

IDAHO ADMINISTRATIVE BULLETIN

September 3, 2014 -- Volume 14-9

Idaho Department of Administration
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IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized 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 may 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 - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. 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 identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2014 Bulletin is cited as Volume **14-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the **Cumulative Rulemaking Index**. Link to it on the Administrative Rules homepage at adminrules.idaho.gov.

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 distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. 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 must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. 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 rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so.

The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

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 for or is occasioning 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) if any document is incorporated by reference in the proposed rule, a brief written synopsis of why the incorporation is needed must be included in the notice of proposed rulemaking, along with a link to the electronic version of the incorporated material or information on how it can be obtained.
- e) the text of the proposed rule prepared in legislative format;
- f) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- g) 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;
- h) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- i) the deadline for public (written) comments on the proposed rule.

Any proposed rulemaking that is 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 Legislative Services Office 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 web site or post this information on its own web site, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s web site.

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 adopt the pending rule. Because a proposed rule is not enforceable, it has no effective date, even when published in conjunction with a temporary rule that is of full force and effect. 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 determines that it is necessary that a rule become effective prior to receiving legislative authorization and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows an 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 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.

The statute that regulates rulemaking in Idaho requires that the text of all proposed rulemakings publish in the Bulletin in order for the rulemaking to be valid. This is true for all temporary rules as well. In most cases, the agency wants the temporary rule to also become a final rule and in most of these cases, the temporary rule and the proposed rule text is identical. In this event, both rulemakings may be promulgated concurrently, however, they remain separate rulemaking actions. The rulemaking is published in the Bulletin as a temporary/proposed rule. Combining the rulemaking allows for a single publication of the text in the Bulletin.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. The agency must publish a notice of rescission to effectively rescind the temporary rule. 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 pending 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 sections or their subparts 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 Rulemaking - Adoption of Pending Rule" is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is of full force and effect.

No pending rule adopted by an agency becomes final and effective until it has been submitted to the legislature for review and approval. Where the legislature finds that an agency has violated the legislative intent of the authorizing statute, a concurrent resolution may be adopted to reject the rulemaking in whole or in part. A "Notice of Rulemaking - Final Rule" and the final codified text must be published in the Bulletin for any rule that is partially rejected by concurrent resolution of the legislature. Unless rejected by concurrent resolution, a pending rule that is reviewed by the legislature becomes final and effective at the end of the session in which it is reviewed without any further legislative action. All pending rules that are approved by concurrent resolution become final and effective upon adoption of the concurrent resolution unless otherwise stated. In no event can a pending rule 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: adminrules.idaho.gov

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: adminrules.idaho.gov

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 schematic. 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 that are further subdivided into 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. Each rulemaking that is filed with the Coordinator is assigned a “DOCKET NUMBER.” The docket number is a series of numbers separated by a hyphen “-”, (**38-0501-1401**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

“DOCKET NO. 38-0501-1401”

“**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**).

“**1401**” 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 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as “**1402**”. The docket number in this scenario would be 38-0501-**1402**.

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)

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2014

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
14-1	January 2014	*November 29, 2013	January 1, 2014	January 22, 2014
14-2	February 2014	January 10, 2014	February 5, 2014	February 26, 2014
14-3	March 2014	February 7, 2014	March 5, 2014	March 26, 2014
14-4	April 2014	March 7, 2014	April 2, 2014	April 23, 2014
14-5	May 2014	April 4, 2014	May 7, 2014	May 28, 2014
14-6	June 2014	May 9, 2014	June 4, 2014	June 25, 2014
14-7	July 2014	June 6, 2014	July 2, 2014	July 23, 2014
14-8	August 2014	July 11, 2014	August 6, 2014	August 27, 2014
14-9	September 2014	August 8, 2014	September 3, 2014	September 24, 2014
14-10	October 2014	**August 29, 2014	October 1, 2014	October 22, 2014
14-11	November 2014	October 10, 2014	November 5, 2014	November 26, 2014
14-12	December 2014	November 7, 2014	December 3, 2014	December 24, 2014

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2015

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
15-1	January 2015	*November 28, 2014	January 7, 2015	January 28, 2015
15-2	February 2015	January 9, 2015	February 4, 2015	February 25, 2015
15-3	March 2015	February 6, 2015	March 4, 2015	March 25, 2015
15-4	April 2015	March 6, 2015	April 1, 2015	April 22, 2015
15-5	May 2015	April 3, 2015	May 6, 2015	May 27, 2015
15-6	June 2015	May 8, 2015	June 3, 2015	June 24, 2015
15-7	July 2015	June 5, 2015	July 1, 2015	July 22, 2015
15-8	August 2015	July 10, 2015	August 5, 2015	August 26, 2015
15-9	September 2015	August 7, 2015	September 2, 2015	September 23, 2015
15-10	October 2015	**August 28, 2015	October 7, 2015	October 28, 2015
15-11	November 2015	October 9, 2015	November 4, 2015	November 25, 2015
15-12	December 2015	November 6, 2015	December 2, 2015	December 23, 2015

****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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IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 71-111, Idaho Code.

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

To incorporate by reference the 2015 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014, Idaho Administrative Bulletin, **Vol. 14-7, pages 16 and 17**.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate specifications, tolerances and other technical requirements for weighing and measuring devices. The rule is, however, consistent with national standards of the National Institute of Standards and Technology.

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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Stacie Ybarra, Program Specialist at (208) 332-8691.

DATED this 7th Day of August, 2014.

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1402

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 71-111, Idaho Code.

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

Idaho's current labeling requirements conflict with Environmental Protection Agency (EPA) regulations at 40 CFR § 80.1501 when ethanol blends are offered for sale at greater than 10%. Any blend less than 10% is not required to be labeled under federal regulations, but will continue to be required by state rule. Language is being added to the section related to oxygenated gasoline that will clarify the labeling requirements of 10% or less ethanol blend ranges. This rule change will not impact petroleum retailers that comply with the current rule.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, pages 18 through 20](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate oxygenated blends of fuel under 10%.

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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Stacie Ybarra, Program Specialist at (208) 332-8691.

DATED this 7th day of August, 2014.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
PO Box 790
Boise, ID 83701
Phone: (208) 332-8500
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IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1403 (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 71-111, 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 17, 2014.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amend IDAPA 02.02.14, Section 014. The rule change will remove language requiring proration of device license fees.

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

IDAPA 02.02.14, Section 014 requires that a device license be prorated based on when a device is placed into service. The proposed change is to remove this language. This change will require new businesses or existing customers who add a device during the license period to pay the full license fee when a device is placed into service in lieu of prorating the license fee.

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

There will be no fiscal impact to the General Fund. ISDA anticipates a positive impact of approximately \$500 in annual revenue to the Weights and Measures dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 21](#).

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 proposed rule, contact Stacie Ybarra, Program Specialist at (208) 332-8692.

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 24, 2014.

DATED this 25th day of July, 2014.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone (208) 332-8500
Fax (208) 334-7120

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0204-1403
(Only those Sections being amended are shown.)

014. ANNUAL LICENSE PERIOD.

Annual license applications and fees are due February 1 of each year and all licenses expire on January 31 of the following year. ~~License fees for new devices installed during the annual licensing period shall be prorated based on the remaining licensing cycle.~~ (2-13-04)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.05 - RULES OF THE DEPARTMENT OF AGRICULTURE
GOVERNING MANUFACTURE GRADE MILK

DOCKET NO. 02-0405-1401

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 37-303, 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 17, 2014.

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

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

The rule is being updated to reflect and be consistent with Senate Bill No. 1338, passed during the 2014 Legislature and signed by Governor C. L. "Butch" Otter on April 3, 2014, effective July 1, 2014. The last changes to the rule were adopted in 1994. Since that time, some of the contents of the rule have become outdated and need to be revised or removed. Specifically, documents referenced throughout the rule will be listed under the incorporation by reference section. All mentions of the Babcock tests will be removed since this test is no longer used. Likewise, the Methods of Analysis section will be removed because IDAPA 02.04.09, "Rules Governing Milk and Cream Procurement and Testing," now covers the requirements for the methods of testing milk and cream for sale. The standards of identity of products will be consistent with the federal definitions.

Currently in Idaho Statute, there are no quality standards specified for butter or whey butter. The rule will establish quality standards for coliform and bacteria testing to ensure that butter and whey butter made in Idaho is of high quality.

The format of the rule will be updated to bring it into compliance with current rulemaking formats (adding incorporation by reference, address, office hours, telephone, and fax numbers, and the Idaho public records act). The name of the rule will also be changed to Rules Governing Manufacture Grade Milk to make it consistent with other Department rules.

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

No fee is being imposed or charged through the promulgation of this proposed rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on July 22, 2014. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6 page 18](#).

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 existing rule does not have an incorporation by reference section, however, the following texts are referenced in the existing rule: Standard Methods for the Examination of Dairy Products, Official Methods of Analysis of AOAC International, and the United States Sediment Standards for Milk and Milk Products. The United States Standards for Grades of Butter is incorporated into 37-313, but will now be explicitly listed in the rule text. Lastly, Appendix D "Standards for Water Sources" of the Grade "A" Pasteurized Milk Ordinance is being proposed for incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback at (208) 332-8541 or john.bilderback@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0405-1401
(Only those Sections being amended are shown.)

02.04.05 - RULES ~~OF THE DEPARTMENT OF AGRICULTURE~~
GOVERNING MANUFACTURE GRADE MILK

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 43 and 12, Idaho Code. ~~(4-8-94)~~()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules ~~of the Department of Agriculture~~ Governing Manufacture Grade Milk.” ~~(4-8-94)~~()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712. ()

01. Standard Methods for the Examination of Dairy Products (Standard Methods) (17th Edition, June 1, 2004) published by the American Public Health Association. ()

02. Official Methods of Analysis of AOAC International (OMA), 19th Edition, 2012. ()

03. United States Sediment Standards for Milk and Milk Products (September 1, 1977) (USDA AMS Dairy Division). This document is available online at <http://www.ams.usda.gov/AMSv1.0/>

[getfile?dDocName=STELDEV3004474.](http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004474) ()

04. United States Standards for Grades of Butter (August 31, 1989) (USDA AMS Dairy Division).
This document is available online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004474>. ()

05. Appendix D “Standards for Water Sources” of the Grade “A” Pasteurized Milk Ordinance.
The Grade “A” Pasteurized Milk Ordinance, 2013 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. ()

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

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

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

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

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

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

006. PUBLIC RECORDS ACT COMPLIANCE.

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

~~0057.~~ -- 009. (RESERVED)

00410. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (4-8-94)()

~~01.~~ *Regulatory Agency.* Department of Agriculture is authorized by law to administer these rules. (4-8-94)

201. 3-A Sanitary Standards. The standards for dairy equipment formulated by the 3-A Sanitary Standards ~~Committees representing the International Association of Milk, Food and Environmental Sanitarians, Inc. (3-A SSI). 3-A SSI is comprised of equipment fabricators, Dairy Processors, and regulatory sanitarians, which include state milk regulatory officials, USDA Agricultural Marketing Service Dairy Programs, the US. Public Health Service, and the Dairy Industry Committee. Published by the International Association of Milk, Food and Environmental Sanitarians~~ Food and Drug Administration, academic representatives, and others. (4-8-94)()

~~102.~~ **Acceptable Milk.** Milk that qualifies as to appearance and odor and that is classified No. 1 or No. 2 for sediment content. (4-8-94)

~~203.~~ **Atmosphere Relatively Free From Mold.** No more than ten (10) mold colonies per cubic foot of air as determined in Standard Methods. (4-8-94)

~~064.~~ **~~Milk Grader or Bulk Milk Collector~~ Hauler or Bulk Milk Sampler.** A person licensed by the Department ~~of Agriculture~~ who is qualified and trained for the grading ~~or sampling~~ of raw milk in accordance with the quality standards and procedures of ~~Sections 050 through 149~~ these rules and the Universal Sample. (4-8-94)()

05. Butter. Butter is the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring

~~matter. Butter shall be clean and non-rancid and shall contain not less than eighty percent (80%) of butterfat. ()~~

~~2106. C-I-P or Cleaned-in-Place. The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation. (4-8-94)~~

~~07. Commingled Milk. Milk that has left the Dairy Farm and has been mixed with other individual Producer milk in a Transportation Tank or at a Dairy Plant. ()~~

~~08. Dairy Farm or Farm. A place or premise certified by the Department where one (1) or more milking cows, sheep ~~or~~, goats, or water buffalo are kept, and from which all or a portion of the milk produced thereon is delivered, sold, or offered for sale to a manufacturing Dairy pPlant. (4-8-94)()~~

~~1709. Dairy-Farm Certification. Certification by an iInspector or aApproved fFieldman that a pProducer's herd, milking facility and housing, milking procedure, cooling, milkhouse or milkroom, utensils and equipment and water supply have been found to meet the applicable requirements of Section 150 for the production of milk to be used for manufacturing purposes. (4-8-94)()~~

~~0910. Dairy Plant or-Plant Dairy Processor. Any place, premise, or establishment licensed by the Department where milk or dDairy pProducts are transported, graded, received or handled for processing or manufacturing and/or prepared for distribution. ~~When "plant" is used in connection with the production, transportation, grading, or use of milk, it means any plant that handles or purchases milk for manufacturing purposes; when used in connection with requirements for plants or licensing of plants, it means only those plants that manufacture dairy products.~~ (4-8-94)()~~

~~1611. Dairy Products. Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk (whole or skim), condensed whole milk and condensed skim milk (plain or sweetened), and such other products, for human consumption, as may be otherwise designated. (4-8-94)~~

~~12. Department. The Idaho State Department of Agriculture. ()~~

~~13. Director. The Director of the Idaho State Department of Agriculture or his designee. ()~~

~~154. Excluded Milk. All of a pProducer's milk excluded from the market by the provisions of Section 080. (4-8-94)()~~

~~15. Farm Tank. A tank used to cool, store or cool, and store milk prior to transportation to the processing plant. ()~~

~~0316. Fieldman. A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a ~~processing or manufacturing~~ Dairy pPlant for the purpose of making dDairy fFarm surveys and doing quality control work. (4-8-94)()~~

~~0417. Fieldman, Approved. A fFieldman qualified, trained, and approved by the Department ~~of Agriculture~~ to perform Dairy fFarm inspections and raw milk grading or sampling. (4-8-94)()~~

~~0518. Inspector. A qualified, trained person employed by the Department ~~of Agriculture~~ to perform dDairy fFarm or Dairy pPlant inspections and raw milk grading or sampling. (4-8-94)()~~

~~0219. License. A license issued under this section by the Department of Agriculture. (4-8-94)~~

~~120. Milk. *The term "milk" shall include the following:* (4-8-94)~~

~~a. *Milk is the lacteal secretion practically free from colostrum obtained by the complete milking of one (1) or more healthy cows.* (4-8-94)~~

~~b. *Goat milk is the lacteal secretion practically free from colostrum obtained by the complete milking of one (1) or more healthy goats. Goat milk shall only be used to manufacture dairy products that are legally provided*~~

~~for in 21 CFR or recognized as non-standardized traditional products normally manufactured from goat milk.~~
(4-8-94)

~~e. Sheep milk is the lacteal secretion practically free from colostrum obtained by the complete milking of one (1) or more healthy sheep.~~
(4-8-94)

~~d. The word "milk" used herein includes only milk, sheep and goat milk for manufacturing purposes. The lacteal secretion practically free from colostrum obtained by the complete milking of one (1) or more healthy cows, goats, sheep, or water buffalo for manufacturing purposes.~~
(4-8-94)()

~~121.~~ **Milk for Manufacturing Purposes.** Milk produced from a Department certified Dairy Farm for processing and manufacturing into products for human consumption but not subject to Grade A or comparable requirements.
(4-8-94)()

~~1322.~~ **Probational Milk.** Milk classified No. 3 for sediment content. (4-8-94)

~~0723.~~ **Producer.** The person or persons who exercise control over the production of the milk delivered to a Dairy ~~p~~Plant, ~~and who receives payment for this product. A "new producer" is one who is initiating the shipment of milk from a farm. A "transfer producer" is one whose shipment of milk from a farm is shifted from one (1) plant to another plant. A "producer/processor" is one who manufactures dairy products on the dairy farm entirely from his own milk, or from his own milk combined with milk from one or more other producers.~~
(4-8-94)()

~~124.~~ **Rejected Milk.** Milk rejected from the market according to the provisions of Section 070. (4-8-94)

~~235.~~ **Sanitizing Treatment.** Application of any effective method or sanitizing agent to clean surface for the destruction of pathogens and other organisms as far as is practicable. The sanitizing agents used shall comply with the ~~Federal Food, Drug, and Cosmetic Act~~ Standard Methods.
(4-8-94)()

~~18.~~ **Official Methods.** ~~Official Methods of Analysis of the Association of Official Agricultural Chemists, a publication of the Association of Official Analytical Chemists.~~
(4-8-94)

~~19.~~ **Standard Methods.** ~~Standard Methods for the Examination of Dairy Products, a publication of the American Public Health Association.~~
(4-8-94)

~~26.~~ **Transportation Tank.** A tank used to transport milk or supply milk from a Dairy Farm to a Dairy Plant.
()

~~27.~~ **Universal Sample.** A single milk sample taken for the purpose of chemical, biochemical, or bacterial analyses typically used for regulatory purposes.
()

~~28.~~ **Whey Butter.** The food product made by gathering the fat of fresh or ripened whey cream separated from cheese whey formed into a mass, with or without added cream obtained from milk, which also contains a small portion of other whey or milk constituents, with or without the addition of salt or a harmless coloring matter. Whey Butter shall be clean and non-rancid and shall contain not less than eighty percent (80%) butter fat. Whey Butter shall be made from pasteurized Whey Cream or cream.
()

~~29.~~ **Whey Cream.** The milk fat which is separated from whey.
()

~~005-009.~~ **(RESERVED)**

~~0101.~~ **RAW MILK OR CREAM.**

All raw milk or cream for manufacturing purposes from all sources shall be based on the following quality specifications.
(7-1-93)

01. Raw Milk. The appearance and odor of acceptable raw milk shall be normal, fresh, and sweet and free from objectionable feed and other off odors that would adversely affect the finished Dairy ~~p~~Product.
(7-1-93)()

- 02. Milk or Cream.** Milk or cream is unacceptable which: (7-1-93)
- a.** Is other than the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, ~~or~~ goats, sheep, or water buffalo properly kept and fed; (7-1-93)()
 - b.** Contains added water; (7-1-93)
 - c.** Contains colostrum, is ropy, bloody or gives any indication of having come from diseased or injured udders; (7-1-93)
 - d.** Contains filth, is contaminated with flies, earwigs or other insects, dirt, oil, economic poisons, pesticides or other foreign matter which renders it unfit for human consumption; (7-1-93)
 - e.** Tests positive for antibiotics or inhibitors as tested by the accepted methods of the latest edition of Standard Methods for the Examination of Dairy Products or by tests approved by the Department of Agriculture; (7-1-93)()
 - f.** Has more than seventeen one hundredths of one percent (.17%) acid calculated as lactic and does not meet the criteria in Subsection 0101.01; (7-1-93)()
 - g.** In the case of cream, is rancid, putrid, or actively foaming; (7-1-93)
 - h.** In the case of cream, contains more than eight tenths of one percent (.8%) acid calculated as lactic; (7-1-93)
 - i.** Is more than three (3) days or seventy-two (72) hours old when picked up at the Dairy ~~F~~ Farm; (7-1-93)()
 - j.** Does not meet the quality standards as set forth in these rules. (7-1-93)

0142. -- 049. (RESERVED)

050. QUALITY REQUIREMENTS FOR MILK FOR MANUFACTURING PURPOSES.

01. Basis. The quality classification of raw milk for manufacturing purposes from each ~~p~~ Producer shall be based on an organoleptic examination for appearance and odor, a drug residue test and quality control tests for sediment content, bacterial estimate and somatic cell count. (4-8-94)()

a. At least once each month the Bulk Milk ~~h~~ Haulers shall bring in not less than a ~~four (4)~~ two (2) ounce sample of mixed milk ~~for the two tenths (.2) inch diameter or a pint sample of mixed milk for the four tenths (.4) diameter,~~ from a ~~p~~ Producer's bulk milk ~~F~~ Farm ~~T~~ Tank. The sample shall be taken in accordance with recommended procedures outlined in the latest edition of Standard Methods for the Examination of Dairy Products and Section 37-413, Idaho Code. (4-8-94)()

02. Appearance and Odor. The appearance of acceptable raw milk shall be normal and free of excessive coarse sediment when examined visually or by an acceptable test procedure. The milk shall not show any abnormal condition (including but not limited to curdles, ropy, bloody or mastitic condition), as indicated by sight or other test procedures. The odor shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished Dairy ~~p~~ Product. (4-8-94)()

03. Sediment Content Classification. Milk shall be classified for sediment content, regardless of the results of the appearance and odor examination described in Subsection 050.02. The USDA Sediment Standard is as follows. (4-8-94)

- a.** No. 1 (acceptable) - not to exceed five tenths (.5) milligram ~~,~~ or equivalent. (4-8-94)()

- b. No. 2 (acceptable) - not to exceed one and five tenths (1.5) ~~milligram~~ or equivalent. ~~(4-8-94)~~()
- c. No. 3 (probational, not over ten (10) days) - not to exceed two and five tenths (2.5) ~~milligram~~ or equivalent. ~~(4-8-94)~~()
- d. No. 4 (reject) - over two and five tenths (2.5) ~~milligram~~ or equivalent. ~~(4-8-94)~~()

04. Method of Testing. Methods for determining the sediment content of the milk of individual producers shall be those described in the ~~latest edition of Standard Methods for Examination of Dairy Products~~. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products ~~at <http://www.gpo.gov/fdsys/pkg/CFR-2001-title7-vol1/content-detail.html>, as amended as incorporated by reference.~~ ~~(4-8-94)~~()

05. Frequency of Test. At least once each month, at irregular intervals, the milk from each ~~p~~Producer shall be tested as follows: ~~(4-8-94)~~()

- a. Milk in Cans. One (1) or more cans of milk selected at random from each ~~p~~Producer. ~~(4-8-94)~~()
- b. Milk in Farm ~~Bulk~~ Tanks. A sample shall be taken from each ~~f~~Farm ~~bulk~~ ~~t~~Tank. ~~(4-8-94)~~()

06. Acceptance or Rejection of Milk. If the sediment disc is classified as No. 1, No. 2, or No. 3, the ~~p~~Producer's milk may be accepted. If the sediment disc is classified No. 4 the milk shall be rejected: ~~p~~rovided, that if the shipment of milk is commingled with other milk in a ~~t~~ransport ~~t~~ank the next shipment shall not be accepted until its quality has been determined at the ~~Dairy~~ ~~f~~Farm before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, if in cans, all cans shall be tested. Producers in No. 3 or No. 4 (milk cans or bulk) shall be notified immediately and shall be furnished applicable sediment discs and the next shipment shall be tested. ~~(4-8-94)~~()

07. Retests. On test of the next shipment (if in cans, all cans shall be tested) milk classified as No. 1, No. 2, or No. 3, may be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made at the ~~Dairy~~ ~~f~~Farm before pickup. The ~~p~~roducers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested. This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not to exceed ten (10) calendar days. If at the end of this time all of the ~~p~~roducer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2) ~~the milk~~ shall be excluded from market. ~~(4-8-94)~~()

051. -- 059. (RESERVED)

060. BACTERIAL ESTIMATE CLASSIFICATION.

A laboratory examination to determine the bacterial estimate shall be made on each ~~p~~roducer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory approved by the Department ~~of Agriculture~~. ~~(4-8-94)~~()

01. Methods of Testing. Milk shall be tested for bacterial estimate by using one (1) of the following methods or any other method approved by Standard Methods ~~for the Examination of Dairy Products~~ or a test approved by the Department: ~~(4-8-94)~~()

- a. ~~BactoScan FC~~. ()
- ~~b~~. Direct microscopic clump count. (4-8-94)
- ~~b~~c. Standard plate count. (4-8-94)
- ~~e~~d. Plate loop count. (4-8-94)

- ~~d.~~ ~~Pectin gel plate count.~~ (4-8-94)
- e. Petrifilm aerobic count. (4-8-94)
- f. Spiral plate count. (4-8-94)

02. Bacterial Estimate Procedures. Whenever the bacterial estimate indicates the presence of more than two hundred thousand (200,000) bacteria per milliliter, the following procedures shall be applied: (4-8-94)()

- a. The ~~p~~Producer shall be notified with a warning of the excessive bacterial estimate. (4-8-94)()
- b. Whenever two (2) of the last four (4) consecutive bacterial estimates exceed two hundred thousand (200,000) per milliliter, the ~~appropriate regulatory authority~~ Department shall be notified and a written warning notice given to the ~~p~~Producer. The notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed two hundred thousand (200,000) per milliliter. (4-8-94)()

c. An additional sample shall be taken after a lapse of three (3) days but within twenty one (21) days of the notice required in Subsection 060.02.b. If this sample also exceeds two hundred thousand (200,000) per milliliter, subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the ~~appropriate State regulatory agency~~ Department when an additional sample of herd milk is tested and found satisfactory. The ~~p~~Producer shall be assigned a full reinstatement status when three out of four consecutive bacterial estimate test do not exceed two hundred thousand (200,000) per milliliter. (4-8-94)()

061. -- 069. (RESERVED)

070. REJECTED MILK.

A plant shall reject specific milk from a producer if the milk fails to meet the requirements for appearance and odor, if it is classified No. 4 for sediment content, or if it tests positive for drug residue. All reject milk shall be identified with a reject tag and/or colored with harmless food coloring. (4-8-94)

071. -- 079. (RESERVED)

080. EXCLUDED MILK.

A Dairy ~~p~~Plant shall not accept milk from a ~~p~~Producer if: (4-8-94)()

01. Probational Sediment Content. The milk has been in a probational (No. 3) sediment content classification for more than ten (10) calendar days. (4-8-94)

02. Exceeding Maximum Bacteria. Three of the last five (5) milk samples have exceeded the maximum bacteria estimate of two hundred thousand (200,000) per milliliter. (4-8-94)()

03. Insanitary Conditions. If the milk is produced ~~in under insanitary~~ clean conditions such as, but not limited to, unclean milk contact surfaces, unclean conditions in the parlor or milk room, poor milking procedures, or poor animal housing conditions. (4-8-94)()

04. Maximum Somatic Cell Count. Three (3) of the last five (5) milk samples have exceeded the maximum somatic cell count level of seven hundred fifty thousand (750,000) per milliliter or one million (1,000,000) per milliliter for goat or sheep milk. (4-8-94)()

05. Positive Drug Test. The ~~p~~Producer's milk shipments to either the Grade A or the manufacturing grade milk market currently are not permitted due to a positive drug residue test. (4-8-94)()

~~**06. Delinquent Review.** The producer is delinquent in completing a review of the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian following an occurrence of shipping milk testing positive for drug residue.~~ (4-8-94)

~~081. -- 089.~~ (RESERVED)

~~090. QUALITY TESTING OF MILK FROM PRODUCERS.~~

~~01. New Producers. An examination and tests shall be made on the first shipment of milk from a new producer or from a producer resuming shipment after a period of non-shipment. The milk shall meet the requirements for; "Acceptable milk," Somatic cell count, Drug residue level, and Bacteria estimate. (4-8-94)~~

~~a. Thereafter, each milk shipment shall meet the requirements of Section 050, and shall be tested in accordance with the provisions of Sections 060, 102, and 103. (4-8-94)~~

~~02. Transfer Producers. An examination and test shall be made by the new buyer on the first shipment of milk from a transfer producer. The milk shall meet the requirements for; "Acceptable milk," Somatic cell count, Drug residue level and Bacteria estimate. (4-8-94)~~

~~a. Thereafter, each milk shipment shall meet the requirements of Section 050, and shall be tested in accordance with the provisions of Sections 060, 102, and 103. (4-8-94)~~

~~b. In addition, the new buyer shall determine from the producer's records that: (4-8-94)~~

~~i. The milk is currently classified "acceptable" for bacteria and sediment; (4-8-94)~~

~~ii. Three (3) of the last five (5) consecutive milk samples do not exceed the maximum somatic cell count level requirements; (4-8-94)~~

~~iii. The last shipment of milk received from the producer by the former plant did not test positive for drug residue; (4-8-94)~~

~~iv. Milk shipments currently are not excluded from the market due to a positive drug residue test; and (4-8-94)~~

~~v. Meets farm certification requirements. (4-8-94)~~

~~03. Delivery. When a producer discontinues milk delivery at one (1) plant and begins delivery at another plant for any reason, the new buyer shall not accept the first milk delivery until he has requested from the previous buyer a copy of the record of: (4-8-94)~~

~~a. The producer's milk quality tests covering the preceding ninety (90) days; (4-8-94)~~

~~b. The producer's drug residue test results for the preceding twelve (12) month period; and (4-8-94)~~

~~c. A statement of the farm certification status and date of certification. (4-8-94)~~

~~04. Status of Quality Records. The previous buyer shall furnish the new buyer with such information within twenty-four (24) hours after receipt of the request. A new buyer may accept a transfer producer's milk after making the request for records, but before receiving them, if he first confirms the producer's records verbally from the previous buyer. If verbal communication is used to ascertain the status of quality records, the new buyer shall send to the previous buyer, as soon as possible, a written confirmation of the conversation. (4-8-94)~~

~~05. Reporting Failure to Provide Quality Records. If the new buyer fails to receive the quality records from the previous buyer, he shall report this fact to the State regulatory agency. The new buyer may then, alternatively, obtain from the producer a copy of the test results for sediment content, bacterial estimate, and somatic cell count for the preceding ninety (90) day period and a copy of the drug residue test results for the preceding twelve (12) month period. (4-8-94)~~

~~091. -- 099.~~ (RESERVED)

100. RECORDS OF TESTS.

Accurate records of the results of the milk quality and drug residue tests for each ~~p~~Producer shall be kept on file for a period of not less than twelve (12) months. The records shall be available for examination by the ~~regulatory agency~~ Department. (4-8-94)()

101. FIELD SERVICE.

A representative of the Dairy ~~p~~Plant shall arrange to promptly visit the Dairy ~~f~~Farm of each ~~p~~Producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, or does not meet the requirements for ~~a~~Acceptable ~~m~~Milk. The purpose of the visit shall be to inspect the milking equipment and facilities and to offer assistance to improve the quality of the ~~p~~Producer's milk and eliminate any potential causes of drug residues. A representative of the Dairy ~~p~~Plant should routinely visit each ~~p~~Producer as often as necessary to assist and encourage the production of high quality milk. (4-8-94)()

102. SOMATIC CELL COUNT.

01. Level of Somatic Cells. A laboratory examination to determine the level of somatic cells shall be made on each producer's milk at least four (4) times in each six (6) month period at irregular intervals. Samples shall be analyzed at a laboratory and by a method approved by the ~~state regulatory agency~~ Department. (4-8-94)()

02. Procedures. Whenever the confirmatory somatic cell count indicates the presence of more than seven hundred fifty thousand (750,000) somatic cells per ~~milliliter~~, (one million (1,000,000) per ~~milliliter~~ for goat and sheep) the following procedures shall be applied: (4-8-94)()

a. The producer shall be notified with a warning of the excessive somatic cell count. (4-8-94)

b. Whenever two (2) of the last four (4) consecutive somatic cell counts exceed seven hundred fifty thousand (750,000) per ~~milliliter~~, (one million (1,000,000) per ~~milliliter~~ for goat and sheep) the ~~appropriate regulatory authority~~ Department shall be notified and a written warning notice given to the ~~p~~Producer. The notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed seven hundred fifty thousand (750,000) per ~~milliliter~~, (one million (1,000,000) per ~~milliliter~~ for goat and sheep). (4-8-94)()

c. An additional sample shall be taken after a lapse of three (3) days but within twenty-one (21) days of the notice required in Subsection 102.02.b. ~~of this section~~. If this sample also exceeds seven hundred fifty thousand (750,000) per ~~milliliter~~, (one million (1,000,000) per ~~milliliter~~ for goat and sheep) subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the ~~appropriate State regulatory agency~~ Department when an additional sample of herd milk is tested and found satisfactory. The ~~p~~Producer shall be assigned a full reinstatement status when three (3) out of four (4) consecutive somatic cell count tests do not exceed seven hundred fifty thousand (750,000) per ~~milliliter~~, (one million (1,000,000) per ~~milliliter~~ for goat and sheep). (4-8-94)()

103. DRUG RESIDUE LEVEL.

01. Industry's Dairy Plant's Sampling and Testing Responsibilities. All milk shipped for processing or intended to be processed on the Dairy ~~f~~Farm where it was produced shall be sampled and tested, prior to processing, for beta lactam drug residue or other drugs as determined by the Department. Collection, handling and testing of samples shall be done according to procedures established by the ~~appropriate State regulatory agency~~ Department. (4-8-94)()

a. When so specified by the US. Food and Drug Administration (FDA), all milk shipped for processing, or intended to be processed on the Dairy ~~f~~Farm where it was produced, shall be sampled and tested, prior to processing, for other drug residues under a random drug sampling program. ~~The~~ random drug sampling program shall include at least four (4) samples collected in at least four (4) separate months during any six (6) month period may be conducted at a frequency determined by the Department. (4-8-94)()

b. When the Commissioner of the FDA determines that a potential problem exists with an animal drug residue or other contaminant in the milk supply, a sampling and testing program shall be conducted, as determined by

the FDA. ~~The testing shall continue determines with reasonable assurance that the potential problem has been remedied.~~ (4-8-94)()

c. ~~The Dairy Industry Plants~~ shall analyze samples for beta lactams and other drug residues by methods evaluated by ~~the Association of Official Analytical Chemists (AOAC) OMA~~ and accepted by the FDA as effective in determining compliance with established "safe levels" or tolerances. "Safe levels" and tolerances for particular drugs are established and amended by the FDA. ~~The industry may employ on a temporary basis other test methods evaluated by the Virginia Polytechnic Institute and State University, or by other institutions using equivalent evaluation procedures, and determined to demonstrate accurate compliance results. These test methods may be used until they are evaluated by the AOAC and accepted or rejected by the FDA.~~ (4-8-94)()

d. Individual ~~p~~Producer sampling. (4-8-94)()

i. Bulk Milk. A milk sample for beta lactam drug residue testing shall be taken at each farm and shall include milk from each ~~Dairy f~~ Farm ~~bulk f~~ Tank. (4-8-94)()

ii. Can Milk. A milk sample for beta lactam drug residue testing shall be performed separately at the receiving ~~Dairy p~~ Plant for each can milk ~~p~~ Producer included in a delivery, and shall be representative of all milk received from the ~~p~~ Producer. (4-8-94)()

iii. ~~Producer/processor Dairy Plant. For those Producers who also have a licensed Dairy Plant. A~~ milk sample for beta lactam drug residue testing shall be performed ~~separately according to Subsections 103.01.d.i. and 103.01.d.ii. of this section for milk produced or received by a producer/processor~~ on each batch of milk to be processed. (4-8-94)()

e. Load sampling and testing. (4-8-94)

i. Bulk milk. A load sample shall be taken from the ~~bulk milk pickup tanker~~ Transport Tank after its arrival at the ~~Dairy p~~ Plant and prior to further commingling. (4-8-94)

ii. Can milk. A load sample representing all of the milk received on a shipment shall be formed at the plant, using a sampling procedure that includes milk from every can on the vehicle. (4-8-94)

iii. ~~Producer/processor Dairy Plant.~~ A load sample shall be ~~formed~~ tested at the ~~Dairy p~~ Plant using a sampling procedure that includes all milk produced and received. (4-8-94)()

f. Sample and record retention. A load sample that tests positive for drug residue shall be retained according to guidelines established by the ~~appropriate State regulatory agency~~ Department. The records of all sample test results shall be retained for a period of not less than twelve (12) months. (4-8-94)()

g. ~~Industry~~ Dairy Plant follow-up. (4-8-94)()

i. When a load sample or individual Producer sample tests positive for drug residue, ~~industry Dairy Plant~~ personnel shall notify the ~~appropriate State regulatory agency~~ Department immediately, ~~as directed by the Department of Agriculture~~, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines. (4-8-94)()

ii. Each individual ~~p~~ Producer sample represented in the positive-testing load sample shall be singly individually tested as directed by the ~~appropriate State regulatory agency~~ Department to determine the ~~p~~ Producer of the milk sample testing positive for drug residue. Identification of the ~~p~~ Producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the ~~appropriate agency, according to State policy~~ Department. (4-8-94)()

iii. Milk shipment from the ~~p~~ Producer identified as the source of milk testing positive for drug residue

shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue. (4-8-94)(____)

02. ~~Regulatory Agency's~~ Department's Monitoring and Surveillance Responsibilities. The Department of Agriculture shall monitor the ~~milk industry Dairy Plant's~~ drug residue program by conducting unannounced on-site inspections to observe testing and sampling procedures and to collect samples for comparison drug residue testing. In addition, the ~~regulatory agency~~ Department shall review industry records for compliance with ~~State policy~~ these rules. The review shall seek to determine that: (4-8-94)(____)

a. Each ~~p~~PProducer is included in a routine, effective drug residue milk monitoring program utilizing AOAC-evaluated and FDA-approved methods to test samples for the presence of drug residue; (4-8-94)(____)

b. The ~~regulatory agency~~ Department receives prompt notification from industry personnel of each occurrence of a sample testing positive for drug residue, and of the identity of each ~~p~~PProducer identified as a source of milk testing positive for drug residue; (4-8-94)(____)

c. The ~~regulatory agency~~ Department receives prompt notification from industry personnel of the intended and final disposition of milk testing positive for drug residue, and that disposal of the load is conducted in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines; and (4-8-94)(____)

d. Milk shipment from a ~~p~~PProducer identified as a source of milk testing positive for drug residue completely and immediately ceases until a milk sample taken from the dairy herd does not test positive for drug residue. (4-8-94)(____)

03. Enforcement. ~~A penalty sanctioned by the Department of Agriculture shall be imposed on the producer for each occurrence of shipping milk testing positive for drug residue.~~ (4-8-94)

~~**a.** The producer shall review the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian within thirty (30) days after each occurrence of shipping milk testing positive for drug residue. A certificate confirming that the "Quality Assurance Program" has been reviewed shall be signed by the responsible producer and a licensed veterinarian. The Department of Agriculture shall receive a copy of the signed "Quality Assurance Program" certificate.~~ (4-8-94)

~~**b.** If a ~~p~~PProducer ships milk testing positive for drug residue three (3) times within a twelve (12) month period, the Department of Agriculture shall may initiate procedures to suspend the ~~p~~PProducer's milk shipping privileges.~~ (4-8-94)(____)

104. RADIONUCLIDES.

Composite milk samples from selected areas within in the state of Idaho should be tested for biologically significant radionuclides at a frequency which the ~~regulatory agency~~ FDA determines to be adequate to protect the consumer. (4-8-94)(____)

105. PESTICIDES AND HERBICIDES.

Composite milk samples should be tested for pesticides and herbicides at a frequency which the ~~regulatory agency~~ FDA determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits. (4-8-94)(____)

106. ADDED WATER.

Milk samples from each ~~p~~PProducer should be tested for added water at a frequency which the ~~regulatory agency~~ Department determines is adequate to prevent the addition of water to the milk. (4-8-94)(____)

107. -- 149. (RESERVED)

150. FARM REQUIREMENTS OF MILK FOR MANUFACTURING.

01. Health of Herd. (4-8-94)

a. General Health. All animals in the herd shall be maintained in a healthy condition, and shall be properly fed and kept. (4-8-94)

b. Tuberculin Test. The cows and water buffalo shall be located in a Modified Accredited Area, an Accredited Free State, or an Accredited Free Herd as determined by the US. Department of Agriculture (USDA). The goats shall be located in States meeting the current USDA Uniform Methods and Rules and for Bovine Tuberculosis Eradication or an Accredited Free Goat Herd. If the animals are not located in such areas, they shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting those same requirements. (~~4-8-94~~)()

c. Brucellosis Test. The cows shall be located in States meeting Class B status, or Certified-Free Herds, or shall be involved in a milk ring test program or state of Idaho blood testing program ~~under the current USDA Brucellosis Eradication Uniform Methods and Rules~~. All additions to the herd shall be from an area or from herds meeting these same requirements. (~~4-8-94~~)()

d. Abnormal Milk. Milk from ~~cows~~ animals known to be infected with mastitis or milk containing residues of antibiotics or others drugs, or milk containing pesticides or other chemical residues in excess of the established limits shall not be sold or offered for sale for human ~~food~~ consumption. The milk shall be disposed of ~~as the regulatory agency~~ in a method approved by the Department ~~may direct~~. (~~4-8-94~~)()

02. Milking and Facility Housing. (4-8-94)

a. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean, the manure removed daily and stored to prevent access of ~~cows~~ animals to accumulation thereof; and no swine or fowl shall be permitted in any part of the milking area. (~~4-8-94~~)()

b. If milk is exposed during straining or transferring in the milking areas it shall be protected from falling particles from areas above milk facility. (4-8-94)

c. The yard or loafing area shall be of ample size to prevent overcrowding, shall be drained to prevent forming of standing water pools, insofar as practicable, and shall be kept clean. (4-8-94)

03. Milking Procedure. (4-8-94)

a. The udders and flanks of all milking ~~cows~~ animals shall be kept clean. The udders and teats shall be washed or wiped immediately before milking with a clean, damp cloth or paper towel moistened with a sanitizing solution and wiped dry, or by any other sanitary method. (~~4-8-94~~)()

b. The milker's outer clothing shall be clean and his hands clean and dry. No person with an infected cut or open sores on their hands or arms shall milk ~~cows~~ animals, or handle milk or milk containers, utensils or equipment. (~~4-8-94~~)()

c. Cows/Animals which secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply as required in Subsection 150.01.d. (~~4-8-94~~)()

d. Milk stools, surcingles and antikickers shall be kept clean and properly stored. Dusty operations should not be conducted immediately before or during milking. Strong flavored feeds should only be fed after milking. (4-8-94)

04. Cooling. (4-8-94)

a. Milk in cans shall be cooled immediately after milking to forty-five (45) degrees Fahrenheit or lower unless delivered to the Dairy ~~Plant~~ within two (2) hours after milking. The devices such as cooler, tank, or refrigerated unit to cool milk can or canned milk shall be kept clean. (~~4-8-94~~)()

b. Milk in ~~Dairy~~ ~~Farm~~ ~~bulk~~ ~~Farm~~ ~~Tanks~~ shall be cooled to forty (40) degrees ~~Fahrenheit~~ or lower within two (2) hours after ~~the first~~ milking and maintained at forty-five (45) degrees ~~Fahrenheit~~ or lower until transferred to the ~~T~~ransport ~~T~~ank. (4-8-94)()

05. Milkhouse or Milkroom. (4-8-94)

a. A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and cooling milk and for washing, handling, and storing the utensils and equipment. Other products shall not be handled in the milkroom which would be likely to contaminate milk, or otherwise create a public health hazard. (4-8-94)

b. It shall be equipped with wash and rinse vat, utensil rack, milk cooling facilities and have an adequate supply of hot water available for cleaning milking equipment. If a part of the barn or other building, it shall be partitioned, screened, and sealed to prevent the entrance of dust, flies, or other contamination. A milking parlor used strictly as a milking facility in combination with a milkhouse or milkroom, when properly equipped, arranged and maintained, need not be partitioned. Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin. The floor of the building shall be of concrete or other impervious material and graded to provide proper drainage. The walls and ceilings shall be constructed of smooth easily cleaned material. All outside doors shall open outward and be self-closing, unless they are provided with tight-fitting screen doors that open outward or unless other effective means are provided to prevent the entrance of flies. (4-8-94)

c. If a ~~Dairy~~ ~~Farm~~ ~~bulk~~ ~~Farm~~ ~~Tank~~ is used, it shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator. (4-8-94)()

d. A small platform or slab constructed of concrete or other impervious material shall be provided outside the milkhouse, properly centered under a suitable port opening in the wall for milkhouse connections. The opening shall be fitted with a tight, self-closing door. The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at point of loading. (4-8-94)

e. The milkhouse or milkroom shall be kept clean and free of trash. Animals and fowl shall not be allowed access to the milkhouse or milkroom at anytime. (4-8-94)

06. Farm Chemicals and Animal Drugs. (4-8-94)

a. Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be properly labeled and used in accordance with label instructions, and shall be stored in a manner which will prevent accidental contact with milk and milk contact surfaces. (4-8-94)

b. Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered to such animals. (4-8-94)

c. When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals. (4-8-94)

d. Herbicides, fertilizers, pesticides, and insecticides that are not approved for use in dairy operations shall not be stored in the milkhouse, milkroom, or milking area. (4-8-94)

07. Utensils and Equipment. (4-8-94)

a. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any ~~in~~sanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use with at least fifty (50) ~~parts-per~~ million- chlorine solution or its equivalent. New or

replacement can lids shall be umbrella type. All new utensils and equipment shall comply with applicable 3-A Sanitary Standards. (4-8-94)()

b. Dairy Farm ~~bulk Farm~~ Tanks shall meet 3-A Sanitary Standards for construction at the time of installation and shall be installed in accordance with regulations of the ~~regulatory agency~~ Department. (4-8-94)()

c. Single service articles shall be properly stored and shall not be reused. (4-8-94)

08. Water Supply. The ~~d~~Dairy ~~f~~Farm water supply shall ~~be properly located, protected, and operated, and shall be easily accessible, ample, and of safe, sanitary quality for the cleaning of dairy utensils and equipment. The water supply shall come from source which is approved by the Department of Agriculture; or from a spring, dug well, driven well, bored well, or drilled well, the water from which complies with the standards of the Department of Agriculture~~ meet the requirements in Appendix D of the Pasteurized Milk Ordinance as incorporated herein by reference. A source that does not conform with the construction requirements of ~~the Department of Agriculture~~ Appendix D, but is tested annually by an approved laboratory and found to be safe and of sanitary quality shall be satisfactory: ~~P~~provided, ~~That after adoption of these rules,~~ any new sources of water supply or any farm water supply requiring repairs or reconstruction or any source from which tested samples have been found unsatisfactory shall meet the construction requirements of the Department ~~of Agriculture~~. (4-8-94)()

09. Sewage Disposal. House, milkhouse or milkroom and toilet wastes shall be disposed of in a manner that will not pollute the soil surface, contaminate any water supply, or be exposed to insects. (4-8-94)

10. Qualifications for Dairy Farm Certification. Dairy Farm ~~e~~Certification requires satisfactory compliance with the requirements in Section 150. (4-8-94)()

151. -- 159. (RESERVED)

160. DAIRY FARM CERTIFICATION.

No milk for manufacturing purposes produced on an uncertified Dairy ~~f~~Farm shall be bought or sold for human consumption. (4-8-94)

01. Initial Inspection. Certified Dairy ~~f~~Farms shall be inspected at least annually after initial certification to determine eligibility for recertification. The inspection ~~procedure~~ criteria for recertification shall be the same as that for initial certification. (4-8-94)()

02. Inspection. Each ~~f~~Farm shall be inspected by an ~~i~~Inspector or ~~a~~Approved ~~f~~Fieldman. When evidence indicates that it is advisable to do so, the Department ~~of Agriculture~~ may require an examination of the herd by a licensed veterinarian. If the Dairy ~~f~~Farm meets the applicable requirements for Dairy Farm ~~e~~Certification described in Section 150, as indicated by the Farm Certification Report Form, the Dairy ~~f~~Farm shall be certified as described in Subsection 160.03. If the Dairy ~~f~~Farm does not meet the requirements for certification, ~~#~~ the Dairy Farm shall be reinspected within thirty (30) days after the initial inspection. If the Dairy ~~f~~Farm then meets the requirements for certification, ~~#~~ the Dairy Farm shall be certified. If the Dairy ~~f~~Farm does not meet the requirements for certification, ~~#~~ the Dairy Farm shall not be certified, and the ~~p~~Producer's authorization to sell milk for human ~~food consumption~~ from that Dairy ~~f~~Farm shall be withheld by the Department ~~of Agriculture~~ until such time as the Dairy ~~f~~Farm qualifies for certification. Repeat violations on any item may cause a Dairy ~~f~~Farm to lose certification. Provided that, if the ~~i~~Inspector determines during any of these inspections that corrections on the Dairy ~~f~~Farm will require some capital investment, a reasonable extension of the prescribed time limits may be granted by the Department ~~of Agriculture~~. (4-8-94)()

03. Certification. An ~~i~~Inspector or ~~a~~Approved ~~f~~Fieldman shall certify Dairy ~~f~~Farms that meet the requirements of Section 150, as applicable, based upon the inspection ~~procedure~~ criteria described in Subsection 160.02. The scoring criteria ~~established on USDA Form DA 181 (11/90) as amended,~~ approved by the Department shall be utilized in determining compliance with the provisions of Section 150. Dairy Farm ~~e~~Certification shall authorize the sale from that Dairy ~~f~~Farm of milk for manufacturing purposes that meets the quality standards. (4-8-94)()

04. **Probationary Period.** If at any time an ~~i~~Inspector or ~~a~~Approved ~~f~~Fieldman determines that a certified ~~Dairy f~~Farm does not meet the requirements for certification, the Department ~~of Agriculture~~ may allow a reasonable probationary period for the ~~p~~Producer to bring the ~~Dairy f~~Farm within the requirements for certification. If at the end of this time the ~~Dairy f~~Farm does not meet the requirements for certification, the Department ~~of Agriculture~~ may revoke the ~~Dairy f~~Farm ~~e~~Certification. (4-8-94)()

05. **Reinstatement.** If, after a period of withholding, probation, or revocation of ~~Dairy f~~Farm ~~e~~Certification, a ~~p~~Producer makes the necessary corrections at the ~~Dairy f~~Farm, ~~they~~ the ~~Producer~~ may apply for reinspection. When conditions have been corrected, the ~~Dairy f~~Farm shall be reinspected by an inspector or ~~a~~Approved ~~f~~Fieldman. When the ~~i~~Inspector or ~~a~~Approved ~~f~~Fieldman determines that requirements for certification have been met, the ~~Dairy f~~Farm shall be certified. (4-8-94)()

161. -- 299. ~~(RESERVED)~~

~~300. METHODS OF ANALYSIS:~~

~~All milk or cream purchased in or from the state of Idaho at a purchase price based upon or determined by weight and the milkfat, protein or solids non fat content thereof, shall be tested for milkfat protein or solids non fat under the methods approved by the latest edition of "The Methods of Analysis of the Association of Official Analytical Chemists."~~ (7-1-93)

~~01. Methods of Testing. The methods of testing milk and cream for sale recognized by the state of Idaho are:~~ (7-1-93)

~~a. The Babcock test in the above named work, Section 15.030. (7-1-93)~~

~~b. Solids not fat to be determined by subtracting the results of the Babcock test, Section 15.030, from the total solids test, Section 15.014, of the same work. (7-1-93)~~

~~c. Butterfat testing by light transmission as set forth in the same work. (7-1-93)~~

~~i. The latest edition of the manufacturer's operation manual shall be available at all times in conjunction with the instrument, and the procedures therein shall be followed. (7-1-93)~~

~~ii. A constant flow voltage regulator must be supplied if the instrument does not have one. If an external regulator is supplied, it must be installed immediately ahead of the instrument. (7-1-93)~~

~~iii. The calibration of the instrument may be checked by the Babcock method or the ether fat extraction method. If the Babcock method is used, a total of ten (10) or more individual tests will be run on the Babcock tester and the same samples run on the instrument. The mathematical average of the tests will be used to adjust the instrument. If the ether extraction method is used, a total of four samples will be run on the Mojonnier and on the instrument. The mathematical average of the four tests shall be used to adjust the instrument. The variation average between the Babcock or Mojonnier and the instrument shall not exceed fifteen thousandths percent (.015%). (7-1-93)~~

~~iv. At the beginning of each testing day and after each thirty (30) tests during the testing period, a pilot sample of homogenized milk of a known butterfat content shall be tested on the instrument and the results recorded on the permanent test record. If there is a variation of four hundredths percent (.04%), the instrument must be rinsed thoroughly with versene solution and the instrument checked for zero setting in order to get agreement on the test of the standard. At least three (3) standard checks must then be run and if the average is in excess of four hundredths percent (.04%), the instrument must be recalibrated. If after the three standard checks are run and the instrument recalibrated, then all samples run after the last check sample must be retested. The results of the rechecks will become official. When any sample varies in butterfat content by more than two percent (2%) from the sample preceding it through the instrument, there shall be an immediate retest and the second test shall be the one recorded. (7-1-93)~~

~~v. The samples used for calibration shall include samples in butterfat ranges normally comprised in the milk or cream purchased. These samples shall be prepared in the same manner as samples upon which producer payments are to be based. (7-1-93)~~

~~vi. All calibration results and check test for initial or subsequent calibration shall be recorded in the original record book and all tests for checking accuracy of calibration shall be recorded in the original record book. (7-1-93)~~

~~vii. The laboratory record shall be kept in a permanently bound record book in chronological order in the laboratory where the tests are made. Such record book shall be known as the original record. Entries shall be dated and subscribed to by the person making the determination and shall be kept for not less than one (1) year following test. (7-1-93)~~

~~viii. Fresh samples of milk to be used where composite samples are not prepared shall be taken in the manner prescribed and approved by the Department of Agriculture. Composite samples, if used, shall be preserved, with not more than one percent (1%) by weight of sample, of Potassium Bichromate or any equally approved preservative. No mercury compound. (7-1-93)~~

~~ix. The minimum sample for use by the light transmission method for fat both fresh and preserved samples. If fresh samples are the basis for payment, then the samples shall be from fresh milk. (7-1-93)~~

~~x. After making the fresh milk fat tests and the results being normal, the samples may be discarded. (7-1-93)~~

~~xi. All milk samples shall be tempered to ninety (90) degrees F— one hundred (100) degrees F in a controlled water bath which is provided with an accurate thermometer or a thermostatically controlled, enclosed, hot air bath at ninety (90) degrees F— one hundred (100) degrees F. (7-1-93)~~

~~xii. No person shall test milk by the light transmission method where the results are used as a payment for butterfat therein, unless licensed as a Babcock tester and is qualified to operate the instrument by the manufacturer's standards. (7-1-93)~~

02. Methods of Payment. ~~Methods of payment for butterfat shall be made by daily extensions of weight and butterfat or by the random stratified testing procedure. The stratified testing procedure shall be as follows: (7-1-93)~~

~~a. A minimum of three (3) tests per pay period must be used to calculate the pay test on a two (2) pay periods per month basis, or six (6) tests per pay period for monthly pay purposes. (7-1-93)~~

~~b. The dates on which samples are to be tested are to be determined by the plant manager and the quality control manager or production supervisor. The dates are to be recorded in a log book for the month prior to testing. If routes are to be tested on different days, the dates by individual routes are to be recorded in a log book. The book is to be kept in a locked place available to management personnel only. Under no circumstances shall the dates of testing be made known in advance to anyone other than management personnel. Lab personnel are to be notified on the days the tests are to be made which routes are to be tested. (7-1-93)~~

~~c. To insure proper stratified random sampling one (1) sample is to be tested each five (5) days. (7-1-93)~~

~~d. Samples will be collected from every producer's shipment or delivery of milk. These samples shall be collected on Saturdays, Sundays, and holidays as the normal random sampling procedure. (7-1-93)~~

03. Infrared Milk Analyzer (I.R.M.A.). ~~The latest edition of the manufacturer's operational manual shall be available at all times in conjunction with the operation of the Milk Analyzer and the procedures therein shall be followed. The instrument performance shall therefore conform to the accepted Standard Methods specification as outlined in the latest Journal of the A.O.A.C. (7-1-93)~~

~~301.— 349. (RESERVED)~~

350. STANDARDS FOR BULK MILK HAULERS.

01. **Permits.** All Bulk Milk Haulers must possess a permit issued by the Department of ~~Agriculture~~. The permit shall cost twenty-five dollars (\$25) and will be issued to the applicant after a training session on proper procedures and successfully passing an examination administered by the Department of ~~Agriculture~~. (4-8-94)()

a. No permit will be issued unless a score of seventy percent (70%) or better is made on the examination. (7-1-93)

b. A ~~T~~training and refresher course conducted by the ~~Idaho~~ Department of ~~Agriculture~~ will be given in each area of the state of Idaho once each year. (7-1-93)()

c. Every holder of a permit must attend a training and refresher course every third year. (4-8-94)

d. Each new ~~prospective Bulk Milk Hauler~~ must immediately shall apply to the Department of ~~Agriculture~~ for a permit. The bulk milk hauling company shall provide basic instructions on bulk milk protocols including milk sample collection, pick-up procedures, and safety measures. ~~A date will be set for a special training and licensing session and upon satisfactory completion, a Hauler and Samplers~~ permit will be issued upon satisfactory completion of a special training and licensing session held by the Department. (7-1-93)()

e. A substitute Bulk Milk Hauler in case of emergency can haul milk for three (3) days without a permit providing ~~ed~~ the ~~state regulatory official~~ Department has been notified and the substitute Bulk Milk Hauler is ~~given some~~ provided instruction on approved milk pickup and delivery requirements by the bulk milk hauling company. At the end of three (3) days the substitute Bulk Milk Hauler must apply for a permit. (7-1-93)()

02. **Adulteration.** If the truck is left unattended, ~~Bulk Milk Haulers~~ shall affix a seal or lock on all ~~tanker~~ Transportation Tank ports, covers, and doors to protect the milk from possible adulteration. (7-1-93)()

03. **Authorization.** No Bulk Milk Hauler shall grade, measure or sample his own milk without written authorization from the ~~processor~~ Dairy Plant receiving the milk. (7-1-93)()

04. **Permit Revocation.** The permit may be revoked if: (7-1-93)

a. The Bulk Milk Hauler fails to grade milk in a Dairy Farm Tank to its odor and appearance and fails to reject all milk which is abnormal in odor or flavor or that contains visible garget or other extraneous matter. (7-1-93)()

b. The Bulk Milk Hauler does not accurately take and record the temperature of milk or if he fails to reject the milk in excess of forty-five (45) degrees F. (7-1-93)()

c. The Bulk Milk Hauler fails to wash his hands before he proceeds to measure and sample the milk. (7-1-93)()

d. The Bulk Milk Hauler fails to follow acceptable procedures in measuring the amount of milk in the ~~bulk Farm Tank~~ or if he does not, immediately after taking the reading convert the reading to pounds or gallons using the chart of the Farm Tank manufacturer and record it on duplicate forms, with one (1) copy to be posted in the milk house and one (1) transmitted to the ~~Dairy Plant~~. (7-1-93)()

e. The Bulk Milk Hauler fails to agitate the milk for at least five (5) minutes in ~~bulk Farm Tanks~~ less than one thousand (1,000) gallons and ten minutes in Farm Tanks over one thousand (1,000) gallons before taking a sample or if he withdraws any part of the milk from the Farm Tank before the sample is taken. (7-1-93)()

f. The Bulk Milk Hauler does not take a sample for ~~butterfat component~~ testing and/or ~~bacterial milk quality~~ analysis in an approved ~~ma#nner~~, or sufficient size, in an approved container properly labeled, and cool and maintain the sample between thirty-two (32) degrees Fahrenheit to forty (40) degrees Fahrenheit. (7-1-93)()

g. The Bulk Milk Hauler rinses the bulk Farm Tank before disconnecting and capping the hose. (7-1-93)()

h. The Bulk Milk #Hauler siphons milk from milk cans, water troughs or other containers other than the ~~bulk Farm #Tank~~. Milk poured into the bulk Farm #Tank from other than regular milking machine pails will not be allowed. (7-1-93)()

351. -- 399. (RESERVED)

400. STANDARDS OF IDENTITY, LABELING, AND QUALITY STANDARDS FOR ICE CREAM AND FROZEN ~~DESSERTS AND FROZEN NOVELTIES~~ DAIRY PRODUCTS AND DESSERTS.

