA 37.03.07, as adopted by the Board of Water Resources; (7-1-93)

e. For the Spokane Valley Rathdrum Prairie Aquifer, "Rathdrum Prairie Sewage Disposal Regulations," as adopted by the Panhandle District Health Department Board of Health and approved by the Idaho Board of Environmental Quality; (7-1-93)

**f.** “Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities,” IDAPA 20.03.02, as adopted by the Board of Land Commissioners; and (7-1-93)

**g.** “Dredge and Placer Mining Operations in Idaho,” IDAPA 20.03.01, as adopted by the Board of Land Commissioners. (7-1-93)

**h.** “Rules Governing Dairy Waste,” IDAPA 02.04.14, as adopted by the Department of Agriculture. (3-20-97)

~~**04. Restriction of Nonpoint Source Activities on Outstanding Resource Waters.** (12-31-91)~~

~~**a.** *The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered.* (12-31-91)~~

~~**b.** *After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 055.05, existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations.* (3-20-97)~~

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.17 - RULES FOR THE RECLAMATION AND REUSE OF MUNICIPAL AND INDUSTRIAL WASTEWATER

DOCKET NO. 58-0117-1001

#### 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. The action is authorized by Chapter 1, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before September 15, 2010. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking is necessary because DEQ has determined that Class A and Class B reclaimed wastewater are highly treated effluents and existing nomenclature and requirements may be too strict. Also, this rulemaking will add language to allow for time extension of reuse permits under certain conditions in order to reduce permit processing times. Other anticipated revisions will clarify current rule language, reduce redundancy with other rules, and increase efficiency.

The proposed rule includes the following:

1. Revise name of rule chapter to "Recycled Water Rules";
2. Revise and add definitions;
3. Revise and renumber Section 401, Plan and Specification Review (moved to Section 606);
4. Revise Sections 600 and 601 to address frequency of total coliform sampling, recycled water uses, pipe identification and signage, distribution pipelines requirements, nutrient removal requirements, reliability and redundancy requirements;
5. Revise and renumber Section 602, Demonstration of Technical, Financial, and Managerial Capacity of Municipal Reuse Facility (moved to Section 612);
6. Revise language for permit modifications and provide examples of minor and major modifications;
7. Add language for rapid infiltration systems and subsurface design, construction and discharge requirements;
8. Add language for industrial recycled water permit requirements and permit content;
9. Add language to establish the mechanism for a reuse permit transfer and for temporary cessation or closure of operations; and
10. Add language to allow for continuation of expiring reuse permits under certain conditions and set the duration of a reuse permit for a fixed term of not more than ten (10) years.

This proposed rule also includes other revisions identified during the negotiated rulemaking process as necessary for maintaining consistency within this rule chapter and with other DEQ rule chapters.

Idaho Association of Commerce & Industry, Idaho Council on Industry & the Environment, Idaho Association of Cities, consulting engineers, existing and potential permittees, and the development community may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. Please note, however, that while portions of Section 600 and entire Section 601 have been struck out, the majority of the struck out rule text has been revised, reorganized and inserted as underlined rule text into new sections of the proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the November 2010 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2011 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

This proposed rule incorporates the American Water Works Association (AWWA) Standards by reference. Incorporation by reference is necessary because publication of the AWWA Standards in the rule would be unduly cumbersome and expensive. Information for obtaining the AWWA Standards is included in the proposed rule.

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On April 7, 2010, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 10-4, pages 28 and 29](#), and a preliminary draft negotiated rule was made available for public review. Meetings were held on April 27, May 27, and June 22, 2010. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments received, and documents distributed during the negotiated rulemaking process is available at [http://www.deq.idaho.gov/rules/waste\\_water/58\\_0117\\_1001\\_proposed.cfm](http://www.deq.idaho.gov/rules/waste_water/58_0117_1001_proposed.cfm).

**IDAHO CODE SECTION 39-107D STATEMENT:** Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. There is no federal law or regulation that is comparable to the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. Therefore, the proposed changes to these rules are not broader in scope or more stringent than federal law or regulations.

This rulemaking does revise rules and standards necessary to protect human health and the environment. The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code. Information relating to Section 39-107D(2) has also been provided.

**Section 39-107D(2)(a), Idaho Code. To the degree that a department action is based on science, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound objective scientific practices.**

The proposed rule changes were initiated for clarification purposes rather than for scientific reasons. By clarifying the language in the Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater, DEQ is facilitating more efficient implementation of the rule, thereby reducing the economic burden on the regulated community. Improved rules also allow the public to better understand the requirements imposed on the regulated community to protect human health and the environment. Specifically, the changes to the rule improve upon the administrative process to determine the permit conditions for municipal and industrial wastewater reuse facilities. The administrative improvements in the rule are not based on science. DEQ has, however, relied upon its experience dealing with reuse activities in drafting the proposed changes to the rule.

**Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.**

This provision is not applicable because the proposed rule changes are for the purpose of clarifying existing rule language. Please see explanation above.

**Section 39-107D(3), Idaho Code. Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under chapter 52, title 67, Idaho Code, the following additional information:**

- a. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;
- b. Identification of the expected risk or central estimate of risk for the specific population or receptor;
- c. Identification of each appropriate upper bound or lower bound estimate of risk;
- d. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and
- e. Identification of studies known to the department that support, are directly relevant to, or fail to

**support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.**

The proposed changes to the rule improve upon the administrative process to determine the permit conditions for municipal and industrial wastewater reuse facilities in order to protect human health and the environment. The rule changes proposed in this rulemaking are not based upon any analysis of risk to specific populations or receptors, but rather improve upon the permitting process necessary to minimize risk to human health and the environment posed by permitted reuse facilities. Therefore, DEQ has no additional information relevant to this rulemaking pursuant to Section 39-107D(3).

**FISCAL IMPACT STATEMENT:** 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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact Olga Cuzmanov at [olga.cuzmanov@deq.idaho.gov](mailto:olga.cuzmanov@deq.idaho.gov), (208)373-0449.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 29, 2010.

Dated this 30th day of July, 2010.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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**THE FOLLOWING IS THE PROPOSED RULE TEXT FOR DOCKET NO. 58-0117-1001**

**000. LEGAL AUTHORITY.**

Pursuant to Title 39, Chapter 1, Idaho Code, the Director of the Department of Environmental Quality is authorized to adopt or formulate and recommend to the Board of Environmental Quality, and the Board of Environmental Quality is authorized to adopt rules, regulations and standards necessary and feasible to protect the environment and the health of citizens of the State including provisions for the issuance of pollution source permits, authorized by Section 39-115, Idaho Code, and review of plans and specifications for wastewater treatment facilities, authorized by Section 39-118, Idaho Code. (4-1-88)( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules are to be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.17, "Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater Recycled Water Rules." (4-11-06)( )

**02. Scope.** These rules establish the procedures and requirements for the issuance and maintenance of pollution source permits for ~~reclamation and reuse facilities~~, *including permits for the treatment of municipal*



~~wastewaters for other reuse purposes as defined in Subsection 600.07, Direct Use of Municipal Reclaimed Wastewater also referred to in these rules as "reuse permits."~~ (4-11-06)(\_\_\_\_)

**002. WRITTEN INTERPRETATIONS.**

Any written statements pertaining to the interpretation of these rules shall be available for review at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (4-6-05)

**003. INCORPORATION BY REFERENCE.**

American Water Works Association (AWWA) Standards, effective December 2009, are incorporated by reference into these rules. This document is available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or can be purchased from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337, <http://apps.awwa.org/ebusmain/OnlineStore.aspx>. (\_\_\_\_)

~~01- General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 003.02 shall constitute the full adoption by reference.~~ (4-6-05)

~~02- Documents Incorporated by Reference. The following documents are incorporated by reference into these rules:~~ (4-6-05)

~~a- IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 542, as codified in the 2007 Idaho Administrative Code.~~ (3-30-07)

~~b- IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 543, as codified in the 2007 Idaho Administrative Code.~~ (3-30-07)

~~03- Availability of Documents Incorporated by Reference. Copies of the documents incorporated by reference are available at the following locations.~~ (4-6-05)

~~a- Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, [www.deq.idaho.gov](http://www.deq.idaho.gov).~~ (4-11-06)

~~b- Idaho Administrative Rules website, <http://www.state.id.us/adm/adminrules/agyindex.htm>.~~ (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**008. REFERENCED MATERIALS.**

**01. Idaho Guidance for ~~the Reclamation and Reuse of Municipal and Industrial Wastewater Recycled Water~~.** This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules relating to the permitting and operations of ~~reclamation and~~ reuse facilities. Copies of the document are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, [http://www.deq.idaho.gov/water/permits\\_forms/permitting/guidance.cfm](http://www.deq.idaho.gov/water/permits_forms/permitting/guidance.cfm). (3-30-07)(\_\_\_\_)

**02. ~~Idaho Wastewater Rules, IDAPA 58.01.16.~~ The Idaho Wastewater Rules are available at <http://adm.idaho.gov/adminrules/rules/idapa58/0116.pdf> **Administrative Rules of the Department of Environmental Quality.** The following administrative rules of the Department of Environmental Quality are referenced in these rules and are available at <http://adm.idaho.gov/adminrules/rules/idapa58/58index.htm>. (3-30-07)(\_\_\_\_)**

**a.** IDAPA 58.01.02, "Water Quality Standards." (\_\_\_\_)

**b.** IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." (\_\_\_\_)

**c.** IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (\_\_\_\_)

- d. IDAPA 58.01.11, "Ground Water Quality Rule." ( )
- e. IDAPA 58.01.16, "Wastewater Rules." ( )

**03. Treatment Technology Report for Recycled Water.** The State of California ~~Department of Health Services~~ Treatment Technology Report for Recycled Water, <http://www.dhs.ca.gov/ps/ddwem/publications/waterrecycling/treatmenttechnology.pdf> [www.cdph.ca.gov/healthinfo/environhealth/water/pages/waterrecycling.aspx](http://www.cdph.ca.gov/healthinfo/environhealth/water/pages/waterrecycling.aspx). (3-30-07)( )

**04. Recommended Standards for Wastewater Facilities.** Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, <http://10statesstandards.com/wastewaterstandards.html>. ( )

**05. AWWA Manual M24.** AWWA Manual M24, Chapter 4 for Dual Water Systems. This document is available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or can be purchased from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337, <http://apps.awwa.org/EbusMain/Default.aspx?TabId=55&ProductID=6713>. ( )

**06. Idaho Standards for Public Works Construction.** This document is available for a fee through the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ( )

009. -- 099. (RESERVED).

**100. APPLICABILITY.**

**01. Applicability to ~~Reclamation and~~ Reuse Facilities.** All ~~reclamation and~~ non-excluded reuse facilities are subject to the ~~permit~~ requirements of these rules. (4-11-06)( )

**02. Excluded Facilities.** ( )

**a.** Land application of wastewater from livestock truck washing facilities, feedlots, dairies and mining are excluded from permit requirements under these rules ~~but are subject to Idaho Department of Environmental Quality Rules, IDAPA 58.01.16, "Wastewater Rules."~~ ( )

**b.** The permit requirements set forth in these rules shall not apply to the incidental use of recycled water for landscape irrigation at a municipal wastewater treatment plant if: ( )

**i.** There is no other recycled water use that would subject the municipal wastewater treatment plant to these rules; ( )

**ii.** The municipal wastewater treatment plant has been issued an NPDES permit and the quality of the effluent meets that required by an NPDES permit; and ( )

**iii.** Public access to the area of landscape irrigation is restricted. ( )

**c.** The Director may exclude other facilities if covered adequately by other law. (4-11-06)( )

**03. Reuse Policy.** It is the policy of the Department to promote, where appropriate, the practice of reuse of both municipal and industrial ~~reclaimed wastewater~~ recycled water through the continued creation and implementation of rules and guidance that give permittees various opportunities for new forms of reuse. (4-11-06)( )

101. -- 199. (RESERVED).

**200. DEFINITIONS.**

For the purpose of these rules, the following definitions apply unless another meaning is clearly indicated by context: (4-1-88)

- 01. Applicant.** The person applying for a ~~reclamation and~~ reuse permit. (4-11-06)(\_\_\_\_)
- 02. Applicable Requirements.** Any state, local or federal statutes, regulations or ordinances to which the facility is subject. (4-1-88)
- 03. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (\_\_\_\_)
- 04. Biochemical Oxygen Demand (BOD).** The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of the organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. (\_\_\_\_)
- ~~035. Board.~~ The Idaho ~~State~~ Board of Environmental Quality. (12-31-91)(\_\_\_\_)
- ~~046. Buffer Distances.~~ (4-11-06)
- ~~a. The A specified distances between the an actual point of reuse of reclaimed wastewater recycled water and other uses a land feature or resource uses specified in these rules, such as wells, adjoining property, inhabited dwellings, and or other features. Buffer distances are set to:~~ (4-11-06)(\_\_\_\_)
- ~~i. Protect public health by limiting exposure to wastewater and conditions associated with reuse facilities;~~ (4-11-06)
- ~~ii. Protect waters of the state, including surface water, ground water and drinking water supplies; and~~ (4-11-06)
- ~~iii. Help ensure that wastewater is restricted to the reuse facilities.~~ (4-11-06)
- ~~b. In determining buffer distances, the Department will consider, as applicable, the degree of treatment or pretreatment of wastewater; the method of irrigation; physical or vegetative barriers; studies of the content of the wastewater, such as pathogen studies; best management practices; environmental conditions, such as wind speed and direction; and other information relevant to protecting public health and the environment. Further information regarding buffer distances is set forth in The Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater.~~ (4-11-06)
- ~~05. Class A Capacity.~~ ~~The capabilities required of a Class A effluent treatment and distribution system in order to achieve and maintain compliance with these rules.~~ (4-6-05)
- ~~06. Class A Effluent Distribution System.~~ ~~The distribution system for Class A effluent as described in these rules. The distribution system does not include any of the collection or treatment portions of the wastewater facility and is not subject to operator licensing requirements of IDAPA 58.01.16, "Wastewater Rules."~~ (4-11-06)
- 07. Department.** The Idaho Department of Environmental Quality. (4-1-88)
- 08. Director.** The Director of the Department of Environmental Quality or the Director's designee. (4-1-88)
- 09. Idaho Guidance for the Reclamation and Reuse of Municipal and Industrial Wastewater.** ~~This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules relating to for permitting and operating reclamation and reuse facilities. Copies of the document are available at the~~

~~Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255 and www.deq.idaho.gov.~~  
**Ground Water Recharge.** The process of adding recycled water to the zone of saturation. (4-11-06)( )

**10. Industrial Wastewater.** ~~Wastewater that is the by-product of any industrial processes including, but not limited to, food processing or food washing~~ All wastewater, treated or untreated, that is not defined as municipal wastewater. (4-11-06)( )

**11. Land Application.** ~~The application of municipal or industrial wastewater to land for the purpose of land treatment.~~ A process or activity involving application of recycled water to the land surface. Land application includes, but is not limited to, spray irrigation, ridge and furrow, overland flow, subsurface absorption, and discharge to a rapid infiltration system. (4-11-06)( )

~~**12. Land Treatment.** The use of land, soil, and crops for treatment of municipal or industrial wastewater.~~ (4-11-06)

**12. Landscape Impoundment.** Any lake, pond, or other water holding feature constructed or managed to store recycled water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage and may incidentally serve a landscaping or aesthetic purpose. ( )

**13. Modal Contact Time.** The amount of time elapsed between the time that a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time that the highest concentration of the tracer is observed in the effluent from the chamber. (3-30-07)

**14. Municipal Wastewater.** Wastewater that contains sewage and associated solids, whether treated or untreated. Municipal wastewater may contain industrial wastewater. Municipal wastewater is also known as domestic wastewater. (4-1-88)( )

~~**15. New Activity.** Any significant change in operation or construction of the wastewater treatment system which may impact the waters of the state.~~ (4-1-88)

**16. Non-Contact Cooling Water.** Water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product, the land application of which does not have the potential to negatively impact ground water. (4-1-88)( )

**16. Non-Potable Mains.** The pipelines that collect and/or convey non-potable discharges from or to multiple service connections. Examples would include sewage collection and interceptor mains, storm sewers, non-potable irrigation mains, and recycled water mains. ( )

**17. Non-Potable Services.** The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, recycled water system, and other non-potable systems to individual consumers. ( )

**18. Non-Potable Water.** Water not suitable for drinking by humans. ( )

**17. NTU (Nephelometric Turbidity Unit).** A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (3-30-07)

**20. Operation and Maintenance Manual.** A manual that describes in detail the operation, maintenance, and management of a reuse facility. Operation and maintenance manual is also known as plan of operation. ( )

**21. Peak Day Flow.** The largest volume of flow to be received during a one (1) day period expressed as a volume per unit time. ( )

**22. Peak Hour Flow.** The largest volume of flow to be received during a one (1) hour period expressed

as a volume per unit time. ( )

~~1823.~~ **Permit.** Written authorization by the Director to modify, operate, construct, or discharge to a ~~reclamation and~~ reuse facility. (4-11-06)( )

~~1924.~~ **Permittee.** The person to whom the ~~reclamation and~~ reuse permit is issued. (4-11-06)( )

~~205.~~ **Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state agency, or federal agency, department or instrumentality, special district, or interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (4-1-88)( )

~~26.~~ **Plan of Operation.** A manual that describes in detail the operation, maintenance, and management of a reuse facility. Plan of operation is also known as operation and maintenance manual. ( )

~~217.~~ **Point of Compliance.** That point in the ~~reclamation and~~ reuse facility where the ~~reclaimed wastewater~~ recycled water must meet the requirements of the permit. ~~There may be~~ A permit may require more than one (1) point of compliance within the facility depending on the constituents to be monitored. (4-11-06)( )

~~28.~~ **Potable Water.** Water suitable for drinking by humans. ( )

~~229.~~ **Primary Effluent.** ~~Raw~~ Wastewater that has been mechanically treated by screening, degritting, sedimentation and/or skimming processes to remove substantially all floatable and settleable solids. (4-1-88)( )

~~230.~~ **Processed Food Crop.** Any crop intended for human consumption that has been changed from its original form and further disinfection occurs. (4-1-88)

~~2431.~~ **Rapid Infiltration System.** ~~A wastewater treatment method by which wastewater is applied to land in an amount of twenty (20) to six hundred (600) feet per year for percolation through the soil. Vegetation is not generally utilized by this method.~~ Rapid infiltration systems, also known as soil aquifer treatment systems, are highly permeable infiltration basins that are operated using periods of wetting and drying cycles at set frequencies to provide for both anaerobic and aerobic treatment of the wastewater through the vadose zone. (4-1-88)( )

~~2532.~~ **Raw Food Crop.** Any crop intended for human consumption which is to be used in its original form. (4-1-88)

~~26.~~ **Reclaimed Wastewater.** ~~For the purpose of these rules, the term reclaimed wastewater shall mean wastewater that is used in accordance with these rules.~~ (4-11-06)

~~33.~~ **Recycled Water.** Water that has been treated by a wastewater treatment system and is used in accordance with these rules. ( )

~~2734.~~ **Restricted Public Access.** Preventing public entry within the area or point of reuse of a facility and the buffer distance around the area by site location or physical structures such as fencing. ~~A lesser buffer distance may be accepted if aerosol drift is reduced.~~ (4-11-06)( )

~~28.~~ **Reclamation.** ~~The treatment of municipal or industrial wastewater that allows it to be reused for beneficial uses. Reclamation also includes land treatment for wastewater that utilizes soil or crops for partial treatment.~~ (4-11-06)

~~2935.~~ **Reuse.** The use of ~~reclaimed wastewater~~ recycled water for ~~beneficial uses including, but not limited to, land treatment,~~ irrigation, aquifer ground water recharge, ~~use in surface water features, land~~ landscape impoundments, toilet flushing in commercial buildings, dust control, and other uses. (4-11-06)( )

~~306.~~ **Reclamation and Reuse Facility or Facility.** Any structure or system designed or used for ~~reclamation or~~ reuse of municipal or industrial wastewater including, but not limited to, industrial and municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to

which the ~~reclaimed wastewater~~ recycled water is applied. This does not include industrial in-plant processes and reuse of process waters within the plant. (4-11-06)( )

~~317.~~ **Sewage.** The water-carried human wastes from residences, buildings, industrial establishments and other places, together with such ground water infiltration and surface water as may be present. (4-1-88)( )

~~328.~~ **Sludge.** The semi-liquid mass produced and removed by wastewater treatment ~~of water or wastewater~~ process. This does not include grit, garbage, and large solids. (4-1-88)( )

~~33.~~ **Time Distribution of Flows.** ~~A measurement of the volume of wastewater distributed over a specified area during a specified time period. Typical unit of measure is inches per acre per week.~~ (4-1-88)

~~39.~~ **Subsurface Distribution System.** Any system with a point of discharge beneath the earth's surface. ( )

~~340.~~ **Turbidity.** A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. (3-30-07)

~~3541.~~ **Wastewater.** ~~Unless otherwise specified, industrial waste, municipal waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present but not including sludge, or non-contact cooling water. Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage.~~ (4-1-88)( )

~~42.~~ **Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. ( )

~~3643.~~ **Waters and Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (4-1-88)

201. -- 299. (RESERVED).

### 300. PERMIT REQUIREMENTS AND APPLICATION.

~~01.~~ **Permit Required.** No person shall construct, modify, operate, or continue to operate a ~~reclamation and reuse facility~~ without a valid permit issued by the Director as provided in these rules. (4-11-06)( )

~~02.~~ **Dischargers.** ~~No person shall discharge to a reclamation and reuse facility without a valid permit issued by the Director as provided in these rules.~~ (4-11-06)

~~032.~~ **Pre-Application Conference.** Prospective applicants are encouraged to meet with the Department prior to submission of an application to discuss the application procedure and anticipated application requirements. (4-1-88)( )

~~04.~~ **Application Required.** ~~Every person requiring a permit under these rules shall submit a permit application to the Department.~~ (4-1-88)

~~a.~~ *At least one hundred eighty (180) days prior to the day on which a new activity is to begin; or* (4-11-06)

~~b.~~ *At least one hundred eighty (180) days prior to the expiration of any permit issued pursuant to these rules.* (4-11-06)

**053. Application Contents.** ~~Application shall be made on a form prescribed by the Director and available from the Department.~~ Except as provided in Subsection 300.054-l, ~~the an~~ application for a reuse permit shall include, ~~but not be limited to,~~ the following information: (3-30-07)( )

- a. Name, location, and mailing address of the facility; (4-1-88)
- b. Name, mailing address, and phone number of the facility owner and signature of the owner or authorized agent; (4-1-88)
- c. The nature of the entity owning the facility (federal, state, private, or public entity); (4-1-88)
- d. A list of local, state, and federal permits, licenses and approvals related to the activity which have been applied for and which have been received and the dates of application or approval; (4-1-88)
- e. A topographic map of the facility site identifying and showing the location and extent of: (4-1-88)
  - i. Wastewater inlets, outlets, and storage structures and facilities, including the land application area; (4-1-88)( )
  - ii. Wells, springs, wetlands, and surface waters; (4-1-88)
  - iii. Twenty-five (25), fifty (50), and one hundred (100) year flood plains, as available through the Federal Insurance Administration of the Federal Emergency Management Agency; (4-1-88)
  - iv. Service roads; (4-1-88)
  - v. Natural or man-made features necessary for treatment; (4-1-88)
  - vi. Buildings and structures; and (4-1-88)
  - vii. Process chemicals and residue storage facilities. (4-1-88)
- f. A topographic map which may be separate from or combined with the facility site map, extending one quarter (1/4) mile beyond the outer limits of the facility site. The map shall identify and show the location and extent of the following: (4-1-88)
  - i. Wells, springs, wetlands, and surface waters; (4-6-05)
  - ii. Public and private drinking water supply sources and source water assessment areas (public water system protection area information); (4-6-05)
  - iii. Public roads; and (4-1-88)
  - iv. Dwellings and private and public gathering places. (4-1-88)
- g. If the facility site or any portion thereof is leased or rented, a copy of that lease or rental agreement; (4-1-88)
- h. The volume of wastewaters to be treated ~~and the time distribution of flows~~; (4-1-88)( )
- i. The physical, chemical, and biological characteristics of the ~~wastewater~~ recycled water to be used; (4-1-88)( )

- j. The climatic, hydrogeologic, and soil characteristics of the facility site; (4-1-88)( )
- k. Description of treatment process and alternatives for disposal of unanticipated excess recycled water that does not meet class specifications; ( )
- l. Site management plans, including a cropping plan where applicable; ( )
- m. A statement and supporting documentation demonstrating that the proposed activity shall comply with IDAPA 58.01.11, "Ground Water Quality Rule"; and ( )
- ~~kn.~~ Any other information the Department may also be required. The Idaho Guidance for Reclamation and Reuse of Municipal and Industrial Wastewater Recycled Water is intended to provide assistance to permit applicants in obtaining a reclamation and reuse permit and may be considered in determining the need for other information. (4-11-06)( )

~~04.~~ **Permit Application Content Exceptions.** Under certain circumstances for permit reissuances, some information required in renewals may not require one (1) or more of the items listed in Subsections 300.053.a through k. may not be necessary for evaluation and will not be required. Application content requirements for permit renewals will be clarified at the pre-application conference. (3-30-07)( )

~~065.~~ **Existing Reclamation and Reuse Facility Operation and Maintenance Manual or Plan of Operations.** Any existing reclamation and reuse facility shall be required to have a plan of operation which describes in detail the operation, maintenance, and management of the wastewater treatment system. A facility's operation and maintenance manual must contain all system components relating to the reuse facility in order to comply with IDAPA 58.01.16 "Wastewater Rules." Section 425. Manuals and manual amendments are subject to the review and approval provision therein. In addition to the content required by IDAPA 58.01.16.425, manuals for reuse facilities shall include, if applicable: operation and management responsibility, permits and standards, general plant description, operation and control of unit operations, land application site maps, wastewater characterization, cropping plan, hydraulic loading rate, constituent loading rates, compliance activities, seepage rate testing, site management plans, monitoring, site operations and maintenance, solids handling and processing, laboratory testing, general maintenance, records and reports, store room and inventory, personnel, an emergency operating plan, and any other information required by the Department. (4-11-06)( )

~~07.~~ **New Reclamation and Reuse Facility Plan of Operation.** Any new proposed reclamation and reuse facility shall be required to have a detailed plan of operation at the fifty percent (50%) completion point of construction. In addition, after one (1) year of operation the plan must be updated to reflect actual operating procedures. A general outline of the plan of operation must be provided with the permit application which will satisfy the intent of these rules. (4-11-06)

301. -- 399. (RESERVED).

400. APPLICATION PROCESSING PROCEDURE.

~~01.~~ **Submittal Date.** In order to allow for adequate processing of permit applications in accordance with these rules, permit applications for new facilities should be submitted at least one hundred eighty (180) days prior to the applicant's expected commencement of reuse activities. Existing facilities applying for permit renewals shall submit a permit application at least one hundred eighty (180) days prior to expiration of the existing permit. ( )

- ~~02.~~ **Complete Application.** If the application is determined to be complete the Director shall provide written notice to the applicant within thirty (30) days after receipt of the application which shall specify: (4-11-06)
- a. The effective date of application, which ~~will~~ shall be the date of the notice; and (4-1-88)( )
- b. A projected schedule for processing the permit which lists the tentative dates for: (4-1-88)
- i. Publication of the preliminary permit decision or application denial; and (4-1-88)



- ii. The date of issuance of a final permit. (4-1-88)

**023. Incomplete Application.** If the application is determined to be incomplete the Director shall provide written notice to the applicant within thirty (30) days after receipt of the application which specifies deficiencies and specifies additional required information. The Director shall not process an application until it is determined to be complete in accordance with these rules. (4-11-06)

**034. Preliminary Decision/Application Denial.** Within thirty (30) days of the effective date of the application the Director shall issue a preliminary decision to prepare a draft permit, or issue a decision denying the application. The applicant shall be notified in writing of the Director's preliminary decision or application denial. Notification shall include a staff analysis of the application and a draft permit if appropriate. (4-1-88)

**045. Contents of the Staff Analysis.** The staff analysis shall briefly state the principal facts and the significant questions considered in preparing the draft permit conditions or the intent to deny, and a summary of the basis for the draft conditions or denial with references to applicable requirements and supporting materials. (4-1-88)

**056. Information or Consultation Before Issuance of Draft Permit or Application Denial.** After the application is determined to be complete, additional information or consultation between the applicant and the Department may be needed to clarify, modify, or supplement the application. This action may be initiated by the Director or the applicant. (4-11-06)

**067. Issuance and Contents of the Draft Permit.** (4-11-06)

**a.** Issuance and Contents of the Draft Permit. The Director shall issue a draft permit to the applicant within sixty (60) days of issuing a preliminary decision to prepare a draft permit. The draft permit shall be in the same form as a final permit and shall specify conditions of operation and management which will be required for the issuance of the permit. Permit conditions shall protect the environment and the public health from the hazard potential of an existing or proposed wastewater treatment system. (4-11-06)

**b.** Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a period of time and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments. (4-11-06)

**078. Issuance of the Final Permit.** The Director shall issue a final permit decision in writing to the applicant within sixty (60) days from the issuance of the draft permit, except the Director may issue the decision at a later date in response to a written request to extend the public comment period. (4-11-06)

**089. Effective Date of Final Permit.** The final permit shall become effective upon date of issue unless a later effective date is specified in the permit. (4-1-88)

**10. Continuation of Expiring Permits.** ( )

**a.** A timely and sufficient application for permit renewal shall administratively extend the terms and conditions of an expired permit pursuant to Section 67-5254, Idaho Code. An application shall be considered timely and sufficient under these rules so long as the Department has determined the application is complete under Subsection 400.02 and the application's effective date under Subsection 400.02.a. is prior to the expiration of the current permit. ( )

**b.** A permittee shall perform the closure requirements in a permit, the closure requirements of these rules, and complete all closure plan activities notwithstanding the expiration of the permit. ( )

**401. PLAN AND SPECIFICATION REVIEW.**

*The current edition of the "Recommended Standards for Wastewater Facilities—Great Lakes-Upper Mississippi River Board of State Sanitary Engineers," "Idaho Standards for Public Works Construction," and other Department guidance shall be used as guides for the development of plans and specifications for all waste treatment facilities. The*

*Department may review the project plans and specifications and the permit application materials concurrently. Plans and specifications may require modification prior to a final permit being issued. The Department does not require review of industrial in-plant processes, only those processes that treat or distribute wastewater. (4-11-06)*

~~**01. Requirement for Single Point of Contact Responsible for Entire Wastewater Project.** The Applicant (Permittee) shall designate a single point of contact who is responsible for all submissions to the Department related to the reclamation and reuse facilities. This single point of contact shall be identified in the permit application. (4-11-06)~~

~~**02. Requirement for Preparation of Plans and Specifications.** All plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities or modification or expansion to same shall be submitted to and approved by the Director before construction can begin in accordance with Chapter 1, Title 39, Idaho Code, and IDAPA 58.01.16, "Wastewater Rules." (4-11-06)~~

~~**03. Requirement for Professional Engineer's Seal.** All plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities or modification or expansion to same, wherein the public welfare or the safeguarding of life, health, or property is involved, shall bear the seal, signature and date of a registered professional engineer licensed in the state of Idaho in accordance Chapter 12, Title 54, Idaho Code. (4-6-05)~~

**4021. -- 499. (RESERVED).**

**500. STANDARD PERMIT CONDITIONS.**

The following conditions shall apply to and be included in all permits. (4-1-88)

**01. Compliance Required.** The permittee shall comply with all conditions of the permit. (4-1-88)

**02. Renewal Responsibilities.** If the permittee intends to continue operation of the permitted facility after the expiration of an existing permit, the permittee shall apply for a new permit in accordance with these rules. (4-1-88)

**03. Operation of Facilities.** The permittee shall at all times properly maintain and operate all structures, systems, and equipment for treatment, control and monitoring, which are installed or used by the permittee to achieve compliance with the permit or these rules. (4-1-88)

**04. Provide Information.** The permittee shall furnish to the Director within a reasonable time, any information including copies of records, which may be requested by the Director to determine whether cause exists for modifying, revoking, re-issuing, or terminating the permit, or to determine compliance with the permit or these rules. (4-1-88)

**05. Entry and Access.** The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, to:

**a.** Enter the permitted facility. (4-1-88)

**b.** Inspect any records that must be kept under the conditions of the permit. (4-1-88)

**c.** Inspect any facility, equipment, practice, or operation permitted or required by the permit. (4-1-88)

**d.** Sample or monitor for the purpose of assuring permit compliance, any substance or any parameter at the facility. (4-1-88)

**06. Reporting.** The permittee shall report to the Director under the circumstances and in the manner specified in this section: (4-1-88)

**a.** In writing at least thirty (30) days before any planned physical alteration or addition to the permitted facility or activity if that alteration or addition would result in any significant change in information that

was submitted during the permit application process. When the alteration or addition results in a need for a major modification, such alteration or addition shall not be made prior to Department approval issued in accordance with these rules. (4-1-88)( )

**b.** In writing thirty (30) days before any anticipated change which would result in noncompliance with any permit condition or these rules. (4-1-88)

**c.** Orally within twenty-four (24) hours from the time the permittee became aware of any noncompliance which may endanger the public health or the environment at telephone numbers provided in the permit by the Director. (4-1-88)

**d.** In writing as soon as possible but within five (5) days of the date the permittee knows or should know of any noncompliance unless extended by the Department. This report shall contain: (4-1-88)

**i.** A description of the noncompliance and its cause; (4-1-88)

**ii.** The period of noncompliance including to the extent possible, times and dates and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and (4-1-88)( )

**iii.** Steps taken or planned, including timelines, to reduce or eliminate the continuance or recurrence of the noncompliance. (4-1-88)( )

**e.** In writing as soon as possible after the permittee becomes aware of relevant facts not submitted or incorrect information submitted, in a permit application or any report to the Director. Those facts or the correct information shall be included as a part of this report. (4-1-88)

**07. Minimize Impacts.** The permittee shall take all necessary actions to eliminate and correct any adverse impact on the public health or the environment resulting from permit noncompliance. (4-1-88)

**08. Compliance with "Ground Water Quality Rule."** Permits issued pursuant to these rules shall require compliance with IDAPA 58.01.11, "Ground Water Quality Rule." ( )

**501. -- 599. (RESERVED).**

**600. SPECIFIC PERMIT CONDITIONS.**

**01. Basis for Specific Permit Conditions.** Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and wastewater compositions. The Director may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to: (4-1-88)

**a.** Chemical, biological, physical, and volumetric characteristics of the wastewater; (4-1-88)

**b.** Geological and climatic nature of the facility site; (4-1-88)

**c.** Size of the site and its proximity to population centers and to ground and surface water; (4-1-88)

**d.** Legal considerations relative to land use and water rights; (4-1-88)

**e.** Techniques used in wastewater distribution and the disposition of that vegetation exposed to wastewaters; (4-1-88)

**f.** Abilities of the soils and vegetative covers to treat the wastewater without undue hazard to the environment or to the public health; and (4-1-88)

**g.** The need for monitoring and record keeping to determine if the facility is being operated in

conformance with its design and if its design is adequate to protect the environment and the public health. (4-1-88)

**02. Duration of Permit.** The permit shall be effective for a fixed term of not more than ~~five ten (510)~~ ten (10) years. (4-1-88)

**03. Limitations to Operation.** Conditions of the permit may specify or limit: (4-1-88)

a. Wastewater composition; (4-1-88)

b. Method, manner, and frequency of wastewater treatment; (4-1-88)

c. Wastewater pretreatment requirements; (4-1-88)

d. Physical, chemical, and biological characteristics of a land treatment facility; and (4-11-06)

e. Any other condition the Director finds necessary to protect public health or environment. (4-1-88)

**04. Compliance Schedules.** The Director may establish a compliance schedule for existing facilities as part of the permit conditions including: (4-1-88)

a. Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or final permit conditions; (4-1-88)

b. Dates by which those steps or actions are to be taken; and (4-1-88)

c. In any case where the period of time for compliance exceeds one (1) year the schedule may also establish interim requirements and the dates for their achievements. (4-1-88)

**05. Monitoring Requirements.** Any facility may be subject to monitoring requirements including, but not limited to: (4-1-88)

a. The installation, use, and maintenance of monitoring equipment; (4-1-88)

b. Monitoring or sampling methodology, frequency, and locations; (4-1-88)

c. Monitored substances or parameters; (4-1-88)

d. Testing and analytical procedures; and (4-1-88)

e. Reporting requirements including both frequency and form. (4-1-88)

~~**06. Rapid Infiltration Systems.** The following minimum treatment requirements are established for land application of wastewater using rapid infiltration methods and systems. (4-11-06)~~

~~a. Suspended solids content of wastewater which includes organic and inorganic particulate matter shall not exceed a thirty (30) day average concentration of one hundred (100) mg/l. (4-1-88)~~

~~b. Nitrogen (total as N) content of wastewater shall not exceed a thirty (30) day average concentration of twenty (20) mg/l. (4-1-88)~~

~~**07. Direct Use of Municipal Reclaimed Wastewater.** Treatment requirements for reuse facilities applicable to direct use of municipal reclaimed wastewater include, but are not limited to, the following. The applicable treatment requirements, buffer zones, access restrictions, disinfection requirements, uses, and other requirements are further described in the Classification Table in Subsection 600.08. (3-30-07)~~

~~a. Class A effluent is municipal reclaimed wastewater that may be used under particular circumstances for irrigation, including residential irrigation at individual homes; ground water recharge using~~

~~surface spreading, seepage ponds, or other unlined surface water features; ground water recharge using subsurface distribution; fire suppression from dedicated, marked hydrants and only by trained fire personnel, and not to be used in building sprinkler systems; dust suppression at construction sites; toilet flushing at industrial and commercial sites where only trained maintenance personnel have access to the plumbing for repair; or other uses acceptable to the Department. Class A effluent shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. Filtration approval requirements, nutrient removal requirements, turbidity limits requirements, monitoring requirements, reliability and redundancy requirements, and distribution system requirements also apply. Class A treatment systems are required to be pilot tested or otherwise approved by the Department per Subsection 601.04 of these rules. Class A effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, and does not exceed twenty three (23) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. For ground water recharge using surface spreading, seepage ponds, and other unlined surface water features, IDAPA 58.01.11, "Ground Water Quality Rule," requirements apply. For Class A effluent, analysis shall be based on daily sampling during periods of use. The point of compliance for Class A effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended but not required that the effluent also be disinfected following storage. Class A effluent for residential irrigation shall be applied only during periods of non-use.~~ (3-30-07)