~~01. Authority. The standards set forth herein are promulgated pursuant to Section 37-1201, Idaho Code.~~ (7-1-93)

~~021. Definitions. For purposes of these rules, ~~the~~ standards of identity for ice cream and frozen custards, frozen yogurt, frozen yogurt dessert mix, frozen yogurt dairy products, frozen dairy dessert, ice milk, sherbet and water ices are as defined by the Food and Drug Administration, United States Department of Health Education and Welfare, in Section 135.3, Section 135.110, Section 135.120, Section 135.140 and Section 135.160, Title 21, Part 135, of the Code of Federal Regulations. ~~the Food and Drug Administration, United States Department of Health Education and Welfare, as set forth in Volume 21, Parts 100 to 199, Code of Federal Regulations, are by reference and adopted as amended.~~ "Lite ice cream" or "light ice cream" shall comply with the provisions set forth for ice cream; provided it meets the following: (7-1-93)()~~

- ~~a. "Lite ice cream" or "light ice cream" shall contain not less than five percent (5%) milkfat. (7-1-93)~~
- ~~b. The total amount of milkfat shall not exceed four and twenty five hundredths (4.25) grams per four (4) ounce serving. (7-1-93)~~
- ~~c. Total milk solids shall be at least eleven percent (11%). (7-1-93)~~
- ~~d. "Lite ice cream" or "light ice cream" shall contain not less than one and three tenths (1.3) pounds of total solids to the gallon and weigh not less than four (4) pounds to the gallon. (7-1-93)~~
- ~~e. "Lite ice cream" or "light ice cream" shall be labeled as such. Further descriptive or non-deceptive labeling may be permitted. (7-1-93)~~
- ~~f. All labels shall be submitted to and approved by the Idaho Department of Agriculture prior to sale or offering for sale of any "lite ice cream" or "light ice cream." (7-1-93)~~

~~03. Frozen Yogurt Dessert Mix. Frozen yogurt dessert mix is the food prepared from milk, with or without added milk solids, flavoring or seasoning and which has been pasteurized and afterwards fermented by one or more strains of Lactobacillus Bulgaricus, including yogurt strains Streptococcus Thermophilus and Lactobacillus Acidophilus. It shall be free of molds, yeasts, and other fungi, as well as other objectionable bacteria which may impair the quality of the product. Mature, clean and wholesome fruit or approved flavors may be added for fruit, fruit flavored or flavored yogurts. (7-1-93)~~

- ~~a. Frozen yogurt dessert mix shall contain not less than three and twenty five hundredths percent (3.25%) milkfat. (7-1-93)~~
- ~~b. The milkfat may be reduced to not less than two and eight tenths percent (2.8%) in flavored products. (7-1-93)~~
- ~~c. The solids not fat in frozen yogurt dessert shall be not less than nine percent (9%) and the total solids not less than twenty three percent (23%). (7-1-93)~~
- ~~d. The weight of the frozen yogurt dessert mix shall be not less than five (5) pounds per gallon. (7-1-93)~~

- ~~e. Harmless, edible stabilizers may be added not to exceed six tenths percent (.6%). (7-1-93)~~
- ~~f. Addition of sugar is optional. (7-1-93)~~
- ~~g. The freezing and air incorporation shall not exceed sixty percent (60%) by volume of the product. (7-1-93)~~
- ~~04. **Frozen Yogurt Dessert.** Frozen yogurt dessert is a frozen product produced from a frozen yogurt dessert mix identified in Subsection 400.03 and which complies with all the identity standards herein contained. (7-1-93)~~
- ~~05. **Frozen Lowfat and Nonfat Yogurt Dessert.** Frozen lowfat yogurt dessert shall be the same as frozen yogurt dessert except it shall contain not more than two percent (2%) milkfat with the addition of fruit. Frozen nonfat yogurt dessert shall be the same as frozen yogurt dessert except that it shall contain not more than five tenths percent (.5%) milkfat. (7-1-93)~~
- ~~06. **Dietetic or Dietary Frozen Dessert.** Dietetic or dietary frozen dessert is the food prepared from the same ingredients and in the same manner as ice cream except that: (7-1-93)~~
- ~~a. The optional sweetening ingredients shall be low caloric or non-caloric sweetening agent. (7-1-93)~~
- ~~b. The milkfat content shall be not less than five tenths percent (.5%) nor more than two percent (2%) by weight. (7-1-93)~~
- ~~c. The total milk solids shall be not less than twelve percent (12%) by weight. (7-1-93)~~
- ~~d. The content of total food solids shall be not less than twenty-eight percent (28%) by weight or one and four tenths (1.4) pounds per gallon. (7-1-93)~~
- ~~e. The weight of the finished product shall be not less than four and one-half (4 1/2) pounds per gallon. (7-1-93)~~
- ~~f. The name of the product is Dietetic Frozen Dessert or Dietary Frozen Dessert. (7-1-93)~~
- ~~g. In addition to the labeling requirements of Section 37-1202, Idaho Code, labeling shall be in accordance with applicable Federal requirements. (7-1-93)~~
- ~~h. Dietetic or dietary frozen dessert shall be sold only in packages of one-half (1/2) gallon or less. (7-1-93)~~
- ~~i. Dietetic or dietary frozen dessert shall not be sold as novelties. (7-1-93)~~
- ~~07. **Milk Shake Base.** Milk shake base is the food prepared from the same ingredients and in the same manner as ice milk except that: (7-1-93)~~
- ~~a. Its milkfat content is not less than two percent (2%) by weight. (7-1-93)~~
- ~~b. Its content of milk solids not fat is not less than eleven percent (11%) by weight. (7-1-93)~~
- ~~c. The total food solids is not less than twenty five percent (25%) by weight. (7-1-93)~~
- ~~d. The provision for reduction in milkfat and total milk solids by the addition of bulky ingredients does not apply. (7-1-93)~~
- ~~e. No person except a manufacturer of frozen dessert mix or frozen dessert shall reduce the percentage by weight of milkfat by the addition of any milk product. (7-1-93)~~

~~08. **Lowfat Frozen Dairy Dessert and Nonfat Dairy Dessert.** Lowfat frozen dessert is the food prepared by freezing while stirring a pasteurized mix prepared from the same ingredients and in the same manner as ice cream except that:~~ (7-1-93)

~~a. Its content of milkfat is more than five-tenths percent (.5%) but not more than two percent (2%).~~ (7-1-93)

~~b. It shall contain not less than twelve percent (12%) total milk solids not including milk components which may be added as ingredients.~~ (7-1-93)

~~c. The weight per gallon of frozen product is not less than four and five-tenths (4.5) pounds.~~ (7-1-93)

~~d. Its content of food solids per frozen gallon shall be not less than one and three-tenths (1.3) pounds.~~ (7-1-93)

~~09. **Nonfat Frozen Dairy Dessert.** Nonfat frozen dairy dessert shall meet all the requirements of lowfat frozen dessert except the milkfat content shall be less than five-tenths (.5%) by weight. The product shall be labeled in the same manner as lowfat frozen dairy dessert except the name of the food which shall be "nonfat frozen dairy dessert."~~ (7-1-93)

~~10. **Nondairy Frozen Dessert.**~~ (7-1-93)

~~a. Nondairy frozen dessert is the food which is prepared by freezing, while stirring, a nondairy frozen dessert mix composed of one (1) or more of the optional characterizing ingredients specified in Subsection 400.10.b. sweetened with one (1) or more of the optional sweetening ingredients specified in Subsection 400.10.c. The nondairy product, with or without water added, may be seasoned with salt. One (1) or more of the ingredients specified in Subsection 400.10.d. may be used. Pasteurization is not required.~~ (7-1-93)

~~b. The optional flavoring ingredients referred to in Subsection 400.10.a., are natural and artificial flavoring and characterized food ingredients.~~ (7-1-93)

~~c. The optional sweetening ingredients referred to in Subsection 400.10.a. are sugar (sucrose), dextrose, invert sugar paste or syrup, glucose syrup, dried glucose syrup, corn sweetener, dried corn sweetener, malt syrup, malt extract, dried malt syrup, dried malt extract, maltose syrup and dried maltose syrup.~~ (7-1-93)

~~d. The optional ingredients referred to in Subsection 400.10.a. are caseinates, hydrogenated vegetable oil, dipotassium phosphate, coloring, mono and diglycerides or polysorbates and other safe and suitable thickening agents.~~ (7-1-93)

~~e. Such non dairy frozen desserts are deemed "processed" when manufactured as a dry powdered mix. The addition of water is the manner in which such nondairy frozen desserts are served.~~ (7-1-93)

~~H02. **Labeling.** Each of the products identified in Subsections 400.02 through 400.10 shall be labeled as provided in Section 37-1202, Idaho Code. In addition, each container shall bear an identifiable code so as to identify the lot and/or date in which the product was manufactured.~~ (7-1-93)

~~03. **Quality Standards.** The following quality standards must be met:~~ ()

~~12a. Coliform Standard. Compliance with the coliform standard shall be deemed to have been met if the number of coliform organisms count does not exceed ten (10) colonies per gram per sample in more than two (2) of the last fivefour (54) consecutive samples. No enforcement action shall be taken if the last sample is within the standard.~~ (7-1-93)()

~~13b. Bacteria Standard. Compliance with the bacteria standard shall be deemed to have been met if the number of bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram per sample in more than two (2) of the last fivefour (54) consecutive samples. Whenever the Dairy Product is cultured, the bacteria test,~~

using the standard plate count or equivalent method, would not be applicable. (7-1-93)()

c. Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of Ice Cream and Frozen Dairy Products and Deserts shall be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the Dairy Product cannot be sold for human consumption. For the Dairy Product to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

~~404.~~ **Licensed Manufacturers.** All frozen dessert mixes except nondairy frozen dessert shall be secured from a licensed manufacturer and shall be manufactured into a semifrozen state without adulteration. Freezing device salvage shall not be reused as a mix. (7-1-93)

~~405.~~ **Violations.** The Director ~~of the Idaho Department of Agriculture or the Director's authorized representative~~ shall issue and enforce a written stop sale order to the owner or custodian of any quantity of frozen desserts or frozen novelties which ~~have~~ are in violation of Title 37 Chapters 3, ~~4, 5, 6, 7, 8, 9, 10, 11~~ Idaho Code, or ~~regulations adopted pursuant thereto~~ these rules. Disposition of products not in compliance shall be at the discretion of the Director. (7-1-93)()

401. -- 499. (RESERVED)

500. STANDARDS FOR BUTTER.

01. Grading. Butter grading shall be performed in accordance with the United States Standards for grades of Butter as incorporated by reference. ()

02. Quality Standards. The following quality standards must be met: ()

a. Coliform Standard. Compliance with the coliform standard shall be deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. ()

b. Bacteria Standard. Compliance with the bacteria standard shall be deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the Butter is cultured, the bacteria test, using the standard plate count or equivalent method, would not be applicable. ()

c. Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of Butter shall be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the Butter cannot be sold for human consumption. For the Butter to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

~~500~~1. ~~IDAHO~~ STANDARDS FOR WHEY BUTTER.

~~01. Definition.~~ (7-1-93)

~~a. Whey Butter: The food product made by gathering the fat of fresh or ripened whey cream separated from cheese whey formed into a mass, with or without added cream obtained from milk, which also contains a small portion of other whey or milk constituents, with or without the addition of salt or a harmless coloring matter. Whey butter shall be clean and non rancid and shall contain not less than eighty percent (80%) butter fat. For the purposes of these rules whey butter shall be pasteurized.~~ (7-1-93)

~~b. Whey Cream: That portion of whey rich in milk fat which is separated from whey.~~ (7-1-93)

021. Basis for Determining the Acceptability of Whey Butter. The acceptability of ~~W~~Whey ~~B~~Butter is determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color and salt. Flavor is the basic quality factor in grading ~~W~~Whey ~~B~~Butter and is determined organoleptically by taste and smell. The flavor characteristic is identified and together with it relative intensity, is rated according to the applicable classification. When more than one flavor characteristic is discernible in a sample of ~~W~~Whey ~~B~~Butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating. Body, color

and salt characteristics are then noted and any defects are disrated in accordance with the established classification. Acceptability for the sample is then established in accordance with the flavor classification, subject to disratings for body, color and salt. When the disratings for body, color and salt exceed the permitted amount or if the flavor is not acceptable, the ~~W~~Whey ~~b~~butter will not be allowed to be sold or distributed within the state of Idaho unless the packages are labeled as provided. (7-1-93)()

032. Specifications for Acceptability of Whey Butter. Whey ~~b~~butter shall be free of foreign materials and visible mold. It shall possess a fine and highly pleasing ~~W~~Whey ~~b~~butter flavor. May possess any of the following flavors to a slight degree: flat, malty, musty, neutralized, scorched, utensil, stale, and woody. May possess the following flavors to a definite degree: cooked, aged, bitter, coarse-acid, smothered, storage and old cream. May possess feed flavor to a pronounced degree. The permitted total disratings in body, color and salt characteristics are limited to one and one-half (1 1/2). (7-1-93)()

043. Whey Butter Label Requirements. It is hereby declared to be unlawful to sell or offer for sale any ~~W~~Whey ~~b~~butter within the state of Idaho unless the wrappers and containers in which said butter is packaged are conspicuously labeled as herein provided: (7-1-93)()

a. The name of the product shall be ~~W~~Whey ~~b~~butter or Whey Cream Butter or “Butter made from whey cream.” (7-1-93)()

b. The name of the product shall be placed on the principal display panel(s) and shall be of uniform type and prominence. (7-1-93)

c. The manufacturer identification number shall be conspicuously placed on each wrapper and container of ~~W~~Whey ~~b~~butter. (7-1-93)()

d. Labels of ~~W~~Whey ~~b~~butter sold or distributed within Idaho shall be approved by the ~~director of the~~ Department of Agriculture. (7-1-93)()

04. Quality Standards. The following quality standards must be met: ()

a. Coliform Standard. Compliance with the coliform standard shall be deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. ()

b. Bacteria Standard. Compliance with the bacteria standard shall be deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the Whey Butter is cultured, the bacteria test, using the standard plate count or equivalent method, would not be applicable. ()

c. Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of Whey Butter shall be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the Butter cannot be sold for human consumption. For the Whey Butter to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

05. Enforcement. Whey ~~b~~butter which fails to meet flavor or body, color and salt requirements as defined in Section 500 may be sold or distributed within the state of Idaho, provided the word, “undergrade” is placed on the principal display panel(s) immediately preceding or following the product name and is of uniform type size and prominence. (7-1-93)()

06. Table I -- Classification of Flavor Characteristics.

Identified Flavors	Acceptable	Un acceptable Un acceptable
Flat	S	D
Malty	S	D

Identified Flavors	Acceptable	Unexeptable Unacceptable
	Musty	S
Neutralized	S	D
Scorched	S	D
Utensil	S	D
Cooked	D	P
Aged	D	P
Bitter	D	P
Smothered	D	P
Storage	D	P
Old Creme Cream	D	P
Feed	P	-
Acid	D	P
Weed	S	D

(7-1-93)()

07. Table II -- Characteristics and Disratings in Body, Color, and Salt.

Characteristics	Body Disratings		
	S	D	P
Crumbly	1/2	1	
Gummy	1/2	1	
Leaky		1/2	1
Mealy or grainy		1/2	1
Short		1/2	1
Weak	1/2	1	
Sticky	1/2	1	
Ragged boring	1	2	

S -- Slight; D -- Definite; P -- Pronounced (7-1-93)

08. Explanation of Terms with Respect to Flavor, Intensity, and Characteristics: (7-1-93)

- a. Slight: Detected only upon critical examination. (7-1-93)
- b. Definite: Detectable but not intense. (7-1-93)
- c. Pronounced: Readily detectable and intense. (7-1-93)
- d. Aged: Characterized by lack of freshness. (7-1-93)

- e.** Bitter: Astringent, similar to taste of quinine and produces a puckery sensation. (7-1-93)
- f.** Coarse-acid: Lacks a delicate flavor or aroma and is associated with an acid condition but there is no indication of sourness. (7-1-93)
- g.** Cooked (fine): Smooth, nutty-like character resembling a custard flavor. (7-1-93)
- h.** Feed: Aromatic flavor characteristic of feeds eaten by cows. (7-1-93)
- i.** Flat: Lacks natural butter flavor. (7-1-93)
- j.** Malty: A distinctive, harsh flavor suggestive of malt. (7-1-93)
- k.** Musty: Suggestive of the aroma of a damp vegetable cellar. (7-1-93)
- l.** Neutralizer: Suggestive of a bicarbonate of soda flavor or the flavor of similar compounds. (7-1-93)
- m.** Old Cream: Aged cream characterized by lack of freshness and imparts a rough aftertaste on the tongue. (7-1-93)
- n.** Scorched: A more intensified flavor than cooked (coarse) and imparts a harsh aftertaste. (7-1-93)
- o.** Sour: Characterized by an acid flavor and aroma. (7-1-93)
- p.** Smothered: Suggestive of improperly cooled cream. (7-1-93)
- q.** Storage: Characterized by a lack of freshness and more intensified than “aged” flavor. (7-1-93)
- r.** Utensil: A flavor suggestive of unclean cans, utensils and equipment. (7-1-93)
- s.** Weed: Aromatic flavor characteristic of the weeds eaten by cows. (7-1-93)
- 09. With Respect to Body:** (7-1-93)
- a.** Crumbly: When a “crumbly” body is present the particles lack cohesion. The intensity is described as “slight” when the trier plug tends to break and the butter lacks plasticity; and “definite” when the butter breaks roughly or crumbles. (7-1-93)
- b.** Gummy: Gummy-bodied-butter does not melt readily and is inclined to stick to the roof of the mouth. The intensity is described as “slight” when the butter tends to become chewy and “definite” when it imparts a gum-like impression in the mouth. (7-1-93)
- c.** Leaky: A “leaky” body is present when on visual examination there are beads of moisture on the surface of the trier plug and on the back of the trier or when slight pressure is applied to the butter on the trier plug. The intensity is described as “slight” when the droplets or beads of moisture are barely visible and about the size of a pinhead; “definite” when the moisture drops are somewhat larger or the droplets are more numerous and tend to run together; and “pronounced” when the leaky condition is so evident that drops of water drip from the trier plug. (7-1-93)
- d.** Mealy or grainy: A “mealy” or “grainy” condition imparts a granular consistency when the butter is melted on the tongue. The intensity is described as “slight” when the mealiness or graininess is barely detectable on the tongue and “definite” when the mealiness or graininess is readily detectable. (7-1-93)
- e.** Ragged boring: A “ragged boring” body, in contrast to solid boring, is when a sticky-crumbly condition is presented to such a degree that a full trier of butter cannot be drawn. The intensity is described as “slight” when there is a considerable adherence “definite” when it is practically impossible to draw a full plug of the butter.

(7-1-93)

f. Short: The texture is short-grained, lacks plasticity and tends toward brittleness. The intensity is described as “slight” when the butter lacks pliability and tends to be brittle; and “definite” when sharp and distinct breaks form as pressure is applied against the plug. (7-1-93)

g. Sticky: When a “sticky” condition is present, the butter adheres to the trier as a smear and possesses excessive adhesion. The intensity is described as “slight” when the smear is present only on a portion of the back of the trier and “definite” when the trier becomes smeary throughout its length. (7-1-93)

h. Weak: A “weak” body lacks firmness and tends to be spongy. The intensity is described as “slight” when the plug of butter, under slight pressure, tends to depress and is not firm and compact; and “definite” when the plug of butter, under slight pressure, tends to depress easily and definitely lacks firmness and compactness. (7-1-93)

10. With Respect to Color: (7-1-93)

a. Mottled: “Mottles” appear as a dappled condition with spots of lighter and deeper shades of yellow. The intensity is described as “slight” when the small spots of different shades of yellow, irregular in shape, are barely discernible on the plug of butter and “definite” when the mottles are readily discernible on the plug of butter. (7-1-93)

b. Specks: “Specks” usually appear in butter as small white or yellow spots, however, the latter may be of variable size. The intensity is described as “slight” when the spots are few in number and “definite” when they are noticeable in large numbers. (7-1-93)

c. Streaked: “Streaked” color appears as light colored portions surrounded by more highly colored portions. The intensity is described as “slight” when only a few are present and “definite” when they are more numerous on the trier plug. (7-1-93)

d. Wavy: “Wavy” color in butter is ~~an~~ unevenness in the color that appears as waves of different shades of yellow. The intensity is described as “slight” when the waves are barely discernible and “definite” when they are readily noticeable on the trier plug. (7-1-93)()

11. With Respect to Salt: (7-1-93)

a. Sharp: “Sharp” salt is characterized by taste sensations suggestive of salt. The intensity is described as “slight” when the salt taste predominates in flavor; and “definite” when the salt taste distinctly predominates in flavor. (7-1-93)

b. Gritty: A “gritty” salt condition is detected by the gritty feel of the grains of undissolved salt, imparting a sand-like feeling on the tongue. The intensity is described as “slight” when only a few grains of undissolved salt are detected and “definite” when the condition is more readily noticeable. (7-1-93)

5072. -- 599. (RESERVED)

600. NEW DAIRY PRODUCTS.

01. General. Upon request of any interested person, the Director ~~of the Idaho Department of Agriculture~~ may establish a temporary definition and standard for a new ~~Dairy~~ ~~P~~Product provided, all the following conditions exist: (7-1-93)()

a. Research in the uses of milk and the products or by products of milk has developed a new ~~Dairy~~ ~~P~~Product for which no definition or standard is prescribed. (7-1-93)()

b. The new ~~Dairy~~ ~~P~~Product cannot be produced or marketed because no definition in standard is prescribed for it. (7-1-93)()

- c. The public interest would be served by the Dairy pProduct. (7-1-93)()
- d. The quality, wholesomeness and manufacturing requirements of the dDairy pProduct are at least equal to established standards for similar dDairy pProducts. (7-1-93)()
- e. The Dairy pProduct is labeled in accordance to ~~F.D.A.~~ guidelines for a food product and approved by ~~the~~ Department ~~of Agriculture~~. (7-1-93)()
- 02. Permits.** The Director ~~of the Department of Agriculture~~ may issue a special permit to the manufacturer/distributor for the production and sale of a new dDairy pProduct(s). The fee for this permit shall be twenty five dollars (\$25) per dDairy pProduct. Such manufacturer/distributor shall be subject to the provisions of Title 37 Idaho Code and regulations adopted pursuant thereto applicable to ~~milk~~ Dairy pPlants and milk products. (7-1-93)()
- 03. Expiration.** After two (2) years from the date a temporary permit has been issued for a new dDairy pProduct(s), the Department ~~of Agriculture~~ shall promulgate rules to establish definitions and standards for the new, nonstandardized dDairy pProduct(s). (7-1-93)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-1401 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2014.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-3704, 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 17, 2014.

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:

Amend Section 010 - The rule change defines the term "harvest" as it pertains to animals on a domestic cervidae facility.

Amend Section 090 - The rule change will establish the new fee schedule for cervidae producers, collected by ISDA, to cover the cost of administering the program, pursuant to the change in statute.

Amend Section 101 - The rule change will alter the frequency of required facility inspections to coincide with the statutory amendment.

Amend Section 209 - The rule change will describe how the Administrator will implement Chronic Wasting Disease Surveillance standards for facilities at a higher risk of disease exposure.

Amend Section 500 - The rule change will establish the new Chronic Wasting Disease surveillance standards for cervids that die or are harvested on cervidae facilities.

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

The domestic cervidae industry is at risk for a program shut-down for a third consecutive year due to a shortage of funds unless the 2014 amendments to the domestic cervidae law (House Bill 431) are implemented as a temporary rule, prior to fees being collected at the end of this calendar year. The temporary rule has already been negotiated with stakeholders, who have reached a consensus on all of the changes.

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

The annual assessment fee for domestic elk will be increased from five dollars (\$5) per head per year, to ten dollars (\$10) per head per year. These funds are used to cover the cost of administering the program, as described in IDAPA 02.04.19.

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 fiscal impact to the industry due to the increased fee schedule will be offset by the reduction of chronic wasting disease testing requirements. ISDA anticipates a net positive fiscal impact to the industry and to the dedicated fund utilized to manage the domestic cervidae program.

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 June 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 27](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 1, 2014. There were twenty (20) people in attendance and multiple comments were entered into the record and taken into consideration when drafting this temporary and proposed rule. The final language represents consensus of the stakeholders present at the negotiated rulemaking.

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 Dr. Scott Leibsle, Deputy Administrator at (208) 332-8614.

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 24, 2014.

DATED this 7th Day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0419-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

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

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

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

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

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

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

- 07. Certificate.** An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae, which contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results and any other information required by the state animal health official for importation or translocation. (4-2-03)
- 08. Cervid Herd.** One (1) or more domestic cervidae or groups of domestic cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. (4-2-03)
- 09. Cervidae.** Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (4-2-03)
- 10. Chronic Wasting Disease.** A transmissible spongiform encephalopathy of cervids, which is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (4-2-03)
- 11. Commingling.** Within the last five (5) years, the animals have had direct contact with each other, had less than thirty (30) feet of physical separation, or shared management equipment, pasture, or surface water sources, except for periods of less than forty-eight (48) hours at sales or auctions when a state or federal animal health official has determined such contact presents minimal risk of CWD transmission. (4-2-03)
- 12. Custom Exempt Slaughter Establishment.** A slaughter establishment that is subject to facility inspection by USDA, but which does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (4-2-03)
- 13. CWD-Adjacent Herd.** A herd of domestic cervidae occupying premises that border a premises occupied by a CWD positive herd, including herds separated by roads or streams. (4-6-05)
- 14. CWD-Exposed Animal.** A cervid animal that is not exhibiting any signs of CWD, but has had contact within the last five (5) years with cervids from a CWD-positive herd or the animal is a member of a CWD-exposed herd. (4-2-03)
- 15. CWD-Exposed Herd.** A herd of cervidae in which no animals are exhibiting signs of CWD, but:
- a.** An epidemiological investigation indicates that contact with CWD positive animals or contact with animals from a CWD positive herd has occurred in the previous five (5) years; or (4-2-03)
 - b.** A herd of cervidae occupying premises that were previously occupied by a CWD positive herd within the past five (5) years as determined by the designated epidemiologist; or (4-2-03)
 - c.** Two (2) herds that are maintained on a single premises even if they are managed separately, have no commingling, and have separate herd records. (4-6-05)
- 16. CWD-Positive Cervid.** A domestic cervid on which a diagnosis of CWD has been confirmed through positive test results on any official cervid CWD test by an approved laboratory. (4-2-03)
- 17. CWD-Positive Herd.** A domestic cervidae herd in which any animal(s) has been diagnosed with CWD, based on positive laboratory results, from an approved laboratory. (4-2-03)
- 18. CWD-Suspect Cervid.** A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (4-2-03)
- 19. CWD-Suspect Herd.** A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (4-2-03)

20. **Department.** The Idaho State Department of Agriculture. (4-2-03)
21. **Death Certificate.** A form, approved by the administrator, provided by the Division for the reporting of cervidae deaths and for reporting sample submission for CWD testing. (4-6-05)
22. **Designated Epidemiologist.** A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the Administrator to fulfill the epidemiology duties relative to the state domestic cervidae disease control program. (4-2-03)
23. **Director.** The Director of the Idaho State Department of Agriculture, or his designee. (4-2-03)
24. **Disposal.** Final disposition of dead cervidae. (4-2-03)
25. **Division.** Idaho State Department of Agriculture, Division of Animal Industries. (4-2-03)
26. **Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (4-2-03)
27. **Domestic Cervidae Ranch.** A premises where domestic cervidae are held or kept, including multiple premises under common ownership. (4-6-05)
28. **Electronic Identification.** A form of unique, permanent individual animal identification such as radio frequency identification tag, radio frequency identification implant, or other forms approved by the Administrator. (4-6-05)
29. **Escape.** Any domestic cervidae located outside the perimeter fence of a domestic cervidae ranch and not under the immediate control of the owner or operator of the domestic cervidae ranch. (4-2-03)
30. **Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (4-6-05)
31. **Harvest.** Any healthy domestic cervid that is intentionally and lethally removed from a domestic cervidae facility, by an owner, designated employee or customer of the facility, strictly for the purposes of either shooting or meat production. (9-1-14)T
- ~~31~~2. **Herd of Origin.** A cervid herd, on any domestic cervidae ranch or other premise, where the animals were born, or where they were kept for at least one (1) year prior to date of shipment. (4-2-03)
- ~~32~~3. **Herd Status.** Classification of a cervidae herd with regard to CWD. (4-2-03)
- ~~33~~4. **Intrastate Movement Certificate.** A form approved by the Administrator, and available from the Division, to document the movement of domestic cervidae between premises within Idaho. (4-2-03)
- ~~34~~5. **Individual CWD Herd Plan.** A written herd management agreement and testing plan developed by the herd owner and approved by the Administrator to identify and eradicate CWD from a positive, source, suspect, exposed, or adjacent herd. (4-7-11)
- ~~35~~6. **Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (4-2-03)
- ~~36~~7. **National CWD Herd Certification Program.** A federal-state-industry cooperative program administered by APHIS and implemented by participating states that establishes CWD surveillance and testing standards that owners must achieve before interstate transport of cervids will be permitted. (3-20-14)
- ~~37~~8. **Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD. (4-2-03)

- 389. Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each cervid. (4-2-03)
- 3940. Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (4-2-03)
- 401. Owner.** The person that has legal title to, or has financial control of, any domestic cervidae or domestic cervidae ranch (4-2-03)
- 412. Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (4-2-03)
- 423. Premises.** The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (4-2-03)
- 434. Quarantine.** An order issued on authority of the Administrator, by a state or federal animal health official or accredited veterinarian, prohibiting movement of cervids from any location without a written restricted movement permit. (4-2-03)
- 445. Quarantine Facility.** A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (4-2-03)
- 456. Ranch Management Plan.** A written plan for a domestic cervidae ranch that sets forth best management practices that mitigates the introduction or dissemination of disease among domestic cervidae. (4-7-11)
- 467. Reidentification.** The identification of a domestic cervid which had been officially identified, as provided by this chapter, but which has lost the official identification device, or the tattoo or official identification device has become illegible. (4-2-03)
- 4748. Restrain.** The immobilization of domestic cervidae in a chute, other device, or by other means for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (4-2-03)
- 4849. Restricted Movement Permit.** An official document that is issued by the Administrator, AVIC, or an accredited veterinarian for movement of animals from positive, suspect, or exposed herds. (4-2-03)
- 4950. Source Herd.** A herd from which at least one (1) cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. (4-2-03)
- 501. State Animal Health Official.** The Administrator, or his designee. (4-2-03)
- 512. Status Date.** The date on which the Administrator approves in writing a herd status change with regard to CWD. (4-2-03)
- 523. Trace Back Herd.** An exposed herd in which at least one (1) CWD positive animal resided within any of the previous sixty (60) months prior to diagnosis with CWD. (4-2-03)
- 534. Trace Forward Herd.** A herd that has received exposed animals from a positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd or from the identified point of entry of CWD into the positive herd. (4-2-03)
- 545. Traceback.** The process of identifying the movements and the herd of origin of CWD positive, or exposed animals, including herds that were sold for slaughter. (4-2-03)
- 556. Wild Cervidae.** Any cervid animal not owned by a person. (4-2-03)
- 567. Wild Ungulate.** Any four (4) legged, hooved herbivore, including cervids and other ruminants, not

owned by a person.

(4-6-05)

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

(BREAK IN CONTINUITY OF SECTIONS)

090. FEES.

01. Annual Assessment Fee. A fee, not to exceed ~~five ten~~ dollars (\$~~510~~) per head per year on elk or three dollars (\$3) per head per year on fallow deer and reindeer, is ~~to be~~ hereby assessed on all domestic cervidae in the state to cover the cost of administering the program covered in these rules. The fee shall include all domestic cervidae present at the ranch as of December 31 and all domestic cervidae imported from outside of the state that die during the same calendar year. This fee is due January first of each year. The annual assessment fee may be reduced if program revenue accumulates to a balance of at least one hundred thousand dollars (\$100,000) in excess of the projected annual cost of operating the program, as determined by the Department on July 1 of each year.

~~(4-7-H)~~(9-1-14)T

02. Import, Export, and Movement Fees. The fees imposed in Section 25-3708(2) through (4), Idaho Code, are due no later than December 31 of each year, but the Department requests all movement fees be submitted within five (5) business days of the movement of the domestic cervids.

(9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

101. DOMESTIC CERVIDAE RANCH FACILITY REQUIREMENTS.

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

01. Maintenance. All facilities shall be maintained, at all times that domestic cervidae are present, to prevent the escape of domestic cervidae or ingress of wild cervidae. (4-2-03)

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

a. Each domestic cervidae ranch shall be inspected ~~at least annually~~ no less than once every five (5) years. Domestic cervidae ranches may be inspected more frequently if requested by the owner or if specified in a ranch management plan. The Administrator may require additional facility inspections as necessary to aid in the prevention, control, or eradication of disease or to ensure compliance with the provisions of this chapter or other state or federal rules applicable to domestic cervidae.

~~(4-2-03)~~(9-1-14)T

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

(BREAK IN CONTINUITY OF SECTIONS)

209. RANCH MANAGEMENT PLAN.

01. Voluntary Ranch Management Plan. A domestic cervidae ranch may apply, on a form prescribed by the Administrator, to enter into a voluntary ranch management plan. The ranch management plan will be developed cooperatively by the owner or authorized agent and the Administrator. For the ranch management plan, the Administrator will conduct a risk assessment considering the factors in Subsection 209.03. A voluntary ranch

management plan may, notwithstanding other rule requirements to the contrary, establish inventory verification requirements and CWD sampling requirements specific for a domestic cervidae ranch. Failure to adhere to an approved voluntary ranch management plan is a violation of these rules. (4-7-11)

02. Mandatory Ranch Management Plan. A domestic cervidae ranch shall be required to develop and implement an approved ranch management plan if the ranch is found in violation of Sections 060, 204 or 500 of these rules. The ranch management plan must be completed and implemented within six (6) months of the disposition of the violation. For the ranch management plan, the Administrator will conduct a risk assessment considering the factors in Subsection 209.03. Failure to comply with the mandatory ranch management plan is a violation of these rules. This requirement will become effective July 1, 2012 (4-7-11)

03. Risk Assessment for Ranch Management Plans. The Administrator will conduct a risk assessment for each ranch management plan. A ranch management plan will not include a double fencing requirement but may require that double gates be installed. The Administrator will consider the following factors when conducting a risk assessment at a domestic cervidae ranch: (4-7-11)

a. Risk of egress. The risk of egress may be evaluated based on, but not limited to, history of domestic cervidae escape during the previous five (5) years, recovery rate of escaped domestic cervidae, length of time domestic cervidae were outside of the perimeter fence, annual average precipitation, topography, altitude and tree density. (4-7-11)

b. Risk of ingress. The risk of ingress may be evaluated on, but not limited to, history of ingress during the previous five (5) years, annual average precipitation, topography, altitude, tree density and proximity to wildlife migration corridors. (4-7-11)

c. Compliance with CWD sample submission. The Administrator may, based on a risk-based assessment of the facility, ~~waive up to twenty percent (20%)~~ adjust the number of the tissue sample submissions required under this rule. The ~~waiver~~ adjustment will be based on, but not limited to, the following: ~~(4-7-03)(9-1-14)T~~

i. Whether ~~F~~the domestic cervidae on the ranch have ~~not had contact~~ commingled with any ~~animals~~ domestic cervids of unknown CWD status. ~~(4-7-03)(9-1-14)T~~

ii. Whether ~~F~~the domestic cervidae ranch ~~must be~~ has been in compliance with all requirements of Title 25, Chapter 35, Idaho Code, and these rules. ~~(4-7-03)(9-1-14)T~~

iii. Whether ~~F~~the domestic cervidae ranch ~~must have no~~ has had documented cases of ingress of wild cervids or egress of domestic cervidae within the eighteen (18) months ~~of the request for a waiver prior to the risk assessment.~~ ~~(4-7-03)(9-1-14)T~~

(BREAK IN CONTINUITY OF SECTIONS)

500. SURVEILLANCE FOR CWD.

01. Slaughter Surveillance. Brain tissue from ~~one hundred percent (100%)~~ no less than ten percent (10%) of all domestic cervidae sixteen (16) months of age or older that are slaughtered at approved slaughter establishments or custom exempt slaughter establishments shall be submitted by the owner of the slaughtered cervidae to official laboratories to be tested or examined for CWD as provided for in these rules. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result shall not count towards the tissue submission requirement. ~~(4-2-08)(9-1-14)T~~

02. Domestic Cervidae Ranch Surveillance. Unless a domestic cervidae ranch is operating with a ranch management plan approved by the Administrator, brain tissue from ~~one hundred percent (100%)~~ no less than ten percent (10%) of all domestic cervidae sixteen (16) months of age or older that ~~die or~~ are harvested on domestic cervidae ranches shall be submitted ~~by the owner or operator of the domestic cervidae ranch to official laboratories to be tested or examined for CWD, as provided for in these rules, except Reindeer and fallow deer unless the~~

~~Reindeer or fallow deer are part of a CWD positive, exposed, trace, source or suspect herd or part of an elk herd.~~ for CWD testing. In addition to the tissue samples from the Harvested domestic cervidae, brain tissue from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that die for any reason other than being harvested shall also be submitted for CWD testing. Reindeer and fallow deer shall be exempt from CWD testing unless the reindeer and fallow deer are part of a CWD positive, exposed, trace, source, or suspect herd or part of an elk herd. The owner or operator of the domestic cervidae ranch shall submit all tissue samples to an official laboratory to be tested for CWD, as provided for in these rules. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result shall not count towards the tissue submission requirement.

In the event a domestic cervidae ranch cannot submit a ~~viable~~ testable brain sample, the domestic cervidae ranch shall submit, on a form approved by the Administrator, a waiver request within forty eight (48) hours of determining that a ~~viable~~ testable brain sample cannot be submitted. ~~(4-7-11)~~(9-1-14)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1401
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-203 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 17, 2014.

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:

Add Subsection 600.04 - To mitigate the risk of disease exposure, a deworming treatment that is specific to the meningeal worm (*P. tenuis*) will be added to the requirements that must be met prior to importing domestic cervids into Idaho.

Add Subsection 600.05 - The accredited veterinarian who signs the certificate of veterinary inspection (CVI) for a shipment of domestic cervidae into Idaho must provide a statement, on the CVI, verifying that none of the cervids in the shipment have been diagnosed or exposed to the meningeal worm, *P. tenuis*.

Modify Section 605 - The rule change removes the restriction that prohibits importing domestic cervidae from regions endemic with *P. tenuis*, but now prohibits importing cervids known to be infected with *P. tenuis*.

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

No fee is being imposed or charged through the adoption of this proposed rule.

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

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

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 June 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 28](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 1, 2014, with twenty (20) people in attendance. Attendees provided multiple comments at the meeting and ISDA took those comments into consideration when drafting this 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator at (208) 332-8614.

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 24, 2014.

DATED this 7th Day of August, 2014.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
Phone: (208) 332-8500 / Fax: (208) 334-2170

2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0421-1401
(Only those Sections being amended are shown.)

011. ABBREVIATIONS.

- | | | |
|-------------|---|------------|
| 01. | APHIS. Animal and Plant Health Inspection Service. | (4-2-08) |
| 02. | AVIC. Area Veterinarian in Charge. | (5-3-03) |
| 03. | AZA. Association of Zoos and Aquariums. | (4-4-13) |
| 04. | CF. Complement Fixation Test. | (3-30-07) |
| 05. | CFR. Code of Federal Regulations. | (5-3-03) |
| 06. | CWD. Chronic Wasting Disease. | (5-3-03) |
| 07. | EIA. Equine Infectious Anemia. | (5-3-03) |
| 08. | EVA. Equine Viral Arteritis. | (5-8-09) |
| 09. | NAEBA. North American Elk Breeders Association. | (5-3-03) |
| 10. | NPIP. National Poultry Improvement Plan. | (5-3-03) |
| 11. | <u>P. tenuis. Paralephastromylyus tenuis (meningeal worm of deer).</u> | () |
| 12. | PCR. Polymerase Chain Reaction. | (4-2-08) |
| 123. | RDGF. Red Deer Genetic Factor. | (4-4-13) |
| 134. | TB. Tuberculosis. | (5-3-03) |
| 145. | UM&R. Uniform Methods and Rules. | (5-3-03) |
| 156. | USDA. United States Department of Agriculture. | (5-3-03) |
| 167. | VHSV. Viral Hemorrhagic Septicemia Virus. | (4-2-08) |
| 178. | VS. Veterinary Services. | (5-3-03) |

(BREAK IN CONTINUITY OF SECTIONS)

- 600. IMPORTATION OF DOMESTIC CERVIDAE.**
Domestic cervidae may enter the state of Idaho, by permit, provided: (5-3-03)

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

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

03. National CWD Herd Certification Program Participation. All cervidae must originate from a herd that is in good standing and actively participating in the National CWD Herd Certification Program. (3-20-14)

04. Deworming Requirement. All cervidae are required to receive anthelmintic, approved for treatment of *P. tenuis*, within thirty (30) days prior to import into Idaho. Treatment must be documented on the certificate of veterinary inspection. ()

05. *P. tenuis* Statement. The certificate of veterinary inspection accompanying the cervidae shipment must contain the following written statement from the accredited veterinarian on the certificate: "No cervids identified on this certificate of veterinary inspection have displayed symptoms consistent with *P. tenuis* infection. These cervids have neither been exposed to *P. tenuis* or originated from a premises where *P. tenuis* has been identified." ()

(BREAK IN CONTINUITY OF SECTIONS)

605. MENINGEAL WORM-~~ENDEMIC REGION.~~

~~Importation of~~ Domestic cervidae ~~shall be imported only from a region not~~ known to be ~~endemic~~ infected with *Parelaphostrongylus tenuis* (~~meningeal worm of white tail deer~~); ~~is prohibited, as reported by the Southeastern Cooperative Wildlife Disease Study.~~ (5-3-03)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1402
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-203 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 17, 2014.

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:

Amend Section 109 - The rule change removes the requirement that prohibits importing livestock that originate from within a 10-mile radius of a confirmed case of vesicular stomatitis (VS).

Amend Subsection 240.03 - The rule change allows dairy breeds of cattle to be granted a tuberculosis testing exemption when consigned directly to feedlots approved for finish feeding.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on July 21, 2014, at the Idaho State Department of Agriculture. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 22](#). No comments have been submitted to the rulemaking record.

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 Dr. Scott Leibsle, Deputy Administrator at (208) 332-8614.

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 24, 2014.

DATED this 7th Day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0421-1402
(Only those Sections being amended are shown.)

109. VESICULAR STOMATITIS.

No livestock may enter Idaho from another state if Vesicular Stomatitis has been diagnosed ~~within ten (10) miles of on~~ the premises of origin of the shipment within the last thirty (30) days. ~~(3-30-07)~~ (5-3-03)

01. Certificate of Inspection. Any livestock entering Idaho from a state where Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a certificate of veterinary inspection with the following statement written by the accredited veterinarian on the certificate: "All animals identified on this certificate of veterinary inspection have been examined and found to be free from Vesicular Stomatitis. During the last thirty (30) days; these animals have neither been exposed to Vesicular Stomatitis nor located within an area where Vesicular Stomatitis has been diagnosed." (5-3-03)

02. Permit for Entry. Livestock from states in which Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a permit for entry into Idaho. The permit number shall be written on the certificate of veterinary inspection. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

240. TUBERCULOSIS TEST REQUIREMENTS.

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

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

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

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho except intact male and female cattle of dairy breeds consigned directly to a feedlot approved for finish feeding of cattle for slaughter only relative to tuberculosis may enter by permit without a tuberculosis test provided the cattle have been individually identified on a certificate of veterinary inspection. (4-2-08)

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

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

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

a. Steers, spayed heifers, and intact heifers of beef and dairy breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef and dairy breeds

that are consigned directly to a feedlot approved for finish feeding of cattle or bison relative to tuberculosis, may enter without individual identification or testing for tuberculosis; and (3-20-04)()

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

c. Tuberculosis testing requirements in Subsection 240.03 may be waived, with administrator approval, for feeder animals of beef breeds and bison originating from a modified accredited advanced state or zone previously classified as accredited free if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous twelve (12) months and the herd of origin is not under hold order, quarantine, or epidemiological investigation for tuberculosis. (4-7-11)

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

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

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

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

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

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that are individually identified and have been classified negative on two (2) official tuberculosis tests conducted at least sixty (60) days, but not more than six (6) months apart, with the second test being conducted not more than sixty (60) days prior to entry into Idaho; or (5-3-03)

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

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

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

07. Rodeo Stock. All cattle six (6) months of age or older imported into Idaho for rodeo or timed events must have been tested negative for bovine tuberculosis within twelve (12) months prior to importation into Idaho. (4-7-11)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.24 - RULES GOVERNING TUBERCULOSIS

DOCKET NO. 02-0424-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-203 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 17, 2014.

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 of the proposed rule:

Adds new Section 401 that establishes criteria for cattle of unknown tuberculosis testing status to be fed to slaughter in feedlots approved for finish feeding.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on July 21, 2014 at the Idaho State Department of Agriculture. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 23](#). No comments have been submitted to the rulemaking record.

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 proposed rule, contact Dr. Scott Leibsle, Deputy Administrator at (208) 332-8614.

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 24, 2014.

DATED this 7th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0424-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

As used in these rules the following terms have the following meanings: (3-20-04)

- 01. Accredited Herd.** A herd that meets the standards of the UMR for bovine tuberculosis. (3-20-04)
- 02. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (3-20-04)
- 03. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (3-20-04)
- 04. Affected Herd.** A herd in which there is strong and substantial evidence that *Mycobacterium bovis* may exist. (3-20-04)
- 05. Approved Laboratory.** A state or federal veterinary diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture shall be the National Veterinary Services Laboratories, Ames, Iowa. (3-20-04)
- 06. Approved Feedlot.** A feedlot approved by the Administrator to feed cattle and domestic bison of unknown Tuberculosis test status. ()
- 067. Area-Veterinarian-in-Charge.** The veterinary official of USDA/APHIS/VS, who is assigned by the deputy administrator of APHIS to supervise and perform official APHIS animal health work. (3-20-04)
- 078. Bovine Tuberculosis.** A disease caused by *Mycobacterium bovis*. (3-20-04)
- 089. Cattle.** All domestic bovidae, including domestic bison. (3-20-04)
- 0910. Department.** The Idaho State Department of Agriculture. (3-20-04)
- 101. Director.** The director of the Idaho State Department of Agriculture or his designee. (3-20-04)
- 112. Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (3-20-04)
- 123. Domestic Bison.** All animals of the genus *Bison*, which are owned by a person. (3-20-04)
- 134. Domestic Cervidae.** Elk, fallow deer, and reindeer owned by a person. (3-20-04)
- 145. Eradication.** The complete elimination of bovine tuberculosis from cattle, domestic cervidae, bison and goats in a state so that the disease does not appear unless introduced from another species or from outside the state. (3-20-04)
- 156. Exposed.** Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by *Mycobacterium bovis*. (3-20-04)
- 167. Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (3-20-04)

178. **Free Area.** The counties, areas or districts not quarantined by the Division of Animal Industries for tuberculosis. (3-20-04)

189. **Herd.** Any group of cattle, bison, goats, and domestic cervidae maintained on common ground, or two (2) or more groups of cattle, bison, goats, and domestic cervidae under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. (3-20-04)

1920. **Herd Depopulation.** The destruction of all cattle, bison, goats, and domestic cervidae exposed to bovine tuberculosis in a herd. (3-20-04)

201. **Interstate Movement.** Movements of cattle, bison, goats, and domestic cervidae from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. (3-20-04)

212. **Intrastate Movement.** Movement of cattle, bison, goats, and domestic cervidae within Idaho. (3-20-04)

223. **Negative.** Any cattle, bison, domestic cervidae, or goats that show no response to the tuberculin test, or are classified by the testing laboratory as negative for tuberculosis. (3-20-04)

234. **Official Tuberculin Test.** A test for bovine tuberculosis, approved by APHIS, applied and reported by approved personnel in accordance with the UMR. (3-20-04)

245. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-04)

256. **Public Stockyards.** Premises where trading in cattle, bison, goats, and domestic cervidae is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where cattle, bison, goats, and domestic cervidae associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. (3-20-04)

267. **Quarantined Area.** The counties, areas, or portions thereof, quarantined by the Division of Animal Industries for tuberculosis. (3-20-04)

278. **Quarantined.** Isolation of all animals diseased or exposed thereto, from contact with healthy animals and exclusion of such healthy animals from enclosures or grounds where said diseased or exposed animals are, or have been kept. (3-20-04)

289. **Reactor.** Any cattle, domestic cervidae, bison or goat that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or DTE; or any animal that is classified a reactor upon slaughter inspection or necropsy. (3-20-04)

2930. **Restrain.** The confinement of cattle, bison, goats, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (3-20-04)

301. **State Animal Health Official.** The Administrator, or his designee, responsible for animal disease control and eradication activities. (3-20-04)

312. **Suspect.** Any cattle, bison, domestic cervidae, or goat that shows a response to a tuberculin test as stated in the UMR for bovine tuberculosis, and is not classified a reactor. (3-20-04)

323. **Tuberculin.** A product that is approved by, and produced under, USDA license for injection into cattle, bison, goats, and domestic cervidae for the purpose of detecting bovine tuberculosis. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

401. APPROVED FEEDLOT.

Cattle and domestic bison of unknown Tuberculosis test status may be fed for slaughter only in an Approved Feedlot, with no provisions for pasturing, grazing, or removal from the feedlot other than to slaughter. ()

402. APPLICATION FOR DESIGNATION AS AN APPROVED FEEDLOT

Application for Approved Feedlot status shall be made on application forms available from the Administrator. ()

403. ADMINISTRATOR APPROVAL.

The Administrator may approve feedlot applications after the feedlot has been inspected by state or federal animal health officials and: ()

01. Cattle Secured. The feedlot management has demonstrated that cattle of unknown Tuberculosis test status can be secured in the feedlot; and ()

02. Adequate Records. Feedlot records are adequate to show the origin and disposition of the cattle in the feedlot; and ()

03. Adequate Resources. The Administrator determines that the Division of Animal Industries has adequate human and fiscal resources to assure that the feedlot abides by the provisions of this chapter; and ()

04. Past History. The Administrator may take any past enforcement or violation history into consideration when making the final determination of whether or not to approve a feedlot. ()

404. APPROVED FEEDLOT NUMBER.

Feedlots approved by the Administrator shall receive an Idaho Approved Feedlot Number. ()

405. EXPIRATION OF APPROVED STATUS.

Approved feedlot status shall expire on September 1 of each year. It shall be the responsibility of feedlot management to apply each year for renewal of approved status. ()

~~406~~ -- 499. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.28 - RULES GOVERNING LIVESTOCK DEALERS, BUYING STATIONS, AND LIVESTOCK TRADER LOTS

DOCKET NO. 02-0428-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-203 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 17, 2014.

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 of the proposed rule:

The rule change amends Section 540 to require that all livestock leaving an approved livestock trader lot shall require an accredited veterinarian to inspect the animals and issue an official certificate of veterinary inspection (CVI) prior to release.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on July 28, 2014 at the Idaho State Department of Agriculture. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 24](#). No comments have been submitted to the rulemaking record.

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 proposed rule, contact Dr. Scott Leibsle, Deputy Administrator at (208) 332-8614.

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 24, 2014.

DATED this 5th Day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0428-1401
(Only those Sections being amended are shown.)

540. REMOVAL REQUIREMENTS.

All *brucellosis test eligible* cattle that are removed from an approved livestock trader lot shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian prior to removal, except: ~~(4-2-08)~~()

- 01. Livestock Markets.** Cattle shipped directly to a specifically approved livestock market. (4-2-08)
- 02. Slaughter.** Cattle shipped directly to an approved slaughter establishment must be individually identified with an approved USDA Backtag. (4-2-08)
- 03. ~~Approved Feedlots.~~** ~~Cattle shipped directly to an Idaho approved feedlot.~~ (4-2-08)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.29 - RULES GOVERNING TRICHOMONIASIS

DOCKET NO. 02-0429-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-203, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 29 through 30](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

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

ISDA does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540.

DATED this 7th day of August, 2014.

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-2710, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 31 and 32](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate commercial feeds. The rule is, however, consistent with national standards of the Association of American Feed Control Officials.

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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

DATED this 7th day of August, 2014.

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1401
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-604, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 34 and 35](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate commercial fertilizers. The rule is, however, consistent with national standards of the Association of American Plant Food Control Officials.

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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

DATED this 7th day of August, 2014.

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is acted on by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-1103, Idaho Code, and 7 CFR Part 205, National Organic Program (NOP).

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 37 through 41](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule regulates an activity regulated by the federal government. The proposed changes bring the rule into compliance with federal regulations.

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

No impact to the General Fund. There will be a \$1,250 reduction in annual revenue to the Organic Food Program dedicated fund due to repeal of a \$50 annual registration fee.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dave Ogden, Section Manager at (208) 332-8612.

DATED this 7th day of August, 2014.

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0641-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2204, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 42 and 43](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate soil and plant amendments. The rule is, however, consistent with national standards of the Association of American Plant Food Control Officials.

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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

DATED this 7th day of August, 2014.

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.08.01 - SHEEP AND GOAT RULES OF THE IDAHO SHEEP AND GOAT HEALTH BOARD

DOCKET NO. 02-0801-1401 (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 25-129, 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 17, 2014.

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

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

The proposed rule reflects the changes mandated by legislation passed that requires an eighty (80) cent per head assessment on goats and an increase from eight (8) cents to ten (10) cents per pound on wool. A total of twenty (20) cents per head on goats and two (2) cents per pound of wool will go to the newly created "Wolf Control Fund". The rule also clarifies the age at which dairy goats need to be tested for brucellosis prior to entering Idaho. Changes were also made in order to update the rule from the name "Idaho Sheep Commission" to "Idaho Sheep and Goat Health Board."

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

The rule will reflect the changes mandated by legislation requiring an eighty (80) cent per head assessment on goats and an increase from eight (8) cents to ten (10) cents per pound on wool. A total of twenty (20) cents per head on goats and two (2) cents per pound of wool will go to the newly created "Wolf Control Fund". These fees are authorized by Section 25-131, 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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stanley T. Boyd, Executive Secretary, Idaho Sheep and Goat Health Board, P.O. Box 2596, Boise, ID 83701 or (208) 334-3115. 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 24, 2014.

DATED this 7th Day of August, 2014.