~~**b.** Class B effluent is municipal reclaimed wastewater that may contact any edible portion of raw food crops; may be used to irrigate golf courses, parks, playgrounds, schoolyards and other areas where children are likely to have access or exposure; or may be used for toilet flushing at industrial and commercial sites where only trained maintenance personnel have access to the plumbing for repair. Class B effluent shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. New Class B treatment systems are required to be pilot tested and approved by the Department prior to start-up. Class B effluent shall meet the following turbidity limits. The daily arithmetic mean of all daily measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. For those systems that have in-line turbidimeters that are operating full-time, no additional monitoring for total suspended solids (TSS) is required. Class B effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, and does not exceed twenty three (23) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. For Class B effluent, analysis shall be based on daily sampling during periods of application. The point of compliance for Class B effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended but not required that the effluent also be disinfected following storage. Residual chlorine at the point of compliance shall be not less than one (1) mg/L free chlorine after a contact time of thirty (30) minutes at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Department that the alternative process is comparable to that achieved by chlorination with one (1) mg/L free chlorine after thirty (30) minutes contact time. Class B effluent shall be applied only during periods of non-use by the public.~~ (3-30-07)

~~**c.** Class C effluent is municipal reclaimed wastewater that may only contact the inedible portion of raw food crops; may be used to irrigate orchards and vineyards during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground or will only contact the inedible portion of raw food crops; may be used to irrigate cemeteries, vegetation on sides and medians of highways, and other areas where individuals have access or exposure; or may be used for toilet flushing at industrial and commercial sites where only trained maintenance personnel have access to the plumbing for repair. Class C effluent shall be oxidized and adequately disinfected. Class C effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed twenty three (23) per one hundred (100) milliliters, and does not exceed two hundred thirty (230) per one hundred (100) milliliters in any confirmed sample as determined from the bacteriological results of the last five (5) days for which analyses have been completed. For Class C effluent, analysis shall be based on weekly sampling during periods of application. The point of compliance for Class C effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. Class C effluent shall be applied only during periods of non-use by the public.~~ (3-30-07)

~~**d.** Class D effluent is municipal reclaimed wastewater that is used to irrigate fodder, seed, or processed food crops and is oxidized and adequately disinfected. Class D effluent shall be considered adequately~~

~~disinfected if, at some location in the treatment process, the median number of total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters, not to exceed two thousand three hundred (2300) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last three (3) days for which analyses have been completed. For Class D effluent, analysis shall be based on monthly sampling during periods of application. The point of compliance for Class D effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. Animals shall not be grazed on land where Class D municipal wastewater is applied, and animals shall not be fed harvested vegetation irrigated in this manner within two (2) weeks of application. (4-11-06)~~

~~e. Class E effluent is municipal reclaimed wastewater that is used to irrigate forested sites where public access is restricted and the municipal wastewater shall be of at least primary effluent quality. Animals shall not be grazed on land where Class E municipal wastewater is applied, and animals shall not be fed harvested vegetation irrigated in this manner within four (4) weeks of application. (4-11-06)~~

~~08. **Direct Use of Municipal Reclaimed Wastewater — Classification Table.** The following table provides a brief summary of the requirements for direct use of municipal reclaimed wastewater outlined in Subsection 600.07. If there are discrepancies between Subsections 600.07 and 600.08, the requirements of Subsection 600.07 prevail.~~

| <b>Classification Table</b> |  |  |   |  |   |
|-----------------------------|--|--|---|--|---|
| <b>Classification</b>       | <b>Class-A</b>   | <b>Class-B</b>   | <b>Class-C</b>  | <b>Class-D</b>   | <b>Class-E</b>  |
| <del>Treatment</del>        | <del>This is a partial list — see Section 601 for more detail: Oxidized, clarified, and coagulated, with filtration approval requirements or treated by an equivalent process, plus nutrient removal requirements, turbidity limits requirements, adequately disinfected and tested.</del> | <del>Oxidized, coagulated, clarified, and filtered, or treated by an equivalent process, turbidity limits requirements, and adequately disinfected and tested.</del> | <del>Oxidized and adequately disinfected</del>  | <del>Oxidized and adequately disinfected</del>   | <del>At least primary effluent quality</del>                      |
| <del>Disinfection</del>     | <del>Total coliform organisms does not exceed two and two tenths (2.2) per one hundred (100) milliliters</del>   | <del>Total coliform organisms does not exceed two and two tenths (2.2) per one hundred (100) milliliters</del>   | <del>Total coliform organisms does not exceed twenty three (23) per one hundred (100) milliliters</del> | <del>Total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters</del> | <del>Total coliform organisms up to “too numerous to count”</del> |

| <b>Classification Table</b> |   |  |  |   |   |
|-----------------------------|---|--|--|---|---|
| <b>Classification</b>       | <b>Class-A</b>  | <b>Class-B</b>   | <b>Class-C</b>   | <b>Class-D</b>  | <b>Class-E</b>  |
| <i>Uses</i>                 | <i>May be used for residential irrigation at individual homes; ground-water recharge using surface spreading; seepage ponds or other unlined surface water features; ground-water recharge using subsurface distribution; fire suppression from dedicated, marked hydrants; dust suppression at construction sites; toilet flushing at industrial and commercial sites; or Class B, C, D, or E uses. Other requirements apply for ground water uses. See Subsection 600.07.a.</i> | <i>May contact any edible portion of raw food crops; may be used to irrigate golf courses, parks, playgrounds, schoolyards; may be used for toilet flushing at industrial and commercial sites; or Class C, D, or E uses. See Subsection 600.07.b.</i> | <i>May be used to irrigate orchards and vineyards during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground, or will only contact the unedible portion of raw food crops; may be used to irrigate cemeteries or roadside vegetation; may be used for toilet flushing at industrial and commercial sites; or Class D or E uses. See Subsection 600.07.c.</i> | <i>May be used to irrigate fodder, seed, or processed food crops; or Class E uses. See Subsection 600.07.d.</i> | <i>May be used to irrigate forested sites. See Subsection 600.07.e.</i>                                       |
| <i>Access-Restriction</i>   | <i>Irrigated during periods of non-use.</i>   | <i>Irrigated during periods of non-use by the public.</i>  | <i>Irrigated during periods of non-use by the public.</i>  | <i>Public access restricted.</i>  | <i>Public access restricted.</i>  |
| <i>Signing and Posting</i>  | <i>See Subsection 601.02</i>  | <i>Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater</i>  | <i>Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater</i>  | <i>Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater</i>   | <i>Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater</i> |

| Classification Table |   |   |   |   |   |
|----------------------|---|---|---|---|---|
| Classification       | Class-A   | Class-B   | Class-C   | Class-D   | Class-E   |
| Buffer Distances     | No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required. One hundred (100) foot minimum to drinking water wells. | Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required. | Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required. | Site specific— See Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required. | 1000 ft. to inhabited dwellings and areas accessible to the public. No effluent is allowed to be applied to surface waters in those circumstances when an NPDES Permit is required. |
| Grazing              | Grazing allowed only with approved grazing management plan.   | Grazing allowed only with approved grazing management plan.   | Grazing allowed only with approved grazing management plan.   | Grazing not allowed.  | Grazing not allowed.  |

(3-30-07)

~~601. CLASS A EFFLUENT MUNICIPAL RECLAIMED WASTEWATER ADDITIONAL REQUIREMENTS.~~

~~01. Engineering Report. Engineering reports and application materials for new Class A effluent municipal reclaimed wastewater systems or major upgrades to Class A effluent municipal reclaimed wastewater systems shall be submitted to the Department with the application and must be approved by the Department prior to permit issuance. The engineering report shall include, but not be limited to, the following items as applicable: purpose; approach; development of alternatives; technical, financial, managerial, and legal issues; emergency response and security; operation and maintenance; consideration of alternatives for disposal of unanticipated excess effluent that does not meet Class specifications; pilot testing; client use issues; potential markets for reclaimed wastewater; potential sources of wastewater; public involvement and perception; targeted markets for reclaimed wastewater; allocation of reclaimed wastewater; preliminary investigations; staff development; treatment system upgrades to meet Class A requirements; distribution system development and schedule; new development infrastructure; reservoir or booster capacity; water balance calculations; costs; applicable regulations; and potential funding sources. This engineering report shall be stamped, dated and signed in accordance with Idaho Board of Registration of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.02, "Rules of Professional Responsibility."~~ (3-30-07)

~~02. Distribution System Requirements. Class A distribution systems and the continued distribution systems of all of its customers shall have specific requirements including, but not limited to:~~ (4-6-05)

~~a. Any person or agency that is planning to construct all or part of the distribution system must obtain~~



~~a plan and specification approval from the Department prior to beginning construction. Where Class A effluent is to be provided by pressure pipeline, the following applicable standards shall be used as guidance: the current edition of "Recommended Standards for Wastewater Facilities—Great Lakes Upper Mississippi River Board of State Sanitary Engineers," the "AWWA Manual M24" Chapter 4 for dual water systems, and the current edition of "Idaho Standards for Public Works Construction." The above guidance documents shall be used for all new systems constructed after April 1, 2005. Requirements for irrigation systems proposed for conversion from use of non-Class A effluent water to use with Class A effluent will be considered on a case-by-case basis considering protection of public health and the environment.~~ (4-6-05)

~~b. Distribution Lines. (4-6-05)~~

~~i. Minimum Separation. (4-6-05)~~

~~(1) Horizontal Separation. Class A effluent distribution mains parallel to potable (culinary) water mains shall be installed in accordance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 542.07. Class A effluent distribution mains parallel to sanitary sewer mains shall be installed at least five (5) feet horizontally from the sanitary sewer main if the sanitary sewer main is located above the Class A effluent main, and three (3) feet horizontally from the sanitary sewer main if the sanitary sewer main is located below the Class A effluent main. (3-30-07)~~

~~(2) Vertical Separation. At crossings of Class A effluent distribution mains with potable water mains and sanitary sewer mains, the order of the mains from lowest in elevation to highest should be: sanitary sewer main, Class A effluent main, and potable water main. A minimum of eighteen (18) inches vertical separation between each of these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the Class A effluent main joints will be equidistant and as far as possible from the potable water main joints and the sanitary sewer main joints. If the Class A effluent water main must cross above the potable water main, the vertical separation shall be a minimum eighteen (18) inches, the Class A effluent main shall be supported to prevent settling, and the Class A effluent main shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to ten (10) feet. If the Class A effluent main must cross below the sanitary sewer main, the vertical separation shall be a minimum eighteen (18) inches and the Class A effluent main shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to ten (10) feet. (3-30-07)~~

~~(3) Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 542, for protection of potable water mains. (3-30-07)~~

~~ii. Class A Effluent Pipe Identification. (4-6-05)~~

~~(1) General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 512 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet "Caution: Reclaimed Wastewater—Do Not Drink" in both Spanish and English lettering. (3-30-07)~~

~~(2) Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Wastewater—Do Not Drink" in both Spanish and English lettering. The overall width of the tape shall be at least three (3) inches. Identification tape shall be installed eighteen (18) inches above the transmission pipe longitudinally, shall be centered over the pipe, and shall run continuously along the length of the pipe. (3-30-07)~~

~~iii. Conversion of Existing Drinking Water or Irrigation Water Lines. Existing water lines that are being converted to use with Class A effluent or a combination of Class A effluent and irrigation water shall first be accurately located and comply with leak test standards in accordance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 542, and in coordination with the Department. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current state cross connection rules and requirements (IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 543), and must meet minimum separation requirements set forth in these rules. If the existing lines meet approval of the water supplier and the Department based upon the requirements set forth in these rules, the lines shall be approved for Class A effluent~~

~~distribution. If regulatory compliance of the system (accurate location, pressure testing, and verification of no cross connections) cannot be verified with record drawings, testing, televising, or otherwise, the lines shall be uncovered, inspected, and identified or otherwise verified to the Department's satisfaction prior to use. All accessible portions of the system must be retrofitted to meet the requirements of these rules. After conversion of the water or irrigation line to a Class A wastewater effluent line, the lines shall be marked as stated in Subsection 601.02.b.ii.(2) of these rules.~~  
(3-30-07)

~~iv. Valve Boxes and Other Surface Identification. All valves shall have locking valve covers that are non-interchangeable with potable water valve covers, and shall have an inscription cast on the top surface stating "Reclaimed Wastewater." Valve boxes shall meet the requirements of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 542. All above ground pipes and pumps shall be consistently color coded (purple, Pantone 512) and marked to differentiate Class A effluent facilities from potable water facilities.~~  
(3-30-07)

~~v. Blow off Assemblies. If either an in line type or end of line type blow off or drain assembly is installed in the system, a plan for proposed discharge or runoff locations shall be submitted to the Department for review and approval.~~  
(4-6-05)

~~e. Storage. If storage or impoundment of Class A effluent is provided, the following requirements apply:~~  
(4-6-05)

~~i. Fencing. No fencing is required by these rules, but may be required by local laws or ordinances.~~  
(4-6-05)

~~ii. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Subsection 601.02.e.v. of these rules. Signs shall be posted on the surrounding fence at minimum five hundred (500) foot intervals and at the entrance of each facility. If there is no fence, signs shall be located at a minimum on each side of the facility or at minimum two hundred fifty (250) foot intervals or at all accessible points.~~  
(4-6-05)

~~iii. For systems supplying irrigation water for residential lawn irrigation, minimum storage requirements shall include sufficient volume for daily use patterns, precipitation events, etc., and an alternate disposal point during non-irrigation season.~~  
(4-6-05)

~~d. Pumping Facilities.~~  
(4-6-05)

~~i. Marking. All exposed and above ground piping, risers, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading "Warning: Reclaimed Wastewater - Do Not Drink" in both Spanish and English lettering. In a fenced pump station area, signs shall be posted on the fence on all sides.~~  
(3-30-07)

~~ii. Seal Water. Any potable water used as seal water for reclaimed water pump seals shall be protected from backflow with a Department approved backflow prevention device or air gap.~~  
(4-6-05)

~~e. Other Requirements.~~  
(4-6-05)

~~i. Backflow Protection. In no case shall a direct connection be made between the potable and Class A effluent system. If it is necessary to put potable water into the Class A effluent distribution system, a Department approved reduced pressure principal device or air gap must be provided to protect the potable water system.~~  
(4-6-05)

~~ii. Drinking fountains, picnic tables, food establishments, and other public eating facilities shall be placed out of any spray irrigation area in which Class A effluent is used, or shall be otherwise protected from contact with the Class A effluent. Exterior drinking fountains, picnic tables, food establishments, and other public eating facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public eating facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.~~  
(4-6-05)

~~iii. Equipment and Facilities. Any equipment or facilities such as tanks, temporary piping or valves,~~

~~and portable pumps that have been or may be used with Class A effluent shall not be used with potable water or sewage. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with sewage shall not be used with Class A effluent or potable water. (4-6-05)~~

~~iv. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose bibs, and temporary construction services. The labels shall read, "Warning: Reclaimed Wastewater - Do Not Drink" in both Spanish and English lettering. (3-30-07)~~

~~v. Warning signs. Where reclaimed water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, at a minimum, one (1) inch purple letters (Pantone 512 or equivalent) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Wastewater - Do Not Drink" in both Spanish and English lettering. (3-30-07)~~

~~03. Other Permits Addressed as Necessary. The following other permits may be necessary for a particular facility but are not regulated under these rules: (4-6-05)~~

~~a. NPDES permits from the Environmental Protection Agency for surface water discharge. (4-6-05)~~

~~b. Injection well permits from Idaho Department of Water Resources. (4-6-05)~~

~~04. Filtration Technology. (3-30-07)~~

~~a. Filtration Technology Acceptance Requirements. All Class A effluent projects in Idaho must have written acceptance from the Department for their proposed filtration technology prior to submitting plans and specifications for approval. Except as provided in Subsections 601.04.b.i and 601.04.b.ii., the following approaches are methods by which this written acceptance may be obtained from the Department. Consultants and vendors shall submit written requests with accompanying product information to the Department's State Office Wastewater Program. (3-30-07)~~

~~i. Department acceptance based on previous similar projects in Idaho. (3-30-07)~~

~~ii. National approval by National Reuse Association, Water Environment Federation Research Foundation, NSF International, or other organization accepted by the Department. (3-30-07)~~

~~iii. The State of California Department of Health Services Treatment Technology Report for Recycled Water, <http://www.dhs.ca.gov/ps/ddwem/publications/waterrecycling/treatmenttechnology.pdf>. (3-30-07)~~

~~iv. Other methods accepted by the Department, including pilot testing. (3-30-07)~~

~~b. Filter Loading, Coagulation, and Acceptance Requirements. (3-30-07)~~

~~i. For mono, dual or mixed media gravity or pressure filtration systems, influent shall be coagulated, clarified and passed through an undisturbed bed of soils or filter media at a rate not to exceed five (5) gallons per minute per square foot. For traveling bridge automatic backwash filters, influent shall be coagulated, clarified and passed through an undisturbed bed of soils or filter media at a rate not to exceed two (2) gallons per minute per square foot. Coagulation may be waived if all of following are met: the filter effluent does not exceed two (2) NTU; the filter influent is continuously measured, the filter influent turbidity does not exceed five (5) NTU; and automatically activated chemical addition or diversion facilities are provided in the event filter effluent turbidity exceeds five (5) NTU. (3-30-07)~~

~~ii. Gravity or pressure filters as described in Subsection 601.04.b.i. are recognized as being acceptable filtration processes under these rules. (3-30-07)~~

~~iii. Other granular media filters that have a continuous backwash feature, pulsed bed feature, or other feature that, in the determination of the Department, does not comply with Subsection 601.04.b.i.; membrane filters;~~

~~or cloth filters must obtain acceptance in accordance with Subsection 601.04.a. (3-30-07)~~

~~**05. Nutrient Removal Requirements.** Total nitrogen at the point of compliance shall not exceed ten (10) mg/L for ground water recharge systems, and thirty (30) mg/L for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. These limits may be much lower depending on the results of any applicable nutrient pathogen studies that may be required. (4-11-06)~~

~~**06. Turbidity Requirements and Disinfection Requirements.** (3-30-07)~~

~~**a.** One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train after filtration and prior to disinfection. (3-30-07)~~

~~**b.** Class A effluent shall meet the following turbidity limits. For systems utilizing sand or other granular media or cloth media, the daily arithmetic mean of all daily measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. For systems utilizing membrane filtration, the daily arithmetic mean of all daily measurements of turbidity shall not exceed zero point two (0.2) NTU, and turbidity shall not exceed zero point five (0.5) NTU at any time. (3-30-07)~~