Stanley T. Boyd, Executive Secretary
Idaho Sheep and Goat health Board
802 W. Bannock St., Suite 205
P.O. Box 2596, Boise, ID 83701
Phone: (208) 334-3115
Fax: (208) 336-9447

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0801-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

- 01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/Vs in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (3-20-04)
- 02. Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (3-20-04)
- 03. Animals.** All vertebrates, except humans. (3-20-04)
- 04. Authorized Federal Inspector.** An employee of USDA authorized by the Board to perform the functions of the Idaho Sheep and Goat Health Board. (3-20-04)
- 05. Authorized State Inspector.** An employee of the state of Idaho authorized by the Board to perform the functions of the Idaho Sheep and Goat Health Board. (3-20-04)
- 06. Board.** The Idaho-~~State~~ Sheep-~~Commission~~ and Goat Health Board or its designee. ~~(3-20-04)~~ ()
- 07. Breeding Stock.** Intact male or female sheep or goats of any age. (3-20-04)
- 08. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (3-20-04)
- 09. *Brucella Ovis* Test Positive.** An animal that tests in the positive range on an approved *Brucella ovis* ELISA test. (3-20-04)
- 10. *Brucella Ovis* Test Suspect.** An animal that tests in the suspect range on an approved *Brucella ovis* ELISA test. (3-20-04)
- 11. *Brucella Ovis* Test Negative.** An animal that tests in the negative range on an approved *Brucella ovis* ELISA test. (3-20-04)
- 12. Certificate.** An official certificate of veterinary inspection or other approved certificate issued by an accredited veterinarian, state or federal animal health official, or other approved official at the point of origin of the shipment of animal(s) being imported. (3-20-04)
- 13. Commercial Low-Risk Goats.** Intact or castrated goats, raised for fiber or meat, that are not registered or exhibited, that are not scrapie positive, suspect, high risk, or exposed animals and that have not been exposed to sheep or are not from a state that has scrapie in goats. (3-20-04)
- 14. Contemporary Lambing Group.** The time from the first birth to sixty (60) days post birthing of the entire group in a given lambing season. (3-20-04)
- 15. Department.** The Idaho State Department of Agriculture. (3-20-04)
- 16. Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (3-20-04)
- 17. Exposed.** Animals that have had direct contact with other animals, herds, or materials that have

been determined to be infected with or affected by any infectious, contagious, or communicable disease. (3-20-04)

18. Federal Animal Health Official. An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (3-20-04)

19. Flock. Flock or flocks shall be interchangeable with the terms herd or herds and denote a group of one (1) or more animals that are fed, housed and birthed together on the same premises, or animals maintained in separate geographic areas that have interchange at or around the time of birth. Changes in ownership of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. (3-20-04)

20. Flock Plan. A written flock management agreement signed by the owner, his accredited veterinarian if there is one, a representative of the Division of Animal Industries, and an APHIS representative in which each signatory agrees to undertake action specified in the Flock Plan to eradicate or control scrapie as defined in 9 CFR Part 54.8 a-f. Goats exposed to scrapie will be subjected to the same rules as sheep. (3-20-04)

21. Goats Requiring Premises/Flock Identification Number. Sexually intact goats or goats that have resided on the same premises as sheep or any other goats not defined in Subsection 010.13. (3-20-04)

22. Idaho Premises/Flock Identification Number. A unique identification number or alphanumeric designation approved by APHIS, and assigned by the Board to each premises/flock of breeding sheep or goats, as defined in Subsection 010.21, in the state of Idaho. (3-20-04)

23. Low Risk Commercial Sheep. Commercial whiteface, whitefaced cross, or commercial hair sheep from a flock with no known risk factors for scrapie, including any exposure to female blackfaced sheep, that are identified with a permanent brand or ear notch pattern registered with an official brand registry and that are not scrapie-positive, suspect, high-risk, or exposed animals and are not animals from an infected, source, or exposed flock. (3-20-04)

24. Negative. Animals are classified as negative when they have been subjected to official tests for a disease, and the tests performed have failed to disclose evidence of the disease. (3-20-04)

25. Official Individual Identification. The unique identification of individual animals with an alpha numeric number applied as a tag, a legible tattoo, electronic device, or any other device approved by APHIS. The Idaho Premises/Flock Identification number can serve as the official individual identification number if it contains a unique individual animal number in addition to the Idaho premises/flock identification number. (3-20-04)

26. Post Exposure Monitoring and Management Plan. A monitoring plan which includes a written agreement signed by the owner of the flock and a representative of the Division of Animal Industries and an APHIS representative in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least five (5) years after an approved Flock Plan has been completed. The PEMMP requires at least once a year flock inspections and prompt reporting of any animal over fourteen (14) months of age which dies in the flock so that some of these animals can be selected and submitted for scrapie testing. The Plan also includes the requirements outlined in 9 CFR Part 54.8. Owners may request to join the Scrapie Flock Certification Program after two (2) years of participation in the PEMMP. (3-20-04)

27. Premises. The ground, area, buildings and equipment utilized to raise, propagate or control sheep and goats. (3-20-04)

28. Quarantine. A written order, executed by the Board or the Administrator, to confine or hold animals on a premises or any other location, where found, and prevent movement of animals from a premises or any other location. (3-20-04)

29. Scrapie. A transmissible spongiform encephalopathy that is a nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats. (3-19-99)

30. Scrapie Exposed Animal. Any animal which has been in the same flock at the same time within the previous seventy-two (72) months as a scrapie positive female animal excluding limited contacts. Limited

contacts are contacts between animals that occur off the premises of the flock and do not occur during or within sixty (60) days after parturition for any of the animals involved. (3-20-04)

31. Scrapie Flock Certification Program. A cooperative Federal-State-Industry voluntary program for reducing the incidence and controlling the spread of scrapie through flock certification. (3-20-04)

32. Scrapie High Risk Animal. An animal determined by epidemiologic investigation to face a high risk of developing clinical scrapie because the animal was: (3-20-04)

a. Progeny of a scrapie-positive dam; (3-20-04)

b. Born in the same contemporary lambing group as a scrapie-positive animal, or (3-20-04)

c. During any subsequent lambing season if born before the flock completes the requirements of a flock plan; or (3-20-04)

d. Born in the same contemporary lambing group as progeny of a scrapie-positive dam or any QQ, at codon 171, sheep present in the lambing facility/area where a scrapie-positive animal was born during the contemporary birth of a scrapie-positive animal. (3-20-04)

e. Animals that fit the criteria for high risk animals which are determined by genetic testing to be QR or RR at the 171 codon, or are determined by other recognized testing procedures to pose no risk, may be exempted as high risk animals by the Board, upon the recommendation of the State Scrapie Certification Board, based upon evidence from the latest research information available. (3-20-04)

33. Scrapie Infected Flock. Any flock in which a scrapie-positive animal has been born, birthed or aborted. A flock will no longer be considered infected after an approved Flock Plan has been completed. (3-20-04)

34. Scrapie-Positive Animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, or another laboratory authorized by state or federal officials to conduct scrapie tests approved for scrapie diagnosis by APHIS or the Administrator. (3-20-04)

35. Scrapie Source Flock. A flock in which an animal was born and subsequently diagnosed as scrapie-positive at less than seventy-two (72) months of age. The flock will no longer be considered a source flock after the requirements of an approved Flock Plan have been completed. A trace to a flock must meet the following criteria to designate the flock as a source flock: The scrapie-positive animal must: (3-20-04)

a. Be identified with a Premises/Flock Identification Number, or on an official eartag, electronic device, ear tattoo, or flank tattoo which is correlated to the Premises/Flock Identification number on flock records; or (3-20-04)

b. Be identified with a genetic heredity test or nose print; or (3-20-04)

c. Possess the original registry eartag or individual identification ear tag along with the movement, production, or registry records indicating birth in the source flock; or (3-20-04)

d. Be traced to the flock by a veterinary epidemiologist through a thorough epidemiological investigation of records and all other available evidence. (3-19-99)

36. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication programs. (3-20-04)

37. State Scrapie Certification Board. The State Scrapie Certification Board will consist of APHIS-AVIC, the State animal health official, animal producers and accredited veterinarians. Animal producers and accredited veterinarians will be appointed by the AVIC and the State animal health official. (3-20-04)

38. Terminal Feedlot. As defined in Title 9 CFR, Parts 54 and 79. (3-20-04)

39. **Trace.** All actions required to identify the flock of origin or destination of an animal. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

013. OFFICIAL IN CHARGE OF SHEEP AND GOATS.

The Idaho ~~Board of Sheep Commission~~ and Goat Health Board is authorized to regulate all matters concerning sheep and goats. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

101. PERMITS.

01. Request for Permits. Request for the permits required under Section 100 shall be in writing, by telephone or facsimile and shall set forth the name and address of the owner of the animals offered for movement into the state of Idaho, the number and class of sheep and goats to be brought in, the destination, the name and address of the consignee, and the approximate date and place of entry. A copy of the permit, or permit number written on the face of the waybill or certificate of veterinary inspection accompanying movement, shall be shown to a representative of the Board or any law enforcement officer of the state, county, or municipality of the state of Idaho upon request. (3-20-04)

02. Certificates of Veterinary Inspection to Be Furnished. Copies of the certificates of veterinary inspection from the point of origin shall accompany the shipment and shall include a copy of the permit or the permit number written on the face of the certificate of veterinary inspection and shall be shown to a representative of the Board or any law enforcement officer of the state, county, or municipality of the state of Idaho upon request, and a copy forwarded to the Idaho Department of Agriculture, Division of Animal Industries, c/o Idaho ~~Board of Sheep Commission~~ and Goat Health Board, P.O. Box 7249, Boise, Idaho 83707 immediately after issuance for sheep and goats entering the state of Idaho. (3-19-04)()

03. Inspection Fees. An inspection fee of one hundred dollars (\$100) per incidence, plus mileage, shall be paid on all sheep and goats exported from or imported into Idaho in violation of these rules. Such incidences require an inspection of animals, certificates of veterinary inspection and permit. (3-20-04)

04. Examination and Treatment Fees. The Board may assess a fee on sheep and goat producers who receive services from the Board or its representatives, such as examination and treatment of animals for diseases or parasites. The fees assessed shall not exceed the actual costs for the services rendered. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

104. DAIRY GOATS.

All dairy type goats, including bucks, entering the state of Idaho shall be accompanied by a permit issued by the Board, together with a certificate of veterinary inspection issued at point of origin by an authorized veterinarian, ~~to which certificate of veterinary inspection there shall be attached a negative test chart~~ All dairy type goats, including bucks, aged six (6) months or older shall have been tested negative for *Brucella melitensis*, ~~conducted~~ within thirty (30) days of the date of entry into the state of Idaho. The negative test chart shall be signed by the person in charge of the laboratory where the test was made and approved by the state animal health official of the state of origin and attached to the certificate of veterinary inspection. Goats entering Idaho on a short term temporary basis for show or other temporary purposes may be exempted from having a negative test for *Brucella melitensis* completed, with permission from the Board. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

107. INTERSTATE SHIPMENTS.

01. **Waybill Requirement.** All sheep and goats leaving the state of Idaho by any common carrier, by railroad, truck, private conveyance, or any kind of transportation shall be accompanied by a waybill, stating the owner's name and indicating destination of sheep or goats, or shall be accompanied by a certificate of veterinary inspection issued by an inspector appointed by the Board or a representative of the APHIS or accredited veterinarian; said certificates of veterinary inspection to be dated not more than ~~ten~~ thirty (~~30~~) days prior to date of movement, and shall comply with the rules for the state of destination. (3-20-04)()

02. **Waybill Violation.** Failure to have such waybills or other documents accompanying the sheep or goats shall constitute a violation of these rules and shall be punishable as provided in Section 900. (3-20-04)

03. **Carriers.** No common or contract carrier or owner or caretaker shall unload any breeding sheep, breeding goats, or dairy goats within the state of Idaho from other states or country, other than as provided in Sections 103, 105, 106, and 107, of these rules, unless such shipments be accompanied by an Idaho Origin Sheep Interstate Grazing Permit issued by the Board or other permit issued by the Board, and the official certificate as provided herein. The original or true copy of each certificate with permit shall be attached to the waybill covering such shipments or be in possession of the owner or caretaker of shipment. (3-20-04)()

04. **Who May Inspect.** Authorized state or federal inspectors and accredited veterinarians may inspect sheep and goats. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

700. SHEEP ASSESSMENTS.

The following rules shall apply to all sheep. (3-20-04)

01. **Payment of Assessment.** The owner of sheep on July 1st of the assessment year shall be responsible for the payment of the assessment levied by the Boards as provided for in Section 25-130 and 25-131, Idaho Code. The rate of assessment shall be ~~six~~ eight cents (\$.068) per pound on all wool, in the grease basis, except tags, crutchings, and dead wool. (3-18-99)()

02. **Assessment as Resident Sheep.** The assessment shall be levied and assessed to the producer at the time of the first sale of wool and shall be deducted by the first purchaser from the price paid to the producer at the time of such sale. (5-5-80)

03. **Migratory Sheep.** In the event that a sheep, which produces wool subject to this assessment, shall be located outside the state of Idaho during a part of the assessment year, the amount of the assessment shall be reduced on a pro rata basis. A grower will be required to request a pro rata adjustment in writing to the Board. (3-19-99)

04. **Costs of Collection.** All costs of collection of delinquent assessments shall be borne as an additional charge against the delinquent assessee first purchaser. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

701. GOAT ASSESSMENTS.

The following rules shall apply to all goats. ()

01. Payment of Assessment. The owner of goat(s) shall be responsible for the payment of the assessment levied by the Board as provided for in Sections 25-130 and 25-131, Idaho Code. The rate of assessment shall be eighty cents (\$.80) per head. ()

02. Assessment as Resident Goats. The assessment shall be levied and assessed to the producer at the time of the sale of said goat(s) and shall be deducted by the first purchaser from the price paid to the producer at the time of such sale. ()

03. Migratory Goats. In the event that a goat, which is subject to this assessment, shall be located outside the state of Idaho during a part of the assessment year, the amount of the assessment shall be reduced on a pro rata basis. A grower will be required to request a pro rata adjustment in writing to the Board. ()

04. Costs of Collection. All costs of collection of delinquent assessments shall be borne as an additional charge against the delinquent assessee first purchaser. ()

~~704~~2. -- 899. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01 - RULES FOR CONTRACT PROVIDERS

DOCKET NO. 05-0101-1401 (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 20-504(3) and 20-504(12), 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 17, 2014.

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 is being repealed in its entirety and replaced by new chapter IDAPA 05.02.01, "Rules for Residential Treatment Providers," and IDAPA 05.02.02 "Rules for Staff Secure providers," which are being published 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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 27](#).

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 Jessica Moncada, (208) 334-5100 x. 410. 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 24, 2014.

DATED this 7th Day of August, 2014.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83702-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

IDAPA 05.01.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.05 - RULES FOR REINTEGRATION PROVIDERS

DOCKET NO. 05-0105-1401 (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 20-504(3) and 20-504(12), 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 17, 2014.

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 is being repealed in its entirety and being replaced with new chapter IDAPA 05.02.03, "Rules for Reintegration Providers," IDAPA 05.02.01, "Rules for Residential Treatment Providers" and 05.02.04, "Rules for Supported Living Providers," which are being published in the 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 negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 28](#).

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 Jessica Moncada, (208) 334-5100 x. 410. 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 24, 2014.

DATED this 7th Day of August, 2014

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IDAPA 05.01.05 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.01 - RULES FOR RESIDENTIAL TREATMENT PROVIDERS

DOCKET NO. 05-0201-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), 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 17, 2014.

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:

05.02.01, "Rules for Residential Treatment Providers," will contain rules that are applicable to all residential treatment providers who contract with the IDJC. This will eliminate current duplication of these rules in multiple chapters. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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: No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 29](#).

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 Jessica Moncada, (208) 334-5100 x. 410.

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 24, 2014.

DATED this 7th Day of August, 2014.

Sharon Harrigfeld, Director
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954 W. Jefferson
PO Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0201-1401

IDAPA 05
TITLE 02
CHAPTER 01

05.02.01 - RULES FOR RESIDENTIAL TREATMENT PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the "Interstate Compact on Juveniles," the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.01, "Rules for Residential Treatment Providers," IDAPA 05, Title 02, Chapter 01. ()

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the following principles: accountability; community protection; and competency development. These rules apply to all residential treatment providers that coordinate needed treatment services identified in individual service implementation plans. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Boise, Idaho 83720. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections' rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the residential treatment providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. REGIONAL FACILITY CONTACT INFORMATION.

01. IDJC Region 1 Facility. The Juvenile Corrections Center at Lewiston may be contacted at (208) 799-3332. ()

02. IDJC Region 2 Facility. The Juvenile Corrections Center at Nampa may be contacted at (208) 465-8443. ()

03. IDJC Region 3 Facility. The Juvenile Corrections Center at St. Anthony may be contacted at (208) 624-3462. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Adult. A person eighteen (18) years of age or older. ()

02. Assessment. The process of gathering information to determine risk and program needs for the purpose of guiding placement decisions and to develop the individualized treatment/service plan. ()

03. Body Cavity Search. The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical authority. ()

04. Body Search, Clothed. Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. ()

05. Body Search, Unclothed. Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. ()

06. Clinical Supervisor. Person who supervises juvenile services coordinators and clinicians in assigned regions and reviews and approves case management documentation. This responsibility also includes oversight of the regional observation and assessment process, and assisting in the maintenance and development of programs. ()

07. Commit. To transfer legal custody to the Idaho Department of Juvenile Corrections. ()

08. Community Service Hours. Hours of community service performed by a juvenile offender in response to a court order or which may be imposed following a formal disciplinary process within a residential treatment provider program for damages to the facility or program. ()

09. Community Treatment Team. A team including the juvenile services coordinator, residential treatment provider case manager, juvenile probation officer, family, and others, as necessary, who work together to provide input into each juvenile offender's service implementation plan, implement their respective sections of that plan, and monitor and report progress on treatment goals. ()

10. Contraband. Any item not issued or authorized by the residential treatment provider. ()

11. Confidential Information. Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. ()

12. Court. District court or magistrate's division thereof. ()

13. Criminogenic Risks and Needs. Assessed juvenile offender risk factors or attributes of juvenile

offenders that are directly linked to criminal behavior and, when changed, influence the probability of recidivism.

()

14. Department. The Idaho Department of Juvenile Corrections. ()

15. Detention. Refers to the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities. ()

16. Director. The director of the Idaho Department of Juvenile Corrections. ()

17. Escape/Attempted Escape. Attempting to leave or leaving a facility without permission, or attempting to leave or leaving the lawful custody of any officer or other person responsible for juvenile's supervision without permission. ()

18. Facility. The physical plant associated with the operation of residential or nonresidential programs. ()

19. Facility Treatment Team. The group of staff employed by the department or by the residential treatment provider who have input into developing the juvenile offender's service implementation plan, who provide direct services to juvenile offenders, and who monitor and report on the progress on meeting the goals in that plan. The facility treatment team is responsible for working with the community treatment team to develop and implement the service implementation plan. ()

20. Incident Report. A written document reporting any occurrence or event, or any other incident which threatens the safety and security of staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. ()

21. Interns. A paraprofessional staff who is pursuing a degree and who, as a part of documented coursework with a college or university, may provide counseling or other services to juvenile offenders in the department's custody or their families, under direct supervision of qualified staff. ()

22. Judge. A district or a magistrate judge. ()

23. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. ()

24. Juvenile Offender. A person under the age of eighteen (18), at the time of any act, omission, or status and who has been adjudicated as being within the purview of the Juvenile Corrections Act. ()

25. Juvenile Records. Information concerning the juvenile offender's delinquent or criminal, personal, and medical history, behavior and activities. ()

26. Juvenile Services Coordinator. An individual, employed by the department, who provides ongoing coordination of services for juvenile offenders committed to the custody of the department. Services include but are not limited to: case coordination/management, family services, and reintegration. In all cases, the juvenile services coordinator collaborates with the facility case manager in providing these services. The juvenile services coordinator communicates information with families, communities, courts, and with other IDJC employees throughout a juvenile's commitment. ()

27. Legal Custody. The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. ()

28. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this title, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential

facility or other facility having temporary or long-term physical custody of the juvenile offender. ()

29. Mechanical Restraints. Mechanical devices used to prevent an uncontrollable juvenile offender from injuring themselves or others. ()

30. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

31. Mental Health Professional. An individual who possesses a master's degree and meets the applicable state's criteria as a licensed LPC, LMFT, LCPC, LCSW, LMSW, psychologist or the equivalent. ()

32. Observation and Assessment Evaluation. Written documentation of assessment tool results, observations, interviews, risks, and any special considerations resulting in the creation of the service plan, which includes the initial reintegration plan. ()

33. Observation and Assessment Program. A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. ()

34. Physical Restraint. Any method of physical control of a juvenile offender which involves staff touching or holding a juvenile offender to limit or control the juvenile offender's actions. ()

35. PREA. A federal act promulgating standards that promote zero tolerance toward sexual abuse of juvenile offenders by staff or by other juvenile offenders. Also known as Public Law 108-79 or the Prison Rape Elimination Act. ()

36. Program Director. The administrator of the residential treatment provider for juvenile offenders. ()

37. Progress Report. A written report summarizing progress toward the goals and objectives set in the service implementation plan. ()

38. Quality Improvement Services Bureau. Department employees responsible for overseeing residential treatment provider's compliance with contract terms and these rules. ()

39. Referral Packet. The information necessary for a potential residential treatment provider to determine whether the program can appropriately meet the identified criminogenic risks and needs of the juvenile being referred. ()

40. Region. Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. ()

41. Regional Facility. Department-operated juvenile correctional centers located in each region of the state. ()

42. Reintegration Plan. That part of the juvenile offender's service plan which specifically addresses the terms, conditions and services to be provided as the juvenile offender moves to a lower level of care or leaves the custody of the department. ()

43. Relapse Prevention Plan. A document completed by the juvenile, used to identify interventions for problem behavior, positive supports, and high risk people and places. ()

44. Release from Department Custody. Termination of the department's legal custody of a juvenile. ()

45. Residential Treatment Provider. Also known as Provider. A residential program under contract with the department to supervise juvenile offenders, provide accountability and competency development in the least restrictive setting, consistent with public safety. ()

46. Restitution. Financial payment intended to reimburse victims for loss, damage, or harm caused by a juvenile offender. Restitution must be court ordered. Providers may not impose restitution against a juvenile offender without a court order. ()

47. Restricted Clinical Information. Any record, document or other information legally protected from dissemination to the general public by statute or rule, such as psychological evaluations, therapy notes, therapy journals, sex histories, polygraph results, psychological testing, or other legally confidential information. ()

48. Room Confinement. Instances in which juvenile offenders are confined in the room in which they usually sleep, rather than being confined in an isolation room. ()

49. Separation or Isolation. Any instance when juvenile offenders are confined alone for over fifteen (15) minutes in a room other than the room in which they usually sleep. ()

50. Service Implementation Plan. A written document produced and regularly updated by a residential treatment provider with input from the community treatment team. This plan describes interventions and objectives to address the service plan goals including the areas of community protection, accountability, and competency development. ()

51. Service Plan. A written document produced during the observation and assessment period following commitment to the department that defines the juvenile offender's criminogenic needs and risks, strengths, goals, and recommendations for family and reintegration services. The service plan addresses the relevant needs and services for each juvenile offender in areas such as mental health, medical, education, substance abuse, and social skills. ()

52. Sexual Abuse. Includes any type of contact which is sexual in nature and directed toward a juvenile offender by staff or by juvenile offenders as well as sexual harassment which includes repeated and unwelcomed sexual advances, comments, gestures, voyeurism, implied threats, and coercion. ()

53. Staffings. Regularly scheduled meetings of the community and facility treatment team members to review progress on treatment goals and objectives identified in each juvenile offender's service implementation plan. ()

54. Subcontractor. A person or business which has contracted with the residential treatment provider for provision of some portion of work or services. ()

55. Suicide Risk Assessment. An evaluation performed by a mental health professional to determine the level of immediate risk of a juvenile offender attempting suicide, and to apply this information in developing a safety plan for the juvenile offender. ()

56. Suicide Risk Screening. An evaluation that is used to quickly determine, based upon known history and current behavior, whether a juvenile offender presents any identifiable risk of immediate suicidal behavior, and to call in a mental health professional to complete a suicide risk assessment. ()

57. Superintendent. The person who has responsibility and oversight of a regional facility and over the region of the state where the regional facility is located. ()

58. Transfer. Any movement of a juvenile offender in the custody of the department from one (1) residential treatment provider to another without a release from department custody. ()

59. Treatment. Any program of planned services developed to meet risks and needs of juvenile offenders and their families, as identified in an assessment, and as related to activities designed to teach alternate behaviors and to support change in the beliefs that drive those behaviors. Treatment as referenced in this context also includes the maintenance of conditions that keep juvenile offenders, staff and the community safe. ()

60. Variance. The means of complying with the intent and purpose of a residential treatment provider

rule in a manner other than that specifically prescribed in the rule. ()

61. Vocational Services. Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. ()

62. Volunteer. A person from the community who freely chooses to do or provide both direct or indirect services to juvenile offenders or staff at a facility or juvenile correctional center. This person is not compelled to do so and is not compensated for the services. ()

63. Waiver. The non-application of one (1) or more of these rules based upon a request by the residential treatment provider and a written decision issued by the department. ()

64. Work Program. A public service work project which employs juveniles at a reasonable wage for the purpose of reimbursing victims of juvenile offender's delinquent behavior. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

Juveniles are committed to the department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-547, Idaho Code). ()

101. WAIVER AND VARIANCE.

Minimum program standards established herein shall apply to all services provided by the residential treatment provider. A waiver and variance from the standards stated in these rules must receive prior written approval from the department and must be attached as a formal amendment to the contract. ()

102. APPLICABILITY.

This chapter applies to all residential treatment providers that coordinate needed treatment services identified in individual service implementation plans. Resident treatment providers must also abide by IDAPA 05.02.02, "Rules for Staff Secure Providers"; IDAPA 05.02.03, "Rules for Reintegration Providers"; or IDAPA 05.02.04, "Rules for Supported Living Providers," as applicable. ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

01. Inspections. The department shall have the authority to conduct reviews of programs, program operations, and facilities to ensure the residential treatment provider's compliance with these rules. The residential treatment provider shall cooperate with the department's review, and must provide access to the program or facility and all juvenile records for juveniles in department custody, as deemed necessary by the department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available. ()

02. Quarterly Reports. In order to assist the department in monitoring contract programs for key areas of operational performance, each residential treatment provider will be required to submit a quarterly report to the department's Quality Improvement Services Bureau. These reports may be submitted by facsimile, mail, or electronically within thirty (30) calendar days of the end of each quarter. The reports must include, at a minimum, the following information: ()

a. All staff turnover during the quarter; ()

b. Number of reportable incidents of the type listed below: ()

i. Assaults against juvenile offenders; ()

ii. Assaults against staff; ()

- iii. Behavioral and psychiatric emergencies; ()
- iv. Contraband; ()
- v. Escapes; ()
- vi. Visitation restrictions due to juvenile offender behavior; ()
- vii. Injuries or illness requiring significant medical attention; ()
- viii. Restraints; ()
- ix. Separation or isolation; ()
- x. Sexual abuse; and ()
- xi. Self-harm and suicide behavior. ()
- c. Number of hours and topics included in staff training for the quarter; ()
- d. Community services hours; ()
- e. GED/HSE or high school diplomas awarded; and ()
- f. A copy of juvenile offender grievances and resolutions according to Section 232 of these rules. ()

03. Notification of Program Changes. Residential treatment providers must notify the department as soon as possible, but no later than thirty (30) calendar days, before there is a change in the name of the organization, type of service, characteristics of juveniles being served, changes in the licensed capacity of the program, closure of the program, changes in ownership or in the organizational structure. ()

04. Emergency Closure of Program. In the event of a natural disaster, fire, flood, or other emergency situation in which the residential treatment provider may be closed temporarily, the residential treatment provider will immediately notify the regional juvenile correctional center in its respective region. ()

05. Notification of Death of a Juvenile Offender. In the event of the death of a juvenile who is in the department's custody, the residential treatment provider must immediately notify the regional facility, juvenile offender's parent or guardian, and law enforcement. Other notifications will be coordinated between the residential treatment provider and the department. ()

06. Additional Incident Reporting. The residential treatment provider must report to the department any and all incidents of the type normally requiring immediate notice to the department, as identified in Subsection 241.01, that occur in their program or facility regardless of whether or not the juveniles involved are in the department's custody. Any such reports regarding juveniles not in department custody must include the type and scope of the incident without any information identifying the juvenile, and must be made available to the department's Quality Improvement Services Bureau. ()

a. The residential treatment provider must report to the department any and all incidents of staff misconduct relating to juvenile care and that result in any type of suspension or termination of employment, revocation or suspension of a professional license, or revocation or suspension of driver's license of any staff who transports juveniles. ()

b. All instances of battery committed on staff must be documented and, whenever appropriate, charges filed with the appropriate authorities. Each such incident must be reported to the juvenile offender's juvenile services coordinator as an incident report according to Subsection 241.01 of these rules. ()

07. Additional Reporting Requirements. In situations where the department has determined that the safety, security, or order of a program are at risk, more frequent and more detailed reporting will be required by the Quality Improvement Services Bureau. The department has a responsibility at all times to monitor the overall safety, security, and order of a program for the protection and well-being of the juvenile offenders. ()

201. COMPREHENSIVE AND CURRENT PROGRAM DESCRIPTION.

01. Program Description. Residential treatment providers must provide, and keep current with the department, a program description detailing the range of services to be provided and the methods for providing these services. ()

02. Minimum Requirements. At a minimum, the program description must include: ()

a. Target population and specific admission criteria; ()

b. Primary and secondary treatment modalities; ()

c. Outline of daily schedules for juvenile offenders and staff; ()

d. Full description of educational services provided; ()

e. Description of emergency and routine medical and mental health services, including psychotropic medication monitoring, unless this population is specifically excluded from admission to the program; ()

f. Description of religious services, recreation services, and other specialized services provided as indicated by the needs of the identified target population; ()

g. Written criteria for successful completion of the program and written criteria for termination from the program prior to completion; ()

h. A thorough description of all services offered as a part of the program, including a description of the frequency of service delivery; ()

i. A detailed description of each individual treatment intervention, such as treatment group, psycho-educational group, cognitive restructuring group, and peer group including: ()

i. The overall goals of the treatment intervention or service area; ()

ii. The average length, total length, and number of sessions in the treatment intervention or service area; ()

iii. The facilitator education and training requirements; and ()

iv. The specific curriculum used in the treatment intervention or service area. ()

j. A detailed description of the behavior management component of the program. ()

202. DISPOSITION OF REFERRALS FROM THE DEPARTMENT.

A juvenile offender's admission into the program shall be based on an assessment of the juvenile offender's strengths, risks, needs, and on the anticipated ability of the program to reasonably address those issues. Residential treatment providers must ensure that the juvenile offender and parent or guardian are provided an opportunity to participate in the admission process and related decisions. ()

01. Accepting Referral. Upon receipt of a complete referral packet from the department, the residential treatment provider has four (4) business days in which to decide whether to accept or decline the referral. Upon acceptance, the Referral Acceptance/Denial Form must be completed and signed. By accepting the referral, the residential treatment provider agrees to address the identified treatment goals and the anticipated length of stay. Once

the acceptance has occurred, the juvenile offender's transportation will be made. ()

02. Declining Referral. Residential treatment providers must not, without just cause, deny admission to any juvenile offender who meets the specific admission criteria set forth in the provider's program description. If a residential treatment provider denies a referral, the specific reason for denial must be documented on the department's Referral Acceptance/Denial Form and the form returned to the regional referral coordinator. The residential treatment provider must then destroy the referral packet. ()

03. Change in Admission Criteria. Any change in the residential treatment provider's admission criteria must be reflected in the provider's admission policy and requires a written amendment to the contract with the department. Temporary exceptions are covered under Section 101 of these rules. ()

04. Reservation of Program Slots. When a program slot is to be reserved, the department shall contact the residential treatment provider and request that the slot be reserved. Unless the department gives specific approval, the maximum time for which a program slot may be reserved and the residential treatment provider continue to receive payment is forty-eight (48) consecutive hours. ()

203. SAFETY AND MAINTENANCE OF BUILDINGS AND GROUNDS.

01. Compliance with State and Local Codes and Ordinances. The residential treatment provider must maintain compliance with all state and local building, life safety, and zoning requirements. Documentation of compliance must be made available to the department. ()

02. Accessibility. The program buildings, parking lots and other structures must provide access as required by the Americans with Disabilities Act, as amended, and other applicable federal and state laws and regulations. ()

03. Maintenance. The residential treatment provider must ensure that all structures are maintained, are in good repair, and are free from hazards to health and safety. The grounds must also be maintained and must be free from any hazard to health and safety. The residential treatment provider must have a written plan for preventive and ongoing maintenance of its building and grounds. ()

04. Construction Considerations. When designing or acquiring any new program or facility and in planning any substantial expansion or modification of existing facilities, the residential treatment provider shall consider the effect of the design, acquisition, expansion, or modification upon the provider's ability to protect residents from any harm, including sexual abuse. ()

05. Program Safety. Each residential treatment provider must have a designated staff member who is responsible for the safety of the program. This individual must conduct monthly inspections of the program, with copies of the inspections kept on file for review by the department, to identify: ()

- a. Fire safety; ()
- b. Existing hazards; ()
- c. Potential hazards; and ()
- d. The corrective action that should be taken to address these hazards. ()

06. Emergency Procedures. The residential treatment provider will utilize and maintain a current emergency procedure manual which must include, at a minimum, procedures pertaining to: ()

- a. Fire safety and escape; ()
- b. Emergency medical care; ()
- c. Notification and filing charges on escape; ()

- d. Incidents of violence within the program; ()
- e. Suicide prevention; ()
- f. Child abuse reporting; and ()
- g. Sexual abuse disclosures. ()

204. VEHICLES.

01. Condition. Vehicles used to transport juveniles must be mechanically sound, in good repair, and meet the department's requirements for insurance coverage. ()

02. Compliance with Applicable Laws. All vehicles must possess current state licenses and must comply with all applicable state laws. When in use, all vehicles must carry a standard first aid kit and a fire extinguisher. ()

03. Maintenance and Equipment Checklist. The residential treatment provider must have a vehicle maintenance and equipment checklist, which must include a listing of all critical operating systems and equipment inspections, the date of the last inspection, and the type of service or action taken. All repairs required to critical operating systems, such as brakes and headlights, must be made immediately. All worn or missing critical equipment must be replaced immediately, such as tires, jacks, and seat belts. ()

205. TRANSPORTATION.

01. Transportation for Service Plan. It shall be the responsibility of the residential treatment provider to provide all transportation associated with the juvenile offender's service implementation plan. The family may be relied upon to provide transportation for passes and some other community contacts as long as this does not present any undue risk or burden to the juvenile offender, family, or community. ()

02. Transportation for Court Proceedings. It is the provider's responsibility to immediately notify the juvenile offender's juvenile services coordinator of court dates and appearances. Arrangements for transportation related to court appearances, as well as related to transfer or release of juvenile offenders from department custody, must be made between the residential treatment provider and the juvenile services coordinator. ()

03. Transport in Personal Vehicles. Juveniles in the custody of the department will not be transported in personal vehicles unless an emergency situation exists and is substantiated by documentation. ()

206. DRIVERS.

01. Juvenile Transport. All drivers of vehicles transporting a juvenile offender must possess a valid driver's license from the applicable state and the proper licenses required by state law for the type of motor vehicle operated. All such operators' driving records must be checked through the Department of Motor Vehicles for the preceding three (3) years and annually after date of hire. During that time, the operator must not have had any felony traffic convictions or withheld judgments. Any incidents of suspended licenses during that time must be specifically reviewed by the residential treatment provider. Personnel files must contain evidence of training to transport a juvenile offender as well as other appropriate documentation. ()

02. Parent or Guardian Transport. When parents or guardians are allowed to transport a juvenile offender for any reason, it is the responsibility of the residential treatment provider to ensure that the individual possesses a current and valid driver's license and insurance coverage. ()

207. -- 209. (RESERVED)

210. ADMINISTRATIVE RECORDS.

01. Documentation Retention. The residential treatment provider must document and retain documentation of all information related to the following items: ()

a. Program consultation provided, such as technical assistance on program design and implementation; ()

b. Training provided to staff; ()

c. All alleged instances of child abuse; ()

d. Program audits or reviews, including corrective actions required and taken; ()

e. Reports of sexual abuse disclosures to the applicable state licensing authority or law enforcement; ()

f. Juvenile offender and staff grievances; ()

g. Copies of all completed incident reports; and ()

h. Copies of background checks for all current employees, contractors, volunteers and interns who may have contact with residents. ()

02. Employee Files. Employee personnel files must contain the following: ()

a. Minimum qualifications for the job held; ()

b. Hiring information; ()

c. Copies of all required licenses or certificates related to the job function; ()

d. Copies of academic credentials, driving record and criminal background checks, as required by state law; ()

e. Current training records; and ()

f. Performance evaluations and copies of personnel actions, such as disciplinary action taken and acknowledgements of outstanding performance. ()

211. STAFF QUALIFICATIONS.

01. Licenses. All individuals providing services to juveniles in the custody of the department must possess all licenses or certifications for their particular position as required by statute, rule, or by the applicable state licensing authority. ()

02. Education or Experience. All individuals providing services must be qualified to do so, on the basis of knowledge, skills, and abilities. In addition, certain program and professional caregivers must meet specific minimum standards for education or experience. These standards shall constitute, in part, the basis for determining the adequacy of program and professional services delivered under contractual agreement with the department. ()

03. Position Descriptions. Residential treatment providers must maintain written position descriptions for every job class established in the organization. In all cases, the particular job titles used by the residential treatment provider to provide counseling, therapy, direct care, and supervision of juvenile offenders, as well as staff supervision and management, must be specifically cross-referenced with the job titles in these rules. ()

212. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.

01. Clinician, Counselor, or Therapist. An individual who conducts a comprehensive assessment of the psychological, behavioral, social, or familial deficits or dysfunctions presented by the juvenile offender, then establishes and implements a plan for therapeutic services. The plan must specify diagnosis and treatment of problems to be addressed, an estimate of the time needed, and a schedule of the frequency and intensity of the services to be provided. The individual may also provide individual, group, or family counseling. At a minimum, the individual must have a master's degree and be currently licensed by the applicable state as a Licensed Professional Counselor (LPC), Licensed Marriage and Family Counselor (LMFT), Licensed Master Social Worker (LMSW), or certified school psychologist. ()

02. Juvenile Services Coordinator or Social Worker. An individual who is responsible for the assessment of treatment progress, and the provision and monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in social work, psychology, or counseling, and must be licensed as a social worker in the applicable state. ()

03. Recreational Specialist. An individual who develops and implements an individualized and goal-directed recreational plan for a juvenile offender in connection with the overall service implementation plan. The individual providing this function must possess a bachelor's degree in recreational therapy, health and physical education, or a related field, or have a high school diploma and two (2) years related experience in providing recreational services to juvenile offenders. ()

04. Rehabilitation Specialist or Facility Case Manager. An individual, under direct supervision, who assists the juvenile offender in implementing the service implementation plan, evaluates the juvenile offender, and maintains the case record with respect to all nonclinical matters. The rehabilitation specialist or facility case manager also assists in presenting the case in staffings, communicates with appropriate individuals, including community interests, regarding the juvenile offender, and prepares written communications, under supervision, including final progress reports. The rehabilitation specialist or facility case manager may also serve as the social worker if properly licensed in the applicable state. Individuals providing this function must possess a bachelor's degree from a fully accredited college or university in the social sciences or a related field, or have a high school diploma and four (4) years related experience in providing services to juvenile offenders. ()

05. Rehabilitation Technician or Direct Care Worker. An individual who is responsible for providing individual or group rehabilitative therapeutic services, supervising juvenile offender's day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juvenile offenders in basic living skills, and providing some community transportation. Such individual must have a high school diploma or its equivalent. ()

06. Special Education Teacher. An individual who provides a modified curriculum for those students who are eligible for services under the IDEA. This individual must hold a valid standard exceptional child certificate with an endorsement as a generalist. ()

07. Teacher. An individual who provides basic educational services as required by state and federal statutes. This individual must hold a valid teaching credential in the appropriate instructional field. ()

213. PROGRAM STAFFING REQUIREMENTS.

01. General Staffing Ratios. The residential treatment provider must ensure that an adequate number of qualified staff are present at all times to provide rehabilitation and treatment services, supervise juvenile offenders, and provide for their health, safety and treatment needs. Staffing patterns must ensure that professional staff is available to juvenile offenders at all times when they are in the program. The residential treatment provider staff should provide consistency and stability so that the juvenile offenders know the roles of each staff member. Specific staffing ratios shall be determined in each contract and must be based in the level of intervention of the program and the risk level of the juvenile offender population. ()

02. Emergency Staffing Ratios. At all times at least one (1) staff member on duty per twenty (20) juvenile offenders in the program must be currently certified to administer first aid and cardiopulmonary resuscitation (CPR). ()

214. GENERAL REQUIREMENTS FOR TRAINING.

- 01. Training Plan.** Training for staff must be conducted in accordance with a written plan approved by management and coordinated by a designated staff member. The training plan must include: ()
- a.** Annual in-service training for all staff to include, but not be limited to: ()
 - i. Identifying and responding to suicide risk; ()
 - ii All training as outlined in section 115.331 of the Prison Rape Elimination Act (PREA) standards; ()
 - iii. Prohibition of abuse and mandatory reporting of abuse; ()
 - iv. De-escalation of juvenile behavior and appropriate physical restraint techniques; and ()
 - v. Incident reporting. ()
 - b.** Those areas of practice and operations requiring a current certification; ()
 - c.** Prior to being assigned sole responsibility for supervision of juvenile offenders, rehabilitation technicians or direct care staff must have training in the following areas: ()
 - i. Principles and practices of juvenile care and supervision; ()
 - ii. Program goals and objectives; ()
 - iii. Juvenile offender rights and grievance procedures; ()
 - iv. Procedures and legal requirements concerning the reporting of abuse and critical incidents and compliance with the PREA as outlined in these rules; ()
 - v. Handling of violent juvenile offenders (use of force or crisis intervention); ()
 - vi. Security procedures (key control, searches, contraband); ()
 - vii. Medical emergency procedures, first aid, and CPR; ()
 - viii. Incident reporting; ()
 - ix. How to recognize and respond to suicidal behavior; ()
 - x. How to access emergency health and mental health care; ()
 - xi. Proper storage and dispensing of medications, as well as general signs and symptoms of adverse reactions, including identification of the individual who will dispense medications in the facility; ()
 - xii. Appropriate response to health-related emergencies; ()
 - xiii. Ethics and professional boundaries; and ()
 - xiv. Appropriate and safe transportation of all juvenile offenders. ()
 - d.** In-service training for all first-year staff must include: ()
 - i. Program policies and procedures; ()

- ii. Job responsibilities; ()
 - iii. Juvenile offender supervision; ()
 - iv. Safety and security emergency procedures (fire, disaster, etc.); ()
 - v. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); ()
 - vii. Infectious diseases, blood borne pathogens, and universal precautions; ()
 - viii. Behavioral observation, adolescent psychology and child growth and development; ()
 - ix. Effective interventions with juvenile offenders including criminogenic risk and need factors;()
 - x. Juvenile Corrections Act, balanced and restorative justice, this chapter, and department rules applicable to the specific type of residential treatment provider; ()
 - xi. Basic security procedures; ()
 - xii. Signs and symptoms of chemical use or dependency; ()
 - xiii. Drug-free workplace; ()
 - xiv. Diversity training to include cultural awareness; and ()
 - xv. Juvenile offender searches for contraband. ()
- 02. Trainer Qualifications.** ()
- a. Individuals who provide instruction in areas of life, health, and safety, including but not limited to first aid, CPR, and physical intervention techniques, shall have appropriate certification which must be documented in their personnel or training file. ()
 - b. Individuals who provide instruction in treatment must have appropriate training, education, and experience which must be documented in their personnel or training file. ()
- 03. Documentation of Training.** Staff training records must be kept by a designated staff person. Training records must be established for each staff member and volunteer and shall include: ()
- a. Name; ()
 - b. Job title; ()
 - c. Employment beginning date; ()
 - d. Annual training hours required; and ()
 - e. A current chronological listing of all training completed. ()
- 04. Training Records.** Training records may be kept separately within each individual personnel file or in a separate training file. Access to curriculum materials must be made available. ()

215. SUBCONTRACTORS, VOLUNTEERS, AND INTERNS.

It is the responsibility of the residential treatment provider to identify the intended use of the subcontractor, volunteer, or intern. If the subcontractor, volunteer, or intern is providing direct services to juveniles, the residential treatment

provider must adhere to the rules in this Section. The provider must notify the department's Quality Improvement Services Bureau promptly, in writing, of any proposed changes in the use of subcontractors, volunteers, or interns providing direct services to juveniles. ()

01. Subcontractors. It is the responsibility of the residential treatment provider to ensure that any subcontractor providing direct services to juveniles meets at least the minimum staff qualifications and terms of the original contract and these rules. The residential treatment provider must maintain a list of all subcontracted service providers and their qualifications. Documentation of services provided by subcontractors must include the scope and frequency of services. ()

02. Volunteers and Interns. Programs should consider soliciting the involvement of volunteers and interns to enhance and expand their services. However, volunteers and interns recruited to supplement and enrich a program may not be substituted for the activities and functions of program staff. Volunteers and interns must not be assigned sole supervision of juvenile offenders. ()

a. Programs that utilize volunteers and interns regularly must have a written plan that includes stipulations for their use and training, and training of program staff on the role of volunteers and interns. Training provided must include all of the information necessary for the volunteers and interns to successfully perform their roles within the program. ()

b. Recruiting of volunteers is conducted by the program director or designee. Recruitment is encouraged from all cultural and socio-economic segments of the community. ()

c. Volunteers and interns must complete an application for the position and be suited for the position to which they are assigned. ()

d. Written job descriptions must be provided for each volunteer and intern position. ()

e. Interns must be documented to be enrolled in an accredited school or program for the profession. ()

f. Interns must have a fully developed internship or practicum agreement which details their activities for the period, and relates these to learning objectives developed with the academic institution and program in which they are enrolled. The internship agreement must include the signatures of the intern, supervising residential treatment provider staff, and a representative of the academic institution in which the intern is enrolled. ()

g. Interns must agree in writing to abide by all policies and standards of conduct, and must agree to meet the ethical standards for the profession for which they are training. ()

h. Volunteers and interns must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position. ()

i. Volunteers and interns must agree in writing to abide by all program policies. ()

03. Subcontractor, Volunteer, and Intern Requirements. Subcontractors, volunteers, and interns who perform professional services must be licensed or certified as required by state law or rule, or must be documented to be supervised directly by staff meeting those credentials. ()

a. Subcontractors, volunteers, and interns must have background and criminal record checks as prescribed by state law. ()

b. Minimum training for subcontractors, volunteers, and interns must include the following: ()

i. Program goals and objectives; ()

ii. The role of the subcontractor, volunteer or intern and job duties or duties related to the learning plan; ()

iii. Subcontractor, volunteer, or intern's role in reporting incidents of sexual abuse under PREA as outlined in these rules; ()

iv. Basic security procedures; ()

v. Recognizing suicidal behaviors; ()

vi. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and ()

vii. Ethics and mandatory reporting of juvenile abuse. ()

04. Volunteers of Minimal Use. Volunteers who meet all of the following criteria may be excluded from Subsection 215.03.a. and Subsection 215.03.b.: ()

i. Use of the volunteer by the residential treatment provider does not exceed four visits per year; ()

ii. Use of the volunteer by the residential treatment provider does not exceed four hours per visit; and ()

iii. The volunteer is under constant personal supervision of at least one staff member of the residential treatment provider during their visit. ()

05. Documentation. The residential treatment provider must maintain individual personnel files for each volunteer and intern working in the program. The files must contain all documentation as described in Subsection 215.03 of these rules. ()

06. Supervision of Volunteers. Volunteers will be supervised at all times by a staff member of the residential treatment provider. This individual shall coordinate and direct the activities of the volunteer. Volunteer performance must be evaluated periodically and evidence of this evaluation be made part of the personnel record of the volunteer. ()

07. Supervision of Interns. An intern will be supervised by a paid employee of the residential treatment provider who has the licenses and credentials required by state law and who has been accepted by the intern's school as an appropriate supervisor for the discipline of instruction. This individual shall coordinate and direct the activities of the intern. Intern performance must be evaluated periodically and evidence of this evaluation made part of the work record of the intern. ()

08. Termination. The residential treatment provider must establish a procedure for the termination of volunteers and interns. Termination of interns shall be in collaboration with the academic institution and program in which they are enrolled. ()

216. CRIMINAL BACKGROUND CHECKS.

The residential treatment provider must ensure that all employees, subcontractors, interns, and volunteers, with the exception of those listed in Section 215.04 of these rules, have undergone a criminal background check every five (5) years in the manner and form required by IDAPA 16.05.06, "Criminal History and Background Checks." In addition to the crimes listed resulting in unconditional denial, any crime not specified there that requires registration on the sex offender registry in Idaho or any other state, will also result in an unconditional denial of employment for direct care or services, or where the employee would have any opportunity to have contact with a juvenile offender in the residential treatment provider's care, including as a volunteer or intern. Documentation of appropriate requests and responses must be kept in confidential employee personnel files. ()

217. -- 219. (RESERVED)

220. JUVENILE RECORDS.

01. Case Management Documents. The residential treatment provider must maintain individual files on all juvenile offenders which shall include: ()

- a. Observation and assessment evaluation provided by the department; ()
- b. Additional assessments; ()
- c. Service implementation plans; ()
- d. Progress reports; ()
- e. Incident reports; ()
- f. Court documents and dispositions; ()
- g. Professional correspondence; ()
- h. Restricted clinical information, which must be kept separate; ()
- i. Medical records, which must be kept separate; ()
- j. Educational records and school history, which must be kept separate; ()
- k. Relapse prevention plan; ()
- l. Identifying information and physical descriptions; ()
- m. Last known parent or guardian address and telephone number; ()
- n. Date of admittance and projected release from the residential treatment provider; ()
- o. Records of juvenile offender's earnings, restitution payments, and community service hours earned; ()

02. Confidentiality.

a. Sections 20-525 and 9-340(2)(b), Idaho Code, and Idaho Court Administrative Rule 32 provide for confidentiality, under certain conditions, of records that contain information about juvenile offenders. ()

b. All matters relating to confidentiality of juvenile offender files must also comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Chapter 1, Sub-Chapter A, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." ()

c. Restricted clinical information, as defined, and education and medical records must each be filed separately and stored in a secured area. ()

d. For residential treatment providers that serve sex offenders, individual treatment assignments, such as journals and detailed sexual histories, must be destroyed at the time the juvenile offender is transferred or released from the program. ()

e. The residential treatment provider must have written policies and procedures to address the confidentiality of juvenile offender records. In compliance with HIPAA's privacy regulations, written procedures shall designate a privacy officer who will: ()

- i. Supervise the maintenance of identifiable personal health care information; ()

- ii. Serve as custodian of all confidential juvenile offender records; and ()
- iii. Determine to whom records may be released. ()

03. Automated Records. Automated records must include a procedure to ensure confidentiality and be in compliance with any state or federal privacy laws pertaining to those records. The procedure must also include provisions for backing up automated records. ()

04. Restrictions to Records Access. ()

a. Access to personal health information must be limited to: ()

i. Employees of the department and the residential treatment provider, to the extent necessary to perform normal business functions, including health treatment, and other functions designed to maintain the good order, safety and security of the juvenile offenders or the program; ()

ii. Individuals participating in a staffing for a juvenile offender, who have a direct need to know the information, and who are obligated to or promise to maintain the confidentiality of information disclosed. These individuals may include employees or representatives of law enforcement, the department, the residential treatment provider, probation officer, medical or mental health professionals and other appropriate individuals; and ()

iii. Law enforcement members, emergency medical personnel, the Idaho Department of Health and Welfare or the applicable state licensing authority, and similar court or government officials, as necessary to perform their duties, and only if not otherwise prohibited by state or federal law or rule. ()

b. Access to all other confidential juvenile offender records must be limited to the following authorized persons: ()

i. Staff authorized by the residential treatment provider and members of the administrative staff of the residential treatment provider's parent agency; ()

ii. A parent or guardian or the juvenile offender, to the extent that disclosure is not privileged and is clinically appropriate; ()

iii. Appropriate staff of the department; ()

iv. Counsel for the juvenile offender with signed consent form; ()

v. Judges, prosecutors, juvenile probation officers, and law enforcement officers, when essential for official business; ()

vi. Other individuals and agencies approved by the department; and ()

vii. Schools, as appropriate. ()

05. Withholding of Information. If the department or the residential treatment provider believes that information contained in the record would be damaging to the juvenile offender's treatment or rehabilitation, that information may be withheld from the juvenile offender, parent or guardian, or others, except under court order. ()

06. Retention of Juvenile Records. At the time of transfer or release from department custody, all case management records must be forwarded to the juvenile correctional center in Nampa. ()

07. Requests for Information. Requests for information of any kind about juvenile offenders in department custody, following their release or transfer from a residential treatment provider's program must be directed to the juvenile correctional center in Nampa. ()

08. Document Reproduction. The residential treatment provider agrees that documents provided by the department shall not be distributed without written permission from the department. ()

221. RELEASE FORMS.

01. Release of Nonmedical Information. The juvenile offender, parent or guardian, and department representative must sign a release of information and consent form before information about the juvenile offender is released to any non-juvenile justice entity. A copy of the consent form must be maintained in the juvenile offender's file at the program and in the case management file maintained by the department. ()

02. Release of Medical Information. Release of medical information requires more specific authorization. The residential treatment provider must abide by IDAPA 05.02.02, Section 262, "Rules for Staff Secure Providers"; or IDAPA 05.02.03, Section 262, "Rules for Reintegration Providers"; or IDAPA 05.02.04, Section 262, "Rules for Supported Living Providers," as applicable. ()

03. Minimum Information. The release of information and consent form must, at a minimum, include the following: ()

- a.** Name of person, agency or organization requesting information; ()
- b.** Name of person, agency or organization releasing information; ()
- c.** The specific information to be disclosed; ()
- d.** The date consent form is signed; ()
- e.** Signature of the juvenile offender and the parent or guardian if the juvenile offender is under the age of 18; ()
- f.** The signature of the person witnessing the juvenile offender's signature; and ()
- g.** Effective and expiration dates. ()

222. JUVENILE OFFENDER PHOTOGRAPHS.

01. Limitations. No juvenile offender in the custody of the department may be used in person or by photograph or any other visual image for the express purpose of any fund raising efforts. ()

02. Department Authorization. Permission to release or use the photographs and any other visual image of juvenile offenders in the custody of the department must require written authorization from the department director or designee. ()

223. RESEARCH PROJECTS.

01. Written Policy. The residential treatment provider must have a written policy regarding the participation of juvenile offenders in research projects. The policy must prohibit participation in medical or pharmaceutical testing for experimental or research purposes. ()

02. Voluntary Participation. Policies must govern voluntary participation in nonmedical and non-pharmaceutical research programs. However, juvenile offenders must not participate in any research program without prior written approval from the director or designee. ()

224. PROHIBITED CONTACT AND PRISON RAPE ELIMINATION ACT (PREA) COMPLIANCE.

01. Sexual Abuse of Juvenile Offenders. The residential treatment provider must have written policies and procedures mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. These policies and

procedures must contain, at a minimum, the following: ()

a. The prohibition of any sexual abuse or sexual harassment as defined in PREA Standards or as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code; ()

b. The appointment of a PREA Coordinator, as outlined in PREA Standards 28 C.F.R. 115.311(c), to be determined by the program director; ()

c. Procedures that enable juvenile offenders to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine well-being checks as outlined in PREA Standards 28 C.F.R. 115.315(d); ()

d. The requirement of staff of the opposite gender to announce their presence when entering a housing unit or any area where juvenile offenders are likely to be showering, performing bodily functions, or changing clothing as outlined in PREA Standards 28 C.F.R. 115.315(d); ()

e. The provision of multiple avenues for a juvenile offender or a third party to report sexual abuse and sexual harassment, at least one of which must be external to the agency as outlined in PREA Standards 28 C.F.R. 115.351; ()

f. The process for gathering information to make classification and housing decisions to reduce the risk of sexual victimization as outlined in PREA Standards 28 C.F.R. 115.342; ()

g. The handling of all information regarding sexual abuse or sexual harassment with confidentiality as outlined in PREA Standards 28 C.F.R. 115.361(c); ()

h. The process to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior as outlined in PREA Standards 28 C.F.R. 115.322; ()

i. Policies to protect all residents and staff who report sexual abuse or sexual harassment from acts of retaliation as outlined in PREA Standards 28 C.F.R. 115.367; ()

j. The provision of timely and unimpeded access to crisis intervention services, medical, and mental health care to victims as outlined in PREA Standards 28 C.F.R. 115.382(a); ()

k. The provision for and documentation of training to staff as outlined in PREA Standards 28 C.F.R. 115.331; ()

l. The provision for and documentation of age appropriate education to juvenile offenders as outlined in PREA Standards 28 C.F.R. 115.333; ()

m. Within 30 days of the conclusion of every sexual abuse investigation the residential treatment provider must conduct a sexual abuse incident review as outlined in PREA Standards 28 C.F.R. 115.386; ()

n. A process that requires reporting and documentation of any instance of sexual abuse among juvenile offenders or between juvenile offenders and staff or volunteers, according to Subsection 241.01 and Subsection 241.05 of these rules. These must be reported on a form provided by the department; ()

o. A process for an initial internal investigation when sexual abuse is reported; ()

p. An expected first response practice of separating the alleged perpetrator from the alleged victim until the investigation is complete; ()

q. In addition to completing the form supplied by the department, the residential treatment provider must document any and all steps taken to ensure the juvenile offender's safety; and ()

r. The residential treatment provider must report all sexual abuse to appropriate licensing authority or law enforcement when sexual abuse is suspected. ()

02. Resident Access to Outside Support Services. The facility must provide residents with access to outside victim advocates for emotional support services related to sexual abuse as outlined in PREA Standards 28 C.F.R. 115.353. ()

03. Sexual Victimization Survey. Residential treatment providers are required to participate in all state and federal surveys, and shall complete and submit the survey and supply the department with copies. ()

225. SUICIDE PRECAUTIONS.

01. Policy Requirements. All residential treatment providers must have a written policy for responding to juvenile offenders who present a risk of suicide. The policy, at a minimum, shall require that: ()

a. Staff are regularly trained to identify, document and appropriately respond to behavior that may indicate a risk of suicide; ()

b. The residential treatment provider utilizes medical or other staff trained by a mental health professional to review history, interview, and observe juvenile offenders new to the program in order to complete a suicide risk screening within two (2) hours of admission. The screening is done to identify any immediate threat of suicide or self-harm and the need for a suicide risk assessment; ()

c. The residential treatment provider utilizes a mental health professional to complete a suicide risk assessment on a juvenile offender who has been identified by staff as presenting a risk of suicide. A suicide risk assessment is a system of structured and documented observation, interview and review of behavioral and mental health information. It comprises a thorough review of recent behavioral and mental health information and interviews of staff and the juvenile offender concerning the behavior that seems to present the threat of self-harm or suicide. A suicide risk assessment typically involves an assessment of the juvenile offender's determination to act on intentions of self-harm, a determination of the depth of planning for making the attempt, the availability of the items or situations necessary for the juvenile to act on that plan and the lethality of the plan as expressed; ()

d. The residential treatment provider utilizes a mental health professional to develop and disseminate a safety plan for each juvenile offender identified as presenting a risk for suicide. The safety plan includes a detailed supervision plan for the juvenile offender; ()

e. Reassessment of suicide risk and whether it is reduced enough to reduce or terminate suicide precautions is made at a time determined by the mental health professional completing the assessment and is ideally completed by that same mental health professional; and ()

f. The residential treatment provider prohibits the use of separation and isolation of juvenile offenders identified as presenting a suicide risk, unless constant one-on-one (1 on 1) staff supervision is provided. ()

02. Separation or Isolation. All juvenile offenders in separation or isolation are closely monitored to reduce the risk of suicidal behaviors. ()

03. Reporting to the Department. All incidents of suicide, attempted suicide or threat of suicide must be reported to the department in the manner described in Subsection 241.01 of these rules. ()

226. -- 229. (RESERVED)

230. JUVENILE OFFENDER RIGHTS AND RESPONSIBILITIES.

01. Residential Treatment Provider Obligations. The residential treatment provider must respect, and not infringe upon, the rights of each juvenile offender in its program. The residential treatment provider must also be responsible for understanding the rights and responsibilities of juveniles in custody, and knowing which rights

have been forfeited as a result of being placed in custody. ()

02. Juvenile Offender Program Responsibilities. The residential treatment provider must inform each juvenile offender, upon admission to its program, of each juvenile offender's responsibilities during the program. Additionally, each juvenile offender must have an understanding of the following program expectations: ()

- a. Requirements needed to complete program; ()
- b. How to access medical services; ()
- c. How to file a grievance; ()
- d. How to report incidents of sexual abuse between juvenile offenders or between staff and juvenile offenders; and ()
- e. How to contact the juvenile services coordinator and juvenile probation officer. ()

231. DISCIPLINE OF JUVENILE OFFENDERS.

01. Written Policies and Procedures. All providers offering treatment services must have comprehensive written discipline policies and procedures, which shall be explained to all juvenile offenders, families, and staff. These policies must include positive responses for appropriate behavior. They must include a provision for written notice to the juvenile offender being disciplined, a mechanism for a fair and impartial hearing to include at least one staff member not involved in the disciplinary action, and a process for appeal. ()

02. Administration of Discipline. Discipline will be administered in a way to create a learning experience for the juvenile offender, and never in a way that degrades or humiliates the juvenile offender. Staff will make every effort to maintain control of juvenile offenders through positive methods. No juvenile offender shall supervise nor carry out disciplinary actions over another juvenile offender. ()

a. Prior to and upon initiating a disciplinary action, careful attention should be given to ensure the disciplinary sanctions are proportionate with the nature and circumstances of the behavior and the program rules to determine the seriousness of the misbehavior and the appropriate type of discipline. ()

b. Disciplinary actions are not the same as the consequences that are spelled out as a part of a service implementation plan for the juvenile offender. A residential treatment provider must make every effort to resolve problems with the least amount of formal disciplinary activity possible. Efforts should be made first to instruct and counsel the juvenile offender. ()

c. Any restriction of a juvenile offender's participation in a program resulting from a formal disciplinary action must be reported in an incident report. ()

03. Prohibited Actions. The residential treatment provider is prohibited from using certain actions as disciplinary responses as listed in the child care licensing rules of the Idaho Department of Health and Welfare. ()

04. Denial of Services. Denial of the following are prohibited as disciplinary responses: ()

- a. Educational and vocational services; ()
- b. Employment; ()
- c. Medical or mental health services; ()
- d. Food; ()

- e. Access to family, juvenile services coordinator, juvenile probation officer, and legal counsel; and ()
- f. Religious services. ()

05. Appeal of Formal Disciplinary Penalties. Each residential treatment provider must have a formal written process through which a juvenile offender can appeal a disciplinary action and receive a review of the case. The residential treatment provider shall explain to the juvenile offender how to use the appeal process. The juvenile offender must be informed that the juvenile services coordinator may be included in the disciplinary process at the juvenile's choice. ()

232. GRIEVANCE PROCEDURES.

01. Written Procedures. The residential treatment provider must have a written grievance procedure for juvenile offenders, which shall include the right to appeal disciplinary actions against them if a separate disciplinary grievance procedure is not available. It must be written in a clear and simple manner and shall allow juvenile offenders to make complaints without fear of retaliation. ()

02. Grievance Forms. The grievance procedure must be explained to the juvenile offender by a staff member who shall document the explanation in the juvenile's file. Grievance forms must be in a location accessible to juvenile offenders without having to request such a form from staff. Completed forms should be placed in a secure area and collected daily. The provider must complete a review and discuss findings with the juvenile offender within three (3) working days of receipt of the grievance form. If the juvenile offender lives independently, the provider must have a process for the juvenile to submit grievance forms to the program director without having to request such a form from staff. A copy of the grievance and the resolution of that grievance must be attached to the quarterly report as specified in Subsection 200.02 of these rules. ()

233. JUVENILE OFFENDER SAFETY.

Every juvenile offender has the fundamental right to feel safe. Residential treatment providers have the responsibility to ensure that a juvenile offender is safe while in their care. Every juvenile offender must be informed of procedures whereby a professional staff person can be contacted on a twenty-four (24) hour basis if the juvenile offender does not feel safe. The residential treatment provider's administration must make periodic contact with juvenile offenders in the program to determine if they feel safe and are comfortable when interacting with peers and staff. ()

234. JUVENILE OFFENDER AND PARENT OR GUARDIAN HANDBOOK.

The residential treatment provider must provide each juvenile offender and their parent or guardian with program handbooks that are written in an age-appropriate manner. ()

- 01. Required Content.** Handbooks must address, at a minimum, the following: ()
 - a. Requirements needed to complete program; ()
 - b. Juvenile offender rights and responsibilities; ()
 - c. The means available to safely report sexual abuse and harassment; ()
 - d. Grievance procedures; ()
 - e. Religious services; ()
 - f. A list of what constitutes as contraband and the consequences for its possession; ()
 - g. The provider's disciplinary process; ()
 - h. Visitation, mail, and phone correspondence; ()
 - i. The provider's policy on searches for contraband, including a list of what constitutes contraband; ()

()

j. The provider's obligation to make reasonable accommodations for any disabilities, language barriers, or other special needs; ()

k. The daily schedule for juvenile offenders; and ()

l. A description of services or items for which a juvenile offender may be charged by the provider. ()

02. Receipt of Handbook. The juvenile offender and their parent or guardian acknowledge in writing their receipt of the juvenile offender and parent or guardian handbook. ()

235. -- 239. (RESERVED)

240. PROGRAM OPERATIONAL REQUIREMENTS.

01. General Requirements. ()

a. Residential treatment providers shall provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs should specifically address those factors in juvenile offender's lives that contribute to delinquency and that can be realistically changed. ()

b. Providers shall encourage appropriate telephone contact, mail contact, and visitation between juvenile offenders and their families. ()

c. Residential treatment providers must structure and document services offered in the program so that continuity in case planning is obvious. Medical health, mental health, substance abuse, social skills, educational, vocational, independent living, and other special needs identified in the assessment must be clearly addressed in the service implementation plan. Services provided to address those needs must be documented regularly. ()

d. Service needs remaining at the time of release from department custody or transfer must be accounted for in the reintegration plan for each juvenile offender. ()

e. The residential treatment provider shall not admit more juveniles into care than the number specified on the provider's license. Residential treatment providers wishing to increase capacity are responsible for contacting the applicable licensing agency. A copy of the written confirmation to the residential treatment provider from the applicable licensing agency for verbal approval to exceed the licensed capacity must be forwarded to the department's Quality Improvement Services Bureau. ()

f. The residential treatment provider must have and strictly follow a comprehensive policy covering the supervision of juvenile offenders, including a plan for monitoring all movement of those juvenile offenders both in the facility and, as appropriate, within the community. Staff at the facility must be aware of the location of every juvenile offender assigned to that program at all times. ()

g. Programs may not, under any circumstances, involve juvenile offenders in plethysmographic assessments. ()

02. Use of Polygraphs. ()

a. The use of polygraphs for juvenile offenders adjudicated for or documented to have demonstrated sexually abusive behavior, must only be undertaken by court order or under the following circumstances: ()

i. With the specific written authorization of the department's regional clinical supervisor; ()

ii. Only with the full, informed consent of the juvenile offender; and ()

- iii. If the juvenile offender is a minor, only with the full, informed consent of the parent or guardian. ()
- b. Polygraphers used in this process must be able to provide documentation of certification by the Sexual Offender Management Board in the use of polygraphy with juvenile offenders. ()
- c. Residential treatment providers must not make treatment decisions solely on the results of a polygraph. ()
- d. Polygraph reports must be sent to the juvenile services coordinator by the residential treatment provider. ()

241. INCIDENT REPORTING REQUIREMENTS.

01. Incidents Requiring Immediate Notice to Parent or Guardian and Department. All notifications under this section must be made to the regional facility in the region where the residential treatment provider is located. Out-of-state providers must notify the juvenile correctional center in Nampa. Residential treatment providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. If any of the following events occur, the residential treatment provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator, juvenile probation officer, and the department's regional facility by telephone (not by facsimile or electronically). The department's regional R.N. must also be notified immediately in the event of all medical and mental health incidents. ()

- a. Medical and mental health emergencies including, but not limited to: ()
 - i. Every instance of emergency room access; ()
 - ii. Refusal of medications, treatment recommended by a physician, or food for three (3) days; ()
- b. Major incidents such as: ()
 - i. Death of a juvenile offender; ()
 - ii. Suicide, attempted suicide or threat of suicide; ()
 - iii. Attempted escape; ()
 - iv. Sexual abuse among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA; ()
 - v. Criminal activity resulting in arrest, detention, or filing a report with local law enforcement; ()
 - vi. Any other relevant report made to the Idaho Department of Health and Welfare or applicable state agency; ()
- c. Any incident of restraint which involves the use of medications, chemicals, or mechanical devices of any kind; ()
- d. Incidents of alleged or suspected abuse or neglect of juvenile offenders; ()
- e. Incidents involving major disasters affecting location or well-being of the juveniles; and ()
- f. Any restriction of a juvenile offender's family visitation due to the juvenile's behavior. ()
- g. A written incident report must also be transmitted within twenty-four (24) hours to the juvenile

offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile. Transmission of all written incident reports may be electronic or by facsimile. ()

02. Escapes Also Require Immediate Notice to Parent or Guardian and Department. In all instances of escape, the residential treatment provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional facility, juvenile offender's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile or electronically). A written incident report must also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile offender. Transmission of all written incident reports may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately. ()

a. Clothing and other personal belongings must be secured immediately and maintained in a secure place until returned to the department. ()

b. The juvenile offender shall continue to be assigned to the program, although not physically present, for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program, in consultation with the juvenile offender's treatment team, choose to transfer the juvenile offender after returning, then the procedures outlined in IDAPA 05.02.02, Section 237, "Rules for Staff Secure Providers"; or IDAPA 05.02.03, Section 237, "Rules for Reintegration Providers"; or IDAPA 05.02.04, Section 237, "Rules for Supported Living Providers," as applicable, shall apply. ()

03. Incidents Requiring Immediate Notice to Department and Three Day Notice to Parent or Guardian. The following incidents require immediate notice to the juvenile services coordinator in the manner described in Subsection 241.01, and require notice within three (3) business days to parent or guardian of the juveniles involved. ()

a. Any use of separation or isolation for more than two (2) hours; ()

b. Incidents involving the disclosure of criminal behavior by juvenile offenders; ()

c. Instances of physical assault or fighting; ()

d. Major misconduct by one (1) or more staff against a juvenile offender; ()

e. Discovery of contraband that represents an immediate threat to safety and security such as weapons or drugs; ()

f. Any instance of an unclothed body search or a body cavity search of a juvenile offender; ()

g. Other than incidents described in Paragraph 241.01.e., significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters; and ()

h. Any pattern of restraint of a juvenile, which is defined as three (3) or more restraints within a twenty-four (24) hour period. ()

04. Incidents Requiring Notice Within Three Days to the Department. ()

a. Residential treatment providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. A copy of the completed incident report must be submitted to the juvenile services coordinator no later than three (3) business days after the incident. ()

b. A detailed incident report is also required for each incident of juvenile offender misconduct that is not reportable under Subsection 241.03 and results in any type of: ()

- i. Instances of lost keys, equipment, or tools; ()
- ii. Discovery of contraband not posing an immediate risk; or ()
- iii. A pattern of refusal of program participation that rises to the point of raising questions about the appropriateness of the placement. ()

c. A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 241.03 and results in any type of: ()

- i. Any physical restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind; or ()
- ii. Separation, isolation, or room confinement for more than fifteen (15) minutes but less than two (2) hours. ()

05. Incident Report Content. Residential treatment providers may elect to use the department's standard incident report form or may use another form as long as all of the following information is included: ()

- a.** Juvenile offender's assigned unit or location; ()
- b.** Date, location, and time of the incident; ()
- c.** Witnesses and other staff and juvenile offenders involved; ()
- d.** Persons notified with date and time of notice; ()
- g.** Brief narrative description of the incident; ()
- e.** Type of incident by category, such as assault against staff or juvenile offender, behavioral and psychiatric emergency, contraband, escape, injury or illness, self-harm or suicidal behavior, or sexual abuse; ()
- f.** Action taken by category, such as restraint, separation, isolation, or room confinement with times in and out, visitation restrictions due to juvenile offender behavior, suicide precautions initiated, or escape precautions initiated; ()
- h.** Signature of staff and reviewing supervisor, which may be affixed electronically; ()
- i.** Documentation of injury and medical attention provided; and ()
- j.** If the incident involves sexual abuse, the incident report must include a description of action taken to: ()

- i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; ()
- ii. Address any immediate trauma, either physical or emotional; ()
- iii. Address long-term medical or mental health needs related to the alleged abuse; ()
- iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; ()
- v. Conduct an initial internal investigation of the incident and as necessary request that an external investigation be completed; and ()
- vi. Prevent repetition of the abusive situation. ()

242. ADDITIONAL PROGRAM POLICY REQUIREMENTS.

01. Written Policies. In addition to other policy requirements listed in these rules, residential treatment providers must have, at a minimum, the following written policies concerning program operations available at the program site: ()

a. Program elements and implementation; ()

b. Admission policy describing the target population and criteria for admission, and identifying sources of referrals to the program; ()

c. Criteria for assigning juvenile offenders to different units within the program, if applicable; ()

d. The provision of (or referral for) emergency and routine medical and mental health services for the population; ()

e. Behavior management within the program, including use of points and levels, restraints, separation, detention and other types of special management; ()

f. Supervision of juvenile offenders policy that shall include managing juvenile offender movement within the program, including the timely transfer of behavioral information about juvenile offenders from staff during shift changes; ()

g. Juvenile offender's access to the community policy that shall include use of community schools or job sites, and individual or group activities away from the program site. This also includes individual community passes; ()

h. Administrative coverage in emergency situations, after regular work hours; ()

i. Documentation and reporting of critical incidents to program administrators, the department and others on the community treatment team; ()

j. Treatment planning and progress reporting to the department, juvenile offender, family and others on the community treatment team; ()

k. Reintegration policy that shall describe criteria for successful completion of program, termination from program prior to completion, and the involvement of the department and community treatment team; and ()

l. Emergency procedures in the event of a natural disaster; ()

02. Documented Staff Training. Documented staff training on these policies must also be available for review by the department. ()

243. -- 999. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.02 - RULES FOR STAFF SECURE PROVIDERS

DOCKET NO. 05-0202-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), 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 17, 2014.

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:

05.02.02, "Rules for Staff Secure Providers," will contain additional rules that are only applicable to these specific providers. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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:

No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 30](#).

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 Jessica Moncada, (208) 334-5100 x. 410.

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 24, 2014.

DATED this 7th Day of August, 2014.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0202-1401

IDAPA 05
TITLE 02
CHAPTER 02

05.02.02 - RULES FOR STAFF SECURE PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the "Interstate Compact on Juveniles," the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.02, "Rules for Staff Secure Providers," IDAPA 05, Title 02, Chapter 02. ()

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the following principles: accountability; community protection; and competency development. These rules apply to providers of treatment services identified in individual service implementation plans. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for agencies. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Boise, Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections' rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Body Cavity Search. The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical authority. ()

02. Body Search, Clothed. Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. ()

03. Body Search, Unclothed. Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. ()

04. Education Plan. A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. ()

05. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). ()

06. Health Services. Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. ()

07. Independent Living Services. Services that increase a juvenile offender's ability to achieve independence in the community. ()

08. Individual Community Pass. Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

a. Day passes with family or other, approved individuals; ()

b. Day or overnight home visits; ()

c. Recreational activities not otherwise approved as a part of a group activity; and ()

d. Funeral leave. ()

09. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

10. Medical Health Assessment. A thorough review to determine a juvenile offender's comprehensive health needs. This information is used to develop the medical terms of a juvenile offender's service plan. ()

11. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

12. Medical Health Screening. A process used to quickly identify a juvenile offender's immediate health needs and to determine if there are any immediate needs related to a chronic health condition. ()

13. Mental Health Assessment. A thorough review to determine a juvenile offender's comprehensive mental health needs. This information is used to develop the medical terms of a juvenile offender's service plan. ()

14. Mental Health Screening. A process used to quickly identify a juvenile offender's immediate mental health needs and to determine if there are any immediate needs related to a chronic mental health condition. ()

15. Privileged Mail. Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. ()

16. Staff Secure Facility. Secure residential facility with awake staff twenty-four (24) hours a day, seven (7) days a week for intensive supervision of juvenile offenders. This includes architecturally secure residential facilities. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

Juveniles are committed to the department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-547, Idaho Code). ()

101. WAIVER AND VARIANCE.

Minimum program standards established herein shall apply to all services provided by the provider. Any waiver and variance from the standards stated in these rules must receive prior written approval from the department and must be attached as a formal amendment to the contract. ()

102. APPLICABILITY.

This chapter applies to providers of treatment services identified in individual service implementation plans. Staff secure providers must also abide by IDAPA 05.02.01, "Rules for Residential Treatment Providers." ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

The department shall have the authority to conduct reviews of programs, program operations, juvenile offender placements, and facilities to ensure the provider's compliance with these rules. The provider shall cooperate with the department's review, and must provide access to the facility and all juvenile records for juveniles in department custody, as deemed necessary by the department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available. ()

201. COMPLIANCE WITH RULES REQUIREMENTS.

The provider must comply with all relevant child care licensing rules of the Idaho Department of Health and Welfare, IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," as well as the rules of the Idaho Department of Juvenile Corrections. Providers located outside of the state of Idaho must comply with their state's relevant child care licensing rules as well as the rules of the Idaho Department of Juvenile Corrections. If a conflict exists between department rules, the more restrictive rule applies. Any and all subcontractors and consultants of the provider are also subject to these rules. ()

202. MINIMUM MANDATORY STAFF TRAINING REQUIREMENTS.

Good professional practice in the area of juvenile offender treatment requires staff to be competently trained. Therefore, all staff is required to have eighty (80) hours of training for all staff during first year of employment. Up to twenty-five percent (25%) of the eighty (80) hours may be fulfilled by working with an experienced staff mentor, who must verify and document basic competencies for new staff; and forty (40) hours of training per year following

the first year of employment. ()

203. CLOTHING AND PERSONAL ITEMS.

01. Clothing Management. Juvenile offenders must have sufficient and appropriate clothing to participate in activities included in their service implementation plan. Juvenile offenders may arrive at the facility with their own clothing and personal items, which shall be inventoried. If the juvenile offender does not have sufficient or appropriate clothing, the provider must provide or purchase adequate and appropriate clothing for the juvenile offender. The provider will ensure the proper care and cleaning of clothing in the juvenile offender's possession. Providers shall not request nor require that the juvenile offender, parent or guardian pay for or purchase clothing. ()

02. Release from Facility. All clothing and incidentals become the property of the juvenile offender upon release from the facility. ()

03. Replacement Clothing. Clothing provided or purchased as replacement will be at the expense of the provider. Unique items of clothing not required for program participation may be purchased at the expense of the juvenile offender. ()

204. FOOD SERVICE.

Juvenile offenders must be served a varied and nutritional diet with menus approved or developed by a qualified nutritionist or dietician and which meet the recommended dietary allowances of the National Research Council or its equivalent. Juvenile offenders must be provided three (3) meals daily in accordance with the child care licensing rules of the Idaho Department of Health and Welfare, or the applicable state's licensing authority. ()

205. RELIGIOUS SERVICES.

The provider must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. The provider's staff schedule must not encourage or discourage participation in general or specific religious services or activities. ()

01. Voluntary Practice. All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security, emotional, or physical well-being of the juvenile offenders in the facility. ()

02. Attendance. Juvenile offenders may be permitted to attend religious services of their choice in the community as long as community safety is ensured. ()

03. Transportation. Programs must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. ()

04. Risk to Community. If the juvenile offender cannot attend religious services in the community because staff has determined that the juvenile is an escape risk, or otherwise presents a risk to the safety of the community, the provider must make reasonable efforts to ensure that the juvenile offender has the opportunity to participate in religious services of the juvenile's choice at the facility. ()

05. Visits. Juvenile offenders must be permitted to receive visits from representatives of their respective faiths. ()

206. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. Programs must ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The juvenile offender's employer must be consulted at least twice monthly by the provider concerning the juvenile offender's work abilities and performance on the job-site. Additionally, the provider must make checks on the job-site at least monthly to ensure the juvenile offender is working under

acceptable conditions, and shall document these checks in the juvenile offender's progress report. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. ()

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender must be handled consistent with Subsection 207.04 of these rules. ()

207. PERSONAL FUNDS.

01. Funds Handled by a Provider. The provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders. ()

a. The provider may deposit personal funds collected for the juvenile offender in a public banking institution in an account specifically designated "Juvenile Personal Funds." The provider must maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the "Juvenile Personal Funds" account. If the funds are collected in an interest bearing account, the interest accrued must be credited to the juvenile offender for whom the funds are collected. ()

b. If the amount of personal funds maintained for the juvenile offender does not exceed fifty (50) dollars, the provider may secure the funds locally if the following conditions are met: ()

i. The juvenile offender's personal funds are kept in a fire-resistant, combination or digital lock-style safe that is permanently affixed to the floor or wall, or weighs at least 200 (two-hundred) pounds. ()

ii. The provider has a process to clearly separate each juvenile offender's personal funds from one another. ()

iii. Access to juvenile offender personal funds is limited to the Program Director or designee. ()

c. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the provider, must be documented, signed, and dated by the juvenile offender. This documentation must be reconciled to the juvenile offender's ledger monthly. ()

d. The provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdrawal from their personal funds. ()

e. The provider shall not require juvenile offenders, parents, or guardians to pay for services and supplies that are to be provided by the provider. ()

02. Reporting Requirements. A personal funds report must be submitted every other month to the juvenile services coordinator. The report must show a list of all juvenile offender account balances. The personal fund account is subject to review and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts must be resolved by the provider within five (5) business days of completion of review. ()

03. Juvenile Offenders with Earned Income. The provider is responsible for maintaining and accounting for any money earned by a juvenile offender. There must be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution, as referenced in Subsection 208.02 of these rules, and a specific allocation for daily incidental expenses. The provider must establish a written plan for the juvenile offender to save the funds necessary to be used upon program completion, for purposes such as paying deposits on utilities and housing or the purchasing of resources necessary for employment. ()

04. Transfer of Personal Funds. If a juvenile offender is transferred to another program, the balance

of the juvenile offender's funds must be given or mailed to the department's fiscal services within ten (10) business days and documented on the Provider Juvenile Check-Out Form supplied by the department, and on the final progress report. ()

208. COMMUNITY SERVICES AND RESTITUTION.

01. Community Service. Juvenile offenders may have court-ordered community service hours. The provider must obtain prior approval from the juvenile probation officer to complete any court-ordered community service hours while at the provider. The provider shall be responsible for documenting approved community service hours and reporting the accumulation of completed hours in the juvenile offender's progress report. ()

02. Court Ordered Restitution. The provider must create a plan for the juvenile offender to submit a portion of a juvenile offender's personal funds or earned income for the payment of restitution as described in this section. The provider must work with the juvenile probation officer and juvenile services coordinator to determine the amount of restitution owed. When juvenile personal funds are available the provider will submit payment to the county until the restitution amount is satisfied. Documentation of the payment is provided to the juvenile services coordinator. Court ordered restitution must be a claim against and paid from the juvenile offender's personal funds account in the amount of fifty percent (50%) of those funds. Should the juvenile offender have no other funds available, then a plan must be developed by the provider to assist the juvenile offender in earning the amount of restitution and, if appropriate, help him develop a payment plan. ()

03. Restitution for Program Damages. Monetary restitution may only be sought through a court order when a juvenile offender has damaged or destroyed property, or has caused or attempted to cause injury to other juvenile offenders or staff. Restitution for damages at the program will not be paid to the exclusion of court ordered restitution. The provider must not access the juvenile offender's personal funds for program damages. Restitution for damages must begin with a plan for repair by the juvenile offender. ()

209. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders shall be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence, and for at least two (2) personal letters each week. ()

02. Inspection of Outgoing Letters. ()

a. Outgoing letters are to be posted unsealed and inspected for contraband. ()

b. Exception: Outgoing "privileged" mail may be posted, sealed and may not be opened, except with a search warrant, as long as it can be confirmed to be to an identifiable source. For purposes of this rule, "an identifiable source" means that the official or legal capacity of the addressee is listed on the envelope and that the name, official or legal capacity, and address of the addressee have been verified. ()

c. Upon the determination that the mail is not identifiable as privileged mail, said mail shall be opened and inspected for contraband. ()

03. Inspection of Incoming Letters. All incoming letters must be opened by the juvenile offender to whom it is addressed and may be inspected for contraband by staff and only in the juvenile offender's presence. ()

04. Reading of Letters. Routine reading of letters by staff is prohibited. The department or court may determine that reading of a juvenile offender's mail is in the best interest of the juvenile offender, and is necessary to maintain security, order or program integrity. However, such reading of mail must be documented and unless court

ordered, must be specifically justified and approved by the juvenile services coordinator. ()

05. Privileged Mail. Under no circumstances shall a juvenile offender's privileged mail be read. ()

06. Packages. All packages must be inspected for contraband. ()

07. Publications. Books, magazines, newspapers and printed matter which may be legally sent to juvenile offenders through the postal system may be approved, unless deemed to constitute a threat to the security, integrity, or order of the programs. Juvenile offenders shall not be allowed to enter into subscription agreements while in department custody. ()

08. Distribution of Mail. The collection and distribution of mail must never be delegated to a juvenile offender. Staff must deliver mail within twenty-four (24) hours, excluding weekends and holidays, to the juvenile offender to whom it is addressed. ()

210. VISITATION.

The provider must develop a written policy governing visitation which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitors below an established age to the program or facility. The provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence shall be denied. In all cases, the provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors. ()

211. -- 219. (RESERVED)

220. SEARCHES FOR CONTRABAND.

01. Searches of Personal Items. Routine searches of personal items being introduced into the program may be conducted by staff prior to the juvenile offender taking possession of his property, or when the juvenile offender is returning to the program from an individual community pass. Search of a juvenile offender's belongings may be done at any time and must be minimally intrusive. ()

02. Policies and Procedures Governing Consequences. The provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. ()

03. Visitor Searches. ()

a. Prior to visitors being allowed in the program, they must be given rules established by the provider that govern their visit and advised that they may be subject to a search by trained staff. They must sign a statement of receipt of these rules and it shall be placed in the provider's file. ()

b. Visitors may be required to submit personal items for inspection. If there is reason to believe that additional searches are necessary, admission to the facility shall be denied. Visitors who bring in items that are unauthorized, but not illegal, will have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the facility. ()

c. All visitor searches must be documented. When contraband is found, a written report must be completed and submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency will be notified. ()

04. Clothed Body Searches. ()

a. Clothed body searches of juvenile offenders may be conducted whenever the provider believes it is necessary to discourage the introduction of contraband into the program, or to promote the safety of staff, juvenile offenders, and visitors. A clothed body search may be used when a juvenile offender is returning from a visit, outside appointment, or activity. ()

b. Clothed body searches must be conducted in the manner required by the rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Clothed body searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Clothed body searches will be conducted using a pat down search on the outside of the juvenile's clothing. The staff member must have had appropriate training in conducting clothed body searches. ()

05. Unclothed Body Searches. Unclothed body searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Unclothed body searches must be based upon a reasonable belief that the juvenile is concealing contraband or signs of abuse. Immediately after conducting an unclothed body search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

06. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth, ears, or nose does not constitute a body cavity search. Body cavity searches must be based upon a reasonable belief that the juvenile is concealing contraband. Immediately after conducting a body cavity search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

07. Documentation of Searches. All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator must be notified and it shall be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. ()

08. Contraband Disposal. All contraband found in the possession of juvenile offenders, visitors, or staff must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. ()

221. SMOKING AND SALE OF CIGARETTES.

Juvenile offenders, regardless of age, are strictly prohibited from purchasing or using tobacco products. Staff secure providers must establish written policies and procedures banning the use of cigarettes and other tobacco products by juvenile offenders at the facility. ()

222. ROOM RESTRICTIONS.

01. Policy and Procedure. The provider must have written policies and procedures regulating the use of the juvenile offender's room for room restriction. The provider's room restriction policy must at a minimum address the following: ()

- a.** Procedures for recording each incident involving the use of restriction; ()
- b.** The reason for the room restriction must be explained to the juvenile offender and allow the juvenile offender to have an opportunity to explain their behavior; ()
- c.** Other less restrictive measures must have been applied prior to the room restrictions; ()
- d.** A juvenile offender on room restriction must have access to the bathroom; ()
- e.** Room restriction may only be used in an unlocked area; and ()

- f. Room restriction must not exceed a total of eight (8) hours within a twenty-four (24) hour period. ()

02. Monitoring During Room Restriction. Staff must check on a juvenile offender in room restriction a minimum of once every fifteen (15) minutes. Providers must ensure that a juvenile offender with a history of depression or suicidal ideation and those who have exhibited these behaviors while in care, are checked at least every five (5) minutes in order to ensure safety. Even more frequent or constant observation must be maintained if any level of suicide risk is determined to be present at any time during room restriction. All items in the area that might be used to attempt self-harm should be restricted or removed. ()

223. USE OF FORCE OR PHYSICAL RESTRAINTS.

Providers licensed by the Idaho Department of Health and Welfare or the applicable state licensing authority, must ensure that all terms of the licensing rules are strictly followed. Additionally, providers must ensure that: ()

01. Minimal Use. Only the minimum level of force necessary to control a juvenile offender's destructive behavior shall be used. ()

02. Physical Force. Physical force, at any level, may only be used to prevent injury to the juvenile offender or to others and to prevent serious damage to property or escape. Physical force must never be used as punishment. ()

03. Reporting Requirement. All instances of use of force must be documented in an incident report and submitted according to the terms of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." Incidents of inappropriate use of force must be reported to the state's applicable licensing authority, or law enforcement as required by law. ()

224. -- 229. (RESERVED)

230. PROGRAMMING.

01. Basic Program Requirements. Providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

a. Providers must provide a range of program services specifically designed to address the characteristics of the target population identified in the comprehensive program description and in the admission policy. ()

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders, and those programs serving sexually abusive juvenile offenders, must be able to demonstrate that the program services offered are supported by research. ()

c. Programs serving female juvenile offenders must be able to demonstrate that the services provided include elements of a program specifically designed to address the unique situations and circumstances facing female juvenile offenders. These elements must be clearly identified and described within the program description. ()

d. Programs designed to serve juvenile offenders with gang involvement must be able to demonstrate that the services provided include elements of a program specifically designed to address gang involvement. These elements must be clearly identified and described within the program description. ()

e. Program services for individual juvenile offenders must be designed based upon the juvenile's service plan, and must target those behaviors or circumstances which have contributed to the juvenile's delinquency and which can reasonably be changed (criminogenic needs). These services must be clearly identified and described

within the program description. ()

f. Juvenile offenders must always be aware of the status of their progress within the program and what remains to be done to complete the program. Providers must assure that the basic norms and expectations of the program, including any points, levels or phases that are a fundamental part of a program, are clearly presented to the juvenile offender and that they are understood. ()

g. Programs that contract with the department to serve juvenile offenders and their families must: ()

i. Provide humane, disciplined care and supervision; ()

ii. Provide opportunities for juvenile offenders' development of competency and life skills; ()

iii. Hold juvenile offenders accountable for their delinquent behavior through means such as victim-offender mediation, restorative conferencing, restitution, and community service; ()

iv. Seek to involve juvenile offenders' families in treatment, unless otherwise indicated for the safety and benefit of the juvenile offenders or other family members; ()

v. Address the principles of accountability to victims and to the community, competency development, and community protection in case planning and reporting; ()

vi. To the fullest extent possible, provide balance in addressing the interests of the victim, community, and the juvenile offender. ()

vii. Participate fully with the department and the community treatment team in developing and implementing service plans for juvenile offenders they serve; and ()

viii. Provide juvenile offenders with educational services based upon their documented needs and abilities. ()

231. GUIDELINES FOR SPECIFIC SERVICES.

01. Counseling Services. ()

a. All counseling services provided to juvenile offenders, whether individual, group or family, must be performed by a clinician, counselor, or therapist as defined in these rules. ()

b. Counseling should be planned and goal directed. ()

c. Notes must be written for each service provided and include documentation of who provided the service. The notes must be dated and clearly labeled either individual, group or family counseling. ()

d. The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. ()

e. Counseling should be reality oriented and directed toward helping juvenile offenders understand and solve specific problems; discontinue inappropriate, damaging, destructive or dangerous behaviors; and fulfill individual needs. ()

f. The minimum standard for the frequency of counseling services must be specified in the comprehensive program description attached to the contract with the department. ()

g. There should be a mechanism developed to monitor and record incremental progress toward the desired outcome of counseling services. ()

h. Programs should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

i. Programs must provide crisis intervention counseling if warranted by the assessment and circumstances. ()

j. The provider must furnish adequate space for conducting private interviews and counseling sessions at the facility. ()

k. Family counseling services must be available as a part of the juvenile offender's service implementation plan, to the extent that this is supported by the assessment. If the assessment indicates a need for these services, family counseling should specifically address issues that, directly or indirectly, resulted in the juvenile offender's removal from the home and the issue of eventual reintegration back into the family unit. A statement of goals to be achieved or worked toward by the juvenile offender and the family should be part of the service implementation plan. ()

02. Substance Abuse Services. As a minimum standard, programs must provide substance abuse services as determined by assessment and indicated in the service implementation plan. Substance abuse services must have direct oversight by a certified alcohol and drug counselor, or master's level clinician with three (3) years' experience in the substance abuse field. Substance abuse services must be fully described in the detailed program description and must have a written curriculum containing a description of each session offered. Juvenile offenders receiving substance abuse services must have an introduction to a community intervention program. Relapse prevention plans must be a component of the substance abuse services provided. Relapse prevention plans must be specifically based on the individual needs of the juvenile offender. Notes documenting the service provided must be dated, clearly labeled "substance abuse services," and each entry must be signed by the counselor performing the service. ()

03. Social Skills Training Including Relapse Prevention Skills. Programs must assess each juvenile offender's social skills and document specific services provided to improve functioning in this area. Additionally, every juvenile offender must have developed a written relapse prevention plan prior to successfully completing the program. ()

04. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills and that age-appropriate juvenile offenders are involved in independent living skills consistent with their age and needs. This program should include, at a minimum, instruction in: ()

- a.** Hygiene and grooming skills; ()
- b.** Laundry and maintenance of clothing; ()
- c.** Appropriate social skills; ()
- d.** Housekeeping; ()
- e.** Use of recreation and leisure time; ()
- f.** Use of community resources; ()
- g.** Money management; ()
- h.** Use of public transportation, where available; ()
- i.** Budgeting and shopping; ()
- j.** Cooking; ()

- k.** Punctuality, attendance and other employment-related matters; ()
- l.** Vocational planning and job finding skills; and ()
- m.** Basic health education. ()

05. Recreational Services. Programs should have a written plan for providing recreational services based on individual needs, interests, and functional levels of the population served. ()

a. The recreational program should include indoor and outdoor activities. Activities should minimize television and make use of a full array of activities that encourage both solitary entertainment and small group interaction. An appropriately furnished area should be designated inside the facility for leisure activities. ()

b. Programs should have staff educated and experienced in recreational programs to ensure good planning, organizing, supervision, use of facility, and community activities. Recreational activities considered part of the service implementation plan must be funded by the provider. The use of community recreational resources should be maximized, as long as community safety is assured. The provider must arrange for the transportation and provide the supervision required for any usage of community recreational resources. No juvenile offender shall be required to pay to participate in recreational activities made available through the program. ()

06. Transportation Services. In all transport situations there must be at least one (1) assigned staff of the same gender, or two (2) assigned staff of the opposite gender, as the juvenile offender being transported. ()

232. CASE MANAGEMENT REPORTING REQUIREMENTS.

Each juvenile offender's progress, or lack of progress, through these levels must be clearly documented and must be related to documented behavior. Recommendations for release from department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. ()

01. Service Implementation Plan. Within thirty (30) calendar days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the service plan from the observation and assessment report. The service implementation plan should, at a minimum, address the following areas as indicated by need: ()

- a.** Education and employment; ()
- b.** Personality and behavior; ()
- c.** Substance abuse; ()
- d.** Attitudes, values, and delinquent orientation; ()
- e.** Family circumstances and parenting; ()
- f.** Peer relations; ()
- g.** Leisure and recreation; ()
- h.** Sexual misconduct; ()
- i.** Specialized needs; and ()
- j.** Reintegration plan, including living arrangements upon release from department custody or transfer and aftercare services needed. ()

02. Juvenile Offender and Family Involvement. Each juvenile offender and, to the fullest extent

possible, the family should be involved in developing the service implementation plan, and in adjusting that plan throughout the course of commitment. ()

03. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. ()

04. Department Assessments. Assessments provided by the department shall not be repeated by the provider at the time of admission into the program without specific justification provided to the regional clinical supervisor. ()

05. Participation in the Progress Assessment/Reclassification. The provider may be asked by the juvenile services coordinator to provide input necessary for periodic reassessments of the juvenile offender's progress and current risk level. In all cases, the provider must participate to the fullest extent possible. ()

06. Progress Notes. Monthly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan and submitted to the juvenile services coordinator. ()

07. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every two (2) months. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 232.01 of these rules should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. ()

08. Relapse Prevention Plan. Prior to completing the program, the provider shall supply the juvenile with the relapse prevention plan form provided by the department. The plan must address areas of risk identified in the juvenile's service implementation plan, as well as interventions the juvenile will use to prevent future problems. While in treatment the provider will solicit feedback from the juvenile services coordinator every thirty (30) calendar days regarding the development of the juvenile's relapse prevention plan. The final relapse prevention plan is due no earlier than the date of the juvenile offender's reintegration staffing. ()

09. Final Progress Report. A final progress report must be submitted to the juvenile services coordinator and any designees no earlier than ten (10) calendar days prior to the juvenile offender's anticipated completion of the program, and no later than the date of release. This recommendation must include: ()

- a. A current summary of the juvenile offender's progress; ()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; ()
- c. Any unresolved goals or objectives; ()
- d. Recommendation for continuing services, including education, in the home community; and ()
- e. The current address of the juvenile. ()

10. Report Distribution. Copies of the service implementation plan, progress reports, relapse prevention plan, and final progress report must be distributed by the provider to the juvenile offender and the juvenile services coordinator and any designees. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for some well documented reason. ()

233. INDIVIDUAL COMMUNITY PASSES.

Prior to granting any individual community pass to a juvenile offender, the provider must contact the juvenile probation officer and the juvenile services coordinator, to ensure that neither the court nor the department has placed restrictions on the juvenile offender's pass privileges. All requests for passes must be approved by the juvenile services coordinator. Any pass involving an overnight stay away from the facility, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an individual community pass, the provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and returns. ()

01. Potential Risk to Public Safety. Individual passes for juvenile offenders assigned to residential facilities should be considered as an integral part of the service implementation plan. However, in all cases, the potential risk to public safety and adequacy of home supervision must be considered prior to allowing a juvenile offender to return home. It is also important that passes not interfere with the ongoing treatment and supervision needed by juvenile offenders. Providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f. A complete listing of the activities required during the pass; ()
- g. Specific stipulations prohibiting:
 - i. The use of alcohol, tobacco, and drugs; ()
 - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii. Participation in sexual relations of any kind; ()
 - iv. Possession of any kind of firearm or weapon; ()
 - v. Any violation of the terms of probation; and ()
- h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

02. Eligibility. A juvenile offender must be in placement a minimum of thirty (30) calendar days to be eligible for any pass. Any exceptions due to extenuating circumstances must be approved by the juvenile services coordinator. ()

03. Frequency. Frequency of passes must be consistent with the terms of the juvenile offender's service implementation plan and provider's contract with the department. ()

04. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. ()

234. GROUP ACTIVITIES OFF FACILITY GROUNDS.

An activity plan and itinerary covering activities to be engaged in, when and where the group is going, how they will travel, how long they will stay, and why the activity is being planned must be submitted to the juvenile services coordinator at least five (5) business days prior to the activity. The activity plan must identify the specific risk elements associated with the activity and provide a safety plan for each of those risk elements. Routine, low risk activities within the local community adjacent to the facility do not require prior notice, and are to be conducted at the discretion of and under the responsibility of the provider. ()

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk, such as overnight trips, must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves horseback riding, boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the department's regional superintendent. ()

02. Staff Requirements. ()

a. A basic first aid kit will be taken with the group. At least one (1) person certified in first aid and CPR must accompany the group. ()

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in rescue and water safety, or if a lifeguard is on duty. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. ()

c. A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, mental deficiencies, or inclusion of groups of juvenile offenders under age twelve (12), are some reasons to consider additional staff. ()

d. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. ()

e. There will be no consumption of alcoholic beverages or illicit drugs by staff or juvenile offenders, interns, or volunteers while engaged in any agency-sponsored trip or activity. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 234.01 of these rules. Each juvenile offender must have prior written consent from a parent or guardian, if available, and the department's regional superintendent. Consent must include: ()

a. Permission for the juvenile offender's participation; ()

b. Acknowledgement of planned activities; and ()

c. Permission for the provider to seek or administer necessary medical attention in an emergency. ()

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the provider, and the results of that exam reported to the juvenile services coordinator.

()

235. OUT-OF-STATE TRAVEL.

When a residential treatment provider is planning an out-of-state trip for any of its juvenile offenders, the facility administrator must obtain prior written authorization from the regional clinical supervisor or designee. The necessary sequence of action and approval is as follows: ()

01. Notification. The residential treatment provider must notify the juvenile services coordinator in writing fourteen (14) business days in advance of the scheduled trip with the following: ()

- a. Dates of the scheduled trip; ()
- b. Location of the trip; ()
- c. Purpose of the trip; ()
- d. Transportation arrangements; ()
- e. Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and ()
- f. Who is going, such as juvenile offender, and name and position of staff. ()

02. Prior Approval. The program director must obtain all necessary approvals prior to authorizing travel. ()

03. Interstate Compact for Juveniles. Any out-of-state travel for more than twenty-four (24) hours requires a travel permit and compliance with the Interstate Compact for Juveniles. ()

236. DRUG SCREENS OF JUVENILE OFFENDERS.

Drug screens may be done randomly or on an as needed basis, at the provider's expense, with the approval of the provider's program director. A record must be kept of all drug screens and results. A positive drug screen must immediately be reported to the juvenile services coordinator. ()

237. PLANNING FOR RELEASE OR TRANSFER.

01. Aftercare Planning. Programs must promote continuity in programming and services for juvenile offenders after they leave the program by assuring that essential information is forwarded to those agencies that will be providing services to the juvenile offenders, and working closely with department staff throughout placement to plan for reintegration. ()

02. Approval. Reintegration, by release from department custody or transfer, must not take place without the involvement of the department's assigned juvenile services coordinator, and the approval in writing of the regional clinical supervisor and regional superintendent. ()

03. Department Concurrence. Preparation for reintegration of a juvenile offender begins with the initial development of a service plan and is an ongoing process throughout the juvenile offender's program. Criteria for the juvenile offender's release from department custody or transfer must be explained to the juvenile as soon as possible after admission to a program. ()

04. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing, which will include the juvenile offender's probation officer, the provider, the juvenile offender's parent or guardian, an education representative, and the juvenile offender. At a minimum, a review of the plans to address any ongoing medical or mental health, substance abuse, social skills, education, vocation, independent living, and other special needs will be conducted. The juvenile offender's relapse prevention plan shall be reviewed by the juvenile probation officer, the juvenile's parent or guardian, the education representative and juvenile services coordinator. Based upon the results of that staffing and pending juvenile services coordinator approval of the relapse prevention plan, the

department will make the final decision regarding transfer or release from department custody. ()

05. Check-Out Procedures. Prior to the release from department custody or transfer, the provider must have completed a Provider Juvenile Check-Out Form supplied by the department. The form must be dated, signed by the juvenile offender, and forwarded to the juvenile services coordinator and any designees on the actual date that the juvenile offender leaves the program. ()

a. The provider must provide the juvenile's Medicaid card, and a thirty (30) day supply of all medications or a thirty (30) day prescription signed by the physician to the individual or agency authorized to transport the juvenile offender. ()

b. Within two (2) business days after a juvenile offender leaves the facility or program, the provider must send any available dental or medical records to the privacy officer at the juvenile correctional center in Nampa. ()

c. Within two (2) business days after a juvenile offender leaves the facility or program, the provider must send a report showing the juvenile offender's total hours, credits, and associated grades directly to the juvenile correctional center in Nampa. The provider must maintain adequate documentation to support the submitted education reports. Timely receipt of these records is critical to assist the transition of the juvenile offender to another educational facility. ()

06. Termination Prior to Completion. ()

a. When a provider believes a juvenile offender is at risk for transfer prior to program completion, the juvenile services coordinator must be notified as far in advance as possible so that a staffing with the regional clinical supervisor and, if necessary, the department's regional superintendent, may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the provider to avoid the necessity of making another placement. The provider must document these efforts at problem solving. The department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the provider. The provider can request transfer of a juvenile offender in the following circumstances: ()

i. A pattern of documented behavior clearly indicating a lack of progress; or ()

ii. Commission of one (1) or more serious or violent incidents that jeopardize the safety and security of individuals or the program. ()

b. In matters involving life, health, and safety of any juvenile in department custody, the department shall remove the juvenile offender immediately. ()

c. A final progress report must include, at a minimum, a report on progress or lack of progress on all service implementation plan areas, and recommendations for follow-up. The report must be forwarded to the juvenile services coordinator within twenty-four (24) hours of release from department custody or transfer prior to program completion. ()

238. -- 249. (RESERVED)

250. EDUCATION SERVICES.

01. Appropriate Services. The provider must ensure that each juvenile offender is given appropriate educational and vocational services that are consistent with the juvenile offender's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by state or federal law. Providers must assure that educational services provided as a part of an overall program play an integral part in the process of reclaiming juvenile offenders to responsible roles in society. Educational services must strive to facilitate positive behavior change by helping juvenile offenders to develop abilities in academic, workplace, and technological areas; to restructure harmful or limiting cognitive patterns; and, to adopt appropriate social interactions skills. Educational services provided by providers must use whatever combination of approaches and motivations that will best facilitate

the learning process in conjunction with the service implementation plan. All educational services provided must meet all mandates of the Elementary Secondary Education Act (ESEA), the Individuals with Disabilities Education Act (IDEA), the Family Educational Rights and Privacy Act (FERPA), and the Rehabilitation Act of 1973 (Section 504). ()

02. Mandatory Enrollment. Providers must ensure that all juvenile offenders involved in their programs who are of mandatory school age in the applicable state, or who have not yet obtained a General Educational Development (GED) or high school diploma, are enrolled in a school system or in a program approved and certified by the applicable state's Department of Education to provide both special education and other services. For those who have obtained a GED or high school diploma, an appropriate educational and vocational service must be provided in accordance with the service implementation plan. ()

03. Cooperative Relationships. Providers may provide educational services through a cooperative agreement with the local education agency or through an in-house educational program administered by the provider. If a local education agency provides the services, it is expected that the provider will have a written agreement with a local education agency that clearly defines the services that will be provided in the contract facility. The written agreement must include, at a minimum, all of the following: ()

- a. Level of participation in reintegration planning for each juvenile offender; ()
- b. That grades will be submitted, as required in Subsection 237.05 of these rules, within two (2) business days of transfer or release from department custody; ()
- c. Curriculum for special education services, if appropriate; ()
- d. A plan for the provision of state required testing; and ()
- e. Types of services that will be provided beyond the established limits of the regular school year for that school district. ()

04. Costs of Educational Services. If a local education agency agreement is developed, the Idaho Department of Education will flow education funds to the local education agency in a manner consistent with current legislative funding mandates. A copy of the memorandum of understanding between the provider and the local education agency must be provided to the department, and the source of funds to cover the costs for educational services clearly accounted for in the budget. If the provider elects to provide the services in-house, the cost of educational services will be included in the daily contract rate. The provider will not be eligible to receive educational funding through both of these sources. ()

05. Accreditation Requirements. Each provider serving juvenile offenders, who have been committed to the department, will have, or contract with, an education program that will meet the accreditation standards of the Northwest Association of Schools or equivalent associating organization, or the applicable state's Department of Education. ()

06. Educational Assessment. Federal and state laws mandate that juvenile offenders be provided with an appropriate education. Providers are responsible for providing an educational track which will best serve the needs of each juvenile offender, as determined by the assessment provided by the department through the observation and assessment process, or as determined by an assessment completed by a local school district. A copy of the relevant assessment and related current and valid education plan, as well as all supporting documentation for each juvenile offender, must be maintained in a separate file and must be available to the department and to the Idaho Department of Education. A copy of the IEP and all supporting documentation must be sent to the department's education records manager within ten (10) business days or less of its completion for inclusion in the juvenile offender's permanent school records that are maintained at the juvenile correctional center in Nampa. ()

- a. Providers are responsible for ongoing, yearly reassessment of each juvenile offender's progress within the education program as well as documenting and reporting that progress. This responsibility extends to completing a reassessment just prior to release from department custody or transfer, and reporting academic gain both for individual juvenile offenders as well as composite data for the education program overall. ()

b. Consistent with statewide educational standards, providers are responsible for assuring that each juvenile offender is tested in accordance with the applicable state's assessment schedule and all required measures. Any fees associated with the testing services will be the responsibility of the provider. Results of testing must be submitted to the department's education records manager at the juvenile corrections center in Nampa within ten (10) business days after the provider's receipt of the scores. ()

07. GED Eligibility. Providers must assure that GED tests will be administered to juvenile offenders meeting the criteria established in the administrative rules of the applicable state's Board of Education for school districts. All GED testing application fees will be paid by the provider. Test results must be submitted to the department's education records manager at the juvenile correctional center in Nampa within ten (10) business days after the receipt of the scores. ()

08. Special Education Services. ()

a. The provider must ensure that the special educational needs of juvenile offenders are addressed. The provider's in-house program or cooperating local education agency program must comply with Section 504 and the IDEA, as well as any other applicable state or federal laws. Under no circumstances shall the provider or its teaching staff make modifications in the juvenile offender's Section 504 or the IDEA educational program without conducting a Child Study Team meeting in consultation with the department's educational coordinator or designee. ()

b. Providers must make every reasonable effort and thoroughly document all efforts to contact parents or guardians of juvenile offenders identified as eligible for special education. If it is not possible to involve the natural parents or guardians, a surrogate parent must be appointed by the agency providing special educational services. This surrogate cannot be the director or other employee of an agency, institution, or community-based residential facility who is involved in providing care or education to a juvenile offender, or an employee of a state agency or agency volunteer, such as caseworker, social worker, or court-appointed special advocate who has been appointed by the state to provide for the welfare of the student. A surrogate parent is used only for special educational requirements and has no other legal authority. ()

09. Standards for Instructional Time. Providers must assure that the school day is consistent with at least the minimum standard established for high schools by the Northwest Association of Schools. The length of the school day will further meet all requirements established by state and federal laws, regulations, and accreditation standards. Providers must provide an appropriate educational or vocational program for each juvenile offender for twelve (12) months of the year. At a minimum, this involves four (4) hours per day, five (5) days per week throughout the full calendar year. Juvenile offenders involved in any disciplinary process must not be denied their right to education and other related services. If security or other related concerns are present that may prohibit a juvenile offender's participation in educational programming, an education plan review will be completed and documented in an incident report. If the juvenile offender is eligible for services under the IDEA or Section 504, a Child Study Team will meet to make a determination as to whether or not the behavior is a result of the juvenile offender's handicap. All due process procedures will be followed according to the administrative rules for special education. ()

10. Educational Records and Confidentiality. ()

a. Educational records must be maintained by the provider at all times in accordance with FERPA. At a minimum, the following information must be included in the record: ()

i. Subjects taken; ()

ii. Grades by subject and explanation of the grading system; ()

iii. Units of credit with explanation; ()

iv. Attendance records; and ()

v. Any standardized test scores. ()

b. Reports of the juvenile offender's educational progress (report cards) must be provided to the education records manager at the juvenile correctional center in Nampa within ten (10) business days after the end of the school's grading periods (midterm, semester, trimester, etc.). ()

c. Providers must ensure that juvenile offender educational files are consistently maintained to ensure compliance with FERPA. ()

d. When a juvenile offender is released from department custody or transferred, the permanent education file must be updated by the department's education records technician. The providers will provide final withdrawal grades and credits within twenty-four (24) hours or next business day after the juvenile offender is released from department custody or transferred. The providers must send the education records manager at the juvenile correctional center in Nampa an e-mail advising that the final grades have been entered into the software program. Working educational files must be returned to the juvenile correctional center in Nampa within ten (10) business days of the juvenile offender's release from department custody or transfer. ()

251. -- 259. (RESERVED)

260. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the provider's care. Each provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified physical or mental health services, including medications. Medical and mental health screenings must be provided within two (2) hours of a juvenile offender's admission to a program. Comprehensive and professional medical and mental health assessments must be provided by the provider within thirty (30) calendar days of admission, unless these are provided by the department. A copy of these assessments must be forwarded to the department's regional R.N. ()

02. Medical Consent. As part of the admission process, the provider must have a copy of the department's Release of Information and Consent form signed by a juvenile offender's parent, guardian, or committing authority. The consent form must be filed in the juvenile offender's medical and case files maintained by the provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the department, reasonable efforts must be made to obtain the consent of the parent or guardian. The signature of only one (1) parent or guardian is sufficient to form consent or authorization. Should the parent or guardian not be available or refuses to sign, the authorization may be signed by the department's regional R.N. or designee. This does not restrict the provider from taking action in life and death situations. ()

04. Reimbursement Sources. The provider must utilize private insurance or Medicaid, if available, for funding medical, dental, optical, mental health, or related services, and pharmaceutical products for any juvenile offender. The provider shall not seek reimbursement from private insurance or Medicaid for health services that are the fiscal responsibility of the provider pursuant to its contract with the department. Any health services not listed in these rules, other than emergency treatment, which was not approved in advance by the department's regional R.N. or designee, will be at the expense of the provider. ()

261. ADMISSION AND ANNUAL HEALTH SERVICES AND TREATMENT RECORDS.

01. Compliance with Child Care Licensing Rules. Admission and annual health services must be provided to juvenile offenders in accordance with the child care licensing rules of the Idaho Department of Health and Welfare, unless otherwise provided in these rules. ()

02. Prior Approval. No prior approval or review from the department's regional R.N. is required for admission and annual health services. Examples of admission and annual health services for which no prior approval or review is required are: ()

- a. Admission physical exams, including STD exams and treatment; ()
- b. Admission dental exams, including x-rays and cleanings (no panoramic x-rays or sealants); ()
- c. Admission eye exams and glasses, if needed; ()
- d. Annual physical exams, including STD exams and treatment; ()
- e. Annual dental exams with x-rays and cleanings (no panoramic x-rays or sealants); and ()
- f. Annual eye exams, if needed, and new glasses only if needed. ()

03. Medical Records. Any time a juvenile offender receives treatment under this section or for any similar service, the provider must retain the original medical record regarding treatment and must immediately send a copy to the department's regional R.N. ()

262. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

01. Confidentiality. Confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

02. Privacy Officer. The provider must appoint a privacy officer to oversee that the control and maintenance of all juvenile offender health and medical records is in compliance with the federal Privacy Regulations, 45 Code of Federal Regulations Sections 160 and 164. ()

03. Separate Records. All juvenile offender medical and health records must be kept in files that are physically separated from other juvenile offender files and information, and under a system of security against unauthorized access. ()

263. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The provider must immediately report critical medical and mental health incidents according IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

264. INFECTIOUS DISEASES.

01. Policies. ()

a. The provider must establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of infectious diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a medical health professional for juvenile offenders diagnosed with an infectious disease. ()

b. The provider must comply with the child care licensing rules of the Idaho Department of Health and Welfare regarding universal precautions. ()

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request to be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. ()

03. Examinations. Examinations must be performed on any juvenile offender by medical professionals for all symptomatic cases of infectious diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. ()

04. Notifications. The provider must notify the department's regional R.N. within three (3) business days of any positive test results, treatment recommendations, and follow up care. ()

265. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and must include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual medical plan will be sent to the department's regional R.N. ()

02. Parenting Classes. Parenting classes must be an integral part of the individual medical plan for all pregnant female juvenile offenders. This service should also be offered as a priority to male juvenile offenders in department custody who are already fathers or whose spouse or girlfriend is expecting a child. ()

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant must be placed with an appropriate family member or in the temporary care of the Family and Children Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the provider's facility. ()

266. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) days requires immediate notification to the department's regional R.N. according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the provider must issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. ()

267. USE OF MEDICATIONS.

01. Written Policy. The provider must have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies must conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare or the applicable state's licensing authority. ()

02. Notification. If initiating or modifying any medication, the department's regional R.N. must be notified. Notification must include the following: ()

a. The name of the prescribed medication; ()

b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant; and ()

c. The reason the medication is being prescribed. ()

268. FIRST AID KITS.

Each provider must maintain first aid kits. Basic first aid kits that do not include medications or sharp tools may be kept unlocked. Any complete first aid kit with medications, wound rinses, scissors, tweezers, or other such objects must be kept locked and placed in areas of the program or facility readily accessible to staff. ()

269. -- 999. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.03 - RULES FOR REINTEGRATION PROVIDERS

DOCKET NO. 05-0203-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), 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 17, 2014.

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:

05.02.03, "Rules for Reintegration Providers," will contain additional rules that are only applicable to these specific providers. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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:

No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 31](#).

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 Jessica Moncada, (208) 334-5100 x. 410.

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 24, 2014.