~~**c.** Class A effluent shall be disinfected by either: (3-30-07)~~

~~**i.** A chlorine disinfection process that provides a concentration/contact time (CT) of four hundred and fifty (450) milligram minutes per liter (mg-min/L) measured at the end of the contact time with a modal contact time of not less than ninety (90) minutes based on peak day dry weather flow; or (3-30-07)~~

~~**ii.** A disinfection process that, when combined with filtration, has been demonstrated to achieve 5-log inactivation of virus. Acceptance by the State of California Department of Health Services as published in their Treatment Technology Report for Recycled Water is one method to constitute such a demonstration. (3-30-07)~~

~~**07. Reliability and Redundancy Requirements.** (4-6-05)~~

~~**a.** Redundant Treatment Capabilities. (3-30-07)~~

~~**i.** Class A treatment systems shall have redundant treatment capabilities able to treat peak day flow; Class A treatment systems shall also provide for: (3-30-07)~~

~~(1) An alternative disposal option; or (3-30-07)~~

~~(2) Diversion to adequate lined storage capable of storing seven (7) days of effluent; or (3-30-07)~~

~~(3) Equivalent back-up system. (3-30-07)~~

~~**ii.** Each of these three (3) alternatives must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than five (5) minutes, or if the alternative filtration/disinfection system is not achieving its required 5-log removal/inactivation of virus for more than five (5) minutes. Peak flow is defined for the purpose of Subsection 601.07 to mean the peak day flow of the plant anticipated for the season in which Class A effluent is being produced. The maximum number of times a facility could exceed on this basis is twice in one (1) week, both of which times are required to be immediately reported. Failure to report or exceeding more than twice in one (1) week are sufficient grounds for the Department to require the system to be shut down for inspection and repair. (3-30-07)~~

~~**b.** Redundant facilities, including, but not limited to, monitoring equipment and treatment trains shall be required. (4-6-05)~~

~~**c.** Standby Power sufficient to maintain all treatment and distribution works shall be required for the Class A effluent use. An alternative to this is to provide standby power sufficient for basic treatment and for automatic by pass of filtration directly to an alternative permitted disposal option. (3-30-07)~~

~~d. Standby treatment filter units in fully operable condition capable of treating peak flow, with the largest filter unit out of service, shall be plumbed and wired in place for immediate use. Peak flow is defined for the purpose of this rule to mean the peak day flow of the plant anticipated for the season in which Class A effluent is being produced. An alternative to this is automatic by-pass of filtration directly to an alternative permitted disposal option. (3-30-07)~~

~~08. Other Class A Effluent Requirements. (4-6-05)~~

~~a. Minimum treatment system size shall be ten thousand (10,000) gallons per day of wastewater flow being treated. (4-11-06)~~

~~b. Five (5) Day Biochemical Oxygen Demand (BOD5) shall not exceed five (5) mg/L for ground water recharge systems, and ten (10) mg/L each for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. (3-30-07)~~

~~e. The pH as determined by daily grab samples or continuous monitoring shall be between six point zero (6.0) and nine point zero (9.0) inclusive. (4-11-06)~~

~~d. For any type of ground water recharge system, the Class A effluent must also meet ground water quality standards per IDAPA 58.01.11, "Ground Water Quality Rule," at the point of compliance, and comply with the remaining sections of the "Ground Water Quality Rule." For these types of ground water recharge systems utilizing Class A effluent municipal reclaimed wastewater, the applicant shall propose to the Department for review and approval, the applicable testing requirements for the effluent as it relates to the primary and secondary ground water standards, as well as background ground water quality. Ground water recharge site locations shall be a minimum of one thousand (1000) feet from any down gradient drinking water extraction well and shall also provide for a minimum of six (6) months time of travel in the aquifer prior to withdrawal. The minimum requirements for site location and aquifer storage time may also be greater depending on any source water assessment zone studies for public drinking water wells in the area. The owners of these systems must control the ownership of this down gradient area to prohibit future wells from being drilled in the impact zone of the ground water recharge system. The Idaho Department of Water Resources requires additional permits for ground water injection wells. (4-11-06)~~

~~e. A filter to waste operational criteria is required for all Class A effluent filtration facilities for each time a filter starts up. The filter will automatically filter to waste until the effluent meets the required turbidity standard. (4-6-05)~~

~~f. Additional information in the form of reports by qualified soil scientists, professional geologists, professional engineers, or other qualified individuals relating to environmental assessments, nutrient management plans, or water rights issues shall be submitted to the Department at the pre-application conference or with the application and must be approved by the Department prior to permit issuance. (4-6-05)~~

~~g. Requirements for Class A effluent distribution system operators. All operators of Class A effluent distribution systems, including operators of distribution systems that utilize a combination of Class A effluent and other irrigation waters, operators of the distribution system from the wastewater treatment plant to the point of compliance or point of use or point of sale, as applicable, and those operators that are employed by buyers of the Class A effluent for subsequent use, including home occupants, shall be required to sign a utility user agreement provided by the utility providing the Class A effluent that states that the user acknowledges that the user understands the origin of the effluent and the concept of agronomic rate for applying the Class A effluent. Contracts for sale of Class A effluent for subsequent use shall also include these requirements. Individual homeowners are allowed to operate or maintain Class A effluent distribution systems. Providers of the Class A effluent shall undertake a public education program within its service area to teach potential customers the benefits and responsibilities of using Class A effluent (3-30-07)~~

~~h. Requirements for mixing Class A effluent with other irrigation waters. Mixing Class A effluent with other irrigation waters may be conducted in a pipe to pipe manner if both the other irrigation water source and the Class A source are protected by Department approved backflow devices. Class A effluent may be mixed with other irrigation water in an unlined pond if the Class A effluent is permitted for aquifer recharge. Class A effluent that is permitted for irrigation only and not aquifer recharge may be mixed with other irrigation water only in a lined pond.~~

~~Water from these mixed ponds may then be used for permitted Class A uses. If any of the water from these mixed ponds ultimately discharges to a canal, drain or other surface water, an NPDES permit may be required due to the presence of effluent in the mixed water. A downstream water user does not need a permit under these rules when mixed effluent/irrigation water is used after it is discharged, in accordance with these rules, to a canal, drain or other surface water.~~ (3-30-07)

~~**602. DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF CLASS A EFFLUENT RECLAIMED WASTEWATER SYSTEMS.**~~

~~No person shall proceed, or cause to proceed, with construction of a new class A effluent reclaimed wastewater system until it has been demonstrated to the Department that the new Class A effluent reclaimed wastewater system will have adequate technical, financial, and managerial capacity. Demonstration of capacity shall be submitted to the Department prior to or concurrent with the submittal of plans and specifications, as required in Section 39-118, Idaho Code, and Subsection 601.02.a. of these rules. The Applicant must obtain Department approval of the new system capacity demonstration prior to permit issuance and construction.~~ (4-6-05)

~~**01. Technical Capacity.** In order to meet this requirement, the Class A effluent reclaimed wastewater system shall submit documentation to demonstrate the following:~~ (4-6-05)

~~**a.** The system meets the relevant design, construction, operating and maintenance requirements of these rules;~~ (4-6-05)

~~**b.** The system has an adequate and consistent source of wastewater;~~ (4-6-05)

~~**c.** A security plan is in place to protect the wastewater source and deal with emergencies;~~ (4-6-05)

~~**d.** The system has trained personnel with an understanding of the technical and operational characteristics of the system;~~ (4-6-05)

~~**e.** A plan for cross-connection control;~~ (4-6-05)

~~**f.** Procedures for emergency response; and~~ (4-6-05)

~~**g.** Quality assurance and quality control plans.~~ (4-6-05)

~~**02. Financial Capacity.** A demonstration of financial capacity must include, but is not limited to, the following information:~~ (4-6-05)

~~**a.** Documentation that organizational and financial arrangements are adequate to construct and operate the Class A effluent reclaimed wastewater distribution system in accordance with these rules. This information can be provided by submitting estimated construction, operation, and maintenance costs, letters of credit, or other access to financial capital through public or private sources and, if available, a certified financial statement;~~ (4-6-05)

~~**b.** Demonstration of revenue sufficiency that includes, but is not limited to, billing and collection procedures, a proposed rate structure which is affordable and ensures availability of operating funds, revenues for depreciation and reserves, and the ability to accrue a capital replacement fund. A preliminary operating budget shall be provided;~~ (4-6-05)

~~**c.** Adequate fiscal controls shall be demonstrated; and~~ (4-6-05)

~~**d.** Equipment inventory controls shall be in place.~~ (4-6-05)

~~**03. Managerial Capacity.** In order to demonstrate adequate managerial capacity, the owner and/or operator of a new Class A effluent reclaimed wastewater system shall submit at least the following information to the Department:~~ (4-6-05)

~~**a.** Clear documentation of legal ownership of the Class A effluent reclaimed wastewater system;~~

~~including collection, treatment and effluent distribution systems, and any plans that may exist for transfer of that ownership on completion of construction or after a period of operation;~~ (4-6-05)

~~b. The name, address, and telephone number of the person who will be accountable for ensuring that the Class A effluent reclaimed wastewater system is in compliance with these rules;~~ (4-6-05)

~~c. The name, address, and telephone number of the system operator;~~ (4-6-05)

~~d. A description of the manner in which the wastewater system will be managed. By laws, restrictive covenants, articles of incorporation, or procedures and policy manuals which describe the management organization structure are a means of providing this information;~~ (4-6-05)

~~e. Personnel management policies and a description of staffing, including training, experience, certification or licensing, and continuing education completed by the Class A effluent reclaimed wastewater system staff;~~ (4-6-05)

~~f. An explanation of how the wastewater system operators will establish and maintain effective communications and relationships between the wastewater system management, its customers, professional service providers, and any applicable regulatory agencies; and~~ (4-6-05)

~~g. Evidence of short-term and long-term planning for future growth, equipment repair and maintenance, and long-term replacement of system components.~~ (4-6-05)

~~04. Consolidation. In demonstrating new system capacity, the owner of the proposed new Class A effluent reclaimed wastewater system shall investigate the feasibility of obtaining water service from an established public water system. If such service is available, but the owner elects to proceed with an independent system, the owner shall explain why this choice is in the public interest in terms of environmental protection, affordability to water users, and protection of public health.~~ (4-6-05)

~~05. Exclusion. New Class A effluent reclaimed wastewater systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, shall meet the regulatory requirements of the Idaho Public Utilities Commission (IPUC) in Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission." Such wastewater systems shall not be required to meet any requirements of Section 602 which are in conflict with the provisions and requirements of the Idaho Public Utilities Commission.~~ (4-6-05)

**601. MUNICIPAL RECYCLED WATER - CLASSIFICATION, TREATMENT, USE.**

**01. Class A Recycled Water.** In order to be classified as Class A recycled water, municipal wastewater shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. Class A treatment systems shall be reviewed by the Department and approved on a case-by-case basis. The Department may require pilot testing or demonstration prior to approval, or may condition approval upon the successful outcome of such testing or demonstration. ( )

**a. Disinfection Requirements.** ( )

**i. Class A recycled water shall be disinfected by either:** ( )

**(1) A chlorine disinfection process that provides a concentration/contact time (CT) of four hundred and fifty (450) milligram-minutes per liter (mg-min/L) measured at the end of the contact time based on total chlorine residual and a modal contact time of not less than ninety (90) minutes based on peak day dry weather flow; or** ( )

**(2) A disinfection process that, when combined with filtration, has been demonstrated to achieve 5-log inactivation of virus. Acceptance by the State of California as published in their Treatment Technology Report for Recycled Water is one (1) method to constitute such a demonstration.** ( )

**ii. The median number of total coliform organisms does not exceed two and two-tenths (2.2) per one**

hundred (100) milliliters, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. No sample shall exceed twenty-three (23) organisms per one hundred (100) milliliters in any confirmed sample. ( )

iii. Sampling frequency and point of compliance. ( )

(1) Class A recycled water shall be sampled and analyzed daily for total coliform when allowed uses specifically require Class A recycled water. The sampling frequency for Class A may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ( )

(2) The point of compliance for Class A recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended that the recycled water also be disinfected following storage. ( )

b. Turbidity Requirements. ( )

i. Class A recycled water shall meet the following turbidity limits: ( )

(1) For filtration systems utilizing sand or other granular media or cloth media, the daily arithmetic mean of all measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. ( )

(2) For filtration systems utilizing membrane filtration, the daily arithmetic mean of all measurements of turbidity shall not exceed zero point two (0.2) NTU, and turbidity shall not exceed zero point five (0.5) NTU at any time. The turbidity standard shall be met prior to disinfection. ( )

ii. One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train after filtration and prior to disinfection. ( )

c. Nitrogen, pH and BOD5 Requirements. ( )

i. Total nitrogen at the point of compliance shall not exceed ten (10) mg/L for ground water recharge systems and thirty (30) mg/L for residential irrigation and other non-recharge uses. These limits are based on a monthly arithmetic mean as determined from weekly composite sampling. These limits are a maximum value and may not be applicable if the results of an assessment of ground water quality impacts that may be required and is approved by the Department indicate that lower limits are necessary to protect existing ground water quality beneficial uses. ( )

ii. The pH as determined by daily grab samples or continuous monitoring shall be between six point zero (6.0) and nine point zero (9.0). ( )

iii. Five (5) Day Biochemical Oxygen Demand (BOD5) shall not exceed five (5) mg/L for ground water recharge systems, and ten (10) mg/L each for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. ( )

**02. Class B Recycled Water.** In order to be classified as Class B recycled water, municipal wastewater shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. Class B treatment systems shall be reviewed by the Department and approved on a case-by-case basis. The Department may require pilot testing or demonstration prior to approval, or may condition approval upon the successful outcome of such testing or demonstration. ( )

a. Disinfection Requirements. ( )

i. Class B recycled water shall be disinfected by either: ( )



(1) A chlorine disinfection process that provides a residual chlorine at the point of compliance of not less than one (1) mg/L total chlorine residual after a contact time of thirty (30) minutes at peak flow; or ( )

(2) When an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Department that the alternative process is comparable to that achieved by chlorination with a total chlorine residual of one (1) mg/L after a minimum contact time of thirty (30) minutes. ( )

ii. The median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. No sample shall exceed twenty-three (23) organisms per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. ( )

iii. Sampling frequency and point of compliance. ( )

(1) Class B recycled water shall be sampled and analyzed daily for total coliform when allowed uses specifically require Class B recycled water. The sampling frequency for Class B may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ( )

(2) The point of compliance for Class B recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. It is recommended that the recycled water also be disinfected following storage. ( )

b. Turbidity Requirements. Class B recycled water shall meet the following: ( )

i. Turbidity Limits. The daily arithmetic mean of all measurements of turbidity shall not exceed five (5) NTU, and turbidity shall not exceed ten (10) NTU at any time. The turbidity standards shall be met prior to disinfection. ( )

ii. Monitoring. One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train after filtration and prior to disinfection. ( )

03. Class C Recycled Water. In order to be classified as Class C recycled water, municipal wastewater shall be oxidized and adequately disinfected. ( )

a. Disinfection Requirements. ( )

i. The median number of total coliform organisms does not exceed twenty-three (23) per one hundred (100) milliliters, as determined from the bacteriological results of the last five (5) days for which analyses have been completed. No sample shall exceed two hundred thirty (230) per one hundred (100) milliliters in any confirmed sample. ( )

ii. Sampling frequency and point of compliance. ( )

(1) Class C recycled water shall be sampled and analyzed weekly for total coliform when allowed uses specifically require Class C recycled water. The sampling frequency for Class C may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health. ( )

(2) The point of compliance for Class C recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time. ( )

**04. Class D Recycled Water.** In order to be classified as Class D recycled water, municipal wastewater shall be oxidized and adequately disinfected. ( )

**a. Disinfection Requirements.** ( )

**i. The median number of total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters, as determined from the bacteriological results of the last three (3) days for which analyses have been completed. No sample shall exceed two thousands three hundred (2300) organisms per one hundred (100) milliliters in any confirmed sample.** ( )

**ii. Sampling frequency and point of compliance.** ( )

**(1) Class D recycled water shall be sampled and analyzed monthly for total coliform when allowed uses specifically require Class D recycled water. The sampling frequency for Class D may be decreased and the alternate frequency will be determined based upon, but not limited to, the following: uses that are allowed with lower class recycled water, the volume of recycled water used, the disinfection method used, the demonstrated disinfection efficiency and reliability, the point of compliance, or other factors demonstrating that the alternative frequency is protective of public health.** ( )

**(2) The point of compliance for Class D recycled water for total coliform shall be at any point in the system following final treatment and disinfection contact time.** ( )

**05. Class E Recycled Water.** In order to be classified as Class E recycled water, municipal wastewater shall meet at least primary effluent quality. ( )

**a. Class E recycled water has no disinfection requirements or applicable coliform standard.** ( )

**b. Sampling frequency for total coliform. In general no sampling and analysis are required for Class E recycled water. In cases where sampling and analysis are required (e.g. buffer distance change reduction) the sampling frequency for total coliform will be established consistent with these rules in order to adequately protect human health and the environment.** ( )

**602. MUNICIPAL RECYCLED WATER - CLASSIFICATION AND USES TABLES.**

**01. Municipal Recycled Water -- Classification Tables.** The following tables provide a summary of the treatment requirements of municipal recycled water outlined in Section 601. If there are discrepancies between Sections 601 and 602, the requirements of Section 601 prevail.

| <b>TABLE 1 - CLASSIFICATION TABLE</b> |                       |                       |                       |                       |                       |
|---------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| <b><u>Classification</u></b>          | <b><u>Class A</u></b> | <b><u>Class B</u></b> | <b><u>Class C</u></b> | <b><u>Class D</u></b> | <b><u>Class E</u></b> |
| <u>Oxidized</u>                       | <u>Yes</u>            | <u>Yes</u>            | <u>Yes</u>            | <u>Yes</u>            | <u>No</u>             |
| <u>Clarified</u>                      | <u>Yes</u>            | <u>Yes</u>            | <u>No</u>             | <u>No</u>             | <u>No</u>             |
| <u>Filtered</u>                       | <u>Yes</u>            | <u>Yes</u>            | <u>No</u>             | <u>No</u>             | <u>No</u>             |
| <u>Disinfected</u>                    | <u>Yes</u>            | <u>Yes</u>            | <u>Yes</u>            | <u>Yes</u>            | <u>No</u>             |

| <b>TABLE 1 - CLASSIFICATION TABLE</b>              |  |  |  |                                      |                                       |                 |
|--|--|--|--|--------------------------------------|---------------------------------------|-----------------|
| <b>Classification</b>                              |  | <b>Class A</b>   | <b>Class B</b>   | <b>Class C</b>                       | <b>Class D</b>                        | <b>Class E</b>  |
| <u>Total coliform (organisms/ 100 milliliters)</u> | <u>Median results for last x-days for which analysis have been completed</u> | <u>2.2</u><br><u>7-day median</u>  | <u>2.2</u><br><u>7-day median</u>  | <u>23</u><br><u>5-day median</u>     | <u>230</u><br><u>3-day median</u>     | <u>No limit</u> |
|  | <u>Maximum in any sample</u>   | <u>23</u>  | <u>23</u>  | <u>230</u>                           | <u>2300</u>                           | <u>No limit</u> |
|  | <u>Monitoring frequency</u>  | <u>Daily, or as determined.</u>  | <u>Daily or as determined.</u>   | <u>Once weekly or as determined.</u> | <u>Once monthly or as determined.</u> |                 |
| <u>Disinfection requirements contact time</u>      |  | <u>Contact time of 450 mg-min L with 90 min of modal time</u><br><u>Or</u><br><u>disinfection to 5-log inactivation of virus</u> | <u>Total chlorine not less than 1mg/L after 30 min contact time at peak flow</u><br><u>Or</u><br><u>alternate process comparable to this</u> |                                      |                                       |                 |