DATED this 7th Day of August, 2014.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0203-1401

IDAPA 05
TITLE 02
CHAPTER 03

05.02.03 - RULES FOR REINTEGRATION PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the "Interstate Compact on Juveniles," the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.03, "Rules for Reintegration Providers," IDAPA 05, Title 02, Chapter 03. ()

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the following principles: accountability; community protection; and competency development. These rules apply to providers of reintegration and independent living skills that coordinate needed treatment services identified in individual service implementation plans. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for providers. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections' rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone number of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Body Cavity Search. The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical authority. ()

02. Body Search, Clothed. Also referred to as a Pat Search. A search during which a juvenile offender is not required to remove their clothing, with the exception of such items as a jacket, hat, socks and shoes. ()

03. Body Search, Unclothed. Also referred to as a Strip Search. A search during which a juvenile offender is required to remove all clothing that is conducted by a medical health professional. ()

04. Education Plan. A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. ()

05. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). ()

06. Health Services. Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. ()

07. Independent Living Services. Services that increase a juvenile offender's ability to achieve independence in the community. ()

08. Individual Community Pass. Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

a. Day passes alone or with family or other, approved individuals; ()

b. Day or overnight home visits; ()

c. Recreational activities not otherwise approved as a part of a group activity; and ()

d. Funeral leave. ()

09. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

10. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

11. Privileged Mail. Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies;

judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. ()

12. Reintegration Placement. The placement of a juvenile offender receiving independent living and reintegration skills services from the provider. This placement may be with a host family, in a group setting, or in an apartment. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

Juveniles are committed to the department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-549, Idaho Code). ()

101. WAIVER OR VARIANCE.

Minimum program standards established herein shall apply to all services provided by the provider. Any waiver or variance from the standards stated in these rules must receive prior written approval from the department and must be attached as a formal amendment to the contract. ()

102. APPLICABILITY.

This chapter applies to providers of reintegration and independent living skills that coordinate needed treatment services identified in individual service implementation plans. Reintegration providers must also abide by IDAPA 05.02.01, "Rules for Residential Treatment Providers." ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

01. Inspections. The department shall have the authority to conduct reviews of programs, program operations, juvenile offender placements, and facilities to ensure the provider's compliance with these rules. The provider shall cooperate with the department's review, and must provide access to the facility and all juvenile records for juveniles in department custody, as deemed necessary by the department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available. ()

02. Site Visit. If the juvenile offender is living independently, the juvenile services coordinator or designee shall conduct site visits of the residence prior to occupancy. ()

201. CLOTHING AND PERSONAL ITEMS.

The reintegration provider must ensure that the juvenile offender has sufficient clothing. The provider shall not require the juvenile offender to purchase clothing with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Any clothing purchased with the juvenile offender's personal funds must be documented. The provider will ensure the juvenile is provided proper care and cleaning of clothing in the juvenile offender's possession. All clothing and incidentals become the property of the juvenile offender upon release. ()

202. FOOD SERVICE.

The reintegration provider must ensure that the juvenile has sufficient food at all times. The provider shall not require the juvenile offender to purchase food with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Shopping, meal preparation, planning and proper nutrition must be part of the independent living skills. ()

203. RELIGIOUS SERVICES.

The reintegration provider must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. ()

01. Voluntary Practice. All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security,

emotional, or physical well-being of the juvenile offenders in the program or residence. ()

02. Attendance. Juvenile offenders may be permitted to attend religious services of their choice in the community as long as community safety is ensured. ()

03. Transportation. The reintegration provider must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. ()

04. Risk to Community. If the juvenile offender cannot attend religious services in the community because staff has reason to believe he would attempt to escape, or otherwise present a risk to the safety of the community, the provider must make every reasonable effort to ensure that he has the opportunity to participate in religious services of his choice at the program or residence. ()

05. Visits. Juvenile offenders must be permitted to receive visits from representatives of their respective faiths. ()

204. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile offender employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. The reintegration provider must ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The juvenile offender's employer must be consulted at least monthly by the provider concerning the juvenile offender's work abilities and performance on the job-site. Additionally, the provider must make checks on the job-site at least twice monthly to ensure the juvenile offender is working under acceptable conditions, and must document these checks in the juvenile offender's progress report. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. ()

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender must be handled consistent with Subsection 205.04 of these rules. ()

205. PERSONAL FUNDS.

01. Funds Handled by a Provider. The provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders and must be able to demonstrate appropriate measures of internal fiscal controls related to the juvenile's personal funds. ()

a. The provider must establish a written budget for a juvenile, as part of the service implementation plan, for the use of the juvenile offender's personal funds. There must be a specific allocation for daily incidental expenses. ()

b. If the amount of personal funds maintained for the juvenile offender does not exceed one hundred (100) dollars, the provider may secure the funds locally if the following conditions are met: ()

i. The juvenile offender's personal funds are kept in a fire resistant combination or digital lock-style safe that is permanently affixed to the floor or wall, or weighs at least 200 (two-hundred) pounds. ()

ii. The provider has a process to clearly separate each juvenile offender's personal funds from one another. ()

iii. Access to juvenile offender personal funds is limited to the Program Director or designee. ()

c. The provider must ensure that the juvenile offender saves at least thirty percent (30%) of income to ()

be used at program completion for purchasing the resources for independent living and employment. ()

d. Upon the juvenile offender's personal funds exceeding one hundred (100) dollars, the reintegration provider must assist the juvenile offender in opening an account in the juvenile's name at a public banking institution. ()

e. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the provider, must be documented, signed, and dated by the juvenile offender. This documentation must be reconciled to the juvenile offender's ledger monthly. ()

f. The provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdrawal from their personal funds. ()

g. The provider shall not require juvenile offenders, parents, or guardians to pay for services and supplies that are to be provided by the reintegration provider. ()

h. There must be no commingling of juvenile personal funds with provider funds. Borrowing or moving funds between juvenile personal accounts is prohibited. ()

02. Reporting Requirements. A personal funds report must be submitted monthly to the juvenile services coordinator. The report must show a list of all juvenile offender account balances. The personal fund account is subject to review and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts must be resolved by the reintegration provider within five (5) business days of completion of the review. ()

03. Transfer of Personal Funds. If a juvenile offender is transferred to another program, the balance of the juvenile offender's locally secured funds must be given or mailed to the department's fiscal services within ten (10) business days and documented on the Provider Juvenile Check-Out Form supplied by the department, and on the final progress report. ()

206. COMMUNITY SERVICE AND RESTITUTION.

01. Community Service. Juvenile offenders may have court-ordered community service hours. The reintegration provider must obtain prior approval from the juvenile probation officer to complete any court-ordered community service hours while at the reintegration provider. The reintegration provider shall be responsible for documenting approved community service hours and reporting the accumulation of completed hours in the juvenile offender's progress report. ()

02. Court Ordered Restitution. The provider must create a plan for the juvenile offender to submit a portion of a juvenile offender's personal funds or earned income for the payment of restitution as described in this section. The provider must work with the juvenile probation officer and juvenile services coordinator to determine the amount of restitution owed. When juvenile personal funds are available the provider will assist the juvenile offender in submitting payment to the county until the restitution amount is satisfied. Documentation of the payment must be provided to the juvenile services coordinator. ()

03. Restitution for Program Damages. Monetary restitution may only be sought through a court order when a juvenile offender has damaged or destroyed property, or has caused or attempted to cause injury to other juvenile offenders or staff. Restitution for damages at the program will not be paid to the exclusion of court ordered restitution. The reintegration provider must not access the juvenile offender's personal funds for program damages. Restitution for damages must begin with a plan for repair by the juvenile offender. ()

207. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders must be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service

implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence. ()

02. Reading of Letters. Routine reading of letters by staff is prohibited. The department or court may determine that reading of a juvenile offender's mail is in the best interest of the juvenile offender, and is necessary to maintain security, order or program integrity. However, such reading of mail must be documented and unless court ordered, must be specifically justified and approved by the juvenile services coordinator. ()

03. Privileged Mail. Under no circumstances shall a juvenile offender's privileged mail be read.()

04. Packages. Packages may be inspected for contraband but only in the presence of the juvenile offender. ()

05. Publications. Books, magazines, newspapers and printed matter which may be legally sent to juvenile offenders through the postal system may be approved by the reintegration provider, unless deemed to constitute a threat to the security, integrity, or order of the programs. ()

06. Distribution of Mail. The collection and distribution of mail must never be delegated to a juvenile offender. Staff must deliver mail within twenty-four (24) hours, excluding weekends and holidays, to the juvenile offender to whom it is addressed unless the juvenile is living independently. ()

208. VISITATION

01. Visitation Policy. The provider must develop a written policy governing visitation which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitation to the residence of visitors below an established age or provide for higher levels of supervision in circumstances where safety of visitors, staff, and juvenile offenders may be at risk. The provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. In all cases, the provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the provider's criteria. ()

02. Visitor Admission. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence shall be denied. Visitors who bring in items that are unauthorized, but not illegal, must either be denied admission into the program or residence or have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the program or residence. All visitors denied access to the program or residence, and the reason for their denial, must be documented. ()

209. -- 219. (RESERVED)

220. SEARCHES FOR CONTRABAND.

01. Searches of Personal Items. Routine searches of personal items being introduced into the program or residence may be conducted by staff prior to the juvenile offender taking possession of their property, or when the juvenile offender is returning to the program or residence from an individual community pass. Search of a juvenile offender's belongings or residence may be done at any time and must be minimally intrusive. ()

02. Policies and Procedures Governing Consequences. The reintegration provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. ()

03. Clothed Body Searches. ()

a. Clothed body searches of juvenile offenders may be conducted whenever the reintegration provider believes it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff, juvenile offenders, and visitors. A clothed body search may be used when a juvenile offender is returning from a visit, outside appointment, or activity. ()

b. Clothed body searches must be conducted in the manner described in the rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Clothed body searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Clothed body searches will be conducted using a pat down search outside the juvenile's clothing on each quadrant. ()

04. Unclothed Body Searches. Unclothed body searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Unclothed body searches must be based upon a reasonable belief that the juvenile is concealing contraband or signs of abuse. Immediately after conducting an unclothed body search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

05. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted by a medical health professional and with prior written authorization from the program director or designee. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth, ears, or nose does not constitute a body cavity search. Body cavity searches must be based upon a reasonable belief that the juvenile is concealing contraband. Immediately after conducting a body cavity search the provider must notify the department's regional superintendent and the Quality Improvement Services Bureau. The provider must complete an incident report according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

06. Documentation of Searches. All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator must be notified and it shall be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. ()

07. Contraband Disposal. All contraband found in the possession of juvenile offenders, visitors, or staff must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. ()

221. -- 229. (RESERVED)

230. PROGRAMMING.

01. Basic Program Requirements. Reintegration providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

a. Providers must provide or coordinate a range of program services specifically designed to address the characteristics of the target population identified in the comprehensive program description and in the admission policy. ()

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders, must be able to demonstrate that the program services offered address the needs of the population served by the reintegration provider. ()

c. Programs providing reintegration services for individual juvenile offenders must target behaviors, needs, or circumstances stated in their final progress report from the sending facility or program. These services must

be clearly identified and described within the program description. ()

d. Juvenile offenders must always be aware of the status of their progress within the program and what remains to be done to complete the program. Reintegration providers must assure that the basic norms and expectations of the program, including any points, levels, or phases that are a fundamental part of a program, are clearly presented to the juvenile offender and that they are understood. ()

e. Programs that contract with the department to serve juvenile offenders and their families must: ()

i. Provide humane, disciplined care and supervision; ()

ii. Provide opportunities for juvenile offenders' development of competency and life skills; ()

iii. Hold juvenile offenders accountable for their delinquent behavior through means such as victim-offender mediation, restorative conferencing, restitution, and community service; ()

iv. Seek to involve juvenile offender's families in treatment, unless otherwise indicated for the safety and benefit of the juvenile offenders or other family members; ()

v. Address the principles of accountability to victims and to the community, competency development, and community protection in case planning and reporting; ()

vi. Participate fully with the department and the community treatment team in developing and implementing service plans for juvenile offenders they serve; ()

vii. Work with the department to provide juvenile offenders with educational and vocational services based upon their documented needs and abilities; and ()

f. Reintegration services include all aspects of case planning and service delivery designed to facilitate successful return of the juvenile offender to the community. ()

231. GUIDELINES FOR SPECIFIC SERVICES.

01. Counseling and Other Outpatient Services. The reintegration provider must schedule all initial outpatient appointments, such as drug and alcohol counseling, for the juvenile offender within five (5) business days of arrival into the program. The provider should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

02. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills. This program should include, at a minimum, instruction in: ()

a. Hygiene and grooming skills; ()

b. Laundry and maintenance of clothing; ()

c. Appropriate social skills; ()

d. Housekeeping; ()

e. Use of recreation and leisure time; ()

f. Use of community resources, such as identifying medical and mental health providers; ()

g. Handling personal finances, and issues such as leases, contracts, cell phone usage and agreements, insurance, banking and credit management with some support and intervention; ()

- h.** Use of public transportation, where available; ()
- i.** Budgeting and shopping; ()
- j.** Cooking; ()
- k.** Punctuality, attendance and other employment-related matters; ()
- l.** Vocational planning and job finding skills; ()
- m.** Wears clothing appropriate for the weather and activity; ()
- n.** Takes own medication, as prescribed; ()
- o.** Obtains and produces identification, as needed; and ()
- p.** Travels to and from necessary destinations. ()

232. CASE MANAGEMENT REPORTING REQUIREMENTS.

Each juvenile offender's progress or lack of progress through these levels must be clearly documented and must be related to documented behavior. Recommendations for release from department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. ()

01. Service Implementation Plan. Within ten (10) business days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the most recent progress report and reintegration plan from the sending facility or program. The service implementation plan must address the needs and areas in the reintegration plan. ()

02. Juvenile Offender and Family Involvement. Each juvenile offender and, to the fullest extent possible, the family should be involved in developing the service implementation plan, and in adjusting that plan throughout the course of commitment. ()

03. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. ()

04. Participation in the Progress Assessment/Reclassification. The provider may be asked by the juvenile services coordinator to provide input necessary for periodic reassessments of the juvenile offender's progress and current risk level. In all cases, the provider must participate to the fullest extent possible. ()

05. Progress Notes. Bi-weekly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan and submitted to the juvenile services coordinator. ()

06. Progress Report. A written progress report must be submitted to the juvenile services coordinator and any designees at least every month, and must include current bank statements and reconciled monthly budget. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 232.01 of these rules should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. ()

07. Relapse Prevention Plan. The reintegration provider shall receive a working copy of the juvenile offender's relapse prevention plan from the department. The provider must work with the juvenile to continue developing the relapse prevention plan form provided as the juvenile experiences increased exposure to the community. The reintegration provider must send the relapse prevention plan to the juvenile services coordinator and any designees prior to the juvenile offender's release from department custody. ()

08. Final Progress Report. A final progress report must be submitted to the juvenile services coordinator and any designees no earlier than ten (10) calendar days prior to the juvenile offender's anticipated completion of the program, and no later than the date of release. This recommendation must include: ()

- a. A current summary of the juvenile offender's progress; ()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; ()
- c. Any unresolved goals or objectives; ()
- d. Recommendation for continuing services, including education, in the home community; and ()
- e. The current address of the juvenile. ()

09. Report Distribution. Copies of the service implementation plan, progress reports, relapse prevention plan, and final progress report must be distributed by the provider to the juvenile offender and the juvenile services coordinator and any designees. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for some well documented reason. ()

233. OVERNIGHT COMMUNITY PASSES.

Any pass involving an overnight stay away from the program or residence, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an overnight community pass, the provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and at the time he returns. ()

01. Potential Risk to Public Safety. If the pass is to the home of a parent or guardian, reintegration providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
- f. A complete listing of the activities required during the pass; ()

- g.** Specific stipulations prohibiting: ()
 - i.** The use of alcohol and drugs; ()
 - ii.** Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii.** Participation in sexual relations of any kind; ()
 - iv.** Possession of any kind of firearm or weapon; ()
 - v.** Any violation of the terms of probation; and ()
- h.** Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

02. Frequency. Frequency of passes must be consistent with the terms of the juvenile offender's reintegration plan and reintegration provider's contract with the department. ()

03. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and his return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. ()

234. ACTIVITIES.

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk or overnight trips must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the department's regional superintendent. ()

02. Staff Requirements for Group Activities. ()

a. A basic first aid kit will be taken with the group. At least one (1) person certified in first aid and CPR must accompany the group. ()

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in rescue and water safety or if a lifeguard is on duty. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. ()

c. A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, or mental deficiencies are some reasons to consider additional staff. ()

d. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. ()

e. There will be no consumption of alcoholic beverages or illicit drugs by juvenile offenders, staff, volunteers, or interns. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 234.01 of these rules. Each juvenile offender must have prior written consent from the department's regional superintendent. Consent must include: ()

- a.** Permission for the juvenile offender's participation; ()

- b. Acknowledgement of planned activities; and ()
- c. Permission for the provider to seek or administer necessary medical attention in an emergency. ()

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the provider, and the results of that exam reported to the juvenile services coordinator. ()

235. OUT-OF-STATE TRAVEL.

When a reintegration provider is planning an out-of-state trip for any of its juvenile offenders, the facility administrator must obtain prior written authorization from the regional clinical supervisor or designee. The necessary sequence of action and approval is as follows: ()

01. Notification. The residential treatment provider must notify the juvenile services coordinator in writing fourteen (14) business days in advance of the scheduled trip with the following: ()

- a. Dates of the scheduled trip; ()
- b. Location of the trip; ()
- c. Purpose of the trip; ()
- d. Transportation arrangements; ()
- e. Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and ()
- f. Who is going, such as juvenile offender, and name and position of staff. ()

02. Prior Approval. The provider must obtain all necessary approvals prior to authorizing travel. ()

03. Interstate Compact for Juveniles. Any out-of-state travel for more than twenty-four (24) hours requires a travel permit and compliance with the Interstate Compact for Juveniles. ()

236. DRUG SCREENS OF JUVENILE OFFENDERS.

Drug screens may be done randomly or on an as needed basis at the reintegration provider's expense with the approval of the provider's program director. A record must be kept of all drug screens and results. A positive drug screen must immediately be reported to the juvenile services coordinator. ()

237. PLANNING FOR RELEASE OR TRANSFER.

01. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing which will include the juvenile offender's probation officer, the provider, the juvenile offender's parent or guardian if applicable, and the juvenile offender. At a minimum, the reintegration staffing must consider and, to the extent possible, solidify plans to address any ongoing medical or mental health, substance abuse, social skills, education, vocation, independent living, and other special needs. Based upon the results of that staffing, the department will make the final decision regarding transfer or release from department custody. ()

02. Check-Out Procedures. Prior to the release from department custody or transfer, the reintegration provider must have completed a Provider Juvenile Check-Out Form supplied by the department. The form must be dated, signed by the juvenile offender, and forwarded to the juvenile services coordinator and any designees on the

actual date that the juvenile offender leaves the program. ()

a. If releasing, the provider must provide the juvenile offender's Medicaid card and all medications to the juvenile. ()

b. If transferring, the provider must provide the juvenile offender's Medicaid card and all medications to the individual or agency authorized to transport the juvenile offender. ()

c. Within two (2) business days after a juvenile offender leaves the program, the provider must send any available dental or medical records to the privacy officer at the juvenile correctional center in Nampa. ()

d. Within two (2) business days after a juvenile offender leaves the program, the provider must send a report showing the juvenile offender's total academic hours, credits, and associated grades directly to the juvenile correctional center in Nampa. The provider must maintain adequate documentation to support the submitted education reports. Timely receipt of these records is critical to assist the transition of the juvenile offender to another educational facility. The education files must be mailed within two (2) business days of the juvenile offender's transfer. ()

03. Termination Prior to Completion. ()

a. When a provider believes a juvenile offender is at risk for transfer prior to program completion, the juvenile services coordinator must be notified as far in advance as possible so that a staffing with the regional clinical supervisor and, if necessary, the department's regional superintendent, may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the provider to avoid the necessity of making another placement. The provider must document these efforts at problem solving. The department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the provider. The provider can request transfer of a juvenile offender in the following circumstances: ()

i. A pattern of documented behavior clearly indicating a lack of progress; or ()

ii. Commission of one (1) or more serious or violent incidents that jeopardize the safety and security of individuals or the program. ()

b. In matters involving life, health, and safety of any juvenile in department custody, the department shall remove the juvenile offender immediately. ()

c. A final progress report must include, at a minimum, a report on progress or lack of progress on all service implementation plan areas, and recommendations for follow-up. The report must be forwarded to the juvenile services coordinator within twenty-four (24) hours of release from department custody or transfer prior to program completion. ()

238. -- 249. (RESERVED)

250. EDUCATION SERVICES.

01. Appropriate Services. The provider must ensure that each juvenile offender is given appropriate educational and vocational services that are consistent with the juvenile offender's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by state or federal law. Providers must assure that educational services provided as a part of an overall program play an integral part in the process of reclaiming juvenile offenders to responsible roles in society. Educational services must strive to facilitate positive behavior change by helping juvenile offenders to develop abilities in academic, workplace, and technological areas; to restructure harmful or limiting cognitive patterns; and, to adopt appropriate social interactions skills. Educational services provided by providers must use whatever combination of approaches and motivations that will best facilitate the learning process in conjunction with the service implementation plan. All educational services provided must meet all mandates of the Elementary Secondary Education Act (ESEA), the Individuals with Disabilities Education Act (IDEA), the Family Educational Rights and Privacy Act (FERPA), and the Rehabilitation Act of 1973 (Section

504). ()

02. Mandatory Enrollment. Providers must ensure that all juvenile offenders involved in their programs who are of mandatory school age in the applicable state, or who have not yet obtained a General Educational Development (GED) or high school diploma, are enrolled in a school system or in a program approved and certified by the applicable state's Department of Education to provide both special education and other services. For those who have obtained a GED or high school diploma, an appropriate educational and vocational service must be provided in accordance with the service implementation plan. ()

251. -- 259. (RESERVED)

260. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the provider's care. Each provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified medical or mental health services, including medications. The provider must coordinate services and assist juvenile offender in interpreting and complying with any follow up care as requested by healthcare provider. Any time a juvenile offender receives treatment under this section or for any health related service, a copy of any medical or dental assessments, treatments, test results, and follow up care must be forwarded to the department's regional R.N. ()

02. Medical Consent. As part of the admission process, the provider must have a copy of the department's Release of Information and Consent form signed by a juvenile offender over eighteen (18) years of age. The consent form must be filed in the juvenile offender's case file maintained by the provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the department, the authorization may be signed by the department's regional R.N. or designee. This does not restrict the provider from taking action in life and death situations. ()

04. Reimbursement Sources. The provider must utilize private insurance or Medicaid, if available, for funding medical, dental, optical, mental health, or related services, and pharmaceutical products for any juvenile offender. The provider shall not seek reimbursement from private insurance or Medicaid for health services that are the fiscal responsibility of the provider pursuant to its contract with the department. Any health services not listed in these rules, other than emergency treatment, which was not approved in advance by the department's regional R.N. or designee, will be at the expense of the provider. ()

261. ADMISSION HEALTH SERVICES AND TREATMENT RECORDS.

01. Prior Approval. Prior approval or review from the department's regional R.N. is required for all health services, other than emergency services. Prior approval may be given for up to five (5) routine, pre-scheduled medical appointments. ()

02. Medical Records. The provider must assist the juvenile offender in organizing medical information, instructions, prescriptions and any necessary follow up papers in a designated medical folder. Any time a juvenile offender receives treatment under this section or for any health related service, the provider must retain the original medical record and shall immediately send a copy to the department's regional R.N. ()

03. Medical Billing. The direct care provider must submit medical bills directly to the department's regional R.N. that approved the provision of services. ()

262. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

To the extent the provider has medical information, confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

01. Privacy Officer. The provider must appoint a privacy officer to oversee that the control and maintenance of all juvenile offender health and medical records is in compliance with the federal Privacy Regulations, 45 Code of Federal Regulations Sections 160 and 164. ()

02. Separate Records. All juvenile offender medical and health records must be kept in files that are physically separated from other juvenile offender files and information, and under a system of security against unauthorized access. ()

263. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The provider must immediately report critical medical and mental health incidents according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

264. INFECTIOUS DISEASES.

01. Policies. The provider must establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of infectious diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a medical health professional for juvenile offenders diagnosed with an infectious disease. ()

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request that he be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. ()

03. Examinations. Examinations must be performed on any juvenile offender by medical professionals for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. ()

04. Notifications. The provider must notify the department's regional R.N. within three (3) business days of any positive test results, treatment recommendations, and follow up care. ()

265. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and must include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual medical plan will be sent to the department's regional R.N. ()

02. Parenting Classes. Parenting classes must be an integral part of the individual medical plan for all pregnant female juvenile offenders. This service should also be offered as a priority to male juvenile offenders in department custody who are already fathers or whose spouse or girlfriend is expecting a child. ()

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant must be placed with an appropriate family member or in the temporary care of the Family and Children Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the provider's facility. ()

266. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) days requires immediate notification to the department's regional R.N. according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers."

()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. This refusal form must be sent from the direct care service provider to the regional R.N. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the provider must issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. ()

267. USE OF MEDICATIONS.

The provider must have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies must conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare. ()

01. Medication Management Upon Arrival. If the juvenile offender is taking medication, the reintegration provider must schedule an initial medication management appointment for the juvenile offender within five (5) business days of arrival into the program. ()

02. Notification. If initiating or modifying any medication, the department's regional R.N. must be notified. Notification must include the following: ()

a. The name of the prescribed medication; ()

b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant;
and ()

c. The reason the medication is being prescribed. ()

268. FIRST AID KITS.

Each provider must maintain first aid kits. Basic first aid kits that do not include medications or sharp tools may be kept unlocked. Any complete first aid kit with medications, wound rinses, scissors, tweezers, or other such objects must be kept locked and placed in areas of the program readily accessible to staff. ()

269. -- 999. (RESERVED)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.04 - RULES FOR SUPPORTED LIVING PROVIDERS

DOCKET NO. 05-0204-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(3) and 20-504(12), 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 17, 2014.

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:

05.02.04, "Rules for Supported Living Providers." This chapter will contain additional rules that are only applicable to these specific providers. Changes include: additional requirements relating to the Department of Justice PREA Standards and providing clarification in areas of past misinterpretation.

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:

No fiscal impact on the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 32](#).

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 Jessica Moncada, (208) 334-5100 x. 410.

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 24, 2014.

DATED this 7th Day of August, 2014.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0204-1401

IDAPA 05
TITLE 02
CHAPTER 04

05.02.04 - RULES FOR SUPPORTED LIVING PROVIDERS

000. LEGAL AUTHORITY.

01. Section 20-504(10), Idaho Code. Pursuant to Section 20-504(10), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders committed to the department. ()

02. Section 20-504(12), Idaho Code. Pursuant to Section 20-504(12), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. ()

03. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the "Interstate Compact on Juveniles," the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 05.02.04, "Rules for Supported Living Providers," IDAPA 05, Title 02, Chapter 04. ()

02. Scope. These rules are established to ensure that the juvenile corrections system in Idaho will be consistently based on the following principles: accountability; community protection; and competency development. These rules apply to providers of supported living that coordinate needed treatment services identified in individual service implementation plans. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretations of these rules. The document is available for public inspection and copying at cost at the Idaho Department of Juvenile Corrections, 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for providers. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

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

The Idaho Department of Juvenile Corrections is located at 954 W. Jefferson St., Boise, Idaho 83720-0285. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. Mail regarding the Idaho Department of Juvenile Corrections' rules should be directed to 954 W. Jefferson St., P.O. Box 83720, Boise, Idaho 83720-0285. The telephone number of the office is (208) 334-5100 and the telecommunications relay service of the office is 1 (800) 377-1363 or 711. The facsimile number of the office is (208) 334-5120. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with the providers are juvenile records of the Idaho Department of Juvenile Corrections, and are subject to the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Education Plan. A written plan for general education students outlining the coursework they will complete each year towards meeting the Idaho Common Core Standards recommended coursework for their grade level based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. ()

02. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). ()

03. Health Services. Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. ()

04. Independent Living Services. Services that increase a juvenile offender's ability to achieve independence in the community. ()

05. Individual Community Pass. Any instance in which a juvenile offender leaves the residential treatment provider's facility for a planned activity, without direct supervision by at least one (1) residential treatment provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: ()

- a. Day passes alone or with family or other, approved individuals; ()
- b. Day or overnight home visits; ()
- c. Recreational activities not otherwise approved as a part of a group activity; and ()
- d. Funeral leave. ()

06. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. ()

07. Medical Health Professional. An individual who meets the applicable state's criteria as a licensed LPN, RN, nurse practitioner, physician assistant, physician or the equivalent. ()

08. Privileged Mail. Mail between the juvenile offender and their attorneys, legal aid services, other agencies providing legal services to juvenile, or paraprofessionals having legitimate association with such agencies; judges and clerks of federal, state and county courts; public officials and their authorized representatives acting in their official capacities; and the communications with clergy of the juvenile's faith. ()

011. -- 099. (RESERVED)

100. INITIATION OF SERVICES.

Juveniles are committed to the department under the provisions of the Juvenile Corrections Act (Sections 20-501 through 20-549, Idaho Code). ()

101. WAIVER OR VARIANCE.

Minimum program standards established herein shall apply to all services provided by the provider. Any waiver or variance from the standards stated in these rules must receive prior written approval from the department and must be attached as a formal amendment to the contract. ()

102. APPLICABILITY.

This chapter applies to providers of supported living that coordinate needed treatment services identified in individual service implementation plans. Supported living providers must also abide by IDAPA 05.02.01, "Rules for Residential Treatment Providers." ()

103. -- 199. (RESERVED)

200. AUTHORITY TO INSPECT.

01. Inspections. The department shall have the authority to conduct reviews of programs, program operations, juvenile offender placements, and facilities to ensure the provider's compliance with these rules. The provider shall cooperate with the department's review, and must provide access to the residence and all juvenile records for juveniles in department custody, as deemed necessary by the department. However, in order to more fully assess the operation of the program, aggregate data and information for all juveniles must be made available. ()

02. Site Visit. A juvenile services coordinator or designee shall conduct a site visit of the residence prior to occupancy by the juvenile offender. ()

201. CLOTHING AND PERSONAL ITEMS.

The supported living provider must ensure that the juvenile offender has sufficient clothing. The provider shall not require the juvenile offender to purchase clothing with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Any clothing purchased with the juvenile offender's personal funds must be documented. The provider will ensure the juvenile is provided proper care and cleaning of clothing in the juvenile offender's possession. All clothing and incidentals become the property of the juvenile offender upon release. ()

202. FOOD SERVICE.

The supported living provider must ensure that the juvenile has sufficient food at all times. The provider shall not require the juvenile offender to purchase food with the juvenile's personal funds unless the purchase is above and beyond the basic requirements of the provider. Shopping, meal preparation, planning and proper nutrition must be part of the independent living skills. ()

203. RELIGIOUS SERVICES.

The provider must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. ()

01. Voluntary Practice. All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security, emotional, or physical well-being of the juvenile offenders in the residence. ()

02. Attendance. Juvenile offenders must be permitted to attend religious services of their choice in the community as long as community safety is ensured. ()

03. Transportation. The provider must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. ()

04. Visits. Juvenile offenders must be permitted to receive visits from representatives of their respective faiths. ()

204. EMPLOYMENT OF JUVENILE OFFENDERS.

01. Employment. If juvenile offender employment away from the program site is a part of the program, written policy and procedure must provide that program resources and staff time are devoted to helping employable juvenile offenders locate employment. The supported living provider must ensure that each employment opportunity meets all legal and regulatory requirements for juvenile employment. The juvenile offender's employer must be consulted at least monthly by the provider concerning the juvenile offender's work abilities and performance on the job-site. Additionally, the provider must make checks on the job-site at twice least monthly to ensure the juvenile offender is working under acceptable conditions, and must document these checks in the juvenile offender's monthly progress report. Under no circumstances should staff or the families of staff benefit financially, or otherwise, from work done by juvenile offenders in the program. Providers must make every reasonable effort to assure that each juvenile offender's transportation to and from a job-site is safe. ()

02. Employment Opportunities. Every reasonable effort must be made to select employment opportunities that are consistent with the individual interests of the juvenile offender to be employed. Preference will be given to jobs that are related to prior training, work experience, or institutional training, and may be suitable for continuing post-release employment. Reasonable effort must be made to provide a juvenile offender with the highest paying job possible. Income earned by a juvenile offender must be handled consistent with Subsection 205.04 of these rules. ()

205. PERSONAL FUNDS.

01. Funds Handled by a Provider. The provider will follow generally accepted accounting practices in managing personal funds of juvenile offenders and must be able to demonstrate appropriate measures of internal fiscal controls related to the juvenile's personal funds. ()

a. The provider shall be required to deposit all personal funds collected for the juvenile offender in a public banking institution in an account in the juvenile's name. The provider must maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the juvenile's account and copies of current bank statements. ()

b. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the provider, must be documented and reconciled to the juvenile offender's ledger monthly. ()

c. The provider must develop written procedures governing any limits to the amount of funds a juvenile offender may withdrawal from their personal funds. ()

d. The provider must not require juvenile offenders, parents, or guardians to pay for services and supplies that are to be provided by the supported living provider. ()

e. There can be no commingling of juvenile personal funds with provider funds. Borrowing or moving funds between juvenile personal accounts is prohibited. ()

02. Personal Funds Reporting Requirements. A personal funds report must be submitted monthly to the juvenile services coordinator. The report must show a list of all juvenile offender account balances. The personal fund account is subject to review and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts must be resolved by the supported living provider within five (5) business days of completion of the review. ()

03. Juvenile Offenders with Earned Income. ()

a. The supported living provider is responsible for maintaining and accounting for any money earned by a juvenile offender. The provider must establish a written budget for a juvenile, as part of the service implementation plan, for the juvenile offender's use of these funds. There must be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution and a specific allocation for daily incidental expenses. ()

b. The provider must ensure that the juvenile offender save at least thirty percent (30%) of income to be deposited into the juvenile's personal funds account. The budget must specify the purpose for which the funds

saved will be used for any unplanned expenses. ()

04. Transfer of Personal Funds. If a juvenile offender is transferred to another program, the balance of the juvenile offender's funds must be given or mailed to the department's fiscal services within ten (10) business days and documented on the Provider Juvenile Check-Out Form supplied by the department, and on the final progress report. ()

206. COMMUNITY SERVICE AND RESTITUTION.

01. Community Service. Juvenile offenders may have court-ordered community service hours. The supported living provider must obtain prior approval from the juvenile probation officer to complete any court-ordered community service hours while at the supported living provider. The provider shall be responsible for documenting approved community service hours and reporting the accumulation of completed hours in the juvenile offender's progress report. ()

02. Court Ordered Restitution. The provider must create a plan for the juvenile offender to submit a portion of a juvenile offender's personal funds or earned income for the payment of restitution as described in this section. The provider must work with the juvenile probation officer and juvenile services coordinator to determine the amount of restitution owed. When juvenile personal funds are available the provider will submit payment to the county until the restitution amount is satisfied. Documentation of the payment must be provided to the juvenile services coordinator. ()

03. Restitution for Program Damages. Monetary restitution may only be sought through a court order when a juvenile offender has damaged or destroyed property, or has caused or attempted to cause injury to other juvenile offenders or staff. Restitution for damages at the program will not be paid to the exclusion of court ordered restitution. The supported living provider must not access the juvenile offender's personal funds for program damages. Restitution for damages must begin with a plan for repair by the juvenile offender. ()

207. JUVENILE OFFENDER MAIL.

01. Restrictions. Juvenile offenders must be allowed to send and receive letters from approved persons, which may include persons in other programs or institutions, unless specifically prohibited by the department or by court order. All other restrictions of mail must be discussed with the community treatment team, approved in writing by the juvenile services coordinator, and documented in the juvenile offender's service implementation plan. There must be no general restrictions on the number of letters written, the length of any letter, or the language in which a letter may be written. Juvenile offenders will be provided with sufficient stationery, envelopes, and postage for all legal and official correspondence. ()

02. Reading of Letters. Routine reading of letters by staff is prohibited. The department or court may determine that reading of a juvenile offender's mail is in the best interest of the juvenile offender, and is necessary to maintain security, order, or program integrity. However, such reading of mail must be documented and unless court ordered, must be specifically justified and approved by the juvenile services coordinator. ()

03. Privileged Mail. Under no circumstances shall a juvenile offender's privileged mail be read. ()

04. Packages. Packages may be inspected for contraband but only in the presence of the juvenile offender. ()

05. Publications. Books, magazines, newspapers and printed matter which may be legally sent to juvenile offenders through the postal system may be approved by the supported living provider, unless deemed to constitute a threat to the security of the residence. ()

06. Distribution of Mail. The collection and distribution of mail must never be delegated to a juvenile offender. Staff must deliver mail within twenty-four (24) hours, excluding weekends and holidays, to the juvenile offender to whom it is addressed unless the juvenile is living independently. ()

208. VISITATION

01. Visitation Policy. The provider must develop a written policy governing visitation which protects the safety of visitors, staff, and juvenile offenders. This policy may restrict visitation to the residence of visitors below an established age or provide for higher levels of supervision in circumstances where safety of visitors, staff, and juvenile offenders may be at risk. The provider must provide a copy of the visitation policy to each juvenile offender, his parent or guardian, and the juvenile services coordinator. In all cases, the provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance with the provider's criteria. ()

02. Visitor Admission. If there is reason to believe a visitor is under the influence of alcohol or drugs or possesses illegal contraband, admission into the residence shall be denied. Visitors who bring in items that are unauthorized, but not illegal, must either be denied admission into the program or residence or have these items taken and locked in an area inaccessible to the juvenile offenders during the visit. These items will be returned to the visitors upon their exit from the program or residence. All visitors denied access to the program or residence, and the reason for their denial, must be documented. ()

209. -- 219. (RESERVED)

220. SEARCHES FOR CONTRABAND.

01. Searches of Personal Items. Routine searches of personal items being introduced into the residence may be conducted by staff prior to the juvenile offender taking possession of his property, or when the juvenile offender is returning to the residence from an individual community pass. Search of a juvenile offender's belongings or residence may be done at any time and must be minimally intrusive. ()

02. Policies and Procedures Governing Consequences. The provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. ()

03. Documentation of Searches. All searches must be documented in terms of reason for the search, who conducted the search, what areas were searched, and what type of contraband was found, if any. If a search yields contraband, the juvenile services coordinator will be notified and it must be reported according to the requirements of IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." If necessary, the appropriate law enforcement agency should be notified. ()

04. Contraband Disposal. All contraband found in the possession of juvenile offenders must be confiscated by staff and secured under lock and key in an area inaccessible to juvenile offenders. Local law enforcement must be notified in the event illegal drugs, paraphernalia, or weapons are found. It shall be the responsibility of the program director, in consultation with the department, to dispose of all contraband not confiscated by police. ()

221. -- 229. (RESERVED)

230. PROGRAMMING.

01. Basic Program Requirements. Supported living providers must provide opportunities and services for juvenile offenders to improve their educational and vocational competence, to effectively address underlying behavior problems, and to prepare them for responsible lives in the community. Programs provided must be gender equitable, gender specific, and culturally competent. The ultimate treatment goal for juvenile offenders involved in these programs is the successful return of juvenile offenders to the community without committing further crimes. ()

02. General Requirements. ()

a. Providers must provide or coordinate a range of program services specifically designed to address the characteristics of the target population identified in the comprehensive program description and in the admission policy. ()

b. Programs that serve a special needs population, such as developmentally delayed or seriously emotionally disturbed juvenile offenders must be able to demonstrate that the program services offered address the needs of the population served by the supported living provider. ()

c. Programs providing supported living services for individual juvenile offenders must target behaviors, needs, or circumstances stated in their final progress report from the sending facility or program. These services must be clearly identified and described within the program description. ()

d. Juvenile offenders must always be aware of the status of their progress within the program and what remains to be done to complete the program. Supported living providers must assure that the basic norms and expectations of the program, including any points, levels, or phases that are a fundamental part of a program, are clearly presented to the juvenile offender and that they are understood. ()

e. Programs that contract with the department to serve juvenile offenders and their families must: ()

i. Provide humane, disciplined care and supervision; ()

ii. Provide opportunities for juvenile offender's development of competency and life skills; ()

iii. Hold juvenile offenders accountable for their delinquent behavior through means such as victim-offender mediation, restorative conferencing, restitution, and community service; ()

iv. Seek to involve juvenile offender's families in treatment, unless otherwise indicated for the safety and benefit of the juvenile offenders or other family members; ()

v. Address the principles of accountability to victims and to the community, competency development, and community protection in case planning and reporting; ()

vi. Participate fully with the department and the community treatment team in developing and implementing service plans for juvenile offenders they serve; ()

vii. Work with the department to provide juvenile offenders with educational and vocational services based upon their documented needs and abilities; and ()

f. Reintegration services include all aspects of case planning and service delivery designed to facilitate successful return of the juvenile offender to the community. ()

231. GUIDELINES FOR SPECIFIC SERVICES.

01. Behavior Assessment. A current assessment of independent behavior capacity must be used to determine the levels of service needed. ()

02. Counseling and Other Outpatient Services. The supported living provider must schedule all initial outpatient appointments, such as drug and alcohol counseling, for the juvenile offender within five (5) business days of arrival into the program. The provider should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. ()

03. Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills consistent with their age and needs. This should include, at a minimum, instruction in: ()

a. Hygiene and grooming skills; ()

b. Laundry and maintenance of clothing; ()

- c. Appropriate social skills; ()
- d. Housekeeping; ()
- e. Use of recreation and leisure time; ()
- f. Use of community resources, such as identifying medical and mental health providers; ()
- g. Handling personal finances, and issues such as leases, contracts, cell phone usage and agreements, insurance, banking and credit management with some support and intervention; ()
- h. Use of public transportation, where available; ()
- i. Budgeting and shopping; ()
- j. Cooking; ()
- k. Punctuality, attendance and other employment-related matters; ()
- l. Vocational planning and job finding skills; ()
- m. Wears clothing appropriate for the weather and activity; ()
- n. Obtains and produces identification, as needed; and ()
- o. Travels to and from necessary destinations. ()

232. CASE MANAGEMENT REPORTING REQUIREMENTS.

Each juvenile offender's progress, or lack of progress, through these levels must be clearly documented and must be related to documented behavior. Recommendations for release from department custody should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. ()

01. Service Implementation Plan. Within ten (10) business days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the most recent progress report and reintegration plan from the sending facility or program. The service implementation plan must address the needs and areas in the reintegration plan. ()

02. Juvenile Offender and Family Involvement. Each juvenile offender and, to the fullest extent possible, the family should be involved in developing the service implementation plan, and in adjusting that plan throughout the course of commitment. ()

03. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. ()

04. Participation in the Progress Assessment/Reclassification. The provider may be asked by the juvenile services coordinator to provide input necessary for periodic reassessments of the juvenile offender's progress and current risk level. In all cases, the provider must participate to the fullest extent possible. ()

05. Progress Notes. Bi-weekly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan and submitted to the juvenile services coordinator. ()

06. Progress Report. A written progress report must be submitted to the juvenile services coordinator

and any designees at least every month, and must include current bank statements and reconciled monthly budget. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful release from department custody. Areas of need that were included in the service implementation plan and identified in Subsection 232.01 of these rules should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. ()

07. Relapse Prevention Plan. The supported living provider shall receive a working copy of the juvenile offender's relapse prevention plan from the department. The provider must work with the juvenile to continue developing the relapse prevention plan form provided as the juvenile experiences increased exposure to the community. The supported living provider must send the relapse prevention plan to the juvenile services coordinator and any designees prior to the juvenile offender's release from department custody. ()

08. Final Progress Report. A final progress report must be submitted to the juvenile services coordinator and any designees no earlier than ten (10) calendar days prior to the juvenile offender's anticipated completion of the program, and no later than the date of release. This recommendation must include: ()

- a. A current summary of the juvenile offender's progress; ()
- b. A summary of the efforts to reach the juvenile offender's goals and objectives, including education; ()
- c. Any unresolved goals or objectives; ()
- d. Recommendation for continuing services, including education, in the home community; and ()
- e. The current address of the juvenile. ()

09. Report Distribution. Copies of the service implementation plan, progress reports, relapse prevention plan, and final progress report must be distributed by the provider to the juvenile offender and the juvenile services coordinator and any designees. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for some well documented reason. ()

233. OVERNIGHT COMMUNITY PASSES.

Any pass involving an overnight stay away from the residence, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an overnight community pass, the provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender leaves and at the time he returns. ()

01. Potential Risk to Public Safety. If the pass is to the home of a parent or guardian, providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision must contain at least the following information: ()

- a. The juvenile offender's name and date of birth; ()
- b. The name, address and telephone number of the individual assuming responsibility; ()
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; ()
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is

- expected to be involved; ()
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; ()
 - f. A complete listing of the activities required during the pass; ()
 - g. Specific stipulations prohibiting: ()
 - i. The use of alcohol and drugs; ()
 - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; ()
 - iii. Participation in sexual relations of any kind; ()
 - iv. Possession of any kind of firearm or weapon; ()
 - v. Any violation of the terms of probation; and ()
 - h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. ()

02. Frequency. Documentation of the exact date and time of the juvenile offender's departure from the residence for a pass, and his return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. ()

03. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the residence for a pass, and his return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. ()

234. ACTIVITIES

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk or overnight trips must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the department's regional superintendent. ()

02. Staff Requirements for Group Activities. ()

a. A basic first aid kit will be taken with the group. At least one (1) person certified in first aid and CPR must accompany the group. ()

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in rescue and water safety or if a lifeguard is on duty. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. ()

c. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. ()

d. There will be no consumption of alcoholic beverages or illicit drugs by juvenile offenders, staff, volunteers, or interns. ()

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 234.01 of these rules. Each juvenile offender must have prior written consent

from the department's regional superintendent. Consent must include: ()

- a. Permission for the juvenile offender's participation; ()
- b. Acknowledgement of planned activities; and ()
- c. Permission for the provider to seek or administer necessary medical attention in an emergency. ()

04. Activity Reports. At the conclusion of each overnight or high risk recreational activity pass, the provider must document in the juvenile offender's file and include in the progress report, any significant positive or negative events that transpired while the juvenile offender was on pass. Any unusual occurrences must be reported to the juvenile services coordinator and documented on an incident report as identified in IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." A drug screening urinalysis may be conducted on each returning juvenile offender, at the expense of the provider, and the results of that exam reported to the juvenile services coordinator. ()

235. OUT-OF-STATE TRAVEL.

When a supported living provider is planning an out-of-state trip for any of its juvenile offenders, the facility administrator must obtain prior written authorization from the regional clinical supervisor or designee. The necessary sequence of action and approval is as follows: ()

01. Notification. The residential treatment provider must notify the juvenile services coordinator in writing fourteen (14) business days in advance of the scheduled trip with the following: ()

- a. Dates of the scheduled trip; ()
- b. Location of the trip; ()
- c. Purpose of the trip; ()
- d. Transportation arrangements; ()
- e. Where the juvenile offender will be staying if overnight accommodations are required (address and phone number); and ()
- f. Who is going, such as juvenile offender, and name and position of staff. ()

02. Prior Approval. The provider must obtain all necessary approvals prior to authorizing travel. ()

03. Interstate Compact for Juveniles. Any out-of-state travel for more than twenty-four (24) hours requires a travel permit and compliance with the Interstate Compact for Juveniles. ()

236. DRUG SCREENS OF JUVENILE OFFENDERS.

Drug screens may be done randomly or on an as needed basis at the supported living provider's expense with the approval of the provider's program director. A record must be kept of all drug screens and results. A positive drug screen must immediately be reported to the juvenile services coordinator. ()

237. PLANNING FOR RELEASE OR TRANSFER.

01. Application for Developmental Disability Services. The supported living provider shall be responsible for compiling and submitting the necessary documentation that will determine if the juvenile offender is eligible for developmental disability services. The provider must begin this process upon the juvenile's admission into the program. ()

02. Reintegration Staffing. The juvenile services coordinator shall convene a reintegration staffing

which will include the juvenile offender's probation officer, the provider, the juvenile offender's parent or guardian if applicable, and the juvenile offender. At a minimum, the reintegration staffing must consider and, to the extent possible, solidify plans to address any ongoing medical or mental health, substance abuse, social skills, education, vocation, independent living, and other special needs. Based upon the results of that staffing, the department will make the final decision regarding transfer or release from department custody. ()

03. Check-Out Procedures. Prior to the release from department custody or transfer, the provider must have completed a Provider Juvenile Check-Out Form supplied by the department. The form must be dated, signed by the juvenile offender, and forwarded to the juvenile services coordinator and any designees on the actual date that the juvenile offender is released from department custody. ()

a. If transferring, the provider must provide the juvenile offender's Medicaid card and all medications to the individual or agency authorized to transport the juvenile offender. ()

b. Within two (2) business days after a juvenile offender is released from department custody, the provider must send any available dental or medical records to the privacy officer at the juvenile correctional center in Nampa. ()

04. Termination Prior to Completion. ()

a. When a provider believes a juvenile offender is at risk for transfer prior to release from department custody, the juvenile services coordinator must be notified as far in advance as possible so that a staffing with the regional clinical supervisor and, if necessary, the department's regional superintendent, may be held. The purpose of this staffing is to consider the circumstances which may require the transfer, and to make every effort to address the concerns with the provider to avoid the necessity of making another placement. The provider must document these efforts at problem solving. The department will make a decision about transfer based upon the results of this staffing and any subsequent work agreed upon with the provider. ()

b. If it is determined that the juvenile offender is not eligible for developmental disability services, the supported living provider must notify the juvenile services coordinator as soon as possible. ()

c. The provider can request transfer of a juvenile offender in the following circumstances: ()

i. A pattern of documented behavior clearly indicating a lack of progress; or ()

ii. Commission of one (1) or more serious or violent incidents that jeopardize the safety and security of individuals or the program. ()

d. In matters involving life, health, and safety of any juvenile in department custody, the department shall remove the juvenile offender immediately. ()

e. A final progress report must include, at a minimum, a report on progress or lack of progress on all service implementation plan areas, and recommendations for follow-up. The report must be forwarded to the juvenile services coordinator within twenty-four (24) hours of transfer. ()

238. -- 249. (RESERVED)

250. EDUCATION SERVICES.

01. Appropriate Services. The provider must ensure that each juvenile offender is given appropriate educational and vocational services that are consistent with the juvenile offender's abilities and needs, taking into consideration age, level of functioning, and any educational requirements specified by state or federal law. Providers must assure that educational services provided as a part of an overall program play an integral part in the process of reclaiming juvenile offenders to responsible roles in society. Educational services must strive to facilitate positive behavior change by helping juvenile offenders to develop abilities in academic, workplace, and technological areas; to restructure harmful or limiting cognitive patterns; and, to adopt appropriate social interactions skills. Educational services provided by providers must use whatever combination of approaches and motivations that will best facilitate

the learning process in conjunction with the service implementation plan. All educational services provided must meet all mandates of the Elementary Secondary Education Act (ESEA), the Individuals with Disabilities Education Act (IDEA), the Family Educational Rights and Privacy Act (FERPA), and the Rehabilitation Act of 1973 (Section 504). ()

02. Mandatory Enrollment. Providers must ensure that all juvenile offenders involved in their programs who are of mandatory school age in the applicable state, or who have not yet obtained a General Educational Development (GED) or high school diploma, are enrolled in a school system or in a program approved and certified by the applicable state's Department of Education to provide both special education and other services. For those who have obtained a GED or high school diploma, an appropriate educational and vocational service must be provided in accordance with the service implementation plan. ()

251. -- 259. (RESERVED)

260. PROVISION OF MEDICAL SERVICES.

01. Medical Care. Each juvenile offender must be provided with medical, dental, optical, mental health, emergency or any other related health services while in the provider's care. Each provider must have access, on a twenty-four (24) hour basis, to a licensed general hospital, clinic or physician, psychiatrist, and dentist to provide juvenile offenders with professional and qualified physical or mental health services, including medications. The provider must coordinate services and assist juvenile offender in interpreting and complying with any follow up care as requested by healthcare provider. Any time a juvenile offender receives treatment under this section or for any health related service, a copy of any medical or dental assessments, treatments, test results, and follow up care must be forwarded to the department's regional R.N. ()

02. Medical Consent. As part of the admission process, the provider must have a copy of the department's Release of Information and Consent form signed by a juvenile offender over eighteen (18) years of age. The consent form must be filed in the juvenile offender's case file maintained by the provider. ()

03. Emergency Medical Treatment. In cases of emergency medical treatment requiring signed authorization for juveniles in the custody of the department, the authorization may be signed by the department's regional R.N. or designee. This does not restrict the provider from taking action in life and death situations. ()

04. Reimbursement Sources. The provider must utilize private insurance or Medicaid, if available, for funding medical, dental, optical, mental health, or related services, and pharmaceutical products for any juvenile offender. The provider shall not seek reimbursement from private insurance or Medicaid for health services that are the fiscal responsibility of the provider pursuant to its contract with the department. Any health services not listed in these rules, other than emergency treatment, which was not approved in advance by the department's regional R.N. or designee, will be at the expense of the provider. ()

261. ADMISSION HEALTH SERVICES AND TREATMENT RECORDS.

01. Prior Approval. Prior approval or review from the department's regional R.N. is required for all health services, other than emergency services. Prior approval may be given for up to five (5) routine, pre-scheduled medical appointments. ()

02. Medical Records. The provider must assist the juvenile offender in organizing medical information, instructions, prescriptions and any necessary follow up papers in a designated medical folder. Any time a juvenile offender receives treatment under this section or for any health related service, the provider must retain the original medical record and must immediately send a copy to the department's regional R.N. ()

03. Medical Billing. The direct care provider must submit medical bills directly to the department's regional R.N. that approved the provision of services. ()

262. PRIVACY OF MEDICAL RECORDS AND INFORMATION.

To the extent the provider has medical information, confidentiality of personal health information of each juvenile offender must be maintained in accordance with the Privacy Regulations promulgated under HIPAA of 1996 or, if

more stringent, the laws of the applicable state. Compliance with these regulations is the responsibility of the provider. Staff shall be provided information about a juvenile offender's medical condition only when that knowledge is necessary for the performance of their job duties. ()

01. Privacy Officer. The provider must appoint a privacy officer to oversee that the control and maintenance of all juvenile offender health and medical records is in compliance with the federal Privacy Regulations, 45 Code of Federal Regulations Sections 160 and 164. ()

02. Separate Records. All juvenile offender medical and health records must be kept in files that are physically separated from other juvenile offender files and information, and under a system of security against unauthorized access. ()

263. NOTIFICATION OF CRITICAL HEALTH INCIDENTS.

The provider must immediately report critical medical and mental health incidents according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

264. INFECTIOUS DISEASES.

01. Policies. The provider must establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of infectious diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a medical health professional for juvenile offenders diagnosed with an infectious disease. ()

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request that he be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. ()

03. Examinations. Examinations must be performed on any juvenile offender by medical professionals for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. ()

04. Notifications. The provider must notify the department's regional R.N. within three (3) business days of any positive test results, treatment recommendations, and follow up care. ()

265. PREGNANCY.

01. Individual Medical Plan. Within the individual medical plan, specific goals and objectives will be developed when a pregnancy has been diagnosed. The plan must be based on the orders of the juvenile offender's licensed healthcare provider and must include special care, location for delivery, regular medical check-ups, and special dietary and recreational needs. A copy of the individual medical plan will be sent to the department's regional R.N. ()

02. Parenting Classes. Parenting classes must be an integral part of the individual medical plan for all pregnant female juvenile offenders. This service should also be offered as a priority to male juvenile offenders in department custody who are already fathers or whose spouse or girlfriend is expecting a child. ()

03. Medicaid Reimbursement. Medical services relating to pregnancy must be provided by a licensed healthcare provider and facility accepting Medicaid reimbursement, unless medical expenses are paid by the juvenile offender's family. ()

04. Infant Care. When an infant is delivered and the mother continues in department custody, the infant must be placed with an appropriate family member or in the temporary care of the Family and Children Services Division of the Idaho Department of Health and Welfare, subject to any necessary court approval. At no time shall the infant remain in the provider's facility. ()

266. REFUSAL OF TREATMENT.

Refusal of medications or treatment recommended by a physician for three (3) days requires immediate notification to the department's regional R.N. according to IDAPA 05.02.01.241, "Rules for Residential Treatment Providers." ()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. This refusal form must be sent from the direct care service provider to the regional R.N. ()

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the provider must issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. ()

267. USE OF MEDICATIONS.

The provider must have written policies and procedures governing the use and administration of medication to juvenile offenders. Policies must conform to all applicable laws and regulations including, but not limited to, those of the Idaho Department of Health and Welfare. ()

01. Medication Management Upon Arrival. If the juvenile offender is taking medication, the supported living provider must schedule an initial medication management appointment for the juvenile offender within five (5) business days of arrival into the program. ()

02. Notification. If initiating or modifying any medication, the department's regional R.N. must be notified. Notification must include the following: ()

a. The name of the prescribed medication; ()

b. The name and phone number of the prescribing doctor, nurse practitioner, or physician's assistant;
and ()

c. The reason the medication is being prescribed. ()

268. FIRST AID KITS.

Each provider must maintain first aid kits. Basic first aid kits that do not include medications or sharp tools may be kept unlocked. Any complete first aid kit with medications, wound rinses, scissors, tweezers, or other such objects must be kept locked and placed in areas of the residence readily accessible to staff. ()

269. -- 999. (RESERVED)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.04 - UNEMPLOYMENT INSURANCE BENEFIT FRAUD AND OVERPAYMENT RULES

DOCKET NO. 09-0104-1401

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 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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

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

This rule change will reflect the legal standard used by the Idaho Supreme Court in unemployment insurance benefit fraud cases by explaining that to “willfully” make a false statement or to “willfully” fail to report a material fact in order to obtain unemployment insurance benefits only requires a purpose or willingness to commit the act or make the omission. It does not require an intent to violate the law.

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

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

There will be no fiscal impact to the General fund or to any dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Volume 14-7, page 35](#).

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 proposed rule, contact Joshua McKenna Benefits Bureau Chief (208) 332-3750 ext. 3919.

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 24, 2014.

DATED this 21st day of July, 2014.

Joshua McKenna, Benefits Bureau Chief
Department of Labor
317 West Main Street, Boise, ID 83735
(208) 332-3570 ext. 3919
(208) 334-6125 Fax
joshua.mckenna@labor.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0104-1401
(Only those Sections being amended are shown.)

014. WILLFUL STANDARD, FRAUD DETERMINATIONS.

For purposes of Section 72-1366(12), Idaho Code, to willfully make a false statement or to willfully fail to report a material fact to obtain benefits requires a purpose or willingness to commit the act or make the omission referred to. A specific intent to violate law is not required. ()

014~~5~~. -- 039. (RESERVED)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.06 - RULES OF THE APPEALS BUREAU

DOCKET NO. 09-0106-1401

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 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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

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

The current rule allows appeals to be filed in any of the 25 Job Service Offices throughout the State. Those appeals are then collected and routed to the Department's Appeals Bureau in Boise, Idaho. This rule change will prevent appeals from being delayed or misdirected by requiring them to be filed by mail or electronically transmitted directly to the Department's Appeals Bureau.

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

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

There will be no fiscal impact to the General fund. The fiscal impact to the Department will be positive. A streamlined appeals process will save the Department mailing and document handling costs and reduce Appeals Bureau and local office staff time.

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 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7 page 36](#).

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 proposed rule, contact Amy Hohnstein Chief Appeals Bureau (208) 332-3752 ext. 3330. 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 24, 2014.

DATED this 21st Day of July, 2014.

Amy Hohnstein, Chief Appeals Bureau
Department of Labor
317 West Main Street, Boise, ID 83735
(208) 332-3752 ext. 3330
(208) 334-6125 Fax
amy.hohnstein@labor.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0106-1401
(Only those Sections being amended are shown.)

012. FILING OF AN APPEAL.

01. Filing of an Appeal Pursuant to the Employment Security Law. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination, redetermination or decision of the Department. ~~The appeal may be filed by delivering it, or faxing it, to any Job Service office or to the Appeals Bureau of the Department, 317 W. Main Street, Boise, Idaho 83735-0720.~~ Every determination, redetermination or decision of the Department shall contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. To appeal a determination, redetermination or decision of the Department, interested parties must follow the instructions on the document being appealed. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed or electronically transmitted appeal that is received ~~by a Job Service office or the Appeals Bureau~~ by 5 p.m. ~~(as of the time zone of the office receiving the appeal)~~ on a business day shall be deemed filed on that date. A faxed or electronically transmitted appeal that is received ~~by a Job Service office or the Appeals Bureau~~ on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. ~~An appeal may also be filed by mailing it to any Job Service office or to the Appeals Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735-0720.~~ If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal shall be deemed to be timely filed. Ref. Section 72-1368(6), Idaho Code. (5-3-03)()

02. Filing of an Appeal Pursuant to the Claims for Wages Act. An appeal shall be in writing, signed by the appellant or the appellant's representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or revised determination of the Department. The appeal may be filed by personal delivery, by mail, ~~or~~ by fax, or by electronic transmission to the Wage and Hour Section of the Department at the address indicated on the Wage Claim Determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed or electronically transmitted appeal that is received by the Wage and Hour Section by 5 p.m. on a business day shall be deemed filed on that date. A faxed or electronically transmitted appeal that is received by the Wage and Hour Section on a weekend, holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. Ref. Section 45-617(6), Idaho Code. (4-5-00)()

03. Date of Mailing. The date indicated on Department determinations, revised determinations, redeterminations and decisions as the "Date of Mailing" or "Date Mailed" shall be presumed to be the date the document was deposited in the United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. (7-1-10)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1401

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 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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

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

The rule is being changed to reflect how the Department currently processes unemployment insurance claims. This rule change will delete references to mailed and in person claims because they are no longer used by the Department. Instead, claims are filed over the internet, or in special circumstances by telephone.

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

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

There will be no fiscal impact to the General fund or to any dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Volume 14-7, page 37](#).

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 proposed rule, contact Joshua McKenna Benefits Bureau Chief (208) 332-3750 ext. 3919. 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 24, 2014.

DATED this 21st day of July, 2014.

Joshua McKenna, Benefits Bureau Chief
Department of Labor
317 West Main Street, Boise, ID 83735
(208) 332-3570 ext. 3919
(208) 334-6125 Fax
joshua.mckenna@labor.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0130-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

Unless the context clearly requires otherwise, these terms shall have the following meanings when used in these Rules, in interpretations, in forms, and in other official documents issued by the Director of the Department of Labor. (3-19-99)

01. Additional Claim. An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-19-99)

02. Administrative Office. The main office in Boise, Idaho, wherein the administrative functions of the Department of Labor are performed. (3-19-99)

03. Appealed Claim. An interested party's appeal to the Appeals Bureau of a claims examiner's decision on a claim or a request for review by the Industrial Commission of a decision made by an appeals examiner. (3-19-99)

04. Average Annual Wage. For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage shall be computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers. (3-19-99)

05. Average Weekly Wage. For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage shall be computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). (4-11-06)

06. Benefit Balance. The unpaid portion of the total benefits payable with respect to a claimant's unemployment during a given benefit year. (3-19-99)

07. Chargeability Determination. A determination issued by the Director or his authorized agent with respect to whether a covered employer's account shall be charged for benefits paid on a claim. (3-19-99)

08. Claim. An application for unemployment insurance or "benefits." (3-19-99)

09. Combined Wage Claim. A claim filed under any interstate agreement whereby an unemployed worker with covered wages in more than one (1) state may combine such wages. (3-19-99)

10. Compensable Claim. An application for benefits which certifies to the completion of a benefit period (one (1) or more weeks). (3-19-99)

11. Contested Claim. A claim in which an interested party disputes the claimant's right to benefits. (3-19-99)

12. Continued Claim. An application for waiting-week credit or for benefits for specific compensable weeks. (3-19-99)

13. Corporate Officer. Any individual empowered in good faith by stockholders or directors in accordance with the corporation's articles of incorporation or bylaws to discharge the duties of a corporate officer. (4-4-13)

14. Employment. For the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho Code, "employment" means that employment subsequent to which a claimant has not earned fourteen (14) times his weekly benefit amount. (4-11-06)

- 15. Full-Time Employment.** A week of full-time employment for a claimant is one in which he has worked what are customarily considered full-time hours for the industry in which he has been employed that week or in which the earnings are more than one and one-half (1-1/2) times his weekly benefit amount. (4-5-00)
- 16. Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional. (3-19-99)
- 17. Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-19-99)
- 18. Intrastate Claim.** A claim filed by a worker who has earned wages within that state or who has federal wages assigned to that state. (3-19-99)
- 19. Itinerant Point.** A place where claims-taking services are regularly provided for less than four (4) days a week by a local office which carries on its primary operations at another point. (3-19-99)
- 20. Liability Determination.** A determination issued by the Director or his authorized agent with respect to whether a cost reimbursement employer shall be charged for benefits paid on a claim. (3-19-99)
- 21. Local Office.** A community office of the Department of Labor at which claims are taken and job placement services are provided to applicants and employers. (3-19-99)
- ~~**22. Mail Claim.** A claim filed by mail rather than in person at a local office. (3-19-99)~~
- ~~**23. Monetary Determination.** A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)~~
- ~~**24. New Claim.** The first initial claim made in a benefit year. (3-19-99)~~
- ~~**25. Non-Monetary Determination.** A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-19-99)~~
- ~~**26. Personal Identification Number (PIN).** A confidential number or other electronic method of verification unique to a claimant or an employer that is required for such persons to perform certain transactions with the Department by electronic or telephonic means. A PIN has the same force and effect as a manual signature. (4-6-05)~~
- ~~**27. Regular Claim.** A claim based on wages earned during a base period, excluding extended benefit claims. (3-19-99)~~
- ~~**28. Signature, Signed.** The Personal Identification Number (PIN) is considered the same as a manual signature and has the same force and effect when a claimant or an employer uses Department-approved electronic or telephonic means to submit information to or engage in transactions with the Department. (4-6-05)~~
- ~~**29. Telephone Claim.** A claim filed by telephone rather than in person at a local office. (3-19-99)~~
- ~~**30. Total Benefit Amount.** The full amount of benefits to which a claimant may be entitled during a benefit year on his regular claim. (3-19-99)~~
- ~~**31. Unemployment.** An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are allocable, or in any week in which the total wages payable to him for less than full-time work performed in such week amounted to less than one and one-half (1-1/2) times his weekly benefit amount. (3-19-99)~~
- ~~**32. Weekly Benefit Amount.** The full amount of benefits to which a claimant may be entitled for one (1) week of total unemployment. (3-19-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

425. NEW CLAIMS/ADDITIONAL CLAIMS.

Ref. Sec. 72-1308, Idaho Code.