( )

| <b>TABLE 2 - CLASS A AND CLASS B ADDITIONAL REQUIREMENTS</b>                |                                    |   |   |
|---|------------------------------------|---|---|
| <b>Classification</b>   |                                    | <b>Class A</b>  | <b>Class B</b>  |
| <u>Turbidity (NTU)</u>  | <u>24-hr - mean, Not to exceed</u> | <u>Granular or cloth media - 2</u><br><u>Membrane filter - 0.2</u>                                  | <u>Granular or cloth media - 5</u>                                  |
|   | <u>Maximum, in any sample</u>      | <u>Granular or cloth media - 5</u><br><u>Membrane filter - 0.5</u>                                  | <u>Granular or cloth media - 10</u>                                 |
|   | <u>Monitoring frequency</u>        | <u>Continuous</u>   | <u>Continuous</u>   |
| <u>Maximum Total nitrogen (mg/L)</u>  |                                    | <u>Ground water recharge - 10</u><br><u>Residential irrigation and other non-recharge uses - 30</u> |   |
|   |                                    | <u>or</u>   |   |
|   |                                    | <u>As required based on an analysis of ground water impacts</u>                                     | <u>May be required based on an analysis of ground water impacts</u> |
| <u>BOD5 (mg/L)</u>  |                                    | <u>Ground water recharge - 5</u><br><u>Residential irrigation and other non-recharge uses - 10</u>  |   |
| <u>Monthly arithmetic mean, from weekly composite samples not to exceed</u> |                                    |   |   |

| TABLE 2 - CLASS A AND CLASS B ADDITIONAL REQUIREMENTS |                     |         |
|---|---------------------|---------|
| Classification  | Class A             | Class B |
| pH  | Between 6.0 and 9.0 |         |
| Daily grab samples or continuous monitoring           |                     |         |

( )

**02. Municipal Recycled Water - Uses.** The following table provides a summary of municipal recycled water uses for which a specific classification is required. Other uses not listed here may be considered on a case-by-case basis and approved by the Department.

| TABLE 3 - RECYCLED WATER USES   |         |         |         |         |         |
|---|---------|---------|---------|---------|---------|
| Recycled Water Uses   | Class A | Class B | Class C | Class D | Class E |
| <b>Uses relating to Irrigation and buffers</b>  |         |         |         |         |         |
| Buffers required  | No      | Yes     | Yes     | Yes     | Yes     |
| Fodder, fiber crops   | Yes     | Yes     | Yes     | Yes     | Yes     |
| Commercial timber, firewood   | Yes     | Yes     | Yes     | Yes     | Yes     |
| Processed food crops or "food crops that must undergo commercial pathogen-destroying processing before being consumed by humans"  | Yes     | Yes     | Yes     | Yes     | No      |
| Ornamental nursery stock, or Christmas trees  | Yes     | Yes     | Yes     | Yes     | No      |
| Sod and seed crops not intended for human ingestion   | Yes     | Yes     | Yes     | Yes     | No      |
| Pasture for animals not producing milk for human consumption  | Yes     | Yes     | Yes     | Yes     | No      |
| Pasture for animals producing milk for human consumption  | Yes     | Yes     | Yes     | No      | No      |
| Orchards and vineyards irrigation during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground, or will only contact the unedible portion of raw food crops | Yes     | Yes     | Yes     | No      | No      |
| Highway medians and roadside vegetation irrigation on sides   | Yes     | Yes     | Yes     | No      | No      |
| Cemetery irrigation   | Yes     | Yes     | Yes     | No      | No      |
| Parks, playgrounds, and school yards during periods of non-use  | Yes     | Yes     | No      | No      | No      |
| Parks, playgrounds, and school yards during periods of use  | Yes     | No      | No      | No      | No      |
| Golf courses  | Yes     | Yes     | No      | No      | No      |
| Food crops, including all edible food crops   | Yes     | Yes     | No      | No      | No      |

| <b>TABLE 3 - RECYCLED WATER USES</b>  |                |                |                |                |                |
|---|----------------|----------------|----------------|----------------|----------------|
| <b>Recycled Water Uses</b>  | <b>Class A</b> | <b>Class B</b> | <b>Class C</b> | <b>Class D</b> | <b>Class E</b> |
| <u>Residential landscape</u>  | <u>Yes</u>     | <u>No</u>      | <u>No</u>      | <u>No</u>      | <u>No</u>      |
| <b>Uses at Industrial, Commercial, or Construction Sites</b>  |                |                |                |                |                |
| <u>Dust suppression at construction sites and control on roads and streets</u>  | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      |
| <u>Toilet flushing at industrial and commercial sites, when only trained maintenance personnel have access to plumbing for repairs</u>        | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      |
| <u>Nonstructural fire fighting</u>  | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      |
| <u>Cleaning roads, sidewalks and outdoor work areas</u>   | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      |
| <u>Backfill consolidation around non-potable piping</u>   | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      |
| <u>Soil compaction</u>  | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      |
| <u>Commercial campus irrigation</u>   | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      | <u>No</u>      |
| <u>Fire suppression</u>   | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      | <u>No</u>      | <u>No</u>      |
| <u>Snowmaking for winter parks, resorts</u>   | <u>Yes</u>     | <u>No</u>      | <u>No</u>      | <u>No</u>      | <u>No</u>      |
| <u>Commercial laundries</u>   | <u>Yes</u>     | <u>No</u>      | <u>No</u>      | <u>No</u>      | <u>No</u>      |
| <b>Ground Water Recharge</b>  |                |                |                |                |                |
| <u>Ground water recharge through surface spreading, seepage ponds or other unlined surface water features, such as landscape impoundments</u> | <u>Yes</u>     | <u>No</u>      | <u>No</u>      | <u>No</u>      | <u>No</u>      |
| <b>Subsurface Distribution</b>  |                |                |                |                |                |
| <u>Subsurface distribution.</u>   | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>Yes</u>     | <u>No</u>      |

( )

**603. MUNICIPAL RECYCLED WATER - ACCESS, EXPOSURE AND SIGNAGE.**

**01. Class A Recycled Water.** When using Class A recycled water the public and personnel at the area of use must be notified that the water is recycled water and is not safe for drinking or human contact. Signs shall be posted and must state “Caution: Recycled Water - Do Not Drink”, or equivalent signage both in English and Spanish.

( )

**a.** Class A distribution system identification and signage.

( )

**i.** General. All new buried pipe conveying Class A Recycled Water, including service lines, valves, and other appurtenances, shall be colored purple, and the precise color used, e.g., Pantone 512, 522 or equivalent, shall be consistently used throughout the system. The precise color proposed for use shall be identified in the plans and specifications and reviewed by the Department during plan and specification review to ensure the pipes may be adequately identifiable and distinguishable. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet “Caution: Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English.

( )

**ii.** Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple color field as approved by the Department, having the words, “Caution:

Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English. The overall width of the tape shall be at least three (3) inches. Identification tape shall be installed eighteen (18) inches above the transmission pipe longitudinally, shall be centered over the pipe, and shall run continuously along the length of the pipe. ( )

iii. Valve Boxes and Other Surface Identification. All valves shall have locking valve covers that are non-interchangeable with potable water valve covers, and shall have an inscription cast on the top surface stating “Recycled Water.” All above ground pipes and pumps shall be consistently color coded (purple) and marked to differentiate Class A recycled water facilities from potable water facilities. ( )

b. Class A recycled water pumping facilities identification and signage. ( )

i. Marking. All exposed and above ground piping, risers, fittings, pumps, valves, etc., shall be painted purple color (Pantone 512, 522 or other equivalent product acceptable to the Department). In addition, all piping shall be identified using an accepted means of labeling reading “Caution: Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English lettering. In a fenced pump station area, signs shall be posted on the fence on all sides. ( )

ii. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose bibs, and temporary construction services. The labels shall read, “Caution: Recycled Water - Do Not Drink” or equivalent signage, in both Spanish and English. ( )

c. Class A Lagoon Identification and Signage. Where Class A recycled water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, at a minimum, one (1) inch purple letters (Pantone 512, 522 or other equivalent product acceptable to the Department) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, “Caution: Recycled Water - Do Not Drink” or equivalent signage in both Spanish and English. ( )

d. Class A Additional Access Requirements. Drinking fountains, picnic tables, food establishments, and other public eating facilities shall be placed out of any spray irrigation area in which Class A recycled water is used, or shall be otherwise protected from contact with the Class A recycled water. Exterior drinking fountains, picnic tables, food establishments, and other public eating facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public eating facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist. ( )

**02. Class B Recycled Water.** When using Class B recycled water, the public and personnel at the use area must be notified that the water used is recycled water and is not safe for drinking or human contact. Signs must be posted and the signs must state that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state “Caution: Recycled Water - Do Not Drink”, or equivalent signage both in English and Spanish. ( )

**03. Class C Recycled Water.** When using Class C recycled water for irrigation, the personnel at the use area must be notified that the water used is recycled water and is not safe for drinking. For the public, signs must be posted around the perimeter of the irrigation site stating that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state “Warning: Recycled Water - Do Not Enter”, or equivalent signage both in English and Spanish. ( )

**04. Class D Recycled Water.** When using Class D recycled water for irrigation, the personnel at the use area must be notified that the water used is recycled water and is not safe for drinking. For the public, signs must be posted around the perimeter of the irrigation site stating that recycled water is used and is not safe for drinking or human contact. Signs shall be posted and must state “Warning: Recycled Water - Do Not Enter”, or equivalent signage both in English and Spanish. ( )

**05. Class E Undisinfected Recycled Water.** When using Class E undisinfected recycled water for irrigation, public access to the irrigation site shall be prevented using a physical barrier or other measure approved by the Department. Signs shall be posted around the perimeter of the irrigation site stating that recycled water is used

and is not safe for drinking or human contact. Signs shall be posted and must state "Warning: Recycled Water - Do Not Enter", or equivalent signage both in English and Spanish. ( )

**604. REUSE FACILITIES - BUFFER DISTANCES.**

- 01. Buffer Distance Considerations.** Buffer distances shall be established for the following purposes: ( )
- a.** Protect public health by limiting exposure to recycled water and conditions associated with reuse facilities: ( )
  - b.** Protect waters of the state, including surface water, ground water and drinking water supplies; and ( )
  - c.** Help ensure that the use of recycled water is restricted to within the physical boundaries of the reuse facilities. ( )
- 02. Determining Buffer Distances.** In determining buffer distances for inclusion in a reuse permit the Department will consider the following: ( )
- a.** Characterization of the recycled water: ( )
  - b.** The method of irrigation: ( )
  - c.** The physical or vegetative barriers: ( )
  - d.** Microbial risk assessments: ( )
  - e.** Any applicable best management practices: ( )
  - f.** Environmental conditions, such as wind speed and direction; and ( )
  - g.** Any other information relevant to the purposes described in this section. ( )

**605. MUNICIPAL RECYCLED WATER -- PRELIMINARY ENGINEERING REPORTS.**

Preliminary engineering reports shall comply with these rules and applicable provisions of ID APA 58.01.16 "Wastewater Rules." Preliminary engineering reports for new municipal recycled water systems or major upgrades to municipal recycled water systems shall be submitted to the Department for review and approval prior to submittal of plans and specifications. ( )

**606. REUSE FACILITY - PLAN AND SPECIFICATION REVIEW.**

All plans and specifications for the construction of new reuse facilities or modification or expansion to same shall be submitted to and approved by the Director in accordance with Chapter 1, Title 39, Idaho Code, and IDAPA 58.01.16, "Wastewater Rules." ( )

**607. MUNICIPAL RECYCLED WATER -- DISTRIBUTION PIPELINES.**

**01. Compliance with Wastewater Rules Required.** The design and construction of municipal recycled water distribution pipelines shall comply with applicable provisions of IDAPA 58.01.16, "Wastewater Rules." Section 430. The design and construction of municipal recycled water distribution pipelines shall also comply with applicable provisions of ID APA 58.01.08, "Idaho Rules for Public Drinking Water Systems." Any person or agency that is planning to construct all or part of the distribution system must obtain a plan and specification approval from the Department prior to beginning construction. ( )

- a.** Recycled water mains shall be treated as non-potable mains when considering their separation from potable water. Recycled water mains shall be treated as potable water mains when considering their separation from sewers. ( )

**b.** For a system that proposes to use an alternative to the distribution pipeline requirements in these rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," or IDAPA 58.01.16, "Wastewater Rules," the design engineer shall submit data to the Department for review and approval demonstrating that the installation of an alternative will protect public health and environment. ( )

**02. Additional Distribution System Requirements for Class A Recycled Water.** Class A distribution systems and the continued distribution systems of all of its customers shall have specific requirements including, but not limited to the following. ( )

**a.** Where Class A recycled water is to be provided by pressure pipeline, the following standards may be used as guidance: the current edition of "Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers," the "AWWA Manual M24" Chapter 4 for dual water systems, and the current edition of "Idaho Standards for Public Works Construction." ( )

**b.** Conversion of Existing Drinking Water or Irrigation Water Lines. Requirements for irrigation systems proposed for conversion from use of non-Class A recycled water to use with Class A recycled water will be considered on a case-by-case basis considering protection of public health and the environment. Existing water lines that are being converted to use with Class A recycled water or a combination of Class A recycled water and irrigation water shall be accurately located, pressure tested and leakage tested prior to conversion in coordination with the Department. AWWA Standard(s) for pressure and leakage testing of drinking water lines shall be utilized on the lines to be converted. The pipeline must be physically disconnected from any potable water lines and brought into compliance with applicable cross connection rules and requirements in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Section 543, and must meet minimum separation requirements set forth in these rules. If the existing lines meet approval of the water supplier and the Department based upon the requirements set forth in these rules, the lines shall be approved for Class A recycled water distribution. If regulatory compliance of the system (accurate location, pressure testing, and verification of no cross connections) cannot be verified with record drawings, testing, televising, or otherwise, the lines shall be uncovered, inspected, and identified or otherwise verified to the Department's satisfaction prior to use. All accessible portions of the system must be retrofitted to meet the requirements of these rules. After conversion of the water or irrigation line to a Class A recycled water line, the lines shall be marked as stated in Subsection 603.01.a.iii. of these rules. ( )

**c.** Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, a plan for proposed discharge or runoff locations shall be submitted to the Department for review and approval. ( )

**d.** Requirements for mixing Class A recycled water with other irrigation waters. Mixing Class A recycled water with other irrigation waters may be conducted in a pipe to pipe manner if both the other irrigation water source and the Class A source are protected by Department approved backflow devices. Class A recycled water may be mixed with other irrigation water in an unlined pond if the Class A recycled water is permitted for ground water recharge. Class A recycled water that is permitted for irrigation only and not ground water recharge may be mixed with other irrigation water only in a lined pond. Water from these mixed ponds may then be used for permitted Class A uses. ( )

**e.** Requirements for Class A recycled water distribution system operators. All operators of Class A recycled water distribution systems, including operators of distribution systems that utilize a combination of Class A recycled water and other irrigation waters, operators of the distribution system from the wastewater treatment plant to the point of compliance or point of use or point of sale, as applicable, and those operators that are employed by buyers of the Class A recycled water for subsequent use, including home occupants, shall be required to sign a utility user agreement provided by the utility providing the Class A recycled water that states that the user understands the origin of the effluent and the concept of agronomic rate for applying the Class A recycled water. Contracts for sale of Class A recycled water for subsequent use shall also include these requirements. Individual homeowners are allowed to operate or maintain Class A recycled water distribution systems. Providers of the Class A recycled water shall undertake a public education program within its service area to teach potential customers the benefits and responsibilities of using Class A recycled water. ( )

**608. MUNICIPAL RECYCLED WATER -- PUMPING STATIONS.**



**01. Pumping Station Requirements.** All municipal recycled wastewater pumping stations shall comply with applicable provisions of IDAPA 58.01.16 "Wastewater Rules", Sections 440. ( )

**02. Additional Pumping Station Requirements for Recycled Water.** ( )

**a. Backflow Protection-Seal Water.** Any potable water used as seal water for recycled water pump seals shall be protected from backflow with a Department approved backflow prevention device or air gap. ( )

**b. Backflow Protection-Potable and Recycled Water.** In no case shall a direct connection be made between the potable and recycled water system. If it is necessary to put potable water into the recycled water distribution system, a Department approved reduced pressure principal device or air gap must be provided to protect the potable water system. ( )

**c. Equipment and Facilities.** Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with recycled water shall not be used with potable water or sewage. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with sewage shall not be used with recycled water or potable water. ( )

**609. MUNICIPAL RECYCLED WATER -- LAGOONS.**

**01. Requirements for Municipal Recycled Water Lagoons.** All new and existing lagoons for municipal recycled water shall comply with applicable provisions of IDAPA 58.01.16 "Wastewater Rules," Section 493. ( )

**02. Class A Recycled Water Lagoons.** Surface water features, such as landscape impoundments used for Class A recycled water, that are not lined or sealed to prevent seepage may be approved provided the ground water quality standards for ground water protection are met. ( )

**610. MUNICIPAL RECYCLED WATER -- CLASS A RECYCLED WATER FILTRATION.**

**01. Class A Filtration Technology Approval.** The Department shall approve the following filter technologies for use in compliance with these rules: ( )

**a.** Those approved and listed in the State of California Treatment Technology Report for Recycled Water, [www.cdph.ca.gov/healthinfo/environmental/health/water/pages/waterrecycling.aspx](http://www.cdph.ca.gov/healthinfo/environmental/health/water/pages/waterrecycling.aspx). ( )

**b.** The Department may consider for approval filtration technologies other than those listed in the report referenced in Subsection 610.01.a. upon submission of a written request accompanied by all necessary product information. Approval of these filtration technologies shall be in accordance with procedures provided in the State of California Treatment Technology Report for Recycled Water. ( )

**02. Filter to Waste Requirement.** The Department may require certain types of Class A recycled water filtration facilities to install and operate a filter to waste system that operates each time a filter starts up. Filter to waste systems shall automatically filter to waste until the effluent meets the required turbidity standard. ( )

**611. MUNICIPAL RECYCLED WATER -- RELIABILITY AND REDUNDANCY.**

**01. Reliability and Redundancy Requirements.** The reliability and redundancy for all wastewater systems shall comply with the requirements in IDAPA 58.01.16 "Wastewater Rules." ( )

**02. Additional Reliability and Redundancy Requirements.** Following are additional reliability and redundancy requirements for Class A recycled water: ( )

**a.** Class A treatment systems shall have treatment capabilities able to treat peak day flow for the season in which Class A recycled water is being produced. ( )

**b.** Class A treatment systems shall also provide for one (1) of the following alternative back-up systems: ( )

**i.** Another permitted disposal option; ( )

**ii.** Diversion to adequate lined storage capable of storing Class A recycled water during a malfunction or emergency. ( )

**c.** An alternative back-up system must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than five (5) minutes, or if the alternative filtration/disinfection system is not achieving its required 5-log removal/inactivation of virus for more than five (5) minutes. The maximum number of times a facility could exceed on this basis is twice in one (1) week, both of which times are required to be immediately reported. Failure to report or exceeding more than twice in one (1) week are sufficient grounds for the Department to require the system to be shut down for inspection and repair. ( )

**d.** Class A redundant monitoring equipment and automatic by-pass equipment must be provided. ( )

**e.** Standby power sufficient to maintain all treatment and distribution works or to meet the requirements for an alternative back-up system shall be required for the Class A recycled water facilities. ( )

**612. DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF MUNICIPAL REUSE FACILITY.**

**01. Compliance with Wastewater Rules Required.** All reuse facilities shall comply with applicable provisions of IDAPA 58.01.16 "Wastewater Rules," Section 409. ( )

**02. Exclusion.** New Class A recycled water systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, are governed by and must meet the regulatory requirements of Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission." In any conflict arising out of the application of these rules and IDAPA 31.01.01, the provisions and requirements of the Idaho Public Utilities Commission shall prevail. ( )

**613. REUSE FACILITY - RAPID INFILTRATION SYSTEM.**

Rapid infiltration systems shall be designed such that the beneficial uses of the waters of the state will not be injured. Prior to construction of a new recycled water system that includes as treatment rapid infiltration systems all plans and specification shall be submitted to and approved by the Director before construction can begin. The Preliminary Engineering Report shall include the parameters for the design of the rapid infiltration systems. ( )

**01. Design and Construction.** Following are the design and construction criteria for rapid infiltration systems: ( )

**a.** The system shall be designed to allow a relatively high rate of recycled water infiltration into the soil followed by rapid percolation; ( )

**b.** The system shall consist of either two (2) or more cells which can be alternately loaded and rested, or one (1) cell preceded by an effluent storage or stabilization pond system. Where only one (1) cell is provided, the storage and stabilization pond(s) shall have sufficient capacity to allow intermittent loading of the rapid infiltration systems; ( )

**c.** The rapid infiltration system shall be designed to provide even distribution of the recycled water and prevent erosion; ( )

**d.** The system shall be designed to ensure that the subsurface soils have the capacity to transmit the applied recycled water down and away from the basins at an acceptable rate to avoid excessive water mounding beneath the basin that would interfere with infiltration at the basins surface; and ( )

e. The system shall be designed to ensure proper operation during the winter conditions in cold climate areas. ( )

**02. Discharge Requirements.** Following are the discharge requirements for recycled water discharged to a rapid infiltration system: ( )

a. The discharge to a rapid infiltration system may not exceed the hydraulic, organic, nitrogen, suspended solids or other limitations specified in the permit or plans developed pursuant to a permit requirement. In determining discharge limitations, the Department shall consider past operating performance, the ability of the soils to treat the pollutants in the recycled water, hydrogeologic characteristics of the site such as permeability and infiltration rates, and other relevant information; and ( )

b. Compliance with IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.02, "Water Quality Standards" shall be ensured. ( )

**614. GROUND WATER RECHARGE - CLASS A RECYCLED WATER**

All ground water recharge systems shall comply with IDAPA 58.01.11, "Ground Water Quality Rule." The minimum requirements for site location and aquifer storage time shall be based on site-specific modeling and any source water assessment zone studies for public drinking water wells in the area. The owners of these systems must control the ownership of this down gradient area to prohibit future wells from being drilled in the impact zone of the ground water recharge system. Authorization from the Idaho Department of Water Resources is required for ground water injection wells. ( )

**615. SUBSURFACE DISTRIBUTION OF RECYCLED WATER**

**01. Subsurface Use of Recycled Water.** The subsurface distribution and use of recycled water must be designed and located so that compliance with IDAPA 58.01.11, "Ground Water Quality Rule," is maintained and pollutants cannot be reasonably expected to enter waters of the state in concentrations resulting in injury to beneficial uses. In addition, the subsurface distribution and use of recycled water shall comply with these rules, and with applicable IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." ( )

**02. Design and Construction.** ( )

a. The system shall be constructed to prevent surface runoff from entering the system. ( )

b. Precautions shall be taken during construction of the subsurface distribution system to minimize compaction and prevent a reduction in soil infiltration rate. ( )

c. Erosion control measures shall be taken during construction to prevent erosion of soil into surface water. ( )

**03. Discharge limitations.** ( )

a. Prior to discharge to a subsurface system, the wastewater shall be treated such that the recycled water is Class A, B, C or D quality. ( )

b. The discharge to a subsurface distribution system may not exceed the hydraulic, organic, nitrogen, or other limitations specified in a permit or plans developed pursuant to a permit requirement. The Department shall consider past operating performance, the ability of the soils to treat the pollutants in the discharge, hydrogeologic characteristics of the site such as permeability and infiltration rates and other relevant information. ( )

**616. PERMIT FOR USE OF INDUSTRIAL RECYCLED WATER**

Industrial recycled water shall only be used in accordance with a permit issued pursuant to these rules. Permit conditions and limitations shall be developed by the Department on a case-by-case basis taking into account the specific characteristics of the wastewater to be recycled, the treatment necessary to ensure the use of such recycled water is in compliance with IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.02, "Water Quality

Standards.” Unless otherwise indicated in this section, the permit application, processing and issuance procedures provided in this rule shall apply to industrial reuse permits. ( )

**01. Additional Application Contents.** In addition to the requirements in Section 300 of these rules, a permit application for reuse of industrial recycled water shall include: ( )

**a.** The source of the water and the projected rates and volumes; and ( )

**b.** The chemical, biological, and physical characteristics of the industrial recycled water from each source. ( )

**02. Permit Content.** The Department shall include the requirements of Section 500, Standard Permit Conditions, in all permits issued for use of industrial recycled water. The Department shall develop additional permit conditions on a case-by-case basis considering the following factors: ( )

**i.** The risk to public health and the environment; ( )

**ii.** The degree of public access to the site where the recycled water is used and the degree of human exposure anticipated; ( )

**iii.** Any additional measures necessary to prevent nuisance conditions; ( )

**iv.** Specific recycled water quality necessary for the intended type of reuse; and ( )

**v.** The means of application of the recycled water. ( )

~~603~~17. -- 699. (RESERVED).

#### 700. PERMIT MODIFICATION.

**01. Modification of Permits.** A permit modification may be initiated by the receipt of a request for modification from the permittee, or may be initiated by the Department if one (1) of more of the following causes for modification exist: ( )

**a.** Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. ( )

**b.** New standards or regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. ( )

**c.** Compliance schedules. The Department determines good cause exists for modification of a compliance schedule or terms and conditions of a permit. ( )

**d.** Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which may cause an adverse impact to surface or ground waters. ( )

**e.** To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ( )

**f.** When a treatment technology proposed, installed, and properly operated and maintained by the permittee fails to achieve the requirements of the permit. ( )

**042. Minor Modifications.** Minor modifications are those which if granted would not result in any increased hazard to the environment or to the public health. *Such modifications shall be made by the Director.* If a permit modification satisfies the criteria for “minor modifications,” the permit may be modified without issuance of a

draft permit or public review. Minor modifications are normally limited to: (4-1-88)( )

- a. The correction of typographical errors or formatting changes; (4-1-88)( )
- b. Transfer of ownership or operational control, or responsible official; (4-1-88)( )
- c. A change in monitoring or reporting frequency requirements, or revision of a laboratory method; (4-1-88)( )
- d. Change compliance due date in a schedule of compliance, provided the new date does not exceed six (6) months; ( )
- e. Change or add a sampling location; ( )
- f. Change to a higher level of treatment without a change in end uses; ( )
- g. Change in terminology; ( )
- h. Removal of an allowed use; ( )
- i. Correct minor technical errors, such as citations of law, and citations of construction specifications; ( )
- j. Change in a contingency plan resulting in equal or more efficient responsiveness; or ( )
- k. Removal of acreage from irrigation without an increase in loadings. ( )

**023. Major Modifications.** All modifications not considered minor shall be considered major modifications. The procedure for making major modifications shall be the same as that used for a new permit under these rules. Some examples of the major modifications are: (4-1-88)( )

- a. Changes in the treatment system; ( )
- b. Adding an allowed use; ( )
- c. Changes to a lower (less treated) class of water; ( )
- d. Addition of acreage used for irrigation; or ( )
- e. Changes to less stringent discharge limitations. ( )

701. -- 799. (RESERVED).

**800. PERMIT TRANSFERABLE.**

~~Permits shall be transferable to a new owner or operator provided that the permittee notifies the Director by requesting a minor modification of the permit before the date of transfer.~~ (4-1-88)

**01. General.** A permit may be transferred only upon approval of the Department. Not transfer is required for a corporate name change as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until approved in writing by the Department. ( )

**02. Request for Transfer.** Either the permit holder (permittee) or the person to whom the permit is proposed to be transfer (transferee) shall submit to the department a request for transfer at least thirty (30) days before the proposed transfer date. The request for transfer shall include: ( )

- a. Legal name and address of the permittee; ( )

- b.** Legal name and address of the transferee: ( )
- c.** Location and the common name of the facility: ( )
- d.** Date of proposed transfer: ( )
- e.** Sufficient documentation for the Department to determine that the transferee will meet the requirements listed in IDAPA 5 8.01.16 "Wastewater Rules," Section 4 09, relating to technical, financial, and managerial capacity: ( )
- f.** A signed declaration by the transferee that the transferee has reviewed the permit and understands the terms of the permit: ( )
- g.** A sworn statement that the request is made with the full knowledge and consent of the permittee if the transferee is submitting the request: ( )
- h.** Identification of any judicial decree, compliance agreement, enforcement order, or other outstanding obligating instrument, the terms of which have not been met, along with legal instruments sufficient to address liabilities under such decree, agreement, order, or other obligating instrument; and ( )
- i.** Any other information the director may reasonably require. ( )

**03. Effective Date of Transfer.** Responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date indicated in the approved transfer. ( )

**04. Compliance with Permit Conditions Pending Transfer Approval.** Prior to a transfer approval, the permittee shall continue to be responsible for compliance with the terms and conditions of the permit and be liable for any violation associated therewith, regardless of whether ownership or operational control of the permitted facility has been transferred. ( )

**05. Transferee Liability Prior to Transfer Approval.** If a proposed transferee causes or allows operation of the facility under his ownership or control before approval of the permit transfer, such transferee shall be considered to be operating without a permit or authorization required by these rules and may be cited for additional violations as applicable. ( )

**06. Compliance Record of Transferee.** The director may consider the prior compliance record of the transferee, if any, in the decision to approve or disapprove a transfer. ( )

**801. TEMPORARY CESSATION OF OPERATIONS AND CLOSURE.**

**01. Temporary Cessation.** A permittee shall implement any applicable conditions specified in the permit for temporary cessation of operations. When the permit does not specify applicable temporary cessation conditions, the permittee shall notify the Director prior to a temporary cessation of operations at the facility greater than sixty (60) days in duration and any cessation not for regular maintenance or repair. Cessation of operations necessary for regular maintenance or repair of a duration of sixty (60) days or less are not required to notify the Department under this section. All notifications required under this section shall include a proposed temporary cessation plan that will ensure the cessation of operations will not pose a threat to human health or the environment. ( )

**02. Closure.** A closure plan shall be required when a facility is closed voluntarily and when a permit is revoked or expires. A permittee shall implement any applicable conditions specified in the permit for closure of the facility. Unless otherwise directed by the terms of the permit or by the Director, the permittee shall submit a closure plan to the Director for approval at least ninety (90) days prior to ceasing operations. The closure plan shall ensure that the closed facility will not pose a threat to human health and the environment. Closure plan approval may be conditioned upon a permittee's agreement to complete such site investigations, monitoring, and any necessary remediation activities that may be required. ( )

~~8042.~~ -- 919. (RESERVED).

920. PERMIT REVOCATION.

01. **Conditions for Revocation.** The Director may revoke a permit if the permittee violates any permit condition or these rules, or the Director becomes aware of any omission or misrepresentation of condition or information relied upon when issuing the permit. (4-1-88)( )

02. **Notice of Revocation.** Except in cases of emergency, the Director shall issue a written notice of intent to revoke to the permittee prior to final revocation. Revocation shall become final within thirty-five (35) days of receipt of the notice by the permittee, unless within that time the permittee requests an administrative hearing in writing. The hearing shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality.” (5-3-03)

03. **Emergency Action.** If the Director finds the public health, safety or welfare requires emergency action, the Director shall incorporate findings in support of such action in a written notice of emergency revocation issued to the permittee. Emergency revocation shall be effective upon receipt by the permittee. Thereafter, if requested by the permittee in writing, the Director shall provide the permittee a revocation hearing and prior notice thereof. Such hearings shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality.” (3-15-02)

04. **Revocation and Closure.** A permittee shall perform the closure requirements in a permit, the closure requirements of these rules, and complete all closure plan activities notwithstanding the revocation of the permit. ( )

(BREAK IN CONTINUITY OF SECTIONS)

940. WAIVERS.

Waivers from the requirements of these rules may be granted by the Director on a case-by-case basis upon full demonstration by the person requesting the waivers that such activities for which the waivers are granted will not have a detrimental effect upon existing water quality and beneficial uses are adequately protected. ~~and~~ (4-11-06)( )

~~01. **Effect.** That the proposed loadings on the site will be de minimus in both quantity and quality;~~ (4-11-06)

~~02. **Treatment Requirements.** That the treatment requirements are:~~ (4-1-88)

~~a. Unreasonable with current technology; or~~ (4-1-88)

~~b. Economically prohibitive.~~ (4-1-88)

## OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR

### IDAPA 60 - IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION

DOCKET NO. 60-0000-1001

#### NOTICE OF LEGISLATIVE ACTION AFFECTING THE IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION - HOUSE BILL 576, SESSION LAW 279 AND ASSIGNMENT OF NEW IDAPA DESIGNATION NUMBER

**EFFECTIVE DATE:** The effective date of this legislative action is July 1, 2010.

**AUTHORITY:** In compliance with and as authorized by Sections 67-5202(2), 67-5202(3), 67-5203, 67-5224, Idaho Code, notice is hereby given that the Office of the Administrative Rules Coordinator has assigned a new IDAPA designation number to the Idaho State Soil and Water Conservation Commission. The Commission has specific rulemaking authority that is separate from that of the Department of Agriculture, therefore the Commission is being assigned a unique identifier to separate this function from that of the Department. This action is authorized pursuant to House Bill 576 (Session Law 279) and Section 67-5202(2), Idaho Code, however, it does not affect any other authority expressly given to the Department of Agriculture and its relationship to the Commission.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the legislative action affecting these rules:

House Bill 576 (Session Law 279) provides for necessary amendments to existing code pertaining to soil conservation districts and the state commission. These updates provide for the continued nonregulatory role of local districts and the state commission in providing assistance to private land owners on natural resource issues. The legislation changes the commission's name to the Idaho State Soil and Water Conservation Commission, provides for changes to how commissions are appointed, and clarifies that the commission hire its own administrator. The legislation streamlines audit requirements for local districts so that they are consistent with other government entities. The current authority of the commission to remove district supervisors from office is deleted and it is specified that supervisors are subject to recall. Current law regarding consolidation of local districts is amended to provide for election of a new chair and allows for a three-year transition period.

Pursuant to Section 67-5202(2), Idaho Code, and further complying with the legislative intent of House Bill 576, all non-substantive changes that do not affect the sense, meaning, or intent of the rules will be made to update all references and citations within the rules formerly promulgated under the authority of the Department of Agriculture. These include, but are not limited to, the following:

Citations and references to IDAPA 02 relating to the affected chapters under TITLE 05, are now changed to IDAPA 60, TITLE 05. All citations and references to the following chapters of the Commission will be corrected in the Administrative Code pursuant to this notice:

- (02.05.01) 60.05.01, Resource Conservation and Rangeland Development Program
- (02.05.02) 60.05.02, The Antidegradation Plan for Agriculture for the Idaho Soil Conservation Commission and Soil Conservation Districts
- (02.05.03) 60.05.03, Rules for Administration of Agricultural Water Quality Cost-Share Program for Idaho
- (02.05.04) 60.05.04, Rules Governing Allocation of Funds to Conservation Districts (Temporary Rule)

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this notice, contact Dennis Stevenson, Administrative Rules Coordinator, 208-332-1820.

DATED this 15th day of August, 2010.

Dennis Stevenson  
Administrative Rules Coordinator  
Office of the Administrative Rules Coordinator  
Department of Administration  
PO Box 83720, Boise, ID 83720-0306  
Phone: (208) 332-1820 / Fax: (208) 332-1896



**IDAPA 60 - IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION**

**60.05.04 - RULES GOVERNING ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS**

**DOCKET NO. 60-0504-1001 (NEW CHAPTER)**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 11, 2010.

**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 22-2718 and 22-2727, Idaho Code.

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

This rulemaking establishes procedures for the allocation of funds to local soil and water conservation districts. The Idaho State Soil and Water Conservation Commission (Commission) is statutorily required to determine a base of funding for each district and then distributes any additional state funds based on the local match (cash and services) provided to each district. Idaho's local conservation districts need these state general funds as early in the fiscal year as possible to continue operation and carry out their responsibilities.

**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:

The Commission is clearly directed by statute to promulgate rules for allocation of funds to districts. This temporary rule confers a benefit to the local conservation districts by providing funding early in the fiscal year thereby allowing the districts to fund their operations and carry out their responsibilities.

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

There are no fees or charges being imposed through this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Sara Schmidt, Administrator, 208-332-1790.

DATED this 13th day of August, 2010.