(3-19-99)

01. Claims for Benefits, Delayed Filing. When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

03. Filing of New Claims. New intrastate and interstate claims may be filed electronically, *in person* at a local office or at an itinerant location, ~~or by mail if permitted by a claims examiner.~~ New *interstate* claims may also be filed by telephone at the Department's discretion. (~~3-30-01~~)()

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

~~**b.** *In person Filing.* A claimant may file a claim in person at the local office serving the claimant's area of residence. Local offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (4-11-06)~~

eb. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

dc. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

~~**e.** *Mailed Claims.* A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day~~

~~period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark.~~ (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

06. Registration/Reporting Requirements -- Interstate Claimants. Interstate claimants shall be required to register for work in the State in which they reside and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

- a. The claimant's legal name; (3-15-02)
- b. The claimant's Social Security Number; (3-15-02)
- c. The address where the claimant's mail is delivered; (3-15-02)
- d. The claimant's place of last employment; (3-15-02)
- e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)
- h. Other information necessary for the proper processing of the claim. (3-15-02)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)

j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits may be denied for failure to provide proof of identity. A claimant notified by telephone of the need to provide proof of identity must provide the information to the Department within two (2) business days. A claimant notified by mail of the need to provide proof of identity must provide the information to the Department within five (5) business days of the date of mailing of the notice. (4-11-06)

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

09. Separation Information. Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed fourteen (14) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (4-11-06)

10. Separation Notice. (3-19-99)

a. Notice to Employer of Separation. At the time a claim for benefits is filed, the Department will review the claimant's employment subsequent to which the claimant has not earned fourteen (14) times his weekly benefit amount. The Department will mail a separation notification letter to each employer within that period. A Department representative will then contact the employer within seven (7) business days for a response, unless the claimant indicated he quit the job for reasons not attributable to the employer. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, shall respond to the Department with the reasons for the separation whenever the claimant: (3-30-07)

- i. Left his employment voluntarily; (3-19-99)
- ii. Was discharged from his employment due to misconduct; (3-19-99)
- iii. Is unemployed due to a strike, lockout, or other labor dispute; (3-30-07)
- iv. Is not working due to a suspension; or (3-30-07)
- v. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-30-07)

11. Filing of an Additional Claim or Reopening a Claim. A claim series may be reestablished, electronically, ~~in person~~ at a local office or at an itinerant location, ~~or~~ by telephone, ~~or by mail~~ at the Department's discretion. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (~~3-30-01~~)()

~~**a.** In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)~~

~~**b.** Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)~~

ea. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

eb. Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

ec. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has

reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

- i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)
- ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

550. REPORTING REQUIREMENTS.

Each claimant shall report weekly or biweekly for benefits as directed. When filing claim reports, a claimant shall use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule shall result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. (3-29-12)

~~**01. In-Person Reports.** A claimant reporting in person must hand the report to an authorized employee of the local office or place it in a receptacle identified for that purpose. The Department will not accept reports deposited under or through the doors of the office. Reports filed in person at a local office shall be considered timely when filed within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. (3-29-12)~~

021. Mailed Reports. Reports that are mailed shall be considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period shall be extended to include the next working day. (3-29-12)

032. Internet Reports. Reports filed via the internet shall be considered timely when made between 12:01 a.m. Mountain Time of the Sunday following the week being claimed and midnight Mountain Time of the Saturday following the week being claimed. (3-20-14)

043. Facsimile Reports. Reports filed by facsimile shall be considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (3-29-12)

054. Electronic Mail Reports. Reports filed by electronic mail shall be considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period shall be extended to include the next working day. Reports shall be deemed filed upon receipt by the Department. (3-29-12)

065. When Report Missing. If a claimant establishes, by credible and corroborated evidence, that a missing report was properly filed as required by this rule, a replacement report shall be considered timely. (3-29-12)

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.02 - RULES GOVERNING SIMULCASTING

DOCKET NO. 11-0402-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 23, 2014.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2506, 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 17, 2014.

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

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

Before a license to conduct historic racing is granted to a licensee, this rule will require a licensee who applies for a license to have a current simulcast license and to have conducted simulcasting of live racing for at least one (1) year.

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

Providing this language will ensure that a licensee who desires to conduct historic racing in the state of Idaho has a commitment to the sport of live racing.

FEE SUMMARY: No fees are imposed by this rule.

FISCAL IMPACT: There is no negative impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule was discussed with input from the affected parties at the July 23, 2014 meeting of the Idaho Racing Commission and is simple in nature.

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:

No materials were incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

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 24, 2014.

DATED this 23rd Day of July, 2014.

Frank Lamb, Executive Director
Idaho Racing Commission
700 S Stratford Drive
Meridian, Idaho 83642
Tel: (208) 884-7080
Fax: (208) 884-7098

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 11-0402-1401
(Only those Sections being amended are shown.)

049. HISTORICAL HORSE RACE LICENSING.

01. No Historical Horse Race Wagering Conducted Without a License. Wagering on an historical horse race shall only be conducted by a licensee approved by the Commission. (3-20-14)

02. Historical Horse Race Horse Breed. A licensee may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets, if any, conducted by the licensee. (3-20-14)

03. Approved Days and Hours. A licensee may conduct wagering on historical races on any days and hours that is in conformity with local municipalities and approved by the Commission. (3-20-14)

04. Cash or Cash Vouchers Only. Historical horse racing terminals shall use cash or cash vouchers only. (3-20-14)

05. License Must Hold Current Simulcast License. A licensee may not apply for a license to conduct historical racing unless that licensee holds a current simulcast license and has conducted simulcasting of live racing for a period of at least one (1) year. (7-23-14)T

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

15.02.02 - VOCATIONAL REHABILITATION SERVICES

DOCKET NO. 15-0202-1401

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 67-5407, 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 17, 2014.

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

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

The Idaho Commission for the Blind and Visually Impaired (ICBVI) is increasing the cost coverages available under the Vocational Rehabilitation (VR) Program Payment Policy. These changes are necessary to keep up with the increasing costs associated with vocational rehabilitation services.

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:

These rules will have no affect on the state general fund. There is a negative fiscal impact, but the changes will be federally funded.

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 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 40](#).

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 Bruce Christopherson, Rehabilitation Services Chief, at (208) 334-3220 ext. 110 or at bchristopherson@icbvi.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 24, 2014.

DATED this 6th day of August, 2014.

Bruce Christopherson
Rehabilitation Services Chief
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, ID 83720-0012
Phone: (208) 334-3220 ext. 110
Fax: (208) 334-2963

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0202-1401
(Only those Sections being amended are shown.)

110. ELIGIBILITY.

01. Eligibility Requirements. Eligibility of a client for vocational rehabilitation services shall be based upon a determination by the Commission that: (4-2-08)

a. The client is blind or visually impaired; (4-2-08)

b. The client's blindness or visual impairment constitutes or results in a substantial impediment to employment; and (4-2-08)

c. There is a reasonable expectation that vocational rehabilitation services will benefit the client in terms of securing, retaining, or regaining employment. (4-2-08)

d. The client has a disability priority which can include no significant disability (NSD), significant disability (SD), or most significant disability (MSD). ()

02. Residency Requirements. A client must have legal residence status, be able to complete an employment eligibility verification, and be present in the state. (4-2-08)

03. Presumptive Eligibility. Individuals who are current SSI or SSDI beneficiaries are presumed to be eligible for vocational rehabilitation services unless the Commission can demonstrate by clear and convincing evidence that such individuals are incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of their disability. (4-2-08)

04. Certificate of Ineligibility. If an individual is determined ineligible for services, a certificate of ineligibility will be prepared and a copy provided the individual or the individual's representative. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

300. PAYMENT POLICY.

01. Upper Limits. In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

a. Education expenses - public in-state institutions. ()

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment. (5-8-09)

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. ()

b. Education expenses - private in-state institutions. ()

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private

in-state education and training institutions and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at ~~Boise State University, Idaho State University, or University of Idaho, whichever is higher~~ a public Idaho college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in that order, before any expenditure of funds by the Commission. ~~(5-8-09)~~()

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. ()

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year that would be incurred at ~~Boise State University, Idaho State University, or University of Idaho whichever is higher~~ a public Idaho college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in that order, before any expenditure of funds by the Commission. ~~(5-8-09)~~()

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the Commission regional office assisting the client. (4-2-08)

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in ~~this~~ that order, before any expenditure of funds by the Commission. ~~(5-8-09)~~()

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: ~~Two~~ Three hundred dollars (\$~~2300~~) plus actual cost of related procedures such as x-rays. ~~(4-2-08)~~()

ii. Psychological exam by licensed psychologist: Two hundred fifty dollars (~~2050~~) plus actual cost of psychometric tests. ~~(4-2-08)~~()

iii. Ophthalmologist/Optomtrist exam: ~~Two~~ Three hundred dollars (~~2300~~) plus actual cost of visual field exam or other necessary tests. ~~(4-2-08)~~()

(1) Low vision exam: One hundred ~~twenty five~~ forty dollars (\$~~12540~~). ~~(4-2-08)~~()

(2) Follow-up low vision consultation: ~~Fifty~~ Sixty-five dollars (~~565~~). ~~(4-2-08)~~()

(3) Eye report: Twenty-five dollars (\$25). (4-2-08)

iv. Eye glasses or contact lenses: Eighty ~~dollars~~ percent (~~\$80~~) for frames and the usual and customary cost for lenses and contact lenses. Nine hundred dollars (\$900) for bioptics. ~~(5-8-08)~~()

- v. Audiologist exam: ~~Eighty~~ One hundred twenty-five dollars (\$~~81~~25). (4-2-08)()
- vi. Physical exam (general basic medical): ~~Sixty~~ Eighty-five dollars (\$~~68~~5). (4-2-08)()
- f. Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at ~~eighty~~ one hundred dollars (\$~~8~~100) per hour. (4-2-08)()
- g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. After the expiration of the three (3) month period, the Commission will pay the state Medicaid rate for medication and medical supplies. (4-2-08)()
- h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five hundred dollars (\$500) per case. (4-2-08)
- i. Transportation. (4-2-08)
- i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
- ii. Transportation costs associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). ~~The Commission does not provide funds for a client's purchase of a motor vehicle~~ Exceptions can be approved by the Rehabilitation Services Chief. (5-8-09)()
- iii. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
- j. Maintenance: Three thousand dollars (\$3,000) per federal fiscal year and no more than five hundred dollars (\$500) per month. There is no limit on the number of months a client can receive maintenance up to the three thousand dollar (\$3,000) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (3-29-12)
- i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
- ii. If a client is participating in the Assessment and Training Center (ATC) and is not commuting to ATC for training, the maximum per month is three hundred dollars (\$300) for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (3-29-12)
- k. Copy fees: ~~Fifteen~~ Twenty dollars (\$~~15~~20) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (4-2-08)()
- l. Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and equipment provided to client from existing Commission inventory will count towards the one thousand dollar (\$1,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (4-2-08)
- m. On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)
- n. Computers including hardware and software: One thousand dollars (\$1,000) per case. If the Commission determines that a change in computers is necessary as appropriate, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client

until the original computer has been returned. (4-2-08)()

o. Self-employment plans: Three thousand dollars (\$3,000). (4-2-08)

p. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)

q. Vehicle purchase: The Commission may provide finances to modify an already owned vehicle to make it accessible for the client's use under the following circumstances: ()

i. The cost of the modification cannot exceed the current Blue Book value of the vehicle; ()

ii. The client must maintain insurance on the vehicle for replacement cost; ()

iii. The Commission encourages the use of loans from ITAP, and independent living centers; and ()

iv. The Commission can aid in the purchase of used vehicles as long as the used vehicles are a part of the approved self-employment plan or a part of the Business Enterprise Program. ()

02. Exclusion of Surgery ~~and Organ Transplantation.~~ (4-2-08)

~~**a.**~~ The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (4-2-08)()

~~**b.**~~ The Commission does not provide funds for a client's organ transplantation. (4-2-08)

03. Authorization to Purchase. When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the ~~#~~Rehabilitation ~~s~~Services ~~e~~Chief or the Commission administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (4-2-08)()

04. Exception Policy. Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the ~~#~~Rehabilitation ~~s~~Services ~~e~~Chief of the Commission. (4-2-08)()

301. -- 354. (RESERVED)

355. CLIENT APPEALS.

01. Informal Dispute Resolution. Within fifteen (15) calendar days of notification of the contested action, lack of action or decision, the client may request that an informal dispute resolution be held. The request shall be made in writing to the ~~#~~Rehabilitation ~~s~~Services ~~e~~Chief. The written request should state the reason for the review. (4-2-08)()

a. The ~~#~~Rehabilitation ~~s~~Services ~~e~~Chief shall inform the client in writing as to the time, place, and date of the informal dispute resolution. The client may choose to represent himself or may have a representative speak on his behalf. (4-2-08)()

b. The ~~#~~Rehabilitation ~~s~~Services ~~e~~Chief will make a decision regarding the specifics of the informal dispute resolution. This decision will be in written form and it will be sent to the client, with a copy in the case file. (4-2-08)()

02. Mediation. The request shall be made in writing to the ~~Rehabilitation Services~~ Chief. A written request shall state the reason for the review. The mediation must take place within sixty (60) days of client's request. ~~(4-2-08)~~()

03. Impartial Due Process Hearing. An impartial due process hearing can be held without an informal dispute resolution or mediation or if the client is dissatisfied with the result of the informal dispute resolution or mediation. The impartial due process hearing will deal with the issues involved in the original Informal dispute resolution or mediation, if one took place. The request for an impartial due process hearing shall be made in writing to the administrator of the Commission within fifteen (15) calendar days of the ~~Rehabilitation Services~~ Chief's decision from the informal dispute resolution or the mediation proceedings. The hearing by an impartial hearing officer must be held within sixty (60) days of a request by the client unless both parties agree to a specified delay. ~~(4-2-08)~~()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.01 - RULES OF THE IDAHO TIME SENSITIVE EMERGENCY SYSTEM COUNCIL

DOCKET NO. 16-0201-1401 (NEW CHAPTER)

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 56-1028, Idaho Code.

MEETING SCHEDULE: The Idaho Time Sensitive Emergency System Council (TSE) holds public meetings on a regular basis for Council business. Each scheduled meeting has an agenda posted on the TSE Council's web page at: www.tse.idaho.gov. Anyone wishing to attend the negotiated rulemaking portion of the meeting needs to check the agenda to see the scheduled time for rules. TSE Council meetings scheduled in September are:

**Thursday, September 4th & Tuesday, September 23rd, 2014
9:00 a.m. MDT (or as scheduled on agenda)**

**Oxford Suites Boise
1426 S. Entertainment Ave.
Boise, Idaho 83709**

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

- 1) Attend scheduled TSE Council meeting at times on Agenda for rule discussions to participate in the rules process;
- 2) Provide oral or written recommendations, or both, at the TSE Council's scheduled time for rules;
- 3) Submit written recommendations and comments to this address on or before October 17, 2014:

**TSE Council - Attn: Wayne Denny
Idaho Department of Health and Welfare
2224 E Old Penitentiary Road
Boise, ID 83712-8249**

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

The 2014 Idaho Legislature adopted a plan to develop a statewide Time Sensitive Emergency (TSE) system of care that will include three of the top five causes of death in Idaho: trauma, stroke, and heart attack. Studies show that organized systems of care improve patient outcomes, reduce the frequency of preventable death, and improve the quality of life of the patient. The TSE Council has been appointed by the Governor and is tasked with developing rules for this statewide system of care for time sensitive emergencies.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Wayne Denny at (208) 334-4000. Agenda and materials pertaining to the TSE Council meetings and this rulemaking may be found on the TSE web page: www.tse.idaho.gov

All written comments on the negotiated rules must be directed to the contact person above and must be delivered on or before October 17, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
Boise, ID 83720-0036

P.O. Box 83720
Tel: (208) 334-5564 phone / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.08 - VITAL STATISTICS RULES

DOCKET NO. 16-0208-1401 (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 39-252, 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 17, 2014.

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

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

Revenue from existing Vital Statistics fees does not cover the current costs. This rulemaking increases fees in order to cover current costs and make the Bureau of Vital Statistics self-sustaining and not require continued subsidization by other Department programs. The Bureau of Vital Statistics receives no state general funds, only federal monies and fees for the services and documents it provides.

Specifically, this rulemaking increases the fees for certified copies, searches for certified copies, verifications, establishing new birth certificates for adoptions, establishing delayed certificates, amending certificates, and other related services. Also, a new fee for corrections is being established.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased under this docket. These fees are levied under the authority of Section 39-252, Idaho Code.

In order to cover the current costs of services provided, the Department's Bureau of Vital Statistics is increasing the fees for the services listed above. Further, a new fee structure for the verification of vital events by the Department's automated data system is being introduced and is based on a national pricing model.

It should be noted that the last fee increase by the Bureau of Vital Statistics was in 2002. Even with the proposed fee increase, Idaho's birth certificates and other vital documents will still be less expensive than 4 of the 6 surrounding states.

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking. The cost to implement these changes is minimal (estimated at \$2,500) and will be paid out of current operating funds. It is estimated that \$344,900 of annual revenue will be generated.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking was deemed not feasible as this rule change is simple in nature.

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 James Aydelotte (208) 334-4969.

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 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Tel: (208) 334-5564 phone / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0208-1401
(Only those Sections being amended are shown.)**

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 ~~four~~sixteen dollars (\$1~~4~~6) per copy. This fee incorporates the additional one dollar (\$1) coroner training and education fund fee in accordance with Section 39-252(2), Idaho Code. The fee for the issuance of a certified copy of any other vital record is ~~this~~sixteen dollars (\$1~~3~~6) per copy. (4-7-11)()

02. Searches. The fee for ~~each~~ a search of the files for a ~~death~~record of any vital event when no record is found ~~or~~ no copy is made, or a special document search is requested, is ~~four~~sixteen dollars (\$1~~4~~6). ~~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).~~ (4-7-11)()

03. Verifications. ()

a. Except for Idaho state ~~executive~~ agencies and public health districts, the fee for manual or written verification of data from a certificate ~~is~~ nine ten dollars (\$910). (4-7-11)()

b. The fees for electronic verification by the Department's automated systems of data from a certificate of any vital event are based on the national pricing model as follows:

<u>Fees for Electronic Verification</u>	
<u>National Monthly Transaction Volume</u>	<u>Charge per Verification Match Provided to Vital Records Agency</u>
<u>1 - 100,000</u>	<u>\$1.35</u>
<u>100,000 - 500,000</u>	<u>\$1.15</u>
<u>500,000 - 1,200,000</u>	<u>\$1.03</u>
<u>1,200,000+</u>	<u>\$0.87</u>

()

c. The fee for electronic fact of death verification by the Department's automated systems is three dollars (\$3.00). Fact of death verification involves comparing administrative data to Idaho death data and returning an indication of death. ()

04. **Statistical, Research, or Public Health Services.** The State Registrar assesses the fee for statistical, research or public health services. The costs 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 prorated basis to reflect the number of expected requests for the same information or service. (4-7-11)

05. **Fees for Other Services.** (4-7-11)

a. The fee for ~~establishing a new birth certificate pursuant to~~ filing a report, certificate, or decree of adoption is ~~thirteen~~ twenty dollars (~~\$13~~20). (4-7-11)()

b. The fee for establishing a delayed certificate of any vital event is ~~thirteen~~ twenty-five dollars (~~\$13~~25). (4-7-11)()

c. The fee for establishing a new or amended ~~birth~~ certificate ~~pursuant to~~ of any vital event due to a court order, a paternity affidavit or rescission, or a subsequent marriage affidavit is ~~thirteen~~ twenty dollars (~~\$13~~20). (4-7-11)()

d. A service fee of three dollars (\$3), in addition to the ~~four~~sixteen dollars (~~\$4~~6) for a certified copy of a death or stillbirth certificate ~~and thirteen (\$13) dollars for a certified copy of a stillbirth certificate~~, must be paid to the local deputy state registrar for securing each expedited certified copy of a vital record. (4-7-11)()

e. The fee for filing a copy of "Request and Consent for Artificial Insemination" as required by Section 39-5403, Idaho Code, is ten dollars (\$10). (4-7-11)

f. The fee for ~~copies a copy of death a~~ certificates of any vital event provided upon written request to local, states other than Idaho, or federal government agencies in accordance with Section 39-270(b), Idaho Code, is ~~four~~sixteen dollars (~~\$4~~6). ~~The fee for any other vital event is thirteen dollars (\$13).~~ (4-7-11)()

g. Fees for correction of a certificates ~~of death or stillbirth~~ any vital event. (4-7-11)()

i. ~~When a funeral director must correct an error on a certificate of death for which certified copies have been issued, and a replacement copy has been requested, the correction fee is fourteen dollars (\$14) and must include issuance of one (1) certified copy of the corrected death record.~~ (4-7-11)

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.~~ (4-7-11)

iii. The fee for ~~additional (a replacement) copies~~ certified copy of a certificates ~~of death or stillbirth issued at the time~~ any vital event when the incorrect certified copy is returned for exchange within sixty (60) days of a correction of an error is ~~two~~ five dollars (~~\$2~~5) per certified copy. (4-7-11)()

iv. ~~When a correction is requested for~~ There is no charge for a correction of an error or errors on a certificate of death or stillbirth, but no replacement copy is requested, there is no charge to the requestor any vital event when the required documentation is received within the first year after the date of the event. (4-7-11)()

iii. The fee for correction of an error or errors on a certificate of any vital event, when the required documentation is received one (1) year or more after the date of the event, is twenty dollars (\$20) per submitted correction request. ()

h. Fees for priority processing or special handling. ()

i. A service fee of ~~five~~ ten dollars (~~\$5~~10) per certificate or document will be added for priority mailing processing or special handling, ~~including additional document requests~~ of a request for a certified copy or copies of a certificate of any vital event, a request for a disinterment permit, a request to file a registry form, or a request regarding another vital event related form or document, other than those identified in Subsection 251.05.h.ii.

of this rule. This fee will be in addition to the current fee~~(s)~~ or fees for ~~the requested~~ each certified copy~~(ies)~~, ~~or~~ search~~(es)~~, or both filing requested, or any combination thereof. This fee is forfeited and a new service fee must be paid for priority processing or special handling in the event that the requestor takes longer than ninety (90) days to respond to a request for additional information, or documentation, or both. (4-7-11)()

ii. A service fee of twenty-five dollars (\$25) per certificate will be added for priority processing to establish a new or amended certificate of any vital event due to a report, certificate or decree of adoption, delayed certificate filing, a court order, a paternity affidavit or rescission, a subsequent marriage affidavit or a correction of a certificate. This fee is in addition to the current fee or fees for the legal amendment processing or request for a certified copy or copies, or both. This fee is forfeited and a new legal amendment service fee must be paid for priority processing or special handling in the event that the requestor takes longer than ninety (90) days to respond to a request for additional information or documentation or both. ()

iii. A hard copy fee of five dollars (\$5) per certificate will be added to the certified copy fee for issuance of a non-computer generated certified photocopy of a certificate of any vital event. Additional certified photocopies of the same certificate requested at the same time will be issued at the sixteen dollar (\$16) certified copy fee. ()

06. Waiver of Fee Requirement. Fees may be waived for Idaho state ~~executive~~ agency and public health district administrative use 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

16.02.10 - IDAHO REPORTABLE DISEASES

DOCKET NO. 16-0210-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency and the Board of Health and Welfare have initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1003, and 56-1005, 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 17, 2014.

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

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

These rules are being updated and language is being amended for clarity and consistency, and for the protection of public health and safety. These changes will align language in these rules with current taxonomy and public health practices. Echinococcosis is being added to the list of reportable diseases to improve surveillance for this disease. Updates are being made to clarify reportable disease restrictions at facilities, daycares, food establishments, and other areas of concern when the public health may be at risk.

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

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

There is no anticipated fiscal impact to state general funds, or any other funds except the costs of the rule promulgation which includes printing and publication.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because these rules are for the protection of the public, and the nature of these amendments do not require negotiations. However, stakeholders have been consulted concerning the proposed rule changes.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication. The incorporated documents are in the current chapter, but are being updated to newer versions: Nationally Notifiable Diseases Surveillance System - Case Definitions; Human Rabies Prevention - United States, 2008; Compendium of Animal Rabies Control, 2011; and Standards for Cancer Registries, Eighteenth Edition.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathryn Turner, at (208) 334-5939.

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 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
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Tel: (208) 334-5564 phone / Fax: (208) 334-6558
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0210-1401
(Only those Sections being amended are shown.)

004. DOCUMENTS INCORPORATED BY REFERENCE.

The documents referenced in Subsections 004.01 through 004.06 of this rule are used as a means of further clarifying these rules. These documents are incorporated by reference and are available at the Idaho State Law Library or at the Department's main office listed in Section 005 of these rules. (4-2-08)

01. Guideline for Isolation Precautions in Hospitals. Siegel, J.D., et al., "Guideline for Isolation Precautions in Hospitals." Health Care Infection Control Practices Advisory Committee, Atlanta, GA: Centers for Disease Control and Prevention, 2007. (4-2-08)

02. ~~Case Definitions for Infectious Conditions Under Public Health Surveillance, 2010. Morbidity and Mortality Weekly Report, 2010 Edition. Centers for Disease Control and Prevention. Division of Integrated Surveillance Systems at <http://www.cdc.gov/nepht/diss/nndss/phs/infdis.htm>. Nationally Notifiable Diseases Surveillance System - Case Definitions. <http://www.cdc.gov/nndss/script/casedefDefault.aspx>. (3-29-10)()~~

a. A person, who has been diagnosed as having a specific disease or condition by a physician or other health care provider, is considered a case. The diagnosis may be based on clinical judgment, on laboratory evidence, or on both criteria. Individual case definitions are described in "National Notifiable Disease Surveillance System Case Definitions," incorporated in Section 004 of these rules. ()

b. A laboratory detection of a disease or condition as listed in Section 050 of these rules and as further outlined in Sections 100 through 949 of these rules. ()

03. Human Rabies Prevention -- United States, ~~1999~~ 2008. Morbidity and Mortality Weekly Report, ~~January 8, 1999~~ May 23, 2008, Vol. ~~48, RR-1~~ 57.RR-3. Centers for Disease Control and Prevention. (4-2-08)()

04. Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HIV and Recommendations for Postexposure Prophylaxis. Morbidity and Mortality Weekly Report, September 30, 2005, Vol. 54, RR09. Centers for Disease Control and Prevention. These guidelines are found online at <http://aidsinfo.nih.gov/contentfiles/HealthCareOccupExpoGL.pdf>. (3-29-10)

05. Compendium of Animal Rabies Control, 2008~~11~~. National Association of State Public Health Veterinarians, Inc., Morbidity and Mortality Weekly Report, ~~April 6, 2007~~ November 4, 2011, Vol. ~~58, RR-3~~ 60.RR-6. Centers for Disease Control and Prevention. This document is found online at <http://www.nasphv.org/Documents/RabiesCompendum.pdf>. (3-29-10)()

06. Standards for Cancer Registries, Volume II, Data Standards and Data Dictionary. North American Association of Central Cancer Registries, ~~Twelfth~~ Eighteenth Edition, Record Layout Version ~~11.2 14,~~ April 2007 September 2013. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS A THROUGH K.

For the purposes of this chapter, the following definitions apply. (4-2-08)

01. Airborne Precautions. Methods used to prevent airborne transmission of infectious agents, as described in "Guideline for Isolation Precautions in Hospitals," incorporated in Section 004 of these rules. (4-2-08)

02. Approved Fecal Specimens. Specimens of feces obtained from the designated person who has not taken any antibiotic orally or parenterally for two (2) days prior to the collection of the fecal specimen. The specimen

must be collected and transported to the laboratory in a manner appropriate for the test to be performed. (4-2-08)

03. Bite or Other Exposure to Rabies. Bite or bitten means that the skin of the person or animal has been nipped or gripped, or has been wounded or pierced, including scratches, and includes probable contact of saliva with a break or abrasion of the skin. The term “exposure” also includes contact of saliva with any mucous membrane. In the case of bats, even in the absence of an apparent bite, scratch, or mucous membrane contact, exposure may have occurred, as described in “Human Rabies Prevention -- United States, ~~1999~~ 2008,” incorporated in Section 004 of these rules. (4-2-08)()

04. Board. The Idaho State Board of Health and Welfare as described in Section 56-1005, Idaho Code. (4-2-08)

05. Cancer Data Registry of Idaho (CDRI). The agency performing cancer registry services under a contractual agreement with the Department as described in Section 57-1703, Idaho Code. (4-2-08)

06. Cancers. Cancers that are designated reportable include the following as described in Section 57-1703, Idaho Code: (4-2-08)

a. In-situ or malignant neoplasms, but excluding basal cell and squamous cell carcinoma of the skin unless occurring on a mucous membrane and excluding in-situ neoplasms of the cervix. (4-2-08)

b. Benign tumors of the brain, meninges, pineal gland, or pituitary gland. (4-2-08)

07. Carrier. A carrier is a person who can transmit a communicable disease to another person, but may not have symptoms of the disease. (4-2-08)

08. Case. (4-2-08)

a. A person, who has been diagnosed as having a specific disease or condition by a physician or other health care provider, is considered a case. The diagnosis may be based on clinical judgment, on laboratory evidence, or on both criteria. Individual case definitions are described in “[National Notifiable Disease Surveillance System Case Definitions for Infectious Conditions Under Public Health Surveillance](#),” incorporated in Section 004 of these rules. (4-2-08)()

b. A laboratory detection of a disease or condition as listed in Section 050 of these rules and as further outlined in Sections 100 through 949 of these rules. (4-2-08)

09. Cohort System. A communicable disease control mechanism in which cases having the same disease are temporarily segregated to continue to allow supervision and structured attendance in a daycare or health care facility. (4-2-08)

10. Communicable Disease. A disease which 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 which may result in infection, illness, disability, or death. (4-2-08)

11. Contact. A contact is a person who has been exposed to a case or a carrier of a communicable disease ~~and could possibly contract~~ while the disease was communicable, or a person by whom a case or carrier of a communicable disease could have been exposed to the disease ~~or infection~~. (4-2-08)()

12. Contact Precautions. Methods used to prevent contact transmission of infectious agents, as described in the “Guideline for Isolation Precautions in Hospitals,” incorporated in Section 004 of these rules. (4-2-08)

13. Daycare. 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 as described by Section 39-1102, Idaho Code. (4-2-08)

- 14. Department.** The Idaho Department of Health and Welfare or its designee. (4-2-08)
- 15. Director.** The Director of the Idaho Department of Health and Welfare or his designee as described under Sections 56-1003 and 39-414(2), Idaho Code, and Section 950 of these rules. (4-2-08)
- 16. Division of Public Health Administrator.** A person appointed by the Director to oversee the administration of the Division of Public Health, Idaho Department of Health and Welfare, or his designee. (4-2-08)
- 17. Droplet Precautions.** Methods used to prevent droplet transmission of infectious agents, as described in the “Guideline for Isolation Precautions in Hospitals,” incorporated in Section 004 of these rules. (4-2-08)
- 18. Exclusion.** An exclusion for a food service facility means a person is prevented from working as a food employee or entering a food establishment except for those areas open to the general public as outlined in the IDAPA 16.02.19, “The Idaho Food Code.” (4-2-08)
- 19. Extraordinary Occurrence of Illness Including Clusters.** Rare diseases and unusual outbreaks of illness which may be a risk to the public are considered an extraordinary occurrence of illness. Illnesses related to drugs, foods, contaminated medical devices, contaminated medical products, illnesses related to environmental contamination by infectious or toxic agents, unusual syndromes, or illnesses associated with occupational exposure to physical or chemical agents may be included in this definition. (4-2-08)
- 20. Fecal Incontinence.** A condition in which temporarily, as with severe diarrhea, or long-term, as with a child or adult requiring diapers, there is an inability to hold feces in the rectum, resulting in involuntary voiding of stool. (4-2-08)
- 21. Foodborne Disease Outbreak.** An outbreak is when two (2) or more persons experience a similar illness after ingesting a common food. (4-2-08)
- 22. Food Employee.** An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces as defined in IDAPA 16.02.19, “The Idaho Food Code.” (4-2-08)
- 23. Health Care Facility.** An establishment organized and operated to provide health care to three (3) or more individuals who are not members of the immediate family. This definition includes hospitals, intermediate care facilities, residential care and assisted living facilities. (4-2-08)
- 24. Health Care Provider.** A person who has direct or supervisory responsibility for the delivery of health care or medical services. This includes: licensed physicians, nurse practitioners, physician assistants, nurses, dentists, chiropractors, and administrators, superintendents, and managers of clinics, hospitals, and licensed laboratories. (4-2-08)
- 25. Health District.** Any one (1) of the seven (7) public health districts as established by Section 39-409, Idaho Code, and described in Section 030 of these rules. (4-2-08)
- 26. Health District Director.** Any one (1) of the public health districts’ directors appointed by the Health District’s Board as described in Section 39-413, Idaho Code, or his designee. (4-2-08)
- 27. Idaho Food Code.** Idaho Administrative Code that governs food safety, IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments,” also known as “The Idaho Food Code.” These rules may be found online at <http://adminrules.idaho.gov/rules/current/16/0219.pdf>. (4-2-08)
- 28. Isolation.** The separation of a person known or suspected to be infected with an infectious agent, or contaminated from chemical or biological agents, from other persons to such places, under such conditions, and for such time as will prevent transmission of the infectious agent or further contamination. The place of isolation will be designated by the Director under Section 56-1003(7), Idaho Code, and Section 065 of these rules. (4-2-08)

011. DEFINITIONS L THROUGH Z.

For the purposes of this chapter, the following definitions apply. (4-2-08)

01. Laboratory Director. A person who is directly responsible for the operation of a licensed laboratory or his designee. (4-2-08)

02. Laboratory. A medical diagnostic laboratory which is inspected, licensed, or approved by the Department or licensed according to the provisions of the Clinical Laboratory Improvement Act by the United States Health Care and Financing Administration. Laboratory may also refer to the Idaho State Public Health Laboratory, and to the United States Centers for Disease Control and Prevention. (4-2-08)

03. Livestock. Livestock ~~includes cattle, swine, horses, mules, asses, native and non native ungulates, and other animals determined by the Department~~ as defined by the Idaho Department of Agriculture in IDAPA 16.04.03, "Rules Governing Animal Industry." (4-2-08)()

04. Medical Record. Hospital or medical records are all those records compiled for the purpose of recording a medical history, diagnostic studies, laboratory tests, treatments, or rehabilitation. Access will be limited to those parts of the record which will provide a diagnosis, or will assist in identifying contacts to a reportable disease or condition. Records specifically exempted by statute are not reviewable. (4-2-08)

05. Outbreak. An outbreak is an unusual rise in the incidence of a disease. An outbreak may consist of a single case. (4-2-08)

06. Personal Care. The service provided by one (1) person to another for the purpose of feeding, bathing, dressing, assisting with personal hygiene, changing diapers, changing bedding, and other services involving direct physical contact. (4-2-08)

07. Physician. A person legally authorized to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine in Idaho as defined in Section 54-1803, Idaho Code. (4-2-08)

08. Quarantine. The restriction placed on the entrance to and exit from the place or premises where an infectious agent or hazardous material exists. The place of quarantine will be designated by the Director or Health District Board. (4-2-08)

09. Rabies Post-Exposure Prophylaxis (rPEP). The administration of a rabies vaccine series with or without the antirabies immune globulin, depending on pre-exposure vaccination status, following a documented or suspected rabies exposure, as described in "Human Rabies Prevention--United States, ~~1999~~ 2008," incorporated in Section 004 of these rules. (4-2-08)()

10. Rabies-Susceptible Animal. Any animal capable of being infected with the rabies virus. (4-2-08)

11. Residential Care Facility. A commercial or non-profit establishment organized and operated to provide a place of residence for three (3) or more individuals who are not members of the same family, but live within the same household. Any restriction for this type of facility is included under restrictions for a health care facility. (4-2-08)

12. Restriction. (4-2-08)

a. To limit the activities of a person to reduce the risk of transmitting a communicable disease. Activities of individuals are restricted or limited to reduce the risk of disease transmission until such time that they are no longer considered a health risk to others. (4-2-08)

b. A food employee who is restricted must not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles. A restricted employee may still work at a food establishment as outlined in the IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

13. Restrictable Disease. A restrictable disease is a communicable disease, which if left unrestricted, may have serious consequences to the public's health. The determination of whether a disease is restrictable is based

upon the specific environmental setting and the likelihood of transmission to susceptible persons. (4-2-08)

14. Severe Reaction to Any Immunization. Any serious or life-threatening condition which results directly from the administration of any immunization against a communicable disease. (4-2-08)

15. Significant Exposure to Blood or Body Fluids. Significant exposure is defined as a percutaneous injury, contact of mucous membrane or non-intact skin, or contact with intact skin when the duration of contact is prolonged or involves an extensive area, with blood, tissue, or other body fluids as defined in "Updated U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HIV and Recommendations for Postexposure Prophylaxis," incorporated in Section 004 of these rules. (3-29-10)

16. Standard Precautions. Methods used to prevent transmission of all infectious agents, as described in the "Guideline for Isolation Precautions in Hospitals," incorporated in Section 004 of these rules. (4-2-08)

17. State Epidemiologist. A person employed by the Department to serve as a statewide epidemiologist or his designee. (4-2-08)

18. Suspected Case. A person diagnosed with or thought to have a particular disease or condition by a licensed physician or other health care provider. The suspected diagnosis may be based on signs and symptoms, or on laboratory evidence, or both criteria. Suspected cases of some diseases are reportable as described in Section 050 of these rules. (4-2-08)

19. Vaccination of an Animal Against Rabies. Vaccination of an animal by a licensed veterinarian with a rabies vaccine licensed or approved for the animal species and administered according to the specifications on the product label or package insert as described in the "Compendium of Animal Rabies Control, ~~2008~~ 2011," incorporated in Section 004 of these rules. (~~3-29-10~~)()

20. Veterinarian. Any licensed veterinarian as defined in Section 54-2103, Idaho Code. (4-2-08)

21. Waterborne Outbreak. An outbreak is when two (2) or more persons experience a similar illness after ~~ingesting exposure to~~ water from a common ~~supply~~ source and an epidemiological analysis implicates the water as the source of the illness. (~~4-2-08~~)()

22. Working Day. A working day is from 8 a.m. to 5 p.m., Monday through Friday, excluding state holidays. (4-2-08)

012. -- 019. (RESERVED)

020. PERSONS REQUIRED TO REPORT REPORTABLE DISEASES, CONDITIONS, AND SCHOOL CLOSURES.

01. Physician. A licensed physician who diagnoses, treats, or cares for a person with a reportable disease or condition must make a report of such disease or condition to the Department or Health District as described in these rules. The physician is also responsible for reporting diseases and conditions diagnosed or treated by physician assistants, nurse practitioners, or others under the physician's supervision. (4-2-08)

02. Hospital or Health Care Facility Administrator. The hospital or health care facility administrator must report all persons who are diagnosed, treated, or receive care for a reportable disease or condition in his facility unless the attending physician has reported the disease or condition. (4-2-08)

03. Laboratory Director. The laboratory director must report to the Department or Health District the identification of, or laboratory findings suggestive of, the presence of the organisms, diseases, or conditions listed in Section 050 of these rules. (4-2-08)

04. School Administrator. A school administrator must report diseases and conditions to the Department or Health District as indicated in Section 050 of these rules. A school administrator must report the closure of any public, parochial, charter, or private school within one (1) working day when, in his opinion, such

closing is related to a communicable disease. (4-2-08)

05. Persons in Charge of Food Establishments. ~~If the A~~ person in charge of ~~the an~~ eating or drinking establishment ~~has reason to suspect that any employee has a disease listed in Section 050 of these rules that is in a communicable form, he~~ must ~~immediately notify~~ **report diseases and conditions to** the Department or Health District **as indicated in Section 050 of these rules** and obtain guidance on proper actions needed to protect the public.

(4-2-08)()

06. Others Required to Report Reportable Diseases. In addition to licensed physicians, reports must also be made by physician assistants, certified nurse practitioners, registered nurses, school health nurses, infection surveillance staff, public health officials, and coroners. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

030. WHERE TO REPORT REPORTABLE DISEASES AND CONDITIONS.

Subsections 030.01 through 030.09 of this rule provide where information for reporting of suspected, identified, and diagnosed diseases and conditions are to be reported. The diseases and conditions in Sections 100 through 949 of these rules are reportable to the agencies listed in Subsections 030.01 through 030.09 of this rule. (4-2-08)

01. Department of Health and Welfare, Bureau of Communicable Disease Prevention Epidemiology Program. (4-2-08)

a. Main Office Address: 450 West State Street, 4th Floor, Boise, ID 83720. (4-2-08)

b. Phone: (208) 334-5939 and FAX: (208) 332-7307. (4-2-08)

02. Health District I - Panhandle Health District. The Panhandle Health District covers the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone. (4-2-08)

a. Main Office Address: 8500 N. Atlas Road, Hayden, ID 83835. (4-2-08)

b. Phone: (208) 772-3920 and FAX: 1-866-716-2599 Toll Free. (4-2-08)

03. Health District II - Public Health Idaho North Central District. The North Central District covers the counties of Clearwater, Idaho, Latah, Lewis, and Nez Perce. (4-2-08)

a. Main Office Address: 215 10th Street, Lewiston, ID 83501. (4-2-08)

b. Phone: (208) 799-3100 and FAX: (208) 799-0349. (4-2-08)

04. Health District III - Southwest District Health. Southwest District Health covers the counties of Adams, Canyon, Gem, Owyhee, Payette, and Washington. (4-2-08)

a. Main Office Address: 13307 Miami Lane, Caldwell, ID 83607. (4-2-08)

b. Phone: (208) 455-5362 and FAX: (208) 455-5350. (4-2-08)

05. Health District IV - Central District Health Department. The Central District Health Department covers the counties of Ada, Boise, Elmore and Valley. (4-2-08)

a. Main Office Address: 707 N. Armstrong Place, Boise, ID 83704. (4-2-08)

b. Phone: (208) 327-8625 and FAX: (208) 327-7100. (4-2-08)

06. Health District V - South Central Public Health District. The South Central Public Health

District covers the counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls. (4-2-08)

- a. Main Office Address: 1020 Washington Street N., Twin Falls, ID 83301. (4-2-08)
- b. Phone: (208) 737-5929 and FAX: (208) 736-3009. (4-2-08)

07. Health District VI - Southeastern Idaho Public Health. The Southeastern Idaho Public Health District covers the counties of Bannock, Bear Lake, Bingham, Butte, Caribou, Franklin, Oneida, and Power. (4-2-08)

- a. Main Office Address: 1901 Alvin Ricken Drive, Pocatello, ID 83201. (4-2-08)
- b. Phone: (208) 233-9080 and FAX: (208) 233-1916. (4-2-08)

08. Health District VII - Eastern Idaho Public Health District. The Eastern Idaho Public Health District covers the counties of Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton. (4-2-08)

- a. Main Office Address: 1250 Hollipark Drive, Idaho Falls, ID 83401. (4-2-08)
- b. Phone: (208) 533-3152 and FAX: (208) 523-4365. (4-2-08)

09. Cancer Data Registry of Idaho (CDRI). (4-2-08)

- a. Main Office Address: 615 N. 7th Street, P.O. Box 1278, Boise, ID 83701. (4-2-08)
- b. Phone: (208) 338-5100. (4-2-08)

10. Inter-Agency Notification. The Health District must notify the Department of reportable diseases and conditions as ~~provided~~ listed in Section 050 of these rules. (4-2-08)()

a. The Department and the Health District will exchange reported information within one (1) working day on any reported case or suspected case of a reportable disease or condition when required in Sections 100 through 949 of these rules. (4-2-08)

b. The Department and the Health District will exchange reported information no later than weekly of all other cases of reportable diseases and conditions ~~as specified under each disease or condition.~~ (4-2-08)()

c. The Department will notify the Idaho Department of Agriculture of any identified or suspected source of an animal related disease when required in Sections 100 through 949 of these rules. (4-2-08)

031. -- 039. (RESERVED)

040. REPORT CONTENTS AND METHOD OF REPORTING.

01. Report Contents. Each report of a reportable disease or condition must include: (4-2-08)

- a. The identity and address of the attending licensed physician or the person reporting; (4-2-08)
- b. The diagnosed or suspected disease or condition; (4-2-08)
- c. The name, current address, telephone number, birth date, age, race, ethnicity, and sex of the individual with the disease or other identifier from whom the specimen was obtained; (4-2-08)
- d. The date of onset of the disease or the date the test results were received; and (4-2-08)
- e. In addition, laboratory directors must report the identity of the organism or other significant test result. (4-2-08)

02. How To Report. A report of a case or suspected case may be made to the Department or Health District by telephone, mail, fax, or through electronic-disease reporting systems as listed in Sections 005 and 030 of these rules. (4-2-08)

03. After Hours Notification. ~~To~~ An after hours report of a disease ~~after hours use~~ or condition may be made through the Idaho State EMS Communications ~~public health paging system~~ Center (State Comm) at (800) 632-8000. A public health official will be ~~paged immediately to assist you~~ contacted regarding the report. (4-2-08)()

041. -- 049. (RESERVED)

050. REPORTABLE OR RESTRICTABLE DISEASES, CONDITIONS AND REPORTING REQUIREMENTS.

Reportable diseases and conditions must be reported to the Department or Health District by those required under Section 020 of these rules. The table below identifies the reportable and restrictable diseases and conditions, the timeframe for reporting, and the person or facility required to report.

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS				
TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Acquired Immune Deficiency Syndrome (AIDS), (including CD-4 lymphocyte counts <200 cells/mm ³ blood or < 14%)	100	Within 3 working days	None	
Amebiasis <u>and Free-living Amebae</u>	110	Within 3 working days	DC, FS, HC	Food Service Facility
Anthrax (<i>Bacillus anthracis</i>)	120	Immediately	None	
Biotinidase Deficiency	130	Within 1 working day (in newborn screening)	None	
Botulism	140	Immediately	None	
Brucellosis (<i>Brucella</i> species)	150	Within 1 working day	None	
Campylobacteriosis (<i>Campylobacter</i> species)	160	Within 3 working days	DC, FS, HC	Food Service Facility
Cancer	170	Report to Cancer Data Registry of Idaho within 180 days of diagnosis or recurrence (including suspected cases)	None	
Chancroid	180	Within 3 working days	None	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
<i>Chlamydia trachomatis</i> Infections	190	Within 3 working days	HC - ophthalmica neonatorum only	
Cholera (<i>Vibrio cholerae</i>)	200	Within 1 working day	FS, HC, DC	Food Service Facility
Congenital Hypothyroidism	210	Within 1 working day (in newborn screening)	None	
Conjunctivitis	080, 090	No reporting required	DC, S	
Cryptosporidiosis (<i>Cryptosporidium</i> species)	220	Within 3 working days	FS, HC, DC	
Cutaneous Fungal Infections	080, 090	No reporting required	DC, S	
Diarrhea (until common communicable diseases have been ruled out)	085	No reporting required	FS	
Diphtheria (<i>Corynebacterium diphtheriae</i>)	230	Immediately	DC, FS, HC, S	School
<u>Echinococcosis</u>	<u>235</u>	<u>Within 3 working days</u>	<u>None</u>	
Encephalitis, Viral or Aseptic	240	Within 3 working days	None	
<i>Escherichia coli</i> O157:H7 and other Shiga-Toxin Producing <i>E. coli</i> (STEC)	250	Within 1 working day	DC, FS, HC	Food Service Facility School
Extraordinary Occurrence of Illness, including Clusters	260	Within 1 working day	None	
Fever	085	No reporting required	FS	
Food Poisoning, Foodborne Illness, and Waterborne Illnesses	270	Within 1 working day	None	
Galactosemia	280	Within 1 working day (in newborn screening)	None	
Giardiasis (<i>Giardia lamblia</i>)	290	Within 3 working days	DC, FS, HC	Food Service Facility
<i>Haemophilus influenzae</i> Invasive Disease	300	Within 1 working day	DC, S	School
Hantavirus Pulmonary Syndrome	310	Within 1 working day	None	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Hemolytic-Uremic Syndrome (HUS) or Thrombotic thrombocytopenic purpura-HUS (TTP-HUS)	320	Within 1 working day	None	
Hepatitis A	330	Within 1 working day	DC, FS, HC	Food Service Facility
Hepatitis B	340	Within 1 working day	None	
Hepatitis C	350	Within 3 working days	None	
Human Immunodeficiency Virus (HIV)	360	Within 3 working days	None	
Human T-Lymphotropic Virus	370	Within 3 working days	None	
Jaundice	085	No reporting required	FS	
Lead Levels of Ten Micrograms or more per Deciliter of Whole Blood (ug/dL) Poisoning	380	Within 3 working days	None	
Legionellosis	390	Within 3 working days	None	
Leprosy (Hansen's Disease)	400	Within 3 working days	None	
Leptospirosis	410	Within 3 working days	None	
Listeriosis (<i>Listeria</i> species)	420	Within 3 working days	None	
Lyme Disease	430	Within 3 working days	None	
Malaria (<i>Plasmodium</i> species)	440	Within 3 working days	None	
Maple Syrup Urine Disease	450	Within 1 working day (in newborn screening)	None	
Measles (Rubeola)	460	Within 1 working day	DC, HC, S	School
Meningitis, Viral or Aseptic	470	Within 3 working days	None	
Methicillin-resistant <i>Staphylococcus aureus</i> (MRSA) Invasive Disease	475	Within 3 working days	None	Note: Only Laboratory Directors need to report.
Methicillin-resistant <i>Staphylococcus aureus</i> (MRSA) Non-Invasive Disease	475, 080, 090	No reporting required	DC, FS, HC, S	
Mumps	480	Within 3 working days	DC, S, HC	School
Myocarditis, Viral	490	Within 3 working days	None	

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
<i>Neisseria gonorrhoeae</i> Infections	500	Within 3 working days	None HC- ophthalmia neonatorum only	
<i>Neisseria meningitidis</i> Invasive Disease	510	Within 1 working day	DC, HC, S	School
Norovirus	520	Within 1 working day	DC, FS, HC, S	
Novel Influenza A Virus	522	Within 1 working day	DC, FS, HC, S	
Pediculosis	080, 090	No reporting required	DC, S	
Pertussis (<i>Bordetella pertussis</i>)	530	Within 1 working day	DC, HC, S	School
Phenylketonuria (PKU)	540	Within 1 working day (in newborn screening)	None	
Plague (<i>Yersinia pestis</i>)	550	Immediately	HC, S	School
Pneumococcal Invasive Disease in Children less than Eighteen (18) Years of Age (<i>Streptococcus pneumoniae</i>)	560	Within 3 working days	DC, S	School
<i>Pneumocystis</i> Pneumonia (PCP)	570	Within 3 working days	None	
Poliomyelitis	580	Within 1 working day	DC	School
Psittacosis	590	Within 3 working days	None	
Q Fever	600	Within 1 working day	None	
Rabies - Human, Animal, and Post-Exposure Prophylaxis (rPEP)	610	Immediately (human), Within 1 working day (animal or rPEP)	None	
Relapsing Fever, Tick-borne and Louse-borne	620	Within 3 working days	None	
Respiratory Syncytial Virus (RSV)	630	Within 1 working day	None	Note: Only Laboratory Directors need to report.
Reye Syndrome	640	Within 3 working days	None	
Rocky Mountain Spotted Fever	650	Within 3 working days	None	
Rubella (including Congenital Rubella Syndrome)	660	Within 1 working day	DC, HC, S	School

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service Facility HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Salmonellosis (including Typhoid Fever) (<i>Salmonella</i> species)	670	Within 1 working day	DC, FS, HC	Food Service Facility
Scabies	080, 090	No reporting required	DC, S	
Severe Acute Respiratory Syndrome (SARS)	680	Within 1 working day	DC, S	School
Severe Reaction to Any Immunization	690	Within 1 working day	None	
Shigellosis (<i>Shigella</i> species)	700	Within 1 working day	DC, FS, HC, S	Food Service Facility School
Smallpox	710	Immediately	DC, HC, S	School
Sore Throat with Fever	085	No reporting required	FS	
Staphylococcal Infections other than MRSA	080, 085, 090	No reporting required	DC, FS, S	
Streptococcal Pharyngeal Infections	080, 090	No reporting required	DC, S	
<i>Streptococcus pyogenes</i> (Group A Strep), Invasive or Resulting in Rheumatic Fever	720	Within 3 working days	DC, HC, S	School
Syphilis	730	Within 3 working days	None	
Taeniasis	085	No reporting required	FS	
Tetanus	740	Within 3 working days	None	
Toxic Shock Syndrome	750	Within 3 working days	None	
Transmissible Spongiform Encephalopathies (TSE), including Creutzfeldt-Jakob Disease (CJD) and Variant CJD (vCJD)	760	Within 3 working days	None	
Trichinosis	770	Within 3 working days	None	
Tuberculosis (<i>Mycobacterium tuberculosis</i>)	780	Within 3 working days	DC, FS, HC, S	School Food Service Facility

REQUIREMENTS FOR REPORTABLE AND RESTRICTABLE DISEASES AND CONDITIONS TABLE 050				
Reportable or Restrictable Diseases and Conditions	Section in Rule	Reporting Timeframe	Restrictable for DC = Daycare FS = Food Service HC = Health Care Facility S = School	Which Facilities Must Report in Addition to Health Care Providers, Laboratory Directors, & Hospital Administrators (Section 020)
Tularemia (<i>Francisella tularensis</i>)	790	Immediately; Identification of <i>Francisella tularensis</i> - within 1 working day	None	
Uncovered and Open or Draining Skin Lesions with Pus, such as a Boil or Open Wound	085	No reporting required	FS	
Varicella (chickenpox)	080, 090	No reporting required	DC, S	
Vomiting (until noninfectious cause is identified)	085	No reporting required	FS	
West Nile Virus (WNV)	800	Within 3 working days	None	
Yersiniosis (<i>Yersinia enterocolitica</i> and <i>Yersinia pseudotuberculosis</i>)	810	Within 3 working days; Identification of <i>Yersinia pestis</i> - immediately	FS	

(3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

080. DAYCARE FACILITY - REPORTING AND CONTROL MEASURES.

01. Readily Transmissible Diseases. Daycare reportable and restrictable diseases are those diseases that are readily transmissible among children and staff in daycare facilities as listed under Section 050 of these rules. (4-2-08)

02. Restrictable Disease --~~Employee Work~~. A person who is diagnosed to have a daycare restrictable disease must not work in any occupation in which there is direct contact with children in a daycare facility, as long as the disease is in a communicable form. (4-2-08)()

03. Restrictable Disease --~~Child Attendance~~. A child who is diagnosed to have a daycare restrictable disease must not attend a daycare facility as long as the disease is in a communicable form. This restriction may be removed by the written certification of a licensed physician, public health nurse or school nurse that the person's disease is no longer communicable. (4-2-08)()

04. Prevention of the Transmission of Disease. When satisfactory measures have been taken to prevent the transmission of disease, the affected child or employee may continue to attend or to work in a daycare facility if approval is obtained from the Department or Health District. (4-2-08)

081. -- 084. (RESERVED)

085. FOOD SERVICE FACILITY - REPORTING AND CONTROL MEASURES.

01. Food or Beverage Transmitted Disease in a Communicable Form. Under Section 050 of these rules, a person who is ~~diagnosed~~ **determined** to have one (1) or more of the diseases or conditions listed as restrictable for food establishments must not work as a food employee as long as the disease is in a communicable form. (4-2-08)()

02. Food Employee Health Examination. The Division of Public Health Administrator may require a food employee to submit to an examination to determine the presence of a disease that can be transmitted by means of food when there is reasonable cause to believe the food employee is afflicted with a disease listed in Section 050 of these rules as restrictable for food establishments and that disease is in a communicable form. (4-2-08)

03. Notification of Disease in a Communicable Form. If the person in charge of an eating or drinking establishment has reason to suspect that any employee has a disease listed in Section 050 of these rules as restrictable for food establishments, and that disease is in a communicable form, the person in charge must immediately notify the Department or Health District and obtain guidance on proper actions needed to protect the public. (4-2-08)

086. -- 089. (RESERVED)

090. SCHOOL - REPORTING AND CONTROL MEASURES.

01. Restrictable Diseases. School reportable and restrictable diseases are those diseases that are readily transmissible among students and staff in schools as listed under Section 050 of these rules. (4-2-08)

02. Restrictions - Work. Any person who is diagnosed to have a school restrictable disease must not work in any occupation that involves direct contact with students in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

03. Restrictions - Attendance. Any person who is diagnosed with or reasonably suspected to have a school restrictable disease must not attend a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

04. Determination Disease Is No Longer Communicable. A licensed physician, public health nurse, school nurse or other person designated by the Department or Health District may determine when a person with a school restrictable disease ~~can~~ **is** no longer ~~transmit the disease to others~~ **communicable**. (4-2-08)()

05. School Closure. A school administrator must report the closure of any public, parochial, charter, or private school within one (1) working day when, in his opinion, such closing is related to a communicable disease. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

110. AMEBIASIS AND FREE-LIVING AMEBAE.

01. Reporting Requirements. Each case of amebiasis or infection with free-living amebae (*Acanthamoeba spp.*, *Balamuthia mandrillaris*, or *Naegleria fowleri*) must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)()

02. Investigation. Each reported case of infection with free-living amebae must be investigated to determine the source of infection. Each reported case of amebiasis must be investigated to determine whether the person with amebiasis is employed as a food employee, provides personal care at a health care or daycare facility, or is a child attending a daycare facility. (4-2-08)()

03. Restrictions - Daycare Facility. A person excreting *Entamoeba histolytica* must not attend a daycare facility while fecally incontinent and must not work in any occupation in which they provide personal care to

children in a daycare facility, unless an exemption is made by the Department or Health District. (4-2-08)

a. This restriction may be withdrawn if an effective therapeutic regimen is completed; or (4-2-08)

b. At least two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart fail to show *Entamoeba histolytica* upon testing by a licensed laboratory. ~~(4-2-08)~~()

04. Restrictions - Food Service Facility. A symptomatic person excreting *Entamoeba histolytica* is restricted from working as a food employee. (4-2-08)

a. This restriction may be withdrawn if an effective therapeutic regimen is completed; or (4-2-08)

b. At least two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart fail to show *Entamoeba histolytica* upon testing by a licensed laboratory. ~~(4-2-08)~~()

05. Restrictions - Health Care Facility. A person excreting *Entamoeba histolytica* must not work in any occupation in which they provide personal care to persons confined to a health care facility, unless an exemption is made by the Department or Health District. (4-2-08)

a. This restriction may be withdrawn if an effective therapeutic regimen is completed; or (4-2-08)

b. At least two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart fail to show *Entamoeba histolytica* upon testing by a licensed laboratory. ~~(4-2-08)~~()

06. Restrictions - Household Contacts. A member of the household in which there is a case of amebiasis may not work in any occupations in Subsections 110.03 through 110.05 of this rule, unless approved by the Department or Health District. The household member must be asymptomatic and have at least one (1) approved fecal specimen found to be negative for ova and parasites on examination by a licensed laboratory prior to being approved for work. (4-2-08)

111. -- 119. (RESERVED)

120. ANTHRAX.

01. Reporting Requirements. Each case or suspected case of anthrax in humans must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

02. Investigation. Each reported case of anthrax must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of infection. ~~(4-2-08)~~()

03. Handling of Report. The Department and Health District will exchange reported information within one (1) working day of any reported case of anthrax. The Department will notify the Idaho Department of Agriculture of any identified source or suspected source of anthrax. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

160. CAMPYLOBACTERIOSIS.

01. Reporting Requirements. Each case of campylobacteriosis must be reported to Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case of campylobacteriosis must be investigated to ~~determine the extent of the~~ confirm the diagnosis, identify clusters or outbreaks of the infection and identify the source of the disease. ~~(4-2-08)~~()

03. Restrictions - Daycare Facility. A person excreting *Campylobacter* must not provide personal care in a daycare and an fecally incontinent person excreting *Campylobacter* must not attend a daycare facility unless an exemption is obtained from the Department or Health District. Before returning to work or daycare, the person must provide at least two (2) successive approved fecal specimens, collected at least twenty-four (24) hours apart, that fail to show *Campylobacter* upon testing by a licensed laboratory. (4-2-08)

04. Restrictions - Food Service Facility. A symptomatic person excreting *Campylobacter* is restricted from working as a food employee. (4-2-08)

05. Restrictions - Health Care Facility. A person excreting *Campylobacter* must not provide personal care to persons in a health care facility unless an exemption is obtained from the Department or Health District. Before returning to work, the person must provide at least two (2) successive approved fecal specimens, collected at least twenty-four (24) hours apart, that fail to show *Campylobacter* upon testing by a licensed laboratory. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

180. CHANCROID.

01. Reporting Requirements. Each case of chancroid must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation and Notification of Contacts. Each reported case of chancroid must be investigated to determine the source and extent of contact follow-up that is required. Each person diagnosed with chancroid is required to inform ~~his~~ all sexual contacts that they have been exposed to a sexually transmitted infection, or to provide specific information to health officials in order to locate these contacts. The contacts must be notified of the disease in order to be examined and treated according to Section 39-605, Idaho Code. (4-2-08)()

181. -- 189. (RESERVED)

190. CHLAMYDIA TRACHOMATIS.

01. Reporting Requirements. Each case of *Chlamydia trachomatis* infection must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case of *Chlamydia trachomatis* pelvic inflammatory disease ~~must~~ may be investigated to determine the extent of contact follow-up that is required. (4-2-08)()

03. Prophylaxis of Newborns. Prophylaxis against *Chlamydia trachomatis* ophthalmia neonatorum is required in IDAPA 16.02.12, "Rules Governing Procedures and Testing To Be Performed on Newborn Infants." (4-2-08)