Sara Schmidt  
Administrator  
Idaho State Soil & Water Conservation Commission  
650 W State Street, Room 145  
Boise, Idaho, 83702  
Phone: 208-332-1790  
FAX: 208-332-1799

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 60-0504-1001**

**IDAPA 60**  
**TITLE 05**  
**CHAPTER 04**

**IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION**

**60.05.04 - RULES GOVERNING ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS**

**000. LEGAL AUTHORITY.**

This chapter is adopted by the Idaho State Soil and Water Conservation Commission under the legal authority of Sections 22-2718 and 22-2727, Idaho Code. (8-11-10)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be known and cited as IDAPA 60.05.04, "Rules for Allocation of Funds to Conservation Districts." (8-11-10)T

**02. Scope.** These rules establish the procedures to be followed by the Commission and the conservation districts in the implementation of Section 22-2727, Idaho Code, providing for the allocation of state funds appropriated for distribution to conservation districts. (8-11-10)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. (8-11-10)T

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeals before the Commission under this chapter. Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to Section 67-5270, Idaho Code. (8-11-10)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this rule. (8-11-10)T

**005. IDAHO PUBLIC RECORDS ACT.**

These rules are public records available for inspection and copying at the department. (8-11-10)T

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

**01. Physical Address.** The central office of the Idaho State Soil and Water Conservation Commission, 650 W State Street, Room 145, Boise, Idaho, 83702. (8-11-10)T

**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. (8-11-10)T

**03. Telephone Number.** The telephone number of the Idaho State Soil and Water Conservation Commission at the central office is (208) 332-1790. (8-11-10)T

**04. Fax Number.** The fax number of the Idaho State Soil and Water Conservation Commission at the central office is (208) 332-1799. (8-11-10)T

**05. Website.** The Commission's website address is <http://www.swc.idaho.gov/>. (8-11-10)T

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

**010. DEFINITIONS.**

For the purpose of the rules contained in this chapter, the following definitions apply: (8-11-10)T

**01. Antidegradation Plan.** Five (5) year plan, with an annual work plan, for resource assessment, resource prioritization, and implementation of water quality efforts as defined in IDAPA 60.05.02, "Rules of the Antidegradation Plan for Agriculture for the Idaho Soil Conservation Commission and Soil Conservation Districts." The district may supplement the antidegradation plan with additional information about local resource conditions, conservation goals and district operations. (8-11-10)T

**02. Base Funding.** Funds appropriated to the Commission to be allocated equally to the various soil conservation districts in a sum not to exceed eight thousand five hundred dollars (\$8,500) per district per year. (8-11-10)T

**03. Board of Supervisors.** Governing body of a district as provided in Section 22-2717(25), Idaho Code. (8-11-10)T

**04. Certify.** To confirm formally as true, accurate, or genuine. (8-11-10)T

**05. Commission.** The Idaho State Soil and Water Conservation Commission as defined in Section 22-2718, Idaho Code. (8-11-10)T

**06. Conservation District or District.** A soil (and water) conservation district as defined in Section 22-2717, Idaho Code. (8-11-10)T

**07. Financial Reports.** Documentation certified by the Board of Supervisors summarizing how base funding and match funding was allocated by the conservation district during the previous fiscal year. (8-11-10)T

**08. Fiscal Year.** As set forth in Section 67-2201, Idaho Code, the fiscal year will begin on July 1 and close on June 30 of the following year. (8-11-10)T

**09. Funding Criteria.** Criteria considered by the Commission to determine the amount of base and match funding to be allocated to the conservation districts. Criteria include district budgets, district budget requests, district programs and work plans, and district work load analysis. The following documents may be required on an annual basis in order to consistently apply the criteria to all districts: antidegradation plans, financial reports, match reports and performance reports. (8-11-10)T

**10. Local Funds.** Monies received in the previous fiscal year from local units of government for the general purposes of a conservation district. Not designated for specific projects. (8-11-10)T

**11. Local Services.** Non-cash contributions received in the previous fiscal year from local units of government for the general purposes of a conservation district. Not designated for specific projects. (8-11-10)T

**12. Local Units of Government.** Any general or special purpose political subdivision of the state which has the power to levy taxes and/or appropriate and spend funds. (8-11-10)T

**13. Match Funding.** Funds appropriated to the Commission for distribution to conservation districts in excess of base funding not to exceed twice the amount of local funds and services received by each district in the previous fiscal year. (8-11-10)T

**14. Match Reports.** Documentation certified by the Board of Supervisors of local funds and services actually received by the conservation district during the previous fiscal year. (8-11-10)T

**15. Maximum Allocation.** The total of base funding and match funding allocated to any one (1) conservation district shall not exceed fifty eight thousand and five hundred dollars (\$58,500) in a fiscal year. (8-11-10)T

**16. Performance Reports.** Documentation summarizing conservation activities, projects and

programs implemented by the conservation district during the previous fiscal year. (8-11-10)T

**011. ALLOCATION OF FUNDS TO DISTRICTS.**

**01. Base Funding.** The Commission shall determine the dollar amount to allocate equally to conservation districts on an annual basis. Once the required documents are submitted and determined to be complete, the Commission shall immediately distribute base funding. (8-11-10)T

**a.** Required Documents. The Commission may require submission of certain documents prior to allocation of base funding to districts: antidegradation plans, financial reports, and performance reports. (8-11-10)T

**b.** The Board of Supervisors shall certify in writing that the district has examined all documentation submitted and that the statements and representations in the documents are true and accurate. (8-11-10)T

**c.** The district shall submit any required documents by a date established by the Commission. (8-11-10)T

**02. Match Funding.** Following determination of base funding, the Commission shall review and approve the additional amount of state appropriations available for proportional allocation to each district in match funding. Match funding will be based upon local funds and services received in the previous fiscal year by each conservation district. As it applies to state match funding, it is intended that donated funds and services be for the general purposes of the conservation district. Expenditure of any such donated funds and services is at the discretion of the conservation district. Funds and services received and designated for specific projects will not be considered when calculating match funding. Once the required documents are submitted and determined to be complete, the Commission shall distribute match funding to each district no later than January 1, 2011. (8-11-10)T

**a.** Required Documents. Each conservation district must submit match reports prior to the Commission's allocation of match funding. The Commission may also require certain documents prior to allocation of match funding to districts including: antidegradation plans, financial reports, and performance reports. (8-11-10)T

**b.** The Board of Supervisors shall certify in writing that the district has examined all documentation submitted and that the statements and representations in the documents are true and accurate. (8-11-10)T

**c.** The district shall submit any required documents by a date established by the Commission. (8-11-10)T

**03. State Budget Requests.** The Commission shall conduct a public hearing to consider the needs of the conservation districts on or before June 15th of each year, giving twenty (20) days' written notice of the hearing to each conservation district and to all other persons requesting notice of the hearing. The Commission shall hear and consider testimony at the hearing and all information submitted by the districts prior to submission of the annual budget request to the legislature and governor based upon the criteria of Subsection 010.09 of this rule. (8-11-10)T

**012. -- 999. (RESERVED).**

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Docket No. **13-0117-1001**

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

**16.02.03 - Emergency Medical Services**

Docket No. **16-0203-1002 (Chapter Rewrite)**

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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 latest publication of the state Administrative Bulletin.

*The written comment submission deadline is September 22, 2010 unless otherwise listed.  
(Temp & Prop) indicates the rule is both temporary and proposed.  
(\*PH) indicates that a public hearing has been scheduled.*

#### **IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790**

**02-0413-101, Rules Governing Raw Milk.** Per statute establishes quality standards for raw milk and raw milk products produced under a herd share and for cultured raw milk products for permitted raw milk facilities.

#### **IDAPA 13 - IDAHO FISH AND GAME COMMISSION PO Box 25, Boise, Idaho 83707**

**13-0102-1001, Rules Governing Public Safety.** (Temp & Prop) Implements SB 1283 to allow hunter education certifications from other countries that meet or exceed Idaho standards.

##### **13.01.04 - Rules Governing Licensing**

**13-0104-1001,** Redefines eligibility requirements for the Landowner Appreciation Program (LAP) and restricts commercialization of LAP tags.

**13-0104-1002,** (Temp & Prop) Eliminates controlled hunt permits, adjusts elk zone tag quotas, and allows for rain checks.

**13-0106-1001, Rules Governing Classification and Protection of Wildlife.** (Temp & Prop) Implements SB 1266 by classifying raccoons as predatory wildlife, and corrects a statutory reference.

**13-0108-1001, Rules Governing the Taking of Big Game Animals in the State of Idaho.** (Temp & Prop) Implements HB 416 to redefine "edible meat" and expand the species exempt from waste; implements HB 463 to allow nonresident deer or elk tags to be used for taking black bear, mountain lion and wolves; removes Units 48 and 57 from the Motorized Vehicle Rule; allows use of electronic calls for taking black bears, mountain lions and wolves in specified seasons; allows the take of wolves by trap or snare in specified seasons; prohibits use of telemetry equipment as an aid to take big game; addresses depredation hunts for black bear and wolves; extends mandatory check and reporting requirements for harvested wolves; eliminates controlled hunt permits; allows for the exchange of bear tags; defines various tag types; amends controlled hunt application requirements and addresses Mandatory Hunter Reports.

##### **13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho**

**13-0109-1001,** Prohibits the take of upland game birds from any watercraft.

**13-0109-1002,** Implements SB 1285 to allow nine-year old hunters to apply for controlled hunt turkey permits.

**13-0110-1001, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife.** (Temp & Prop) Implements SB 1328 to allow the release of certain captured predatory and unprotected wildlife with written landowner permission; implements SB 1342 to allow the Department to require records from taxidermy/furbuyers and adds a reporting requirement for purchase of raw mountain lion and black bear parts; clarifies legal methods of take; addresses commercial sale of rattlesnake parts.

**13-0116-1001, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals.** (Temp & Prop) Implements SB 1286 to classify raccoons as predatory wildlife; clarifies the definitions of “bait” and “game animal”.

**13-0117-1001, Rules Governing the Use of Bait for Taking Big Game Animals.** (Temp & Prop) Clarifies definitions of “bait” and “game animals”; allows incidental take of wolves near bear bait sites.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE  
PO Box 83720, Boise, ID 83720-0036**

**16.02.03 - Emergency Medical Services**

**16-0203-1001,** Chapter repeal.

**16-0203-1002,** Chapter rewrite revises, updates, and clarifies the rule.

**16-0203-1003,** Sets initial, reinstatement, recognition/reciprocity, and renewal licensure fees for AEMTs and Paramedics.

**16-0208-1001, Vital Statistics Rules.** Fee rule conforms to HB 492 by revising fees charged for certified copies of vital records certificates; increases cost of a death certificate by \$1 per certified copy to fund training for county coroners.

**\*16-0211-1001, Immunization Requirements for Children Attending Licensed Daycare Facilities.** (\*PH) Increase the number of vaccines required for children attending licensed daycare facilities to protect children from vaccine-preventable diseases; provides a conditional attendance clause for children who are in the process of receiving required vaccines; provides clarification on exclusion of children from attendance; updates existing language to match current practices. Parents choosing not to immunize their children are able to sign an exemption form for medical, religious, or other reasons.

**16.02.13 - Rules Governing Certification of Idaho Water Quality Laboratories**

**16-0213-1001,** Chapter repeal.

**16-0213-1002,** Chapter rewrite conforms rule to federal requirements for certification and provides laboratories and the Department a clear and accurate description of the criteria and processes required for initiating, maintaining, and revoking drinking water certification.

**\*16-0215-1001, Immunization Requirements for Idaho School Children.** (\*PH) Changes will help protect children from additional vaccine-preventable diseases; provides a conditional admission clause for children who are in the process of receiving required vaccines; provides clarification on exclusion of children from attendance; updates existing language to match current practices. Parents choosing not to immunize their children are able to sign an exemption form for medical, religious, or other reasons.

**16-0305-1002, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD).** (Temp & Prop) Allows for the use of electronic data transfer from the SSA to verify U.S. citizenship and identity; changes eligibility time period for Afghani and Iraqi special immigrants to comply with changes in federal law; and removes references to the obsolete Idaho State School and Hospital Waiver.

**16-0309-1003, Medicaid Basic Plan Benefits.** (Temp & Prop) Changes definition for Medicaid Inpatient Cost Limits to clarify the “beginning of the principal year”; revises reporting requirements for DSH; clarifies definition of “uninsured patient costs” in DSH requirements; and Implements a periodic state cost survey to establish a pharmacy reimbursement fee schedule.

**16.03.10 - Medicaid Enhanced Plan Benefits**

**\*16-0310-1002,** (\*PH) Redesigns developmental disabilities benefits for children as part of the Children's System Redesign and provides definitions and requirements for children's DD programs, including new services and provider qualifications.

**16-0310-1003,** (Temp & Prop) Conforms to HB 701 and 708 by clarifying for nursing facilities coverage and limitations, inflation freeze, efficiency incentive, and special rate payment offset; and incentive changes for ICF/IDs.

**\*16-0313-1002, Consumer-Directed Services.** (\*PH) Updates definitions and incorporates the new Family-Directed Services option as part of the redesign of children's developmental disabilities benefits.

**\*16-0319-1001, Certified Family Homes.** (\*PH) Updates safety and sanitation requirements; requires manufactured and modular homes to meet certain requirements at the time of manufacture; requires Department assessment and approval of all vehicles, commercial coaches, or manufactured or modular homes for use as a certified family home; changes requirements for proof that non-municipal sewage disposal requirements are met from three to five years; amends rules on guardianship of residents by the certified family home provider.

**\*16-0321-1001, Developmental Disabilities Agencies (DDAs).** (\*PH) New chapter replaces the existing licensing and certification requirements for DDAs.

**\*16-0411-1001, Developmental Disabilities Agencies.** (\*PH) Chapter repealed and replaced by IDAPA 16.03.21.

**16-0601-1001, Child and Family Services.** Addresses Title IV-E relative guardianship assistance to provide for a permanent living situation with a relative for older children; details requirements of the Multiethnic Placement Act; aligns rules with current practice by clarifying contact requirements for foster children in out-of-state care; replaces risk-oriented language with safety-oriented language; and removes requirement for parent signature on the alternate care plan.

**16-0602-1003, Rules Governing Standards for Child Care Licensing.** Clarifies the criminal history and background checks requirements for foster care licensing.

**IDAPA 18 - DEPARTMENT OF INSURANCE  
PO Box 83720, Boise, ID 83720-0043**

**18-0125-1001, Title Insurance and Title Insurance Agents and Escrow Officers.** Ensures escrow pricing is not being used as an illegal inducement to obtain title insurance business; develops a system to verify costs for delivery of escrow services; ensures access to a viable and competitive marketplace for consumers of title industry products and services.

**18-0147-1001, Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors.** Permits the recognition of company mortality experience in the development of deficiency reserves and removes some arbitrary limits that had been imposed on the recognition of company experience; includes a requirement for disclosure by the appointed actuary of possible shortfalls in funding future required reserves.

**18-0153-1001, Continuing Education.** Removed requirement that ethics courses be stand alone courses; requires that persons using self-study materials complete questions at the end of each chapter with a score of at least 70% before proceeding to the next chapter.

**18-0156-1001, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules.** Removes language relating to filing of escrow charges and fees and moves it to rule 18.01.25; ensures access to a viable and competitive marketplace for consumers of title industry products and services.

**18-0166-1001, Director's Authority for Companies Deemed to Be in Hazardous Financial Condition.** Provides additional standards for the director to consider when determining whether the continued operations of an insurer might be deemed hazardous to policyholders, creditors or the general public; authorizes the director to issue an order to companies so deemed to take corrective action.

**18-0177-1001, Actuarial Opinion and Memorandum Rule.** Removes outdated language in actuarial opinions; adds a date to the signature of actuary; provides directions on the rationale for degree of rigor in analyzing different blocks of business; provides directions for criteria for determining asset adequacy; provides instructions to comment on the impact of the insufficiency of assets to support the payment of benefits.

**18-0179-1001, Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.** With Director's approval allows use of the preferred mortality tables as a valuation standard for any business issued using the 2001 CSO as the valuation mortality table; includes a specific limitation related to the accounting used when there is a coinsurance treaty in effect.

**IDAPA 34 - OFFICE OF THE SECRETARY OF STATE****PO Box 83720, Boise, ID 83720-0080**

**34-0501-1001, Rules Governing Farm Products Central Filing System.** Allows for the use of a unique identifier numbering system rather than social security numbers and tax identification numbers on effective financing statements; updates old information and makes corrections.

**34-0502-1001, Rules Governing Liens in Crops, for Seed, and Farm Labor.** Revises the duration and extension information regarding Claim of Lien for Farm Labor and Claim of Lien for Seed to make them consistent with statute; removes references to microfiche; and make other minor corrections.

**IDAPA 35 - STATE TAX COMMISSION****PO Box 36, Boise, ID 83722-0410**

**\*35-0103-1002, Property Tax Administrative Rules.** (\*PH) Provides the standards necessary to monitor the information provided in property records as part of the continuing valuation program and for the enforcement of these standards which will provide for better records with more information relevant to property appraisals.

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES****PO Box 83720, Boise, ID 83720-0098**

**\*37-0203-1001, Water Supply Bank Rules.** (\*PH) Increases the rental fee percentage retained by IDWR from 10% to 25% and imposes a lease application filing fee of \$250 per water right to operate the Water Supply Bank and maintain the level of service required.

**37-0310-1001, Well Driller Licensing Rules.** Reduces number of continuing education credits required for license renewal to 14 units; updates definitions; updates and revises application requirements relating to experience and compliance history of an applicant renewing or obtaining a license to be consistent with Idaho Code.

**IDAPA 41 - PUBLIC HEALTH DISTRICTS****Southwest District Health - 920 Main Street, Caldwell, ID 83605**

**41-0301-1001, Rules of the Southwest District Health Department.** Chapter repeal.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY****1410 N. Hilton, Boise, ID 83706-1255**

**58-0102-1001, Water Quality Standards.** Provides procedures to limit degradation of water quality by addressing the following: activities subject to an tidegradation review; definition of degradation and impairment and the information needed to determine the method it is decided where each of the three levels of protection from degradation is applied; exemptions to an tidegradation review; determination of insignificant discharges not warranting analysis of their degradation to high quality water; how DEQ will evaluate changes in water quality; waste treatment alternatives analysis to identify least degrading option for significant degradation of high quality water; socioeconomic analysis needed to justify degradation of high quality water; and what is needed to document existing sources of pollution are meeting required controls.

**58-0117-1001, Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater.** Revises name of rule chapter to "Recycled Water Rules"; revises and adds definitions; addresses frequency of total coliform sampling, recycled water uses, pipe identification and signage, distribution pipelines requirements, nutrient removal requirements, reliability and redundancy requirements; provides examples of minor and major modifications of permits; adds language for rapid infiltration systems and subsurface design, construction and discharge requirements; revises industrial recycled water permit requirements and permit content; establishes the mechanism for a reuse permit transfer and for temporary cessation or closure of operations; allows for continuation of expiring reuse permits under certain conditions and sets the duration of a reuse permit for a fixed term of not more than 10 years.

**RULES ADOPTED AS TEMPORARY ONLY:****Idaho State Soil and Water Conservation Commission**

**60-0504-1001, Rules Governing Allocation of Funds to Conservation Districts.**

**Department of Health and Welfare**

**16-0309-1004, Medicaid Basic Plan Benefits.**

**16-0310-1003, Medicaid Enhanced Plan Benefits.**



**Idaho State Tax Commission**  
**35-0101-1001**, Income Tax Administrative Rules.

Please refer to the Idaho Administrative Bulletin, **September 1, 2010, Volume 10-9**, for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

*Issues of the Idaho Administrative Bulletin can be viewed at [www.adm.idaho.gov/adminrules/](http://www.adm.idaho.gov/adminrules/).*

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306  
Phone: 208-332-1820; Fax: 332-1896; Email: [rulescoordinator@adm.idaho.gov](mailto:rulescoordinator@adm.idaho.gov)

# **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*July 1, 1993 -- Present*

## **CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*This online index provides a history of all agency rulemakings from 1993 to the present.  
It tracks all rulemaking activities on each chapter of rules and includes negotiated,  
temporary, proposed, pending and final rules, public hearing notices,  
vacated rulemaking notices, and executive orders of the Governor.*

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# **ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

*Idaho Department of Administration  
Office of the Administrative Rules Coordinator*

*March 29, 2010 -- September 1, 2010*

*(eff. \*PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

*(eff. date)L - Denotes Adoption by Legislative Action*

*(eff. date)T - Temporary Rule Effective Date*

*SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)*

*HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)*

*(This Abridged Index includes rules promulgated before March 29, 2010 that have not been  
adopted as final rules and all rulemakings being promulgated after March 29, 2010 - Sine Die.)*

**IDAPA 02 -- DEPARTMENT OF AGRICULTURE**

*(Rules of the Idaho State Soil and Water Conservation Commission have been moved from IDAPA 02 and re-indexed under IDAPA 60 pursuant to House Bill 576 - Session Law 279 - 2010 Legislative Session)*

**60-0000-1001** Notice of Legislative Action Creating the Idaho State Soil and Water Conservation Commission - House Bill 576, Session Law 279, Bulletin Vol. 10-9 (eff. 7-1-10)

**02.01.04, Rules Governing the Idaho Preferred <sup>TM</sup> Promotion Program**

**02-0104-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7

**02-0104-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**02.02.14, Rules for Weights and Measures**

**02-0214-1001** Proposed Rulemaking, Bulletin Vol. 10-8

**02-0214-1001** Adoption of Pending Rule, Bulletin Vol. 10-10

**02.04.08, Rules Governing Grade A Milk and Milk Products**

**02-0408-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 10-1-10)T

**02.04.09, Rules Governing Methods of Making Sanitation Ratings of Milk Shippers**

**02-0409-1001** Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-8 (eff. 10-1-10)T

**02.04.10, Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers**

**02-0410-1001** Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-8 (eff. 10-1-10)T

**02.04.11, Rules Governing Evaluation of Milk Laboratories**

**02-0411-1001** Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-8 (eff. 10-1-10)T

**02.04.13, Rules Governing Raw Milk**

**02-0413-1001** Proposed Rulemaking, Bulletin Vol. 10-9

**02.04.14, Rules Governing Dairy Waste**

**02-0414-0902** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10

**02.04.19, Rules Governing Domestic Cervidae**

**02-0419-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**02.04.21, Rules Governing the Importation of Animals**

**02-0421-1001** Notice of Temporary Rulemaking, Bulletin Vol. 10-6 (eff. 4-15-10)T

**02-0421-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**02.04.29, Rules Governing Trichomoniasis**

**02-0429-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**02.06.02, Rules Pertaining to the Idaho Commercial Feed Law**

**02-0602-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**02.06.10, Rules Governing the Potato Cyst Nematode (*Globodera pallida*)**

**02-0610-0901** Temporary and Proposed Rule, Bulletin Vol. 09-12 (eff. 10-1-09)T

**02-0610-0901** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

**02-0610-0901** Adoption of Pending Rule, Bulletin Vol. 10-10

**02.06.12, Rules Pertaining to the Idaho Commercial Fertilizer Law****02-0612-1001** Proposed Rulemaking, Bulletin Vol. 10-10**02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho****02-0613-0801** Notice of Intent to Promulgate Rules - Request for Written Comments, Bulletin Vol. 08-9**02-0613-0801** Notice of Intent to Promulgate Rules - Request for Written Comments, Bulletin Vol. 08-10**02-0613-0801** Notice of Intent to Promulgate Rules - Request for Written Comments, Bulletin Vol. 08-11**02.06.16, Crop Residue Disposal Rules****02-0616-1001** Proposed Rulemaking, Bulletin Vol. 10-10**02.06.33, Organic Food Products Rules****02-0633-1001** Proposed Rulemaking, Bulletin Vol. 10-10**02.06.41, Rules Pertaining to the Soil and Plant Amendment Act of 2001****02-0641-1001** Proposed Rulemaking, Bulletin Vol. 10-10**IDAPA 03 -- STATE ATHLETIC COMMISSION****03.01.01, Rules of the State Athletic Commission****03-0101-1001** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-10**IDAPA 04 -- OFFICE OF THE ATTORNEY GENERAL****04.11.01, Idaho Rules of Administrative Procedure of the Attorney General****04-1101-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T**IDAPA 05 -- DEPARTMENT OF JUVENILE CORRECTIONS****05.01.01, Rules for Contract Providers****05-0101-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-5 (eff. 3-29-10)T**05-0101-1001** Adoption of Pending Rule, Bulletin Vol. 10-8 (eff. \*PLR 2011)**IDAPA 06 -- STATE BOARD OF CORRECTION****06.01.01, Rules of the Board of Correction****06-0101-1001** Notice of Proclamation of Rulemaking, Bulletin Vol. 10-10 (eff. 11-5-10)**IDAPA 07 -- DIVISION OF BUILDING SAFETY****07.01.03, Rules of Electrical Licensing and Registration - General****07-0103-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T**07.01.04, Rules Governing Electrical Specialty Licensing****07-0104-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T**07.01.07, Rules Governing Continuing Education Requirements****07-0107-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**07.02.05, Rules Governing Plumbing Safety Licensing****07-0205-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T**07.03.01, Rules of Building Safety****07-0301-1001** Proposed Rulemaking, Bulletin Vol. 10-10**07-0301-1002** Proposed Rulemaking, Bulletin Vol. 10-10**07.03.11, Rules Governing Manufactured/Mobile Home Industry Licensing****07-0311-1001** Proposed Rulemaking, Bulletin Vol. 10-10**07.04.02, Safety Rules for Elevators, Escalators, and Moving Walks****07-0402-1001** Proposed Rulemaking, Bulletin Vol. 10-10**07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems****07-0701-1001** Proposed Rulemaking, Bulletin Vol. 10-10**IDAPA 08 -- STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION****08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools****08-0111-1001** Proposed Rulemaking, Bulletin Vol. 10-10**08.02.02, Rules Governing Uniformity - State Board of Education Rules****08-0202-1001** Proposed Rulemaking, Bulletin Vol. 10-6**08-0202-1002** Proposed Rulemaking, Bulletin Vol. 10-10**08-0202-1003** Proposed Rulemaking, Bulletin Vol. 10-10**08-0202-1004** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 7-1-10)T**08.02.03, Rules Governing Thoroughness - State Board of Education Rules****08-0203-1001** Adoption of Temporary Rule, Bulletin Vol. 10-1 (eff. 11-9-09)T (Expires Sine Die 2011)**08-0203-1001** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5**08-0203-1002** Proposed Rulemaking, Bulletin Vol. 10-10**08-0203-1003** Proposed Rulemaking, Bulletin Vol. 10-10**08-0203-1004** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 7-1-10)T**IDAPA 09 -- DEPARTMENT OF LABOR****09.01.04, Unemployment Insurance Benefit Fraud and Overpayment Rules****09-0104-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T**09.01.06, Rules of the Appeals Bureau****09-0106-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T**09.01.30, Unemployment Insurance Benefits Administrative Rules****09-0130-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T**09.01.35, Unemployment Insurance Tax Administrative Rules****09-0135-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T**IDAPA 10 -- IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS**

***10.01.01, Rules of Procedure***

- 10-0101-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-6  
**10-0101-1001** Proposed Rulemaking, Bulletin Vol. 10-8

***10.01.02, Rules of Professional Responsibility***

- 10-0102-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-6  
**10-0102-1001** Proposed Rulemaking, Bulletin Vol. 10-8

***IDAPA 11 -- IDAHO STATE POLICE******11.03.01, Rules Governing Alcohol Testing, Idaho State Forensic Laboratory***

- 11-0301-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T

***11.05.01, Rules Governing Alcohol Beverage Control***

- 11-0501-0902** Temporary Rulemaking, Bulletin Vol. 09-11 (9-1-09)T  
**11-0501-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

***11.10.01, Rules Governing Idaho Public Safety and Security Information System***

- 11-1001-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***11.11.01, Rules of the Idaho Peace Officer Standards and Training Council (POST)***

- 11-1101-1001** Temporary Rulemaking, Bulletin Vol. 10-3 (eff. 1-12-10)T  
**11-1101-1001** Proposed Rulemaking, Bulletin Vol. 10-10  
**11-1101-1002** Proposed Rulemaking, Bulletin Vol. 10-10

***11.11.02, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers***

- 11-1102-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***11.11.03, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers***

- 11-1103-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***11.11.04, Rules of the Idaho Peace Officer Standards and Training Council for Correctional Officers and Adult Probation and Parole Officers***

- 11-1104-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***11.11.05, Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff***

- 11-1105-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***11.11.06, Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers***

- 11-1106-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***IDAPA 13 -- IDAHO FISH AND GAME COMMISSION AND  
THE IDAHO DEPARTMENT OF FISH AND GAME******13.01.02, Public Safety - Idaho Fish and Game Commission***

- 13-0102-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

***13.01.04, Rules Governing Licensing***

- 13-0104-1001** Proposed Rulemaking, Bulletin Vol. 10-9  
**13-0104-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**13.01.06, Classification and Protection of Wildlife**

**13-0106-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho**

**13-0108-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho**

**13-0109-1001** Proposed Rulemaking, Bulletin Vol. 10-9

**13-0109-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**13.01.10, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife**

**13-0110-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**13.01.16, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals**

**13-0116-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**13-0116-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 8-18-10)T

**13.01.17, Rules Governing the Use of Bait for Taking Big Game Animals**

**13-0117-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

**IDAPA 15 -- OFFICE OF THE GOVERNOR****Executive Orders of the Governor**

Executive Order No. **2010-01** Bulletin Vol. 10-4

Executive Order No. **2010-03** Bulletin Vol. 10-6

Executive Order No. **2010-05** Bulletin Vol. 10-6

Executive Order No. **2010-07** Bulletin Vol. 10-6

Executive Order No. **2010-02** Bulletin Vol. 10-6

Executive Order No. **2010-04** Bulletin Vol. 10-6

Executive Order No. **2010-06** Bulletin Vol. 10-6

Executive Order No. **2010-08** Bulletin Vol. 10-6

**Division of Human Resources and Personnel Commission**

IDAPA 28.01.01, "Rules of the Idaho Personnel Commission" were transferred to the Division of Human Resources and Personnel Commission under the Office of the Governor effective July 1, 1999 and redesignated as IDAPA 15.04.01/

**15.04.01, Rules of the Division of Human Resources and Personnel Commission**

**15-0401-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T

**15-0401-1002** Proposed Rulemaking, Bulletin Vol. 10-10

**IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE****16.02.02, Rules of the Emergency Medical Services (EMS) Physician Commission**

**16-0202-1001** Proposed Rulemaking, Bulletin Vol. 10-7

**16.02.03, Rules Governing Emergency Medical Services**

**16-0203-0901** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-5

**16-0203-0901** Temporary and Proposed Rulemaking, Bulletin Vol. 09-10 (eff. 7-1-09)T

**16-0203-0901** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

**16-0203-1001** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-9

**16-0203-1002** Proposed Rulemaking, Bulletin Vol. 10-9

**16-0203-1003** Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-9

**16.02.06, Rules Governing Quality Assurance for Idaho Clinical Laboratories**

**16-0206-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-5

**16-0206-1001** Proposed Rulemaking, Bulletin (Chapter Repeal) Vol. 10-8

**16-0206-1002\*** Proposed Rulemaking, Bulletin (Chapter Rewrite) Vol. 10-8

*\*Changes chapter name from: "Rules Governing Quality Assurance for Idaho Clinical Laboratories"  
to: "Quality Assurance for Idaho Clinical Laboratories"*

**16.02.08, Vital Statistics Rules**

**16-0208-1001** Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-9

**16.02.11, Immunizations Requirements for Children Attending Licensed Day Care Facilities in Idaho**

**16-0211-1001** Proposed Rulemaking, Bulletin Vol. 10-9

**16.02.13, Rules Governing Certification of Idaho Water Quality Laboratories**

**16-0213-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-5

**16-0213-1001** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-9

**16-0213-1002\*** Proposed Rulemaking (Chapter Rewrite - Fee Rule), Bulletin Vol. 10-9

*\*Changes chapter name from: "Rules Governing Certification of Idaho Water Quality Laboratories"  
to: "State of Idaho Drinking Water Laboratory Certification Program"*

**16.02.15, Immunization Requirements for Idaho School Children**

**16-0215-1001** Proposed Rulemaking, Bulletin Vol. 10-9

**16.03.01, Eligibility for Health Care Assistance for Families and Children**

**16-0301-1001** Proposed Rulemaking, Bulletin Vol. 10-7

**16-0301-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. (4-1-09)T - (12-19-09)T - (1-1-10)T - (9-1-10)T)

**16.03.04, Rules Governing the Food Stamp Program in Idaho**

**16-0304-0902** Temporary Rulemaking, Bulletin Vol. 09-7 (eff. 6-1-09)T (Expires May 31, 2010)

**16-0304-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5 (Expires 5-31-10)

**16-0304-1001** Temporary Rulemaking, Bulletin Vol. 10-7 (eff. 6-1-10)T (Expires May 31, 2011)

**16-0304-1002** Proposed Rulemaking, Bulletin Vol. 10-10

**16-0304-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. (12-19-09)T - (1-1-10)T - (7-1-10)T - (10-1-10)T)

**16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)**

**16-0305-0904** Temporary and Proposed Rulemaking, Bulletin Vol. 09-12 (eff. (1-1-10)T)

**16-0305-0904** Adoption of Pending and Amendment to Temporary Rule, Bulletin Vol. 10-4 (eff. (1-1-10)T)

**16-0305-0904** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

**16-0305-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-6 (eff. 7-1-10)T

**16-0305-1001** Notice of Public Hearing and Extension of Written Comment Period, Bulletin Vol. 10-8

**16-0305-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. (12-19-09)T - (1-1-10)T - (9-1-10)T)

**16-0305-1002** Notice of Public Hearing and Extension of Written Comment Period, Bulletin Vol. 10-10

**16.03.08, Rules Governing Temporary Assistance for Families in Idaho**

**16-0308-1001** Proposed Rulemaking, Bulletin Vol. 10-5

**16.03.09, Medicaid Basic Plan Benefits**

**16-0309-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T

**16-0309-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 9-1-10)T

**16-0309-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T

**16-0309-1004** Temporary Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T (Expires June 30, 2011)

**16.03.10, Medicaid Enhanced Plan Benefits**

**16-0310-0902** Temporary and Proposed Rulemaking, Bulletin Vol. 09-1 (eff. 1-1-09)T

**16-0310-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 09-6

**16-0310-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

**16-0310-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-5 (eff. 1-1-10)T

**16-0310-1001** Notice of Public Hearing and Extension of Written Comment Period, Bulletin Vol. 10-7



- 16-0310-1002** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7
- 16-0310-1002** Proposed Rulemaking, Bulletin Vol. 10-9
- 16-0310-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T
- 16-0309-1004** Temporary Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T (Expires June 30, 2011)

***16.03.13, Consumer-Directed Services***

- 16-0313-1001** Adoption of Temporary Rule, Bulletin Vol. 10-1 (eff. 1-1-10)T (Expires 3-29-10)
- 16-0313-1002** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7
- 16-0313-1002** Proposed Rulemaking, Bulletin Vol. 10-9

***16.03.19, Rules Governing Certified Family Homes***

- 16-0319-1001** Proposed Rulemaking, Bulletin Vol. 10-9

***16.03.21, Developmental Disabilities Agencies (DDA)***

- 16-0321-1001** Proposed Rulemaking (New Chapter), Bulletin Vol. 10-9

***16.03.22, Residential Care or Assisted Living Facilities in Idaho***

- 16-0322-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***16.03.24, The Medically Indigent Program - Request for Medicaid Eligibility Determination***

- 16-0324-1001** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 10-7 (eff. 7-1-10)T

***16.04.11, Developmental Disabilities Agencies (DDA)***

- 16-0411-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7
- 16-0411-1001** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-9

***16.05.04, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding***

- 16-0504-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***16.05.06, Criminal History and Background Checks***

- 16-0506-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-7 (eff. 5-1-10)T - (7-1-10)T
- 16-0506-1002** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-7 (eff. 7-1-10)T

***16.06.01, Rules Governing Family and Children's Services***

- 16-0601-1001** Proposed Rulemaking, Bulletin Vol. 10-9

***16.06.02, Rules Governing Standards for Child Care Licensing***

- 16-0602-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-7 (eff. 7-1-10)T
- 16-0602-1002** Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-7 (eff. 7-1-10)T
- 16-0602-1003** Proposed Rulemaking, Bulletin Vol. 10-9

***16.06.12, Rules Governing the Idaho Child Care Program (ICCP)***

- 16-0612-1001** Temporary Rulemaking, Bulletin Vol.10-4 (eff. 1-1-10)T
- 16-0612-1001** Proposed Rulemaking, Bulletin Vol. 10-5
- 16-0612-1002** Proposed Rulemaking, Bulletin Vol. 10-10

***16.07.37, Children's Mental Health Services***

- 16-0737-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-6 (eff. 5-1-10)T

***16.07.50, Rules and Minimum Standards Governing Non-Hospital, Medically-Monitored Detoxification/Mental Health Diversion Units***

- 16-0750-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (10-1-10)T

***IDAPA 17 -- INDUSTRIAL COMMISSION***

***17.02.03, Administrative Rules of the Industrial Commission Under the Worker's Compensation Law  
- Security for Compensation***

**17-0203-1001** Proposed Rulemaking, Bulletin Vol. 10-10

***17.02.05, Administrative Rules of the Industrial Commission Under Worker's Compensation Law  
- Industrial Commission***

**17-0205-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-7 (eff. 7-1-10)T

***17.02.08, Miscellaneous Provisions***

**17-0208-1001** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-10

**17-0208-1002** Proposed Rulemaking (Chapter Rewrite), Bulletin Vol. 10-10

***17.02.09, Medical Fees***

**17-0209-1001** Proposed Rulemaking (New Chapter), Bulletin Vol. 10-10

***17.02.10,- Administrative Rules of the Industrial Commission Under The Workers' Compensation Law --  
Security For Compensation - Insurance Carriers***

**17-0210-1001** Proposed Rulemaking (New Chapter), Bulletin Vol. 10-10

***17.02.11, Administrative Rules of the Industrial Commission Under The Workers' Compensation Law -  
Security For Compensation - Self-Insured Employers***

**17-0211-1001** Proposed Rulemaking (New Chapter), Bulletin Vol. 10-10

***17.05.01, Rules Under the Crime Victims Compensation Act***

**17-0501-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-7 (eff. 7-1-10)T

***IDAPA 18 -- DEPARTMENT OF INSURANCE***

***18.01.04, Rules Pertaining To Bail Agents***

**18-0104-1001** Proposed Rulemaking (New Chapter), Bulletin Vol. 10-10

***18.01.05, Health Carrier External Review***

**18-0105-0901** Temporary and Proposed Rulemaking, Bulletin Vol. 09-12 (eff. 1-1-10)T

**18-0105-0901** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

***18.01.25, Title Insurance and Title Insurance Agents and Escrow Officers***

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**IDAPA 60 -- IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION**

*(Rules of the Idaho State Soil and Water Conservation Commission have been moved from IDAPA 02 and re-indexed under IDAPA 60. This action is being done pursuant to the legislative intent of House Bill 576 - Session Law 279 - 2010 Legislative Session)*

*(These rules were formerly indexed under the Department of Lands (IDAPA 20) and the Department of Agriculture (IDAPA 02) and were governed by the Soil Conservation Commission)*

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