04. Restrictions - Health Care Facility. Cases of *Chlamydia trachomatis* ophthalmia neonatorum in a health care facility will be placed under contact isolations. (4-2-08)

191. -- 199. (RESERVED)

200. CHOLERA.

01. Reporting Requirements. Each case or suspected case of cholera must be reported to the Department or Health District within one (1) working day. (4-2-08)

02. Investigation. Each reported case of cholera must be investigated to confirm the diagnosis, determine the extent of the identify clusters or outbreaks of the infection, and identify contacts, carriers, and the source of the infection. (4-2-08)()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any reported case of cholera. (4-2-08)

04. Restrictions - Daycare Facility. A person excreting *Vibrio cholerae* must not attend a daycare facility while fecally incontinent and must not work in any occupation that provides personal care to children in a daycare facility while the disease is in a communicable form, unless an exemption is obtained from the Department or Health District. (4-2-08)

05. Restrictions - Food Service Facility. A symptomatic person excreting *Vibrio cholerae* ~~is restricted from working as a food employee~~ must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)()

06. Restrictions - Health Care Facility. A person excreting *Vibrio cholerae* must not work in any occupation that provides personal care to persons confined in a health care or residential facility while in a communicable form, unless an exemption is obtained from the Department or Health District. A person in a health care facility who has cholera must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

07. Restrictions - Household Contacts. A member of the household in which there is a case of cholera may not work in any occupations listed in Subsections 200.04 through 200.06 of this rule, unless approved by the Department or Health District. The household member must be asymptomatic and provide at least one (1) approved fecal specimen found to be negative on a culture by a licensed laboratory prior to being approved for work. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

220. CRYPTOSPORIDIOSIS.

01. Reporting Requirements. Each case of cryptosporidiosis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case must be investigated to ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. (4-2-08)()

03. Restrictions - Daycare Facility. A fecally incontinent person excreting *Cryptosporidium* must not attend a daycare facility. A person excreting *Cryptosporidium* must not provide personal care in a daycare facility, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn when: (3-29-10)

a. At least two (2) approved successive fecal specimens collected at least twenty-four (24) hours apart fail to show *Cryptosporidium* upon testing by a licensed laboratory; or (4-2-08)()

b. Diarrhea has ceased for twenty-four (24) hours. (4-2-08)

04. Restrictions - Food Service Facility. A symptomatic person excreting *Cryptosporidium* is restricted from working as a food employee. (3-29-10)

05. Restrictions - Health Care Facility. A person excreting *Cryptosporidium* must not provide personal care in a custodial institution, or health care facility while fecally incontinent, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn when: (3-29-10)

a. At least two (2) approved successive fecal specimens collected at least twenty-four (24) hours apart fail to show *Cryptosporidium* upon testing by a licensed laboratory; or (4-2-08)()

b. Diarrhea has ceased for twenty-four (24) hours. (4-2-08)

221. -- 229. (RESERVED)

230. DIPHtherIA.

01. **Reporting Requirements.** Each case or suspected case of diphtheria must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

02. **Investigation and Response.** Each reported case of diphtheria must be investigated to determine if the illness is caused by a toxigenic strain of *Corynebacterium diphtheriae*, ~~the extent of the~~ identify clusters or outbreaks of the infection, and identify contacts, carriers, and the source of the infection. Contacts of a person with toxigenic diphtheria will be offered immunization against diphtheria. (4-2-08)()

03. **Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case or suspected case of diphtheria. (4-2-08)

04. Restrictions - Daycare Facility. A person diagnosed with diphtheria must be managed under Section 080 of these rules. ()

~~04~~5. **Restrictions - Health Care Facility.** (4-2-08)

a. A person with oropharyngeal toxigenic diphtheria in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. The Department or Health District may withdraw this isolation requirement after two (2) cultures of the nose and two (2) cultures from the throat, taken at least twenty-four (24) hours apart and at least twenty-four (24) hours after the completion of antibiotic therapy, fail to show toxigenic *Corynebacterium diphtheriae* upon testing by a licensed laboratory. (4-2-08)

b. A person with cutaneous toxigenic diphtheria must be placed under contact precautions. The Department or Health District may withdraw these precautions after two (2) cultures from the wound fail to show toxigenic *Corynebacterium diphtheriae* upon testing by a licensed laboratory. (4-2-08)

~~05~~6. **Restrictions - Contacts.** Contacts of a person with toxigenic diphtheria are restricted from working as food employees, working in health care facilities, or from attending or working in daycare facilities or schools until they are determined not to be carriers by means of a nasopharyngeal culture or culture of other site suspected to be infected. These restrictions may be withdrawn by the Department or Health District. (4-2-08)

231. -- 2304. (RESERVED)

235. ECHINOCOCCOSIS.

01. Reporting Requirements. Each case of echinococcosis must be reported to the Department or Health District within three (3) working days of identification. ()

02. Investigation. Each reported case of echinococcosis must be investigated to confirm the diagnosis and to identify possible sources of the infection. ()

236. -- 239. (RESERVED)

240. ENCEPHALITIS, VIRAL OR ASEPTIC.

01. **Reporting Requirements.** Each case of viral or aseptic encephalitis, including meningoencephalitis, must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)()

02. **Investigation.** Each reported case of viral or aseptic encephalitis ~~and meningitis~~ meningoencephalitis must be investigated to confirm the diagnosis, identify clusters or outbreaks of the infection, and identify the agent or source of the infection. (4-2-08)()

241. -- 249. (RESERVED)

250. ESCHERICHIA COLI O157:H7 AND OTHER SHIGA-TOXIN PRODUCING E. COLI (STEC).

01. Reporting Requirements. Each case or suspected case of *Escherichia coli* O157:H7 or other Shiga-toxin producing *E. coli* (STEC) must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case must be investigated to determine if the person is employed as a food employee, provides personal care at a health care or daycare facility, or is a child attending a daycare facility. The investigation ~~determines the extent of the~~ identifies clusters or outbreaks of the infection, and ~~identifies~~ the most likely source of the infection. (4-2-08)()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any reported case of *E. coli* O157:H7 or other Shiga-toxin producing *E. coli* (STEC). (4-2-08)

04. Restrictions - Daycare Facility. A person who is excreting *E. coli* O157:H7 or other STEC must not attend daycare facilities while fecally incontinent or provide personal care to children in a daycare facility while the disease is present in a communicable form without the approval of the Department or Health District. Before returning to work, the person must provide two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart, that fail to show *E. coli* O157:H7 or other STEC ~~are sufficient to remove this restriction.~~ (4-2-08)()

05. Restrictions - Food Service Facility. A person diagnosed to have *E. coli* O157:H7 or other STEC which can be transmitted from one (1) person to another through food or beverage must not work as a food employee as long as the disease is in a communicable form. Food employees must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

06. Restrictions - Health Care Facility. A person who is excreting *E. coli* O157:H7 or other STEC must not provide personal care to persons in a health care facility while the disease is present in a communicable form without the approval of the Department or Health District. Before returning to work, the person must provide two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart, that fail to show *E. coli* O157:H7 or other STEC ~~are sufficient to remove this restriction.~~ (4-2-08)()

251. -- 259. (RESERVED)

260. EXTRAORDINARY OCCURRENCE OF ILLNESS, INCLUDING CLUSTERS.

01. Reporting Requirements. Cases, suspected cases, and clusters of extraordinary or unusual illness must be reported to the Department or Health District within one (1) working day by the diagnosing person. (4-2-08)

a. ~~Extraordinary or u~~Unusual outbreaks include illnesses which may be a significant risk to the public, may involve a large number of persons, or are a newly described entity. (4-2-08)()

b. Even in the absence of a defined etiologic agent or toxic substance, clusters of unexplained acute illness and early-stage disease symptoms must be reported to the Department or Health District within one (1) working day and investigated. (4-2-08)

02. Investigation. Each reported case of extraordinary occurrence of illness, including clusters, must be investigated to confirm the diagnosis, determine the extent of the cluster or outbreak, identify the source of infection or exposure, and determine whether there is a risk to the public warranting intervention by a public health agency. Evaluation and control measures will be undertaken in consultation with the Department and other appropriate agencies. The Department may elect to investigate by conducting special studies as outlined in Section 070 of these rules. (4-2-08)()

03. **Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day on any reported case or suspected case. (4-2-08)

261. -- 269. (RESERVED)

270. **FOOD POISONING, FOODBORNE ILLNESS, AND WATERBORNE ILLNESS.**

01. **Reporting Requirements.** Each case, ~~or~~ suspected case, or outbreak of food poisoning, foodborne illness, or waterborne illness must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)()

02. **Investigation.** Each reported case or outbreak of food poisoning, foodborne illness, or waterborne illness must be investigated to confirm the diagnosis, determine the extent of ~~the outbreak~~ transmission, identify the source, and determine if actions need to be taken to prevent additional cases. (4-2-08)()

03. **Handling of Report.** The Department and the Health District will exchange reported information within one (1) working day of any reported case or suspected case. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

290. **GIARDIASIS.**

01. **Reporting Requirements.** Each case of giardiasis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. **Investigation.** Each reported case of giardiasis must be investigated to determine if the person is employed as a food employee, provides personal care at a health care or daycare facility, or is a child attending a daycare facility. The investigation ~~determines the water sources used by the person with giardiasis, the extent of the~~ identifies clusters or outbreaks of the infection, and the most likely source of the infection. (4-2-08)()

03. **Restrictions - Daycare Facility.** A person with diarrhea who is excreting *Giardia lamblia* must not attend daycare while fecally incontinent or provide personal care to children in a daycare facility while the disease is present in a communicable form or until therapy is completed. An asymptomatic person may provide these services or attend daycare with specific approval of the Department or Health District. (4-2-08)

04. **Restrictions - Food Service Facility.** A symptomatic person who is excreting *Giardia lamblia* ~~is restricted from working as a food employee~~ must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)()

05. **Restrictions - Health Care Facility.** A person with diarrhea who is excreting *Giardia lamblia* must not provide personal care to persons in a health care facility while the disease is present in a communicable form or until therapy is completed. An asymptomatic person may provide these services with specific approval of the Department or Health District. (4-2-08)

291. -- 299. (RESERVED)

300. **HAEMOPHILUS INFLUENZAE INVASIVE DISEASE.**

01. **Reporting Requirements.** Each case or suspected case of *Haemophilus influenzae* invasive disease, including, but not limited to, meningitis, septicemia, bacteremia, epiglottitis, pneumonia, osteomyelitis and cellulitis, must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)()

02. **Investigation.** Each reported case of *Haemophilus influenzae* invasive disease must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify contacts,

and determine the need for antimicrobial prophylaxis of close contacts. (4-2-08)()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any reported case of *Haemophilus influenzae* invasive disease. (4-2-08)

04. Restrictions - Daycare Facility. A person who is diagnosed with ~~a~~ invasive disease caused by invasive *Haemophilus influenzae* must not work in an occupation providing personal care to children, or attend a daycare facility as long as the disease is in a communicable form. (4-2-08)()

05. Restrictions - School. A person who is diagnosed with ~~a~~ invasive disease caused by invasive *Haemophilus influenzae* must not work in any occupation where there is direct contact with students or attend a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

380. LEAD POISONING.

01. Reporting Requirements. Each case of lead poisoning ~~determined by symptoms or a blood lead level of ten (10) micrograms or more per deciliter (10 ug/dL) of whole blood,~~ must be reported to the Department or Health District within three (3) working days of the identification of the case: when determined by symptoms or a blood level of: (4-2-08)()

a. Ten (10) micrograms or more per deciliter (10 ug/dL) of whole blood in adults eighteen (18) years and older; or ()

b. Five (5) micrograms or more per deciliter (5 ug/dL) of whole blood in children under eighteen (18) years of age. ()

02. Investigation. Each reported case of lead poisoning or excess lead exposure ~~must~~ may be investigated to confirm blood lead levels, determine the source, and whether actions need to be taken to prevent additional cases. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

460. MEASLES (RUBEOLA).

01. Reporting Requirements. Each case or suspected case of measles must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of measles must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify the source of the infection, and to identify susceptible contacts. (4-2-08)()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any reported case of measles. (4-2-08)

04. Restrictions - Daycare Facility and School. (4-2-08)

a. A child diagnosed with measles must not attend a daycare facility or school as long as the disease is in a communicable form. (4-2-08)

b. In the event of a case of measles in a daycare or school, susceptible children must be excluded until adequate immunization is obtained, or the threat of further spread of the disease is contained, as provided in Sections 33-512(7) and 39-1118, Idaho Code. (4-2-08)

c. A person who is diagnosed as having measles must not work in any occupation in which there is direct contact with children, as long as the disease is in a communicable form. (4-2-08)

05. Restrictions - Health Care Facility. A person diagnosed with measles in a health care facility must be managed under the “Guideline for Isolation Precautions in Hospitals,” as incorporated by reference in Section 004 of these rules. (4-2-08)

461. -- 469. (RESERVED)

470. MENINGITIS, VIRAL OR ASEPTIC.

01. Reporting Requirements. Each case of viral or aseptic meningitis must be reported to the Department or Health District within three (3) working days of identification. ~~(4-2-08)~~()

02. Investigation. Each reported case of viral or aseptic meningitis must be investigated to confirm the diagnosis, identify clusters or outbreaks of the infection, and identify the agent or source of the infection. ()

(BREAK IN CONTINUITY OF SECTIONS)

480. MUMPS.

01. Reporting Requirements. Each case of mumps must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case of mumps must be investigated to ~~determine the immunization history or if the cause for an~~ confirm the diagnosis, identify clusters or outbreak ~~is unusual~~ of the infection, identify the source of the infection, and to identify susceptible contacts. ~~(4-2-08)~~()

03. Restrictions. A person with mumps must be restricted from daycare, school, or work for five (5) days after the onset of parotid swelling. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

500. NEISSERIA GONORRHOEAE.

01. Reporting Requirements. Each case of *Neisseria gonorrhoeae* infection must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. A person diagnosed with urethral, cervical, oropharyngeal, or rectal gonorrhea is required to inform ~~his~~ all sexual contacts or provide sufficient information to health officials in order to locate these contacts. The contacts must be advised of their exposure to a sexually transmitted infection and informed they should seek examination and treatment. ~~(4-2-08)~~()

03. Prophylaxis of Newborns. Prophylaxis against gonococcal ophthalmia neonatorum is described in IDAPA 16.02.12, “Rules Governing Procedures and Testing To Be Performed on Newborn Infants.” (4-2-08)

04. Isolation - Health Care Facility. A person with gonococcal ophthalmia neonatorum in a health care facility must be managed under the “Guideline for Isolation Precautions in Hospitals,” as incorporated in Section 004 of these rules. (4-2-08)

501. -- 509. (RESERVED)

510. NEISSERIA MENINGITIDIS INVASIVE DISEASE.

01. Reporting Requirements. Each case or suspected case of *Neisseria meningitidis* invasive disease, including meningitis and septicemia, must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of *Neisseria meningitidis* invasive disease must be investigated to confirm the diagnosis, ~~to determine the extent of the~~ identify clusters or outbreaks of the infection, identify contacts, and determine the need for antimicrobial prophylaxis or immunization of close contacts. ~~(4-2-08)~~()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any reported case of *Neisseria meningitidis* invasive disease. (4-2-08)

04. Restrictions - Daycare Facility. A person who is diagnosed with a disease caused by *Neisseria meningitidis* must not provide personal care to children, or attend a daycare facility, as long as the disease is present in a communicable form. (4-2-08)

05. Restrictions - Health Care Facility. A person with *Neisseria meningitidis* in a health care facility or residential care facility must be placed under respiratory isolation until twenty-four (24) hours after initiation of effective therapy. (4-2-08)

06. Restrictions - School. A person who is diagnosed with a disease caused by *Neisseria meningitidis* must not work in any occupation that involves direct contact with students, or attend a private, parochial, charter, or public school as long as the disease is present in a communicable form. (4-2-08)

511. -- 519. (RESERVED)

520. NOROVIRUS.

01. Reporting Requirements. Each case or suspected case of norovirus must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of norovirus must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. ~~(4-2-08)~~()

03. Restrictions - Daycare Facility. A person excreting norovirus must not attend or provide personal care in a daycare while symptomatic, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn once asymptomatic, unless hygienic practices are insufficient. (4-2-08)

04. Exclusions - Food Service Facility. A person suspected of infection with, or diagnosed with, norovirus is excluded from working as a food employee while symptomatic, unless an exemption is made by the Department or Health District. This exclusion will be withdrawn once the person is asymptomatic, unless hygienic practices are insufficient. ~~(4-2-08)~~()

05. Restrictions - Health Care Facility. A person excreting norovirus must not provide personal care in a health care facility, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn once asymptomatic, unless hygienic practices are insufficient. (4-2-08)

06. Restrictions - School. A person excreting norovirus must not attend or work in a private, parochial, charter, or public school while symptomatic, unless an exemption is obtained from the Department or Health District. This restriction will be withdrawn once asymptomatic, unless hygienic practices are insufficient. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

530. PERTUSSIS.

01. Reporting Requirements. Each case or suspected case of pertussis must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of pertussis must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify susceptible contacts, and identify the source of the infection. (4-2-08)()

03. Restrictions - Daycare Facility. A person who is diagnosed with pertussis must not work in any occupation in which there is direct contact with children, or attend a daycare facility, as long as the disease is in a communicable form. (4-2-08)

04. Restrictions - Health Care Facility. A person who is diagnosed with pertussis must not work in any occupation in which there is direct contact with other persons in a health care facility as long as the disease is in a communicable form. (4-2-08)

05. Restrictions - School. A person diagnosed with pertussis must not attend or work in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

550. PLAGUE.

01. Reporting Requirements. Each case or suspected case of plague must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

02. Investigation. Each reported case of plague must be investigated to confirm the diagnosis, determine the source, ~~the extent of the~~ identify clusters or outbreaks of the infection, and whether there has been person-to-person transmission. (4-2-08)()

03. Handling of Report. Each case of plague reported to the Department is reported to the Idaho Department of Agriculture if animals are involved. (4-2-08)

04. Restrictions - Health Care Facility. (4-2-08)

a. A person with or suspected of having pneumonic plague in a health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

b. A person with or suspected of having bubonic plague in health care facility must be managed under the "Guideline for Isolation Precautions in Hospitals," as incorporated in Section 004 of these rules. (4-2-08)

05. Prophylaxis of Contacts. Household members and face-to-face contacts of a person with pneumonic plague must be placed on chemoprophylaxis and placed under surveillance for seven (7) days. A person who refuses chemoprophylaxis must be maintained under droplet precautions with careful surveillance for seven (7) days. (4-2-08)

551. -- 559. (RESERVED)

560. PNEUMOCOCCAL INVASIVE DISEASE IN CHILDREN LESS THAN EIGHTEEN YEARS OF AGE.

01. Reporting Requirements. Each case of pneumococcal invasive disease in children under eighteen (18) years of age including, but not limited to, meningitis, septicemia, and bacteremia, ~~and pneumonia~~, must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)()

02. Investigation. Each reported case of pneumococcal invasive disease in children must be

investigated to confirm the diagnosis and determine relevant vaccine history. (4-2-08)

03. Restrictions - Daycare Facility. A person who is diagnosed with pneumococcal invasive disease must not attend daycare or work in any occupation in which there is direct contact with children in a daycare facility as long as the disease is in a communicable form. (4-2-08)

04. Restrictions - School. A person diagnosed with pneumococcal invasive disease must not attend or work in any occupation in which there is direct contact with children in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

580. POLIOMYELITIS.

01. Reporting Requirements. Each case or suspected case of poliomyelitis infection must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of poliomyelitis infection must be investigated to confirm the diagnosis, to determine whether the case is polio vaccine associated or wild virus associated, ~~to determine the extent of the~~ identify clusters or outbreaks of the infection, whether there has been person-to-person transmission, and to identify susceptible contacts, carriers, and source of the infection. (4-2-08)()

03. Immunization of Personal Contacts. The immunization status of personal contacts is determined and susceptible contacts are offered immunization. (4-2-08)

581. -- 589. (RESERVED)

590. PSITTACOSIS.

01. Reporting Requirements. Each case of psittacosis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify possible sources of the infection. (4-2-08)()

03. Handling of Report. Any identified sources or suspected sources of infection must be reported to the Department which will notify the Idaho Department of Agriculture if birds or other animals are involved. (4-2-08)

591. -- 599. (RESERVED)

600. Q FEVER.

01. Reporting Requirements. Each case or suspected case of Q fever must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of Q fever must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. (4-2-08)()

03. Handling of Report. Any identified or suspected sources of infection must be reported to the Department which will notify the Idaho Department of Agriculture if animals are involved. (4-2-08)

601. -- 609. (RESERVED)

610. RABIES - HUMAN, ANIMAL, AND POST-EXPOSURE PROPHYLAXIS (rPEP).

01. Reporting Requirements. (4-2-08)

a. Each case or suspected case of rabies in humans must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

b. Each case of rabies in animals must be reported to the Department or Health District within one (1) working day of identification. Each case of rabies in animals must also be reported to the Department of Agriculture as required in IDAPA 02.04.03, "Rules Governing Animal Industries." (3-29-10)

c. Each instance of rabies post-exposure prophylaxis (rPEP) series initiation must be reported to the Department or Health District within one (1) working day. (4-2-08)

02. Investigation. (4-2-08)

a. Each reported case or suspected case of rabies in humans must be investigated to confirm the diagnosis, identify the source and other persons or animals that may have been exposed to the source, and identify persons who may need to undergo rPEP. (3-29-10)

b. Each suspected or confirmed case of rabies in animals will be investigated to determine if potential human or animal exposure has occurred and identify persons who may need to undergo rPEP. (3-29-10)

c. Each reported rPEP series initiation must be investigated to determine if additional individuals require rPEP and identify the source of possible rabies exposure. (3-29-10)

03. Handling of Report. The Health District must notify the Department ~~and the Idaho Department of Agriculture~~ within one (1) working day of each reported case of this disease. (~~4-2-08~~)()

04. Management of Exposure to Rabies. All exposures to a suspected or confirmed rabid animal must be managed under the guidelines in the "Compendium of Animal Rabies Control, ~~2008~~ 2011," incorporated by reference in Section 004 of these rules. In the event that a human or animal case of rabies occurs, any designated representative of the Department, Health District, or Idaho Department of Agriculture, will establish such isolation and quarantine of animals involved as deemed necessary to protect the public health. (~~3-29-10~~)()

a. The handling of a rabies-susceptible animal that has bitten a person must be as follows: (4-2-08)

i. Any livestock which has bitten a person must be managed by the Idaho Department of Agriculture. (4-2-08)

ii. Any healthy domestic dog, cat, or ferret that has bitten a person must be observed for ten (10) days following the bite under the supervision of a licensed veterinarian or other person designated by the Idaho Department of Agriculture, Health District, or the Department. Such observation must be within an enclosure or with restraints deemed adequate to prevent contact with any member of the public or other animals. (4-2-08)

iii. It is the animal owner's responsibility to carry out the quarantine of the biting animal and to follow instructions provided for the quarantine of the animal. (4-2-08)

iv. Any domestic dog, cat, or ferret that has not been vaccinated against rabies by a licensed veterinarian and can not be quarantined, must be destroyed by a means other than shooting in the head. The head must be submitted to an approved laboratory for rabies analysis. (4-2-08)

v. Rabies susceptible animals other than domestic dogs, cats, ferrets, or livestock must be destroyed and the head submitted to an approved laboratory for rabies analysis, unless an exemption is given by the Department or Health District. (3-29-10)

vi. No person will destroy, or allow to be destroyed, the head of a rabies-susceptible animal that has bitten a person without authorization from the Department or Health District. (4-2-08)

b. The handling of a rabies-susceptible animal that has not bitten a person, but has within the past one hundred eighty (180) days been bitten, mouthed, mauled by, or closely confined in the same premises with a known rabid animal must be as follows: (4-2-08)

i. Any domestic dog, cat, ferret, or livestock which has not been vaccinated as recommended by the American Veterinary Medical Association, must be placed in quarantine for a period of six (6) months under the observation of a licensed veterinarian or a person designated by the Idaho Department of Agriculture, Health District, or the Department and vaccinated according to the Rabies Compendium. An animal with current vaccinations, including livestock, should be revaccinated immediately with an appropriate rabies vaccine and quarantined for forty-five (45) days. These provisions apply only to animals for which an approved rabies vaccine is available. (4-2-08)

ii. The quarantine of such animal must be within an enclosure deemed adequate by a person designated by the Idaho Department of Agriculture, the Department, or Health District to prevent contact with any person or rabies-susceptible animal. (4-2-08)

iii. The owner of the animal is financially responsible for the cost of isolating and quarantining the animal and for specimen collection and testing. (4-2-08)

iv. Destruction of such animal is permitted as an alternative to quarantine. (4-2-08)

c. Any rabies-susceptible animal other than domestic dogs, cats, ferrets, or livestock that are suspected of having rabies, or which have been in close contact with an animal known to be rabid, must be destroyed. The animal must be tested by an approved laboratory for rabies if a person has been bitten or has had direct contact with the animal which might result in the person becoming infected unless an exemption is granted by the Department or Health District. (3-29-10)

05. City or County Authority. Nothing in these rules is intended or will be construed to limit the power of any city or county in its authority to enact more stringent requirements to prevent the transmission of rabies. (4-2-08)

611. -- 619. (RESERVED)

620. RELAPSING FEVER, TICK-BORNE AND LOUSE-BORNE.

01. Reporting Requirements. Each case of tick-borne or louse-borne relapsing fever must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case of tick-borne or louse-borne relapsing fever must be investigated to confirm the diagnosis, ~~determine the extent and source of the~~ identify clusters or outbreaks of the infection, and whether transmission was from lice or ticks. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

660. RUBELLA - INCLUDING CONGENITAL RUBELLA SYNDROME.

01. Reporting Requirements. Each case or suspected case of rubella or congenital rubella syndrome must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of rubella or congenital rubella syndrome must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, identify any contacts who are susceptible and pregnant, and document the presence of the congenital rubella syndrome. (4-2-08)()

03. Restrictions - Daycare Facility. A person who is diagnosed with rubella must not attend daycare, ~~be present~~, or work in any occupation in which there is close contact with children in a daycare facility as long as the disease is in a communicable form. (4-2-08)()

04. Restrictions - Health Care Facility. A person who is diagnosed with rubella must not work in any occupation in which there is close contact with other persons in a health care facility as long as the disease is in a communicable form. (4-2-08)()

05. Restrictions - Schools. A person who is diagnosed with rubella must not attend, be present, or work in any occupation in which there is close contact with children or other persons in a private, parochial, charter, or public school as long as the disease is in a communicable form. (4-2-08)()

06. Restrictions - Personal Contact. A person who is diagnosed with rubella must not work in occupations in which there is close contact with women likely to be pregnant as long as the disease is in a communicable form. (4-2-08)()

661. -- 669. (RESERVED)

670. SALMONELLOSIS - INCLUDING TYPHOID FEVER.

01. Reporting Requirements. Each case or suspected case of salmonellosis or typhoid fever must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of salmonellosis or typhoid fever must be investigated to confirm the diagnosis, ~~to determine the extent of the~~ identify clusters or outbreaks of the infection, and to identify contacts, carriers, and the source of ~~contamination~~ infection. (4-2-08)()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any suspected or reported case. (4-2-08)

04. Restrictions - Chronic Carrier. Chronic carriers, which are those who excrete *Salmonella* for more than one (1) year after onset, are restricted from working as food employees. Chronic carriers must not work in any occupation in which they provide personal care to children in daycare facilities, or to persons who are confined to health care facilities or residential care facilities, until *Salmonella* is not identified by a licensed laboratory in any of three (3) successive approved fecal specimens collected at least seventy-two (72) hours apart. (4-2-08)

05. Restrictions - Non-Typhi Salmonella. (4-2-08)

a. A fecally incontinent person excreting non-Typhi *Salmonella* must not attend a daycare facility. (4-2-08)

b. A person excreting non-Typhi *Salmonella* must not work in any occupation in which they provide personal care to children in a daycare facility or provide personal care to persons confined to a health care facility, unless an exemption is obtained from the Department or Health District. (4-2-08)

c. A symptomatic food employee excreting non-Typhi *Salmonella* must be managed under the IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

d. If hygienic practices are insufficient, before a person can attend or work in a daycare facility or a health care facility, or work as a food employee, the person must provide two (2) successive approved fecal specimens ~~which are negative for~~ collected at least twenty-four (24) hours apart, that fail to show *Salmonella* upon testing by a licensed laboratory, collected not less than twenty-four (24) hours apart and forty-eight (48) hours after the last dose of antimicrobials. (4-2-08)()

e. The Department may withdraw this restriction on a case of non-Typhi *Salmonella* provided that the person is asymptomatic. (4-2-08)

f. Any member of a household in which there is a case of non-Typhi salmonellosis must not work as a food employee until ~~he produces~~ the member provides at least one (1) ~~negative~~ approved fecal specimen ~~for that fails to show~~ Salmonella upon testing by a licensed laboratory. (4-2-08)()

06. Restrictions - Salmonella Typhi. (4-2-08)

a. Any person with typhoid fever will remain subject to the supervision of the Department until *Salmonella Typhi* is not isolated by a licensed laboratory from three (3) successive approved fecal specimens. ~~These specimens are to be~~ collected at least twenty-four (24) hours apart and not earlier than one (1) month after onset. (4-2-08)()

b. A food employee excreting *Salmonella Typhi* must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)

c. Any member of a household in which there is a case of *Salmonella Typhi* must not work in the occupations described in Subsection 670.05.d. of this rule until the member provides at least two (2) ~~fecal specimens successive~~ approved fecal specimens ~~are negative for~~ collected twenty-four (24) hours apart that fail to show *Salmonella* upon testing by a licensed laboratory. (4-2-08)()

d. All chronic carriers of *Salmonella Typhi* must abide by a written agreement called a typhoid fever carrier agreement. This agreement is between the chronic carrier and the Department or Health District. Failure of the carrier to abide by the carrier agreement may cause the carrier to be isolated under Section 065 of these rules. The carrier agreement requires: (4-2-08)

i. The carrier cannot work as a food employee; (4-2-08)

ii. Specimens must be furnished for examination in a manner described by the Department or Health District; and (4-2-08)

iii. The Department or Health District must be notified immediately of any change of address, occupation, and cases of illness suggestive of typhoid fever in his family or among immediate associates. (4-2-08)

e. Chronic carriers of typhoid fever may be released from carrier status when *Salmonella Typhi* is not identified by a licensed laboratory in any of six (6) consecutive approved fecal and urine specimens collected at least one (1) month apart. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

700. SHIGELLOSIS.

01. Reporting Requirements. Each case or suspected case of shigellosis must be reported to the Department or Health District within one (1) working day of identification. (4-2-08)

02. Investigation. Each reported case of shigellosis must be investigated to confirm the diagnosis and ~~determine the extent of the~~ identify clusters or outbreaks of the infection. An attempt must be made to identify contacts, carriers, and the source of the infection. (4-2-08)()

03. Handling of Report. The Department and the Health District will exchange reported information within one (1) working day on any suspected or reported case. (4-2-08)

04. Restrictions - Daycare Facility. (4-2-08)

a. A person excreting *Shigella* must not attend a daycare facility while fecally incontinent. (4-2-08)

b. A person excreting *Shigella* must not work in any occupation in which he provides personal care to

children in a daycare facility while the disease is present in a communicable form, unless an exemption is obtained from the Department or Health District. During an outbreak in a daycare facility, a cohort system may be approved. (4-2-08)

c. The Department or Health District may withdraw the daycare restriction when the person has provided ~~that~~ two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart ~~are~~ negative for that fail to show *Shigella* upon testing by a licensed laboratory. (4-2-08)()

05. Exclusions - Food Service Facility. (4-2-08)

a. A food employee excreting *Shigella* must be managed under IDAPA 16.02.19, “The Idaho Food Code.” (4-2-08)

b. The Department or Health District may withdraw the food service restriction when the employee has provided ~~that~~ two (2) successive approved fecal specimens collected at least twenty-four (24) hours apart ~~are~~ negative for that fail to show *Shigella* upon testing by a licensed laboratory. (4-2-08)()

06. Restrictions - Health Care Facility. A person excreting *Shigella* must not work in any occupation in which he provides personal care to persons who are confined to a health care facility while the disease is present in a communicable form, unless an exemption is obtained from the Department or Health District. During an outbreak in a facility, a cohort system may be approved. (4-2-08)

07. Restrictions - Household Contacts. No member of a household, in which there is a case of shigellosis, may work in any occupations in Subsections 700.04 through 700.06 of this rule, unless the Department or Health District approves and at least one (1) fecal specimen is negative for *Shigella* upon testing by a licensed laboratory. (4-2-08)

701. -- 709. (RESERVED)

710. SMALLPOX.

01. Reporting Requirements. Each case or suspected case of smallpox must be reported to the Department or Health District immediately, at the time of identification, day or night. (4-2-08)

02. Investigation. Each reported case of smallpox must be investigated promptly to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection and susceptible contacts. (4-2-08)()

03. Restrictions - Daycare Facility. (4-2-08)

a. A person diagnosed with smallpox must not attend a daycare facility as long as the disease is in a communicable form. (4-2-08)

b. In the event of an outbreak, the Department or Health District may exclude susceptible children and employees from daycare facilities where a case has been identified until adequate immunization is obtained or the threat of further spread is contained. (4-2-08)

04. Restrictions - Health Care Facility. A person diagnosed or suspected of having smallpox in a health care facility must be managed under the “Guideline for Isolation Precautions in Hospitals,” as incorporated in Section 004 of these rules. (4-2-08)

05. Restrictions - Public Gatherings. A person diagnosed with smallpox must not attend public gatherings as long as the disease is in a communicable form. (4-2-08)

06. Restrictions - School. (4-2-08)

a. A person diagnosed with smallpox, regardless of age, must not attend a private, parochial, charter,

or public school as long as the disease is in a communicable form.(4-2-08)

b. In the event of an outbreak, the Department or Health District may exclude susceptible children and employees from schools where a case has been identified until adequate immunization is obtained or the threat of further spread is contained under Section 33-512(7), Idaho Code. (4-2-08)

07. Restrictions - Working. A person diagnosed with smallpox must not work in any occupation as long as the disease is in a communicable form. (4-2-08)

711. -- 719. (RESERVED)

720. STREPTOCOCCUS PYOGENES (GROUP A STREP) INFECTIONS ~~WHICH ARE INVASIVE OR RESULT IN RHEUMATIC FEVER.~~

01. Reporting Requirements. Each case of *Streptococcus pyogenes* (group A Strep) infection which is invasive or results in rheumatic fever or necrotizing fasciitis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)()

02. Investigation. Each reported case of *Streptococcus pyogenes* (group A Strep) infection which is invasive or results in rheumatic fever or necrotizing fasciitis must be investigated to confirm the diagnosis, to determine if the infection is part of an outbreak, and to identify the source of the infection. (4-2-08)()

03. Restrictions - Daycare Facility. An infected person must not attend or work in a daycare until twenty-four (24) hours has elapsed after treatment is initiated or until he is no longer infectious as determined by a physician, the Department or Health District. (4-2-08)

04. Restrictions - Health Care Facility. An infected person must not work in a health care facility until twenty-four (24) hours has elapsed after treatment is initiated or until he is no longer infectious as determined by a physician, the Department or Health District. (4-2-08)

05. Restrictions - School. An infected person must not attend or work in a private, parochial, charter, or public school until twenty-four (24) hours has elapsed after treatment is initiated or until the patient is no longer infectious as determined by a physician, the Department or Health District. (4-2-08)

721. -- 729. (RESERVED)

730. SYPHILIS.

01. Reporting Requirements. Each case or suspected case of syphilis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case of primary, secondary, or early latent syphilis must be investigated by the Department or Health District. Each person diagnosed with infectious syphilis is required to inform ~~his~~ all sexual contacts that they may have been exposed to a sexually transmitted infection, or provide sufficient information to public health officials so they may locate contacts and assure that each is offered prompt diagnosis and treatment under Section 39-605, Idaho Code. (4-2-08)()

03. Testing Without an Informed Consent. A physician may order blood tests for syphilis when an informed consent is not possible and there has been, or is likely to be, significant exposure to a person's blood or body fluids by a person providing emergency or medical services. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

770. TRICHINOSIS.

01. Reporting Requirements. Each case of trichinosis must be reported to the Department or Health District within three (3) working days of identification. (4-2-08)

02. Investigation. Each reported case of trichinosis must be investigated to confirm the diagnosis, ~~determine the extent of the~~ identify clusters or outbreaks of the infection, and identify the source of the infection. (4-2-08)()

03. Handling of Report. The Department will notify the Idaho Department of Agriculture and other regulatory agencies as applicable. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

810. YERSINIOSIS, OTHER THAN PLAGUE.

01. Reporting Requirements. Each case of yersiniosis, other than plague, must be reported to the Department or Health District within three (3) working days of identification. Plague must be reported immediately as described in Section 550 of these rules. (4-2-08)

02. Investigation. Each reported case of yersiniosis must be investigated to confirm the diagnosis, identify carriers, and the source of the infection. (4-2-08)

03. Restrictions - Food Service Facility. A symptomatic person ~~excreting Yersinia is restricted from working as a food employee~~ must be managed under IDAPA 16.02.19, "The Idaho Food Code." (4-2-08)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.27 - IDAHO RADIATION CONTROL RULES

DOCKET NO. 16-0227-1401 (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, 56-1007, 56-1041, 56-1043, 56-1044, and 56-1046, 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 17, 2014.

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 chapter of rules is being repealed in its entirety. Companion Docket No. 16-0227-1402 to rewrite the current chapter of rules is published simultaneously in this Idaho Administrative Bulletin.

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

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

There is no anticipated fiscal impact to the state general fund as a result of this rulemaking. Please see the fiscal impact statement under Docket No. 16-0227-1402 for the fiscal impact related to the rewrite of this chapter.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 59 and 60](#). A follow-up Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, page 47](#).

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 Katey Anderson at (208) 334-2235, ext. 245.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720

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IDAPA 16.02.27 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.27 - IDAHO RADIATION CONTROL RULES

DOCKET NO. 16-0227-1402 (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, 56-1007, 56-1041, 56-1043, 56-1044, and 56-1046, 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 17, 2014.

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 chapter of rules is being rewritten in its entirety. This rule rewrite will align this chapter of rules with the requirement under Section 56-1043, Idaho Code, for the Department to license (rather than register) x-ray producing devices. These rules:

1. Establish x-ray licensure requirements, including the specification of standard licensure cycles for the various types of x-ray producing devices;
2. Update and streamline the rules by incorporating by reference current standards and federal regulations that will reduce the length, complexity, and publication costs, and will ensure the chapter contains current terminology, best practices, and safety standards; and
3. Add x-ray licensure fees, including for the administration, information-technology infrastructure, and quality improvement associated with the licensure requirements and inspection processes throughout the program.

Companion Docket No. 16-0227-1401 to repeal the current chapter of rules is published simultaneously in this Idaho Administrative Bulletin.

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

The Department is authorized under Sections 56-1007, and 56-1041, Idaho Code, to collect fees for services provided by the Department. This proposed rulemaking includes a \$50 license application fee and a \$25 per tube fee for all devices licensed within the state of Idaho. Fee estimates from the licensure of different types of radiation equipment are as follows:

1. Hospital, Clinic, and Medical Practice - \$33,250
2. Dental, Chiropractic, Podiatric, and Veterinary Practice - \$33,750
3. Industrial, Research, Educational, or Security agency - \$5,100.

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

The Department estimates that the proposed licensure fees will increase receipts to the Department by approximately \$72,100. This fee will cover the increased administrative cost associated with the licensure and inspection requirements, IT infrastructure, and implementation of a remote evaluation by mail process.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 59 and 60](#). A followup Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, page 47](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication. The incorporated documents are:

National Council of Radiation Protection (NCRP) Report No. 147, entitled: "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to Ten (10) MeV," issued November 19, 2004.

U.S. Food and Drug Administration, Mammography Quality Standards Act Regulations, Part 900--Mammography.

Suggested State Regulations for Control of Radiation, Volume 1, published by the Conference of Radiation Control Program Directors.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720

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THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0227-1402

**IDAPA 16
TITLE 02
CHAPTER 27**

16.02.27 - IDAHO RADIATION CONTROL RULES

000. LEGAL AUTHORITY.

The Idaho Legislature, under the following Sections of statute has granted authority to the Board of Health and Welfare and the Director of the Department to adopt rules related to x-ray producing machines in order to protect the health of the people of Idaho. Sections 56-1041 and 56-1043, Idaho Code, grant authority to the Board of Health and Welfare to adopt radiation control rules. Section 56-1041, Idaho Code, establishes the Department as the designated agency to regulate, license, and control radiation associated with x-ray machines. Section 56-1044, Idaho Code, requires that radiation machines for mammography be registered with the Department, as provided in rule. Section 56-1046, Idaho Code, grants authority to the Department to establish record-keeping and reporting requirements for those who possess or use an x-ray machine. Section 56-1003, Idaho Code, grants authority to the Director to supervise and administer laboratories. Section 56-1007, grants authority to the Department to charge and collect fees established by rule. ()

001. TITLE.

The title of these rules is IDAPA 16.02.27, "Idaho Radiation Control Rules." Except as otherwise specifically

provided, these rules apply to all persons who possess, use, transfer, own or acquire any radiation machine. ()

002. WRITTEN INTERPRETATIONS.

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

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

The documents referenced in Subsections 004.01 through 004.03 of this rule are used as a means of further clarifying these rules. These documents are incorporated by reference and are available online as provided, or may be reviewed at the Department of Health and Welfare, Idaho Bureau of Laboratories at 2220 Old Penitentiary Road, Boise, Idaho 83712-8299. ()

01. National Council of Radiation Protection (NCRP) Report No. 147. National Council of Radiation Protection (NCRP) Report No. 147, entitled: "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of Energies up to Ten (10) MeV," issued November 19, 2004, by the National Council on Radiation Protection and Measurement. This document may be obtained from: NCRP Publications, 7910 Woodmont, Bethesda, MD 20814, e-mail: NCRPpubs@NCRPonline.org, phone: 1-301-657-2652, Ext. 14. ()

02. Mammography Quality Standards Act Regulations, Part 900. The Mammography Quality Standards Act Regulations, Part 900, located at 21 CFR 900.12 as authorized by 21 U.S.C. 360i, 360nn, 374(e); and 42 U.S.C. 263b. A copy of these regulation may be ordered from the U.S. Food and Drug Administration, 10903 New Hampshire Avenue, Silver Spring, MD 20993, phone: 1-888-INFO-FDA (1-888-463-6332). These regulations are available online at <http://www.fda.gov/Radiation-EmittingProducts/MammographyQualityStandardsActandProgram/Regulations/ucml10906.htm#s9001>. ()

03. Suggested State Regulations for Control of Radiation, Volume 1. This publication is being adopted with the exclusions, modifications, and additions listed below in Subsections 004.03.a through 004.03.k of this rule. Suggested State Regulations for Control of Radiation, Volume 1, is published by the Conference of Radiation Control Program Directors, Inc., 1030 Burlington Lane, Suite 4B, Frankfort, Kentucky 40601. It is also available online at <http://www.crcpd.org/SSRCRs/default.aspx>. ()

a. Part A -- General Provisions (March 2003). Modifications have been made to this Part. See Sections 100 - 199 of these rules. ()

b. Part B -- Registration [Licensure] of Radiation Machine Facilities, [Services] - And Associated Healthcare Professionals (February 2009). Exclusions and modifications have been made to this Part. See Sections 200 - 299 of these rules. ()

c. Part C -- Licensing of Radioactive Material (March 2010). This Part is excluded from incorporation. ()

d. Part D -- Standards for Protection Against Radiation (March 2003). The following Sections of this Part are incorporated: 1101a, 1101b, 1101c, 1201a, 1201b, 1201c, 1201f, 1206, 1207, 1208, 1301, 1501, 1502, 1503, 1601, 1602, 1901, 1902, 1903, 1904c, 2102, 2103a, 2104, 2105, 2106, 2107a, 2110, 2201, 2202, 2203, 2204, 2205, and 2207b. ()

e. Part E -- Radiation Safety Requirements for Industrial Radiographic Operations (February 1999). Exclusions have been made to this Part. See Sections 400 - 499 of these rules. ()

f. Part F -- Diagnostic X-rays and Imaging Systems in the Healing Arts (May 2009). This Part is incorporated with no exclusions, modifications, or additions. ()

g. Part G -- Use of Radionuclides in the Healing Arts (March 2003). This Part is excluded from incorporation. ()

h. Part H -- Radiation Safety Requirements for Analytical X-ray Equipment (January 1991). This Part is incorporated with no exclusions, modifications, or additions. ()

i. Part I -- Radiation Safety Requirements For Particle Accelerators (January 1991). This Part is excluded from incorporation. ()

j. Part J -- Notices, Instructions and Reports to Workers; Inspections (March 2003). This Part is incorporated with no exclusions, modifications, or additions. ()

k. Parts M through Z. These Parts are excluded from incorporation. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

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

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

03. Street Address. ()

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 East Old Penitentiary Road, Boise, ID 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 Websites. ()

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

b. The Idaho Bureau of Laboratories internet website is found at <http://www.statelab.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

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

007. -- 049. (RESERVED)

050. LICENSING. Sections 050 through 099 provide for the licensing of radiation machines. ()

051. SCOPE. Radiation producing machines, unless exempt under Section B.4 of the Suggested State Regulations for Control of

Radiation incorporated under Section 004 of these rules, must be licensed with the Radiation Control Agency in accordance with the requirements of Sections B.6 through B.9, of the Suggested State Regulations for Control of Radiation, as applicable. ()

052. FEES.

01. Radiation Licensing Fees. Radiation facility fees apply to each person or facility owning, leasing, storing, or using radiation-producing machines. This fee is assessed on the same cycle as inspections and consists of a base licensing fee and a per tube charge. Fees are due within thirty (30) calendar days of the renewal date. A late charge of fifty (\$50) dollars will be assessed at thirty-one (31) days past the renewal date. If the fees are not paid by day ninety-one (91) past the renewal date, licensure will be terminated.

X-Ray Renewal Cycle and Facility Fees			
Facility Type	Renewal Cycle	Facility Fee	Per Tube Fee
Hospital, Clinic, Medical Practice	2 Years	\$50	\$25
Dental, Chiropractic, Podiatric, Veterinary Practice	4 Years		
Industrial, research, academic/educational, or security	10 Years		

()

02. X-Ray Shielding Plan Review and Fee. Facilities housing X-ray producing devices and regulated under these rules must obtain a review of their shielding plan by a qualified expert. A copy of this review, to include a floor plan and site specific shielding calculations, must be submitted to the Radiation Control Agency within thirty (30) days of receipt. Facilities may request a departmental review of the X-ray shielding calculations and floor plan by the Radiation Control Agency. A \$350 fee will be charged for this service. ()

03. Radiation Safety Program Fee. If a facility or group of facilities under one administrative control employs one or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility may pay a flat annual facility fee of \$1000 instead of the licensing fees required in Subsection 052.01 of this rule. In addition, annual submittal of documentation of evidence of an ongoing and functioning quality control program must be submitted for review and approval. ()

053. APPLICATION FOR LICENSE.

In addition to the requirements detailed in the incorporated reference, Section B, the following is required with application for use of x-ray producing devices. ()

01. Responsible Authority. All applications must be signed by the responsible authority (RA) over the x-ray producing device. Required qualifications of the RA can be found in Section B.6c of the SSRCR. ()

02. Application For License. Application for license must be on forms furnished by the Radiation Control Agency and must contain: ()

a. Name of the owner, organization or person having administrative control and responsibility for use (responsible authority); and ()

b. Address and telephone number where the machine is located; and if the radiation producing machine is used as a mobile device, a central headquarters must be used. ()

- c. A designation of the general category of use, such as dental, medical, industrial, veterinary, and research; and ()
- d. The manufacturer, model number, and type of machine; and ()
- e. Name of the radiation machine supplier, installer, and service agent. ()
- f. Name of an individual to be responsible for radiation protection, when applicable. ()

03. Qualifications for Authorized Operation, Service, and Repair of X-ray Machines. The responsible authority must prohibit any person from operating, performing maintenance, or furnishing servicing or services to an x-ray producing machine under his authority that is not properly trained, certified, or licensed to do so. The responsible authority must obtain and retain documentation for a minimum of 2 years that all operation, service, repair, and maintenance of x-ray producing machine(s) under their authority are done so by a qualified individual or entity. ()

04. Operator Qualifications. No individual will be permitted to act as an operator of a particular machine until such individual has received an acceptable amount of training in radiation safety as it applies to that machine and is approved by the Radiation Protection Supervisor or Radiation Safety Officer. Operators will be responsible for: ()

- a. Keeping radiation exposure to himself and to others as low as is practical; and ()
- b. Being familiar with safety procedures as they apply to each machine; and ()
- c. Wearing of personnel monitoring devices, if applicable; and ()
- d. Notifying the Radiation Protection Supervisor or Radiation Safety Officer of known or suspected excessive radiation exposures to himself or others. ()

05. Minimum Safety Requirements. Unless otherwise specified within these or the incorporated rules, the following are the minimum safety requirements for personnel acting as radiographers or radiographers assistants. ()

- a. Licensees must not permit any individuals to act as radiographers as defined in these rules until such individuals: ()
 - i. Have received copies of and instructions in the licensee's operating and emergency procedures; and have demonstrated understanding thereof; and ()
 - ii. Have been instructed in the subjects outlined in Subsection 06. of this rule, and have demonstrated understanding thereof; and ()
 - iii. Have received copies of and instruction in the correct execution of these rules and have demonstrated understanding thereof; and ()
 - iv. Have demonstrated competence to use the specific radiation machine(s), related handling tools, and survey instruments which will be employed in their assignment. ()
 - v. Have demonstrated an understanding of the instructions in this section by successful completion of a written test and a field examination on the subjects covered. ()
- b. Licensees must not permit any individuals to act as a radiographer's assistant as defined in these rules until such individuals: ()
 - vi. Have received copies of and instructions in the licensee's operating and emergency procedures; and have demonstrated understanding thereof; and ()

vii. Have demonstrated competence to use under the personal supervision of the radiographer the radiation machine(s) and radiation survey instrument(s) which will be employed in their assignment. ()

viii. Have demonstrated an understanding of the instructions in this section by successfully completing a written or oral test and a field examination on the subjects covered. ()

c. Records of the above training, including copies of written tests and dates of oral tests and field examinations, must be maintained for inspection by the Radiation Control Agency for three (3) years following termination of employment. ()

d. Each licensee must conduct an internal audit program to ensure that the Radiation Control Agency's conditions and the licensee's operating and emergency procedures are followed by each radiographer and radiographer's assistant. These internal audits must be performed at least quarterly, and each radiographer must be audited at least annually. Records of internal audits must be maintained for inspection by the Agency for two (2) years from the date of the audit. ()

06. Subjects to Be Covered During the Instruction of Radiographers. ()

a. Fundamentals of Radiation Safety, to include at least: ()

i. Characteristics of gamma and x-radiation; and ()

ii. Units of radiation dose (millirem); and ()

iii. Bioeffects of excessive exposure of radiation; and ()

iv. Levels of radiation from radiation machines; and ()

v. Methods of controlling radiation dose, including: ()

(1) Working time; and ()

(2) Working distances; and ()

(3) Shielding; and ()

vi. Radiation Protection Standards; and ()

b. Radiation Detection Instrumentation, to include at least: ()

i. Use of radiation surveys instruments, including: ()

(1) Operation; and ()

(2) Calibration; and ()

(3) Limitations; and ()

ii. Survey techniques; and ()

iii. Use of Personnel Monitoring Equipment, including: ()

(1) Film badges, TLDs; and ()

(2) Pocket dosimeters; and ()

- (3) Pocket chambers; and ()
- c. Radiographic Equipment, to include at least: ()
 - i. Operation and control of x-ray equipment; and ()
- d. The Requirements of Pertinent Federal regulations and State rules; and ()
- e. The Licensee's Written Operating and Emergency Procedures; and ()
- f. Case histories of radiography accidents. ()

07. Modification, Revocation, and Termination of Licenses. Pursuant to amendments to the Act, departmental rules or regulations, or orders issued by the Radiation Control Agency, the terms and conditions of all licenses are subject to amendment, revision, or modification, and are subject to suspension or revocation. ()

- a. Any license can be revoked, suspended, modified, or denied, in whole or in part. ()
 - i. For any materially false statement: ()
 - (1) In the application; or ()
 - (2) In any statement of fact required under provisions of the Act or under these rules; or ()
 - ii. Because of conditions revealed: ()
 - (1) Within the application; any report, record, or inspection; or ()
 - (2) By any other means which would warrant the Radiation Control Agency to refuse to grant a license on an original application; or ()
 - iii. For violations of or failure to observe any of the terms and conditions: ()
 - (1) Of the Act; or ()
 - (2) Of the license; or ()
 - (3) Of any rule; or ()
 - (4) Of any regulation; or ()
 - (5) Of an order of the Radiation Control Agency. ()
- b. Except in cases of willful violation or in which the public health, interest or safety requires otherwise, no license can be modified, suspended, or revoked unless such issues have been called to the attention of the licensee in writing and the licensee afforded the opportunity to demonstrate or achieve compliance with all lawful requirements. ()

08. Emergency Action. If the Radiation Control Program Director finds the public health, safety or welfare requires emergency action, the Director will incorporate findings in support of such action in a written notice of emergency revocation issued to the licensee. Emergency revocation is effective upon receipt by the licensee. Thereafter, if requested by the licensee in writing, the Director will provide the licensee a revocation hearing and prior notice thereof. Such hearings are conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

054. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

Sections 100 through 199 of these rules will be used for exclusions, modifications, and additions to Part A of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules.()

101. SCOPE.

Modification to Part A, Section A.1. Except as otherwise specifically provided, these regulations apply to all persons who receive, possess, use, transfer, own, or acquire any source of radiation; provided that nothing in these regulations applies to any person to the extent such person is subject to regulation by the Nuclear Regulatory Commission. ()

102. DEFINITIONS.

Additions to Part A, Section A.2. ()

01. Act. "Act" means Section 56-1053, Idaho Code. ()

02. Agency. "Agency" means the Idaho Department of Health and Welfare. ()

103. VIOLATIONS.

Modification to Part A, Section A.8. Any person who willfully violates any provision of the Act is subject to penalties under Section 56-1053, Idaho Code. ()

104. IMPOUNDING.

Modification to Part A, Section A.9. Sources of radiation are subject to impounding under Section 56-1052, Idaho Code. ()

105. COMMUNICATIONS.

Modification to Part A, Section A.12. All communications and reports concerning these rules, and applications filed under these rules, must be addressed to the Agency at Radiation Control Section, Idaho Department of Health and Welfare, Bureau of Laboratories, 2220 Old Penitentiary Road, Boise, Idaho 83712-8299. ()

106. -- 199. (RESERVED)

200. LICENSURE OF RADIATION MACHINE FACILITIES, (SERVICES) - AND ASSOCIATED HEALTHCARE PROFESSIONALS.

Sections 200 through 299 of these rules will be used for exclusions, modifications, and additions to Part B of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules.()

201. LICENSURE OF RADIATION MACHINE FACILITIES.

Exclusion to Part B, Section B.6. Subsection B.6.b is excluded from incorporation. ()

202. RECIPROCAL RECOGNITION OF OUT-OF-STATE RADIATION MACHINES.

Modifications and additions to Part B, Section B.16. ()

01. Modification to Part B, Section B.16.a.iv. States in which this machine is registered or licensed. ()

02. Addition to Part B, Section B.16 -- New Subsection d. The owner or person having possession of any radiation producing machine registered or licensed by a federal entity or state other than Idaho, or both, planning to establish regular operations in Idaho, must complete registration of the machine with the Agency within thirty (30) days after taking residence and prior to operation of the machine. Thirty (30) days prior to the expiration date of any out-of-state license for any radiation producing machine, the owner must apply to the Agency for a machine license. ()

203. -- 400. (RESERVED)

400. RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS.

Sections 400 through 499 of these rules will be used for exclusions, modifications, and additions to Part E of the

Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules.()

401. LICENSING AND REGISTRATION REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHY OPERATIONS.

Exclusions to Part E, Section E.5. Subsections E.5.b.i and E.5.b.ii, are excluded from incorporation. ()

402. LEAK TESTING AND REPLACEMENT OF SEALED SOURCES.

Part E, Section E.10 is excluded from incorporation. ()

403. QUARTERLY INVENTORY.

Part E, Section E.11 is excluded from incorporation. ()

404. LABELING, STORAGE, AND TRANSPORTATION.

Exclusions to Part E, Section E.14. Subsections E.14.a, E.14.b, and E.14.d, are excluded from incorporation. ()

405. CONDUCTING INDUSTRIAL RADIOGRAPHIC OPERATIONS.

Exclusion to Part E, Section E.15. Subsection E.15.d is excluded from incorporation. ()

406. RECORDS OF LEAK TESTING OF SEALED SOURCES AND DEVICES CONTAINING DU.

Part E, Section E.27 is excluded from incorporation. ()

407. RECORDS OF QUARTERLY INVENTORY.

Part E, Section E.28 is excluded from incorporation. ()

408. UTILIZATION LOGS.

Part E, Section E.29 is excluded from incorporation. ()

409. LOCATION OF DOCUMENTS AND RECORDS.

Exclusions to Part E, Section E.37. Subsections E.37.b.iii, E.37.b.xi, and E.37.b.xii are excluded from incorporation. ()

410. NOTIFICATIONS.

Exclusions to Part E, Section E.38. Subsections E.38.a.i, and E.38.a.ii are excluded from incorporation. ()

411. APPLICATION AND EXAMINATIONS.

Part E, Section E.39 is excluded from incorporation. ()

412. CERTIFICATION IDENTIFICATION (ID) CARD.

Part E, Section E.40 is excluded from incorporation. ()

413. RECIPROCITY.

Part E, Section E.41 is excluded from incorporation. ()

414. SPECIFIC REQUIREMENTS FOR RADIOGRAPHIC PERSONNEL PERFORMING INDUSTRIAL RADIOGRAPHY.

Part E, Section E.42 is excluded from incorporation. ()

415. -- 599. (RESERVED)

600. NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS.

Sections 600 through 699 of these rules will be used for exclusions, modifications, and additions to Part J of the Suggested State Regulations for Control of Radiation, Volume 1, as incorporated in Section 004 of these rules.()

601. -- 999. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.11 - RULES GOVERNING INTERMEDIATE CARE FACILITIES
FOR PEOPLE WITH INTELLECTUAL DISABILITIES (ICF/ID)**

DOCKET NO. 16-0311-1401 (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. This action is authorized pursuant to Sections 39-1303a, and 39-1307, Idaho Code.

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

Friday, September 12, 2014, 9:00 a.m. MDT

**Licensing & Certification Central Office
3232 Elder Street, Conference Rm. D-East
Boise, Idaho 83705**

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

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

The ICF/ID rules in this chapter have not been updated for quite some time. Changes in treatment and intervention strategies for individuals with intellectual disabilities have progressed substantially making these rules obsolete and no longer applicable to current best practices and procedures. This chapter is being repealed in its entirety and rewritten under Docket No. 16-0311-1402 that is published in this same bulletin.

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

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

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014, Idaho Administrative Bulletin, [Vol. 14-5, pages 62 and 63](#).

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 Debby Ransom at (208) 334-6626.

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 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
Boise, ID 83720-0036

P.O. Box 83720
Tel: (208) 334-5564 phone / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

IDAPA 16.03.11 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.11 - INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH INTELLECTUAL DISABILITIES (ICFS/ID)

DOCKET NO. 16-0311-1402 (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. This action is authorized pursuant to Sections 39-1303a, and 39-1307, Idaho Code.

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

Friday, September 12, 2014, 9:00 a.m. MDT

**Licensing & Certification Central Office
3232 Elder Street, Conference Rm. D-East
Boise, Idaho 83705**

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

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

The ICF/ID rules in this chapter have not been updated for quite some time. Changes in treatment and intervention strategies for individuals with intellectual disabilities have progressed substantially making these rules obsolete and no longer applicable to current practices and procedures. The rewrite of this chapter updates the licensing and enforcement areas of these rules, and incorporates by reference several documents needed for health and safety standards. These rules allow for best practice, active treatment, and intervention strategies for individuals with intellectual disabilities and related conditions. The repeal of this chapter is published in this same bulletin under Docket No. 16-0311-1401.

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

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

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014, Idaho Administrative Bulletin, [Vol. 14-5, pages 62 and 63](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being reprinted in this chapter of rules due to their length, format, and the cost for republication. The incorporated documents are:

Code of Federal Regulations (CFR), 42 CFR Part 48, 42 CFR 1001.1301, and 42 CFR 442.101; IDAPA 07.03.01, "Rules of Building Safety;" and National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (Edition 2000).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Debby Ransom at (208) 334-6626.

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 24, 2014.

DATED this 7th day of August, 2014.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0311-1402

**IDAPA 16
TITLE 03
CHAPTER 11**

**16.03.11 - INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH
INTELLECTUAL DISABILITIES (ICFs/ID)**

000. LEGAL AUTHORITY.

The Board of Health and Welfare is authorized under Sections 39-1301 through 39-1314, Idaho Code, to adopt, amend, and enforce rules, regulations, and standards for licensure that promote safe and adequate treatment, and to protect the health and safety of individuals being cared for in intermediate care facilities for people with intellectual disabilities defined in Section 39-1301(c), Idaho Code. The Department is authorized under 42 CFR Part 483 to set conditions of participation for intermediate care facilities for individuals with intellectual disabilities (ICFs/ID). Under Sections 56-1002, 56-1003, 56-1004, 56-1004A, 56-1005, 56-1007, and 56-1009, Idaho Code, the Department and the Board of Health and Welfare have prescribed powers and duties to provide for the administration and enforcement of Department programs and rules. ()

001. TITLE, SCOPE, AND PURPOSE.

01. Title. The title of this chapter of rules is IDAPA 16.03.11, "Intermediate Care Facilities for People with Intellectual Disabilities (ICFs/ID)." ()

02. Scope. These rules include the licensing standards and requirements for the administration of intermediate care facilities for the active treatment of individuals with intellectual disabilities and related conditions. This service delivery system provides care through small community-based facilities with the least restrictive alternatives including deinstitutionalization, normalization, and individual programming to enhance each individual's self-sufficiency for personal development and health needs. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of this chapter, or to the documentation of compliance with these rules. ()

003. ADMINISTRATIVE APPEALS.

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

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: ()

01. Code of Federal Regulations (CFR). The Board has adopted by reference certain Codes of Federal Regulations (CFR), Standards and Certification, Part 483, in this chapter. 42 CFR Part 483 may be found online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=f030c6d2c3e752bba7d12ce1015a4e7a&node=42:5.0.1.1.2.9&rgn=div6>. Modifications and additions to the "Conditions of Participation for Intermediate Care Facilities for Individuals with Intellectual Disabilities" are made in Subsections 004.02 through 004.13 of this rule. ()

02. 42 CFR 483.400 - Basis and Purpose. No additions or modifications have been adopted for this subpart. ()

03. 42 CFR 483.405 - Relationship to Other Health and Human Services (HHS) Regulations. No additions or modifications have been adopted for this subpart. ()

04. 42 CFR 483.410 - Condition of Participation: Governing Body and Management. Additions and modifications for this subpart are found in Sections 100-199 of these rules. ()

05. 42 CFR 483.420 - Condition of Participation: Client Protections. Additions and modifications for this subpart are found in Sections 200-299 of these rules. ()

06. 42 CFR 483.430 - Condition of Participation: Facility Staffing. Additions and modifications for this subpart are found in Sections 300-399 of these rules. ()

07. 42 CFR 483.440 - Condition of Participation: Active Treatment Services. No additions or modifications have been adopted for this subpart. ()

08. 42 CFR 483.450 - Condition of Participation: Client Behavior and Facility Practices. Additions and modifications for this subpart are found in Sections 500-599 of these rules. ()

09. 42 CFR 483.460 - Condition of Participation: Health Care Services. No additions or modifications have been adopted for this subpart. ()

10. 42 CFR 483.470 - Condition of Participation: Physical Environment. Additions and modifications for this subpart are found in Sections 700-799 of these rules. ()

11. 42 CFR 483.480 - Condition of Participation: Dietetic Services. Additions and modifications for this subpart are found in Sections 800-899 of these rules. ()

12. 42 CFR 1001.1301 - Failure to Grant Immediate Access. No additions or modifications have been adopted for this subpart. ()

13. 42 CFR 442.101 - Obtaining Certification. No additions or modifications have been adopted for this subpart. ()

14. IDAPA 07.03.01, Rules of Building Safety. IDAPA 07.03.01, "Rules of Building Safety," as adopted by the Division of Building Safety, Building Code Advisory Board. The rules are available online at: <http://adminrules.idaho.gov/rules/current/07/0301.pdf>. The Building Safety rules adopt The International Building Code that may be obtained from the International Code Council, Western Regional Office, 5360 Workman Mill Road, Whittier, CA 90601-2298, phone: (888) 422-7233, and online at [http:// www.iccsafe.org](http://www.iccsafe.org). ()

15. National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (edition

2000). The following document is incorporated by reference in these rules: National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, (2000), published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471. A copy is available for review at the Department's Division of Licensing and Certification located at 3232 Elder Street, Boise, Idaho 83705. The NFPA 101: Life Safety Code may be accessed online at: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101>. ()

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. ()

a. The mailing address of the Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

b. The mailing address of the Division of Licensing and Certification, P.O. Box 83720, Boise, Idaho 83720-0009. ()

03. Street Address. ()

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

b. The street address of the Division of Licensing and Certification is located at 3232 Elder Street, Boise, Idaho 83705. ()

04. Telephone. ()

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

b. The telephone number of the Division of Licensing and Certification, Bureau of Facility Standards is (208) 334-6626. ()

05. Internet Websites. ()

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

b. The Division of Licensing and Certification, Bureau of Facility Standards internet website is found at <http://www.facilitystandards.idaho.gov>. ()

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, and must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records Act. 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. ()

03. Disclosure of an Individual's Identity. Under Section 39-1310, Idaho Code, information received by the Department through filed reports, inspections, or as required by law, will not be disclosed publicly in such a manner as to identify individuals except as necessary in a proceeding involving a question of licensure. ()

04. Public Availability of Survey Reports. The Department will post on the Division of Licensing and Certification's website, survey reports and findings of complaint investigations relating to a facility at <http://www.facilitystandards.idaho.gov>. ()

007. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. An intermediate care facility for people with intellectual disabilities (ICF/ID) must comply with the Department's criminal history and background check rules in IDAPA 16.05.06, "Criminal History and Background Checks." ()

02. Individuals Subject to Criminal History Checks. Owners, administrators, employees, and contractors, hired or contracted with after October 1, 2007, who have direct access to individuals residing in an ICF/ID must complete and receive a Department criminal history and background check clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks." ()

010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

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

01. Active Treatment. Aggressive, consistent implementation of a program of specialized and generic training, treatment, health, and related services directed toward the acquisition of skills necessary for the individual to function with as much self-determination and independence as possible. It includes the prevention or deceleration of regression or loss of current optimal functional status. ()

02. Administrator. The person delegated the responsibility for management of a facility. ()

03. Advocate. A person who assists the individual in exercising their rights within the facility and as a citizen of the United States. ()

04. Alteration. Any change or modification to the building or property that does affect Life Safety Code compliance or a change in space usage or utilization of the facility, including additions, remodeling or systems modifications. ()

05. Board. The Idaho State Board of Health and Welfare. ()

06. Certification. Federal program approval (Medicare, Medicaid, etc.) of the facility to participate in the delivery of program care to eligible individuals under applicable federal requirements. ()

07. Client. A term used in the Code of Federal Regulations (CFR) for an "individual" residing in an intermediate care facility for individuals with intellectual disabilities who requires active treatment. A "client" is synonymous with the terms "individual" and "resident" in this chapter. ()

08. Department. The Idaho Department of Health and Welfare. ()

09. Director. The Director of the Idaho Department of Health and Welfare, or his designee. ()

10. Discharge. The permanent movement of an individual to another facility or setting that operates independently from the ICF/ID. ()

11. Enclosure. Any barrier designed, constructed, or used to contain an individual's within a designated area for the purposes of behavior modification, and does not meet the definition of a "time out" room as stated in 42 CFR 483.450(c)(1). ()

12. Governmental Unit. The State of Idaho, any county, municipality, or other political subdivision, or any department, division, board, or other agency thereof. ()

13. Individual. A term used in the Code of Federal Regulations (CFR) for an “individual” residing in an intermediate care facility for individuals with intellectual disabilities who requires active treatment. An “individual” is synonymous with the terms “client” and “resident” in this chapter. ()

14. Individual Program Plan (IPP). A written plan developed by the interdisciplinary team for each individual in the ICF/ID. The IPP is based on a completed, thorough review of the individual’s preferences, lifestyle, cultural background, strengths, needs, and capabilities in all major life areas essential to increasing independence and ensuring rights. Each individual’s IPP addresses what an individual needs in order to function with as much independence as possible by stating: ()

- a. The desired outcomes the individual is trying to achieve; ()
- b. The specific steps and actions that will be taken to reach the desired outcomes; and ()
- c. Any additional adaptive equipment, assistive technology, services, and supports required to meet the individual’s needs. ()

15. Initial License. The first license issued to a facility. ()

16. Interdisciplinary Team (IDT). Professionals, paraprofessionals, and non-professionals who possess the knowledge, skills, and expertise necessary to accurately identify the comprehensive array of the individual’s needs and design a program which is responsive to those needs. The IDT must include the individual unless inability or unwillingness is documented, his parent, guardian, or representative unless documented to be inappropriate or unobtainable, a physician, a social worker, and other appropriate professional and non-professional staff, at least one (1) of whom is a Qualified Intellectual Disabilities Professional. ()

17. Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID). An institution that meets federal conditions of participation and has as its primary purpose the provision of health or rehabilitation services to individuals with intellectual disabilities or related conditions receiving care and services under the Medicaid program, which is organized and operated to provide services to four (4) or more individuals, not related to the owner. ()

011. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.

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

01. Legal Guardian. A court-appointed surrogate designated to advocate on behalf of the individual. The guardian’s role is to encourage self-reliance and independence as well as make decisions on behalf of the individual. ()

02. Licensee. Any person, firm, partnership, corporation, company, association, joint stock association, governmental unit, legal entity, legal successor thereof, or organization to whom a license is issued. ()

03. National Fire Protection Association (NFPA). The National Fire Protection Association, from whom copies of applicable safety standards referenced herein are available at cost. Requests should be addressed to NFPA Publication Department, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471 or www.NFPA.org. ()

04. Noxious Stimuli. A startling, unpleasant, or painful action used in response to an individual’s behavior that has a potentially aversive or harmful effect. ()

05. On Duty. Personnel are considered “on duty” when working with, or available to meet an individual’s needs. ()

06. Outside Service. Any service provided at a location other than the premises for which the license was issued, pursuant to Section 39-1305, Idaho Code. Includes off-site treatment locations regardless of ownership or operating party, schools, vocational programs, and separately licensed Developmental Disabilities Agencies per Section 39-4605, Idaho Code. ()

07. **Owner.** Any recognized legal entity, governmental unit, or person having legal ownership of an ICF/ID. ()

08. **Parent.** A person who by birth, through adoption, or through fostering is considered legally responsible for a child under the age of eighteen (18), unless otherwise ordered by a court of competent jurisdiction. ()

09. **Participate.** To provide input through whatever means necessary to ensure an individual's IPP is responsive to the individual's needs. ()

10. **Physician.** An individual licensed to practice medicine and surgery by the Idaho State Board of Medicine or the Idaho State Board of Podiatry under Section 39-1301(h), Idaho Code. ()

11. **Provisional License.** A license issued to a facility that conforms substantially with these rules, during which time the facility is to correct deficiencies, or to implement administrative or major structural changes. ()

12. **Qualified Intellectual Disabilities Professional (QIDP).** An individual who has at least one (1) year of experience working directly with individuals with intellectual disabilities or developmental disabilities; and meets the requirements in 42 CFR 483.430 (a). ()

13. **Related to Owner.** An individual who is related to an owner of an intermediate care facility by blood, marriage, adoption, fostering, or legal guardianship. ()

14. **Renovations, Minor.** Changes or modifications to the building or property that do not affect the structural integrity of the building, the fire safety, the physical spaces within the building, or the functional operation for which the facility is licensed. ()

15. **Resident.** A term used in the International Building Code for an "individual" residing in an intermediate care facility for individuals with intellectual disabilities who requires active treatment. A "resident" is synonymous with the terms "individual" and "client" in this chapter. ()

16. **Sufficient Staff.** Sufficient numbers of staff to meet each individual's needs and to implement the active treatment program defined in each individual's IPP. ()

17. **Transfer.** A transfer means any of the following: ()

a. The temporary movement of an individual between facilities; ()

b. The temporary movement from an ICF/ID to a psychiatric or medical hospital for medical reasons; ()

c. The permanent movement of an individual between living units of the same facility; or ()

d. The permanent movement of an entire facility to a new location, including individuals served, staff and records. ()

18. **Waiver.** Provision by the Department to allow for an exception to rule on a case-by-case basis. ()

012. -- 019. (RESERVED)

020. LICENSE REQUIRED.

An intermediate care facility for people with intellectual disabilities (ICF/ID) cannot be established, maintained, or operated within Idaho without obtaining a license from the Department as required in Sections 39-1301 through 39-1314, Idaho Code. An ICF/ID must be in compliance with Idaho statutes, federal regulations, and this chapter of rules

in order to hold a license. ()

021. ICF/ID LICENSURE REQUIREMENTS.

01. Facility Name. Each ICF/ID must use a distinctive name for the facility which is registered with the Secretary of State of Idaho. The facility cannot change its name without written notification to the Department at least thirty (30) days prior to the date the proposed name change is to be effective. ()

02. Physical Location. Each ICF/ID must meet the requirements under Sections 67-6530 through 67-6532, Idaho Code, for local planning and zoning laws or ordinances. Facilities serving eight (8) or fewer individuals with intellectual disabilities is not required to secure conditional use permits, zoning variances, or zoning clearance. ()

03. Size Limitations. The maximum size of an ICF/ID must be no more than fifteen (15) beds. An ICF/ID that has continuously operated under current ownership since July 1, 1980, or before, and continues to operate under that ownership, is exempt from this requirement. ()

04. Compliance with Water and Sanitation Rules. Each ICF/ID must have a statement from the Public Health District indicating that the water supply and sewage disposal systems meet the Department requirements in Sections 700 through 799 of these rules. ()

05. Approval of Facility Construction Plans. Each ICF/ID must obtain written Department approval prior to any proposed construction of a facility or alterations to an ICF/ID. Construction or alteration plans must be provided to the Department prior to licensing of the facility. ()

022. INSPECTION OF FACILITY.

01. Representatives of the Department. The Department is authorized to enter an ICF/ID, or its buildings associated with its operation, at all reasonable times for the purpose of inspection. The Department may, at its discretion, utilize the services of any legally qualified person or organization, either public or private, to examine and inspect any ICF/ID for licensing requirements. ()

02. Accessible With or Without Prior Notification. The Department or its representatives may enter a facility for the purpose of inspections with or without prior notification to the facility. ()

03. Inspection of Records. For the purposes of these rules, the Department is authorized to inspect all records required by the Department to be maintained by the facility. ()

04. Inspection of Outside Services. The Department is authorized to inspect any outside services that a licensed facility uses for its individuals. ()

023. -- 024. (RESERVED)

025. INITIAL APPLICATION FOR LICENSURE.

Each person or entity planning to operate an ICF/ID must apply to the Department for an initial license. ()

01. Form of Application. The applicant must complete an initial application form provided by the Department. The application and documents required in Subsection 025.02 of this rule must be submitted to the Department at least ninety (90) days prior to the planned opening date. ()

02. Documents Required. In addition to the application form, the following documents must be submitted with the application prior to approval of a license: ()

a. A certificate of occupancy from the local building and fire authority. ()

b. Acceptable policies and procedures governing the facility, including a sample of an individual record, as required by the Department. ()

c. If the facility is owned by a corporation, the names and addresses of all officers and stockholders having more than five percent (5%) ownership. ()

026. CHANGE OF OWNERSHIP (CHOW).

A new owner must submit a new application for licensure, and must receive the license from the Department before operating the facility. A “change in ownership” is a change in the person or legal organization that has final decision-making authority over the daily operation of an existing ICF/ID. ()

01. CHOW of ICF/ID. An ICF/ID must apply for a change of ownership when: ()

a. The form of legal organization of the facility changes, such as when a sole proprietorship becomes a partnership or corporation; ()

b. Title of the ICF/ID is transferred from the current licensee to another party; ()

c. The ICF/ID is leased to another party, or the facility's existing lease is terminated; ()

d. An event occurs that terminates or dissolves a partnership or sole proprietorship; or ()

e. The licensee is a corporation; and ()

i. The corporation is dissolved; or ()

ii. A new corporation is formed through consolidation or merger with one (1) or more other corporations, and the licensed corporation no longer exists. ()

02. No CHOW. Ownership does not change when: ()

a. The licensee contracts with another party to manage the facility and to act as the licensee’s agent. The licensee must retain final decision-making authority over daily operating decisions; or ()

b. When the licensee is a corporation, some or all of its corporate stock is transferred, and the corporation continues to exist. ()

03. Application for Change of Ownership. An ICF/ID must apply to the Department for a change of ownership at least ninety (90) days prior to the proposed date of the change, using an initial licensing application form. ()

027. -- 029. (RESERVED)

030. ISSUANCE OF LICENSE.

An ICF/ID license is issued when the Department finds that the applicant has demonstrated compliance with the requirements in Idaho statutes and these rules. ()

01. License Issued Only to Named Applicant and Location. Each license is issued only for the premises and persons or governmental units named in the application, as required in Section 39-1305, Idaho Code. ()

02. License Specifies Maximum Allowable Beds. Each license specifies the maximum allowable number of beds in each facility, which may be exceeded only on an emergency basis, for the minimum amount of time required to address the emergency. This emergency exception must be authorized by the Department. ()

03. Initial License. When the Department determines that all required application information has been received and demonstrates compliance, a license is issued. The initial license expires at the end of the calendar year in which the license was issued. ()

04. Provisional License. A provisional license issued to an ICF/ID is valid for a period not to exceed six (6) months from the date of issuance by the Department. A provisional license may be issued in order for the facility to: ()

- a. Implement administrative changes; ()
- b. Implement structural changes to a facility's premises; or ()
- c. Work on correcting deficiencies to bring the facility into compliance with statutory requirements and these rules. ()

031. EXPIRATION AND RENEWAL OF LICENSE.

An ICF/ID license issued by the Department is valid until the end of the calendar year in which it is issued. The license is renewed annually unless the license is revoked or suspended. ()

032. -- 039. (RESERVED)

040. DISPLAY OF LICENSE.

Under Section 39-1305, Idaho Code, an ICF/ID must post its license in a conspicuous place on the premises visible to the general public. ()

041. -- 049. (RESERVED)

050. DENIAL OR REVOCATION OF LICENSE.

Under Section 39-1306, Idaho Code, the Department may deny an application for an ICF/ID license or revoke an existing license. ()

01. Notice to Deny or Revoke. The Department will send a written notice to the applicant or licensee by certified mail, registered mail, or personal delivery service, to deny or revoke a license or application. The notice will inform the applicant or licensee of the opportunity to request a hearing as provided in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

02. Major Deficiency. The Department may deny an application for a license or revoke an existing license if a major deficiency exists in the compliance of the ICF/ID with the provisions of Idaho Code, federal regulations, or of these rules. A major deficiency is: ()

- a. Any violation of ICF/ID requirements contained in Idaho Code, federal regulations, or these rules that would endanger the health, safety, or welfare of any individual; ()
- b. Any repeated violations of any requirements in Idaho Code, federal regulations, or these rules; or ()
- c. The accumulation of minor violations at the facility that, taken as a whole, would endanger the health, safety, or welfare of any individual. ()

03. Prior Record Related to Licensure. The Department may deny an application for a license or revoke an existing license when the owner or administrator has: ()

- a. Had any health or personal care license denied or revoked; ()
- b. Been found to have operated any health or personal care facility without a license; or ()
- c. Been enjoined from operating any health or personal care facility in an action related to improper operation of a facility. ()

04. Personnel Inadequacies. The Department may deny an application for a license or revoke an existing license when the owner or administrator lacks sufficient staff in number or qualification to properly care for

the proposed or actual number and needs of individuals. ()

05. Inadequate or False Disclosure. The Department may deny an application for a license or revoke an existing license when the owner or administrator has misrepresented, or failed to fully disclose, any facts or information or any items in any application or any other document requested by the Department, when such facts and information were required to have been disclosed. ()

06. Prior Criminal Record. The Department may deny an application for a license or revoke an existing license when the owner or administrator has been convicted of any crime or infraction associated with the operation of a licensed health or personal care facility. ()

051. -- 059. (RESERVED)

060. SUMMARY SUSPENSION OF LICENSE.

The Director may summarily suspend any ICF/ID license in the event of any emergency endangering the health, safety, or welfare of an individual in the facility. The Director will provide an opportunity for a contested case hearing under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

061. -- 069. (RESERVED)

070. RETURN OF SUSPENDED, REVOKED, OR RELINQUISHED LICENSE.

Each ICF/ID license is the property of the State of Idaho and must be returned to the Department immediately upon its suspension, revocation, or the voluntary closure of the facility. ()

071. -- 079. (RESERVED)

080. WAIVER.

Under Section 39-1306, Idaho Code, a temporary or permanent waiver to these rules and minimum standards, either in whole or in part, may be granted by the Department to an ICF/ID on a case-by-case basis under the following conditions: ()

01. Waiver for Good Cause. The Department finds good cause to grant a waiver and no individual's health, safety, or welfare is endangered by the waiver being granted. ()

02. No Precedent. Precedent will not be set by granting the requested waiver, and such waiver will have no force or effect in any other proceeding. ()

081. -- 099. (RESERVED)

100. GOVERNING BODY AND MANAGEMENT.

The requirements of Sections 100 through 199 of these rules are modifications or additions to the requirements in 42 CFR 483.410 - 483.410(e), Condition of Participation: Governing Body and Management incorporated in Section 004 of these rules. ()

101. GOVERNING BODY DUTIES.

01. Unrelated to Owner. The governing body of each ICF/ID must assure that individuals residing at the ICF/ID are unrelated to the owner. ()

02. Appointment of Administrator. The governing body of each licensed ICF/ID must appoint an administrator. ()

102. ADMINISTRATOR.

01. Administrator Requirements. Each ICF/ID must have an administrator who: ()

a. Is at least twenty-one (21) years of age; ()

- b. Is responsible and accountable for implementation of the policies established by the governing body; ()
 - c. Has a minimum three (3) years direct experience working in an ICF/ID setting; and ()
 - d. Meets all other qualifications required by the facility's governing body. ()
- 02. Administrator Duties.** The administrator's responsibilities and duties are to: ()
- a. Implement and monitor written policies and procedures for each service of the ICF/ID and the operation of its physical plant. The administrator must see that these policies and procedures are adhered to and must make them available to authorized representatives of the Department. ()
 - b. Implement and monitor written policies and procedures for the recruitment and employment of sufficient staff and personnel in number and qualification to perform each service and for the operation of the ICF/ID. The administrator must see that the policies and procedures for administration of personnel requirements in Section 120 of these rules are adhered to and available to authorized representatives of the Department. ()
 - c. Compile, complete, and submit all reports and records required by the Department. ()
 - d. Notify the Department immediately of an anticipated or actual termination of any service vital to the continued safe operation of the ICF/ID or the health, safety, and welfare of its individuals and personnel. ()
 - e. When not on duty, delegate the necessary authority to an administrator designee who is competent to handle the administrator's duties. Delegation of authority must occur according to the ICF/ID policies and procedures set by the facility's governing body. In the event of an emergency, the administrator designee must know how to contact the administrator. ()

103. -- 109. (RESERVED)

110. FACILITY RECORDS.

- 01. Records Available Upon Request.** Each ICF/ID must be able to print and provide paper copies of electronic records upon the request of the individual who is the subject of the requested records, the individual's legal guardian, payer, or the Department. ()
- 02. Census Register.** Each ICF/ID must maintain a census register that lists: ()
- a. The name of each individual residing in the facility; ()
 - b. The individual's date of admission and discharge; and ()
 - c. A daily census of each individual who is in the facility on any given day. ()

111. -- 119. (RESERVED)

120. ADMINISTRATIVE REQUIREMENTS -- PERSONNEL.

Each ICF/ID must employ personnel sufficient in number and qualifications to meet, at a minimum, the quality of care mandated by law and these rules for all individuals' needs in the facility. ()

01. Job Descriptions. Current job descriptions outlining the authority, responsibilities, and duties of all personnel in the facility, including the administrator, must be established and maintained as required by the governing body. A copy of an employee's particular job description must be provided to each employee. ()

02. Policies and Procedures. The facility must ensure that explicit and uniform policies and procedures are established for each employment position concerning hours of work, overtime, and related personnel

matters. A statement of these policies must be provided to each employee. ()

03. Daily Work Schedules. Daily work schedules must be maintained that show the personnel on duty at any given time for the previous three (3) month period. These schedules must be kept up to date and identify the employee as follows: ()

a. First and last names; ()

and b. Professional designations such as registered nurse (RN), licensed practical nurse, (LPN), QIDP; ()

c. Employment position in the facility. ()

04. Organizational Chart. A current organizational chart that clearly indicates lines of authority within the facility's organizational structure must be available at the facility to be viewed by all employees, or kept in each employees' possession while on duty. ()

05. Personnel Records. A separate personnel record must be maintained for each employee of the facility that contains the following information: ()

a. The employee's name, current address, and telephone number; ()

b. The employee's Social Security Number; ()

c. The employee's educational background; ()

d. The employee's work experience; ()

e. The employee's other qualifications to provide ICF/ID care. If licensure is required to provide a service the employee was hired to provide, the facility must have written verification of the original license number and date the current license expires; ()

f. The employee's criminal history and background check (CHC) clearance must be printed and on file, when a CHC is required; ()

g. The employee's date of employment; ()

h. The employee's date of termination including the reason for termination. ()

i. The employee's position in the facility and a description of that position; and ()

j. The employee's hours and work schedule, paydays, overtime, and related personnel matters.()

06. Health and Age Requirements. All personnel employed by an ICF/ID must meet and observe the following requirements: ()

a. Each employee must be free of communicable disease and infected skin lesions while on duty; and ()

b. At the time of employment, each employee must have a tuberculin skin test consistent with current tuberculosis control procedures. ()

c. No employee who is less than eighteen (18) years of age can provide direct individual care in an ICF/ID. ()

07. Training Requirements. Each ICF/ID must have and follow structured written training programs designed to train each employee in the responsibilities specified in the written job description, and to provide for

quality of care and compliance with these rules. Signed evidence of personnel training, indicating dates, hours, and topic, must be retained at the facility. This training must include at a minimum: ()

a. Initial orientation for new employees; and ()

b. Continuing in-service training designed to, at a minimum, meet the quality of care mandated by law and these rules for individuals residing in the facility. ()

121. -- 199. (RESERVED)

200. CLIENT PROTECTIONS.

The requirements of Sections 200 through 299 of these rules are modifications and additions to the requirements in 42 CFR 483.420 - 483.420(d)(4), Condition of Participation: Client Protections incorporated in Section 004 of these rules. ()

201. INDIVIDUAL ADVOCATE.

An individual advocate is a person whose primary responsibility is to help assure the individual's rights are not violated and to act in the best interest of the individual. ()

202. APPOINTED ADVOCATE.

The administrator of an ICF/ID must appoint an advocate for an individual with input from the individual's IDT when the following exists: ()

01. Parent or Legal Guardian Unable to Participate. The individual's parent or legal guardian is unable or unwilling to participate, or is unavailable after reasonable efforts to contact them for participation have been made. ()

02. Individual Unable to Make Informed Decisions. An individual "lacks capacity to make informed decisions" as defined in Section 66-402(9), Idaho Code. The IDT must determine and document in the individual's record the specific impairment that has rendered the individual incapable of understanding his own rights. ()

03. Requested by Individual, Parent, or Guardian. An advocate is requested by the individual, his parent, or his guardian. ()

04. Advise Individual of Rights. The fact that an individual has been determined to be incompetent or incapable does not absolve the facility from advising the individual of his rights to the extent that the individual is able to understand them. ()

05. Advocate Selection. The administrator must assure that all individuals are represented only by persons who are not employed by the facility. The priority for selection of advocates will be in the following order: ()

a. Parent(s); ()

b. An interested family member; or ()

c. Other interested parties. ()

203. ADVOCATES' RIGHTS.

Each advocate has the following rights: ()

01. Be Informed. To be informed of activities related to the individual that may be of interest to them or of significant changes in the individual's condition. ()

02. Visitation Rights. To visit the individual and all parts of the facility that provide services to the individual at any reasonable hour and without prior notice, unless contraindicated by the individual's needs or such practice infringes upon the privacy and rights of others. ()

03. Prompt Communications. To receive prompt replies to any communication sent to the facility regarding the individual. ()

04. Written Interpretation of Evaluations. To be given within thirty (30) days of admission to the facility, a written interpretation of the evaluation that is conducted for the individual. The administrator of the facility must provide a written interpretation of any and all subsequent evaluations. ()

05. Discharge Counseling. To be counseled as to the advantages and disadvantages of discharging the individual from the facility, including admission to another facility. ()

06. Prompt Notification of Significant Events. To be notified promptly in the event of any unusual occurrence, including serious illness or accident, impending death, and/or death; and in the case of death, to be told of autopsy findings if an autopsy is performed. ()

07. Access to Individual's Records. To be given access to all of the individual's records that pertain to their active treatment, subject to the requirements specified in IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

204. -- 299. (RESERVED)

300. FACILITY STAFFING.

The requirements of Sections 300 through 399 of these rules are modifications and additions to the requirements in 42 CFR 483.430 - 483.430(e)(4), Condition of Participation: Facility Staffing incorporated in Section 004 of these rules. ()

301. INTERNS AND VOLUNTEERS.

Volunteers and interns must be under the direct supervision of facility staff during all times of direct contact with individuals. ()

302. -- 399. (RESERVED)

400. ACTIVE TREATMENT SERVICES.

The requirements of Sections 400 through 499 of these rules are modifications and additions to the requirements in 42 CFR 483.440 - 483.440(f)(4), Condition of Participation: Active Treatment Services incorporated in Section 004 of these rules. ()

401. -- 499. (RESERVED)

500. CLIENT BEHAVIOR AND FACILITY PRACTICES.

The requirements of Sections 500 through 599 of these rules are modifications and additions to the requirements in 42 CFR 483.450 - 483.450(e)(4)(iii), Condition of Participation: Client Behavior and Facility Practices incorporated in Section 004 of these rules. ()

501. MANAGEMENT OF INAPPROPRIATE INDIVIDUAL BEHAVIOR.

The application of painful or noxious stimuli and the use of enclosures are prohibited. ()

502. -- 599. (RESERVED)

600. HEALTH CARE SERVICES.

The requirements of Sections 600 through 699 of these rules are for modifications and additions to the requirements in 42 CFR 483.460 - 483.460(n)(2), Condition of Participation: Health Care Services incorporated in Section 004 of these rules. ()

601. -- 699. (RESERVED)

700. PHYSICAL ENVIRONMENT.

The requirements of Sections 700 through 799 of these rules are modifications and additions to the requirements in 42

CFR 483.470 - 483.470(1)(4), Condition of Participation: Physical Environment, incorporated in Section 004 of these rules. Other documents incorporated in Section 004 of these rules related to an ICF/ID physical environment are the NFPA's Life Safety Code and IDAPA 07.03.01, "Rules of Building Safety." ()

701. ENVIRONMENTAL SANITATION STANDARDS.

Each ICF/ID must ensure that its environment promotes the health, safety, independence, and learning of each individual in the facility. ()

702. ENVIRONMENTAL STANDARDS -- WATER, SEWER, AND GARBAGE.

01. Water Supply. Each ICF/ID must have a water supply that is adequate, safe, and of a sanitary quality. The water supply must: ()

a. Be from an approved public or municipal water supply; or ()

b. Be from a private water supply that meets the standards approved by the Department, when an approved public or municipal water supply is not available. ()

02. Private Water Supply. An ICF/ID using a private water supply must: ()

a. Submit water samples to the local Public Health District Laboratory for bacteriological examination at least once every three (3) months; and ()

b. Keep copies of the Public Health District laboratory reports on file at the facility and available to authorized representatives of the Department. ()

03. Adequate Water Supply. Each ICF/ID must have a sufficient amount of water under adequate pressure to meet sanitary and fire sprinkler system requirements of the facility at all times, according to the requirements in IDAPA 07.02.06, "Rules Concerning Idaho State Plumbing Code," and the NFPA Life Safety Code incorporated in Section 004 of these rules. ()

04. Sewage Disposal. Each ICF/ID must discharge all sewage and liquid wastes into a municipal sewage system where such a system is available. Where a municipal sewage system is not available, sewage and liquid wastes must be collected, treated, and disposed of in a manner approved by the Department. ()

05. Garbage and Refuse Disposal. Each ICF/ID must provide garbage and refuse disposal at its facility that meets the following requirements: ()

a. The premises and all buildings must be kept free from accumulation of weeds, trash, and rubbish; ()

b. Materials not directly related to the maintenance and operation of the facility must not be stored on the premises; ()

c. All containers used for storage of garbage and refuse must be constructed of durable, nonabsorbent material, and must not leak. Containers must be provided with tight-fitting lids unless stored in a vermin-proof room or enclosure; ()

d. Garbage containers must be maintained in a sanitary manner. Sufficient containers must be afforded to hold all garbage and refuse that accumulates between periods of removal from the facility; and ()

e. Storage areas must be kept clean and sanitary. ()

703. ENVIRONMENTAL STANDARDS -- CHEMICALS AND PESTICIDES.

01. Rodent and Pest Control. Each ICF/ID must be maintained free from insects, rodents, vermin, and other pests. ()

a. Chemicals and pesticides must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer that is registered with the Idaho Department of Agriculture; and ()

b. Chemicals and pesticides used in the facility's pest control program must be used and stored to meet local, state, and federal requirements. ()

02. Chemical Storage. All toxic chemicals must be properly labeled and stored according to the manufacturer's instructions. Toxic chemicals must not be stored in individual areas, with drugs, or in any area where food is stored, prepared, or served. ()

704. ENVIRONMENTAL STANDARDS -- LINENS AND LAUNDRY SERVICES.

01. Linens Provided. Each ICF/ID must have available at all times a quantity of linens sufficient for the proper care and comfort of its individuals. The linens must: ()

a. Be of good quality, not thread-bare, torn, or badly stained; and ()

b. Be handled, processed, and stored in an appropriate manner that prevents contamination. ()

02. Laundry Facilities. Unless a laundry service is used as described in Subsection 704.03 of this rule, each ICF/ID must have adequate laundry facilities for the sanitary washing and drying of the linens and other washable goods laundered in the facility. An individual's personal laundry must be collected, sorted, washed, and dried in a sanitary manner, and must not be washed with the general linens. The laundry area must: ()

a. Be situated in an area separate and apart from where food is stored, prepared, or served; ()

b. Be well-lighted and ventilated; ()

c. Be adequate in size for the needs of the facility; ()

d. Be maintained in a sanitary manner; and ()

e. Be kept in good repair. ()

03. Laundry Services. When an ICF/ID sends its linens and individuals' personal laundry out for laundry services, the facility must ensure that: ()

a. Soiled linens and clothing are handled in a proper manner to prevent cross-contamination and material damage prior to sending out; ()

b. Clean linens and clothing received from a laundry service are stored in a proper manner to prevent potential re-contamination or material damage; and ()

c. Each individual's personal laundry is collected, transported, sorted, washed, and dried in a sanitary manner and is not washed with general linens. ()

705. ENVIRONMENTAL STANDARDS -- HOUSEKEEPING SERVICES.

Each ICF/ID must have sufficient housekeeping and maintenance personnel and equipment to maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. ()

01. Facility Interior. Floors, walls, ceilings, and other interior surfaces, equipment, and furnishings must be maintained in a clean and sanitary manner. ()

02. Housekeeping Procedures. Each ICF/ID must have written procedures for cleaning surfaces and equipment that is explained to each person engaged in housekeeping duties. An individual in the facility who is engaged in facility housekeeping duties as part of his training program must be supervised by the facility's program personnel according to the individual's assessed needs. ()

03. Requirements After Individual Discharged. After discharge of an individual the facility must ensure that the individual's room is thoroughly cleaned, including the bed, bedding, linens, and furnishings. ()

04. Deodorizers. Deodorizers and other products must not be used to cover odors caused by poor housekeeping or unsanitary conditions. ()

05. Housekeeping Equipment. All housekeeping equipment must be in good repair and maintained in a clean and sanitary manner. ()

706. -- 709. (RESERVED)

710. PHYSICAL FACILITY STANDARDS -- EXISTING GENERAL REQUIREMENTS.

Each ICF/ID must meet the minimum standards related to physical construction and maintenance for all of its buildings used for ICF/ID services as required in Sections 711 through 712 of these rules. All buildings are subject to approval by the Department. ()

711. PHYSICAL FACILITY STANDARDS -- EXISTING CONSTRUCTION.

Each ICF/ID must use buildings that are of such character and quality to be suitable for the services and usage provided in its buildings. Other requirements for existing buildings are: ()

01. Good Repair. Each building used by the ICF/ID and its equipment must be in good repair. ()

a. The walls and floors must be of such character as to permit frequent cleaning. ()

b. Walls and ceilings in kitchens, bathrooms, and utility rooms must have smooth, cleanable surfaces. ()

c. The building must be kept clean and sanitary, and every reasonable precaution must be taken to prevent the entrance of insects and rodents. ()

02. Stairways. Each stairway in an ICF/ID must have sturdy handrails on both sides of the stairs, and all open stairwells must be protected with guardrails. Each stairway must have a nonskid tread covering the entire surface of the stair. ()

03. Porches and Verandas. Each open porch and veranda must be protected by sturdy guardrails of a height measuring a minimum of forty-two (42) inches. ()

04. Telephone. Each ICF/ID must have telephone access that provides a reliable means of communication to each individual in the facility for private conversations and to contact emergency services. ()

05. Dining Areas. Each ICF/ID must provide one (1) or more attractively furnished, multi-purpose areas of an adequate size for individuals' dining, diversional, and social activities. Each area must be: ()

a. Well-lighted; ()

b. Ventilated; and ()

c. Equipped with tables and chairs that have easily cleanable surfaces. ()

06. Storage Areas. Each ICF/ID must provide general storage areas and medical storage areas. ()

a. For each licensed bed in the facility there must be a minimum of ten (10) square feet of general storage area; ()

b. In addition, each individual's bedroom must have suitable storage for personal clothing, possessions, and individual adaptive equipment; and ()

c. The facility must provide safe and adequate storage space for medical supplies and an area appropriate for the preparation of medications. ()

07. Lighting. Each ICF/ID must meet the following lighting requirements: ()

a. In addition to natural lighting, artificial lighting is required to provide an average illumination of ten (10) foot-candles (107 lux) over the area of a room at thirty (30) inches (standard household lighting level) above the floor level. ()

b. With the exception of emergency egress lighting, all artificial lighting must be controllable by switches. ()

c. Task lighting and reading lights must be available to meet each individual's needs. ()

08. Ventilation. Each ICF/ID must be ventilated and precautions must be taken to prevent offensive odors. ()

09. Heating and Air Conditioning. Each ICF/ID must provide heating and air conditioning systems throughout each building that are capable of maintaining a temperature range between sixty-eight (68°F) degrees and eighty-one (81°F) degrees Fahrenheit in all weather conditions. An ICF/ID cannot use any of the following: oil space heaters, recessed gas wall heaters, or floor furnaces. ()

10. Plumbing. Each ICF/ID must meet the following plumbing requirements: ()

a. All plumbing fixtures must be clean and in good repair. ()

b. Vacuum breakers must be installed where necessary to prevent backsiphonage. ()

c. The temperature of hot water at plumbing fixtures used by individuals in the facility must be between one hundred (100°F) degrees and one hundred twenty (120°F) degrees Fahrenheit. ()

712. PHYSICAL FACILITY STANDARDS -- INDIVIDUAL ACCOMMODATIONS FOR EXISTING CONSTRUCTION.

Each ICF/ID must provide accommodations for each individual that meet the following requirements: ()

01. Multi-Bedroom. No more than two (2) individuals can be housed in any multi-bedroom. ()

02. Windows. Each individual's room window area must be no less than one-eighth (1/8) of the floor area and must be able to open. ()

a. Suitable window shades or drapes must be provided to control lighting in the room. ()

b. Windows must be located to permit an individual to have a view through the windows from a sitting position, allow for natural light, and room ventilation. ()

c. Windows must be constructed to prevent any drafts when closed. ()

03. Location of Bedroom. Each individual's bedroom must be an approved room that is not located: ()

a. In a way that its outside walls are below grade; ()

b. In any attic story; ()

c. In any trailer house; ()

- d. In any other room not approved; or ()
- e. In a way that it can only be reached by passing through another individual's room, a utility room, or any other similar rooms. ()
04. **Room Size.** Each individual's room must have dimensions that allow for no less than three (3) feet between beds. ()
05. **Ceilings.** Each individual's room must have a ceiling height of seven and one-half (7 1/2) feet or more. ()
06. **Bathrooms.** Each ICF/ID must have toilet rooms and hand washing facilities that are constructed as follows: ()
- a. Toilet rooms and bathrooms for individuals and personnel must not open directly into any room in which food, drink, or utensils are handled or stored. Toilet rooms or bathrooms may open into great rooms containing kitchen and dining areas if the doors are equipped with self-closures and ventilation is activated automatically with lighting. ()
- b. Toilet rooms and bathrooms must be separated from all rooms by solid walls or partitions. Adequate provisions to insure an individual's privacy must be made. ()
- c. Toilet rooms and bathrooms must be constructed for ease of cleaning. ()
- d. When an individual in an ICF/ID requires the use of a wheelchair, there must be at least one (1) toilet room and one (1) bathing area large enough to accommodate wheelchairs. ()
- e. Inside bathrooms and toilet rooms with no exterior window, must have forced ventilation to the outside. ()
- f. Toilet rooms must be so arranged that it is not necessary for an individual to pass through another individual's room to reach the toilet facilities. ()
- g. When an ICF/ID serves an individual with physical impairments, handrails or grab-bars must be provided in the individual's toilet rooms and bathrooms, and must be located so as to be functionally adequate. ()
07. **Bath Linens.** Each individual must be provided with an individual towel and washcloth. ()
08. **Beds.** Each individual must be provided with his own bed that is thirty-six (36) inches wide or more, substantially constructed, and in good repair. Roll-away beds, cots, and folding beds cannot be used. Each individual's bed must be clean and: ()
- a. Have satisfactory springs in good repair; ()
- b. Have a comfortable mattress that is standard in size for the bed; and ()
- c. Each mattress must be maintained, and for individuals known to be incontinent, water repellent. ()
09. **Interior Design.** The interior design of each ICF/ID must provide the functional arrangement of a home to encourage a personalized atmosphere for its individuals. ()
10. **Furnishings and Equipment.** Each ICF/ID must have furniture and equipment that is maintained in a sanitary manner, kept in good repair, and is located to permit convenient use by its individuals. ()
11. **Corridors and Hallways.** Each ICF/ID must ensure corridors and hallways are free of accessory equipment that projects into such areas or otherwise poses a hazard or impedes easy passage. ()

713. -- 729. (RESERVED)

730. PHYSICAL FACILITY STANDARDS -- NEW CONSTRUCTION.

Each ICF/ID must comply with IDAPA 07.03.01, "Rules of Building Safety," incorporated in Section 004 of these rules, or with locally adopted code when more stringent. In addition to the construction and the physical facility standards for new construction, a facility must also comply with Sections 730 through 732 of these rules. Additions to existing facilities, conversions of an existing building to a facility, and portions of facilities undergoing remodeling or alterations other than repairs, must meet these required standards. ()

731. PHYSICAL FACILITY STANDARDS -- NEW CONSTRUCTION REQUIREMENTS.

01. New Facility Life Safety Code Requirements. Each new ICF/ID must meet the provisions of the National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, as incorporated in Section 004 of these rules, applicable to an ICF/ID, as specified below: ()

a. Each new facility housing sixteen (16) individuals or less on the first floor only, must meet the requirements of Chapter 32, New Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capabilities, specifically the sections found within 32.1, 32.2 and 32.7, and the applicable provisions of chapters 1 through 10. ()

b. Each new facility housing individuals on other than the first floor must meet the requirements of NFPA 101, the Life Safety Code, Chapter 18, New Health Care Occupancies, Limited Care Facility. ()

02. Plans, Specifications, and Inspections. Plans, specifications, and inspections of each new ICF/ID construction or any addition, alteration, conversion, or remodeling of an existing structure are governed by the following rules: ()

a. Plans for new construction of an ICF/ID must be prepared by an architect licensed in the state of Idaho; ()

b. Employment of an architect can be waived by the Department in connection with certain minor alterations. ()

03. Approved by Department. Each ICF/ID must submit plans and specifications to the Department prior to beginning any work on the construction of new buildings, additions, or structural changes to existing facilities, or conversion of existing buildings to be used as an ICF/ID. The Department will review and approve plans and specifications to assure compliance with the applicable construction standards, codes, rules, and regulations. ()

04. Preliminary Plans. Preliminary plans must be submitted and must include: ()

a. The assignment of all spaces, size of areas and rooms, and indication in outline of the fixed and movable equipment and furniture; ()

b. Drawings of each floor, attic, and basement; ()

c. The total floor area and number of beds; ()

d. Drawings of approaches or site plans, roads, parking areas, and sidewalks; ()

e. An outline describing the general construction, including interior finishes, acoustical materials, heating, electrical, and ventilation systems; and ()

f. Plans drawn to scale of sufficient size to clearly present the proposed design, but not less than a scale of one-eighth (1/8) inch to one (1) foot. ()

05. Working Drawings. Each ICF/ID must develop working drawings in close cooperation with the Department and other appropriate agencies and receive written Department approval prior to beginning construction. The drawings and specifications must: ()

- a. Be well-prepared with accurate dimensions; ()
- b. Include all necessary explanatory notes, schedules, and legends; ()
- c. Be complete and adequate for contract purposes; and ()
- d. Be stamped with the architect's seal. ()

06. Inspection. Each ICF/ID must be inspected and approved by the Department prior to occupancy. The Department must be notified at least six (6) weeks prior to completion of construction to schedule a final inspection. ()

07. ICF/ID Regulations. Each ICF/ID being constructed must meet or exceed construction features that are applicable for all local, state, and national codes. In the event of a conflict in requirements between codes, the most restrictive will apply. ()

08. Site Requirements. Each ICF/ID site location must: ()

- a. Be served by an all-weather road kept open to motor vehicles at all times of the year; ()
- b. Be accessible to physician, professional, and habilitation services, medical facilities, shopping centers, and population centers where employees may be recruited and retained; ()
- c. Be remote from railroads, factories, airports, and similar noise, odor, smoke, dust, or other nuisances; ()
- d. Be accessible to public utilities and services such as electrical power, telephone service, and fire protection; ()
- e. Have adequate off-street parking available; and ()
- f. Comply with homeowner association covenants, conditions, and restrictions. ()

732. PHYSICAL FACILITY STANDARDS -- INDIVIDUAL ACCOMODATIONS FOR NEW CONSTRUCTION.

Each ICF/ID must provide accommodations for each individual that meets the following requirements: ()

- 01. Bedrooms.** Each individual bedroom must be of sufficient size to allow for the following: ()
- a. Eighty (80) square feet or more of usable floor space per bed in a multiple-occupancy bedroom; and ()
 - b. One hundred (100) square feet or more of usable floor space for a single occupancy bedroom. ()

02. Multi-Bedrooms. No more than two (2) individuals can be housed in any multi-bedroom. ()

03. Windows. Each individual's room window area must be no less than eight percent (8%) of the floor area and must be able to open. ()

- a. Suitable window shades or drapes must be provided to control lighting in the room. ()
- b. Windows must be located to permit an individual to have a view through the windows from a

sitting position, allow for natural light, and room ventilation. ()

c. Windows must be constructed to prevent any drafts when closed. ()

04. Location of Bedroom. Each individual's bedroom must be an approved room that is not located: ()

a. In a way that its outside walls are below grade; ()

b. In any attic story; ()

c. In any trailer house; ()

d. In any other room not approved; or ()

e. In a way that it can only be reached by passing through another individual's room, a utility room, or any other similar rooms. ()

05. Bathrooms. Each ICF/ID must have one (1) toilet, one (1) tub or shower, and one (1) lavatory bowl for every four (4) licensed beds in the facility. Tubs, showers, and lavatory bowls must be connected to hot and cold running water. Toilet and bathing rooms must not be accessed through another individual's sleeping room. ()

06. Living and Dining Areas. Each ICF/ID must provide a minimum of thirty (30) square feet per licensed bed for living, dining, and recreational activities. This area must be for the sole use of individuals, and under no circumstances can these rooms be used as bedrooms by an individual or personnel. A hall or entry is not acceptable as a living room or recreation room. ()

07. Closets. Each individual must have closet space provided in his bedroom that is four (4) square feet or more per licensed bed. When a common closet is used for two (2) individuals, there must be a physical separation for the clothing of each individual. ()

733. -- 739. (RESERVED)

740. FIRE AND LIFE SAFETY STANDARDS -- EXISTING FACILITY.

All buildings on the premises of an ICF/ID must meet all the requirements of local, state, and national codes concerning fire and life safety standards that are applicable to ICFs/ID. ()

01. General Requirements. Each ICF/ID must meet the following general requirements for the fire and life safety standards: ()

a. The facility must be structurally sound and must be maintained and equipped to assure the safety of the individuals who reside there, employees, and the public. ()

b. On the premises of each facility where natural or man-made hazards are present, suitable fences, guards, and railings must be provided to protect the individuals who reside there, employees, and the public. ()

02. Existing Life Safety Code Requirements. Each ICF/ID must meet provisions of the National Fire Protection Association (NFPA) Standard 101, The Life Safety Code, incorporated in Section 004 of these rules, applicable to an ICF/ID, as specified below: ()

a. Each existing facility housing sixteen (16) or fewer individuals on a single story must meet the requirements of Chapter 33, Existing Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capabilities, specifically the sections found within 33.1, 33.2 and 33.7, and the applicable provisions of Chapters 1 through 10 of the NFPA Standard 101, The Life Safety Code. ()

b. Existing fire sprinkler systems in a facility are permitted to continue in service until building footprint modifications are made, or a change of ownership, provided the lack of conformity with these standards

does not present a serious hazard to the occupants as determined by the authority having jurisdiction. ()

c. Sprinkler systems for a facility must be connected to the building fire alarm system and be supervised. ()

d. Sprinkler systems installed in a newly constructed or converted facility must be designed to the standards of NFPA 13, NFPA 13-R or NFPA 13-D. Multipurpose sprinkler and domestic piping systems are prohibited. ()

03. Existing Licensed Facilities. Each existing ICF/ID housing seventeen (17) or more individuals, or any number of individuals residing in multiple story buildings, must meet the requirement of Chapter 19, Existing Health Care Occupancies, Limited Care Facilities, and the applicable provision of Chapters 1 through 10 of the NFPA Standard 101, The Life Safety Code, incorporated in Section 004 of these rules. ()

04. Portable Fire Extinguishers. Each ICF/ID must have portable fire extinguishers installed throughout the facility in accordance with applicable provisions of NFPA Standard 10, "Portable Fire Extinguishers." ()

05. Portable Comfort Space Heating Devices Prohibited. The use of portable comfort space heating devices of any kind is prohibited in an ICF/ID. ()

06. Emergency Battery Operated Lighting. Each ICF/ID must provide emergency battery-operated lighting for at least the exit passageway lighting, hall lighting, and the fire alarm system, in accordance with NFPA 101, The Life Safety Code, Section 7.9, as incorporated in Section 004 of these rules. ()

741. FIRE AND LIFE SAFETY STANDARDS -- EMERGENCY PLANS.

01. Emergency Plans for Protection and Evacuation of Individuals. In cooperation with the local fire authority, the administrator of each ICF/ID must develop a prearranged written plan for employee response for protection of the individuals who reside there and for orderly evacuation of these individuals in case of an emergency. These plans must include procedures to meet all potential emergencies and disasters relevant to the facility, such as fire, severe weather, and missing individuals. ()

a. The written emergency plan for each facility must contain a diagram of the building showing emergency protection equipment, evacuation routes, and exits. This diagram must be conspicuously posted in a common area within the facility. An outline of emergency instructions must be posted with the diagram. ()

b. The facility must communicate the written emergency plan to staff and train staff in the use of the written emergency plan. ()

c. The facility must periodically review the written emergency plan and thoroughly test it to assure rapid and efficient function of the plan. ()

d. The facility must hold unannounced evacuation drills at least quarterly for each shift of personnel for a total of no less than twelve (12) per year. The evacuation drills must be irregularly scheduled throughout all shifts and under varied conditions. At least one (1) drill per shift must be held on a Sunday or holiday. The facility must actually evacuate individuals during at least one (1) drill each year on each shift. ()

e. The facility must document evacuation drills, cite the problems investigated, and take the appropriate corrective action for the identified problems. ()

02. Report of Fire. Each ICF/ID must submit to the Department a separate report of each fire incident that occurs within the facility within thirty (30) days of the occurrence. The facility must use the Department's reporting form, "Facility Fire Incident Report," available online at: <http://www.facilitystandards.idaho.gov>. The facility must provide all specific data concerning the fire including the date, origin, extent of damage, method of extinguishment, and injuries, if any, for each fire incident. A reportable fire incident is when a facility has an incident: ()

- a. That causes staff to activate the facility emergency plan in whole or in part; ()
- b. That causes an alarm throughout, causing staff or residents to activate the facility emergency plan, in whole, or in part; ()
- c. That causes a response by the fire department or emergency services to investigate an alarm or incident; ()
- d. That is unplanned in which residents are evacuated, prepared to evacuate, partially evacuated, or protected in place, due to smoke, fire, unknown gases/odors, or other emergency; or ()
- e. That results in an injury, burn, smoke inhalation, death, or other fire or emergency-related incident. ()

03. Maintenance of Equipment. Each ICF/ID must establish routine test, check, and maintenance procedures for alarm systems, extinguishment systems, and all essential electrical systems. Each facility must meet the following requirements: ()

- a. The use of any defective equipment on the premises of any facility is prohibited. ()
- b. The administrator of the ICF/ID must have all newly acquired equipment and appliances inspected for safe condition and function prior to use by any individual residing there, employee, or visitor to the facility. ()
- c. The administrator of the ICF/ID must show written evidence of adequate preventive maintenance procedures for equipment directly related to the health and safety of the individuals who reside there. ()
- d. The facility must have the fire alarm system and smoke detection system serviced at least annually by an authorized servicing agency. Servicing must be in accordance with the applicable provision of NFPA Standard 72, The National Fire Alarm Code. ()
- e. The facility's automatic sprinkler systems, if installed, must be serviced at least annually by an authorized servicing agency. Servicing must be in accordance with the applicable provisions of NFPA Standard 25, "Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems." Facilities protected by an NFPA 13D sprinkler system must be serviced and tested annually by an authorized servicing agency to include a visual inspection of all heads, testing of all water flow and tamper devices at a minimum. ()
- f. The facility must have all portable fire extinguishers serviced annually in accordance with the applicable provisions of NFPA Standard 10, "Portable Fire Extinguishers." ()
- g. The facility must establish routine in-house test and check procedures covering alarm systems, extinguishment systems, and essential electrical systems. ()

742. -- 749. (RESERVED)

750. VEHICLES.

Each ICF/ID that transports individuals must have a vehicle safety policy that meets the following: ()

- 01. Vehicle Safety Policy Content.** Each ICF/ID must develop, implement, monitor, and maintain a written vehicle safety policy for each vehicle owned, leased, or used that includes: ()
- a. The establishment of a preventative maintenance program for each vehicle; ()
 - b. Vehicle inspections and other regular maintenance needed to ensure individuals' safety; and ()
 - c. Inspection of wheelchair lifts, securing devices, and other devices necessary to ensure individuals' safety. ()

02. Motor Vehicle Licensing Requirements. Each ICF/ID must meet and adhere to all laws, rules, and regulations, including licensing, registration, and insurance requirements applicable to drivers and vehicles for each vehicle type used. ()

751. -- 799. (RESERVED)

800. DIETETIC SERVICES.

The requirements of Sections 800 through 899 of these rules are modifications and additions to the requirements of 42 CFR 483.480 - 483.480(d)(5), Condition of Participation: Dietetic Services incorporated in Section 004 of these rules. ()

801. PURCHASING AND STORAGE OF FOOD.

Each ICF/ID must purchase and store food as follows: ()

01. Food Source. Each ICF/ID must obtain all food and drink from an approved source identified in IDAPA 16.02.19, "The Idaho Food Code." ()

02. Record of Food Purchases. At a minimum, each ICF/ID must keep a record of food purchases that includes invoices for the preceding thirty (30) day period. ()

03. Food Supply. Each ICF/ID must maintain on its premises the following food supplies: ()

a. Staple food items sufficient for a one (1) week period; and ()

b. Perishable food items sufficient for a two (2) day period. ()

04. Temperature Requirements. Each refrigerator and freezer must be equipped with a reliable, easily read thermometer to ensure the following guidelines are met: ()

a. Refrigerators must be maintained at forty-one (41°F) degrees Fahrenheit or below; and ()

b. Freezers must be maintained at ten (10°F) degrees Fahrenheit or below. ()

802. -- 999. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS

DOCKET NO. 16-0501-1401

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, 39-5403, 56-221, 56-222, 56- 1003, and 56-1004, Idaho Code (Joint rules).

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 17, 2014.

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

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

This rule change will clarify the ability of the Department's Bureau of Vital Statistics to provide state agencies with "fact of death" information to prevent communications needlessly being sent to a decedent's family. Second, the Social Security Administration (SSA) realized that it was disclosing information from death records in violation of federal law (Section 205(r) of the Social Security Act). For example, it was providing "fact of death" information to pension and life insurance companies who use this information to distribute benefits to the proper recipient. Since SSA can no longer provide comprehensive death verification data, the only other source for this information is the states. This rule change will also clarify the Department's ability to provide such verification under very limited circumstances.

Specifically, this rule change will allow the Department to make a "fact of death" verification to other state agencies. For example, if another state agency needs to verify that an individual has passed away so that no further communication is sent to that decedent's family, the Department will have clear authority in rule to do so. This will also allow companies such as life insurance and pension companies to do this type of verification to facilitate the receipt of benefits by Idaho citizens.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking was deemed not feasible as this rule change is simple in nature.

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 James Aydelotte (208) 334-4969.

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 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Tel: (208) 334-5500 / Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0501-1401
(Only those Sections being amended are shown.)**

280. VITAL STATISTICS -- VERIFICATION OF DATA.

01. Verifications. The Registrar will *only* confirm or deny the presence and accuracy of data already known to a governmental agency that requests information from a vital record. Such verifications may be conducted by telephone for Idaho state agencies. Other requests for verification require a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such other information as the Registrar requests. Verifications may also be conducted via Department automated systems approved by the Registrar. (3-20-04)()

02. Administrative Fact of Death Verifications. Upon agreement in writing to such conditions as the Registrar may impose, the Registrar may compare Idaho state agency administrative data to Idaho death data and return an indication of death, also known as fact of death verification, for administrative purposes only. ()

03. Verifications to Protect a Person's Property Right. The State Registrar may approve electronic fact of death verification by entities seeking to determine or protect a person's property right. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1401

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, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, 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 17, 2014.

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

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

These rule changes will allow the Department to cover the costs of driver's training, permit, and license for an eligible foster child, as well as reimburse foster parents for the cost of car insurance for the foster child.

It is anticipated these rule changes will:

1. Improve the Department's chances of recruiting and retaining foster parents;
2. Increase the number of placement options for older youth; and
3. Encourage life skills and normalization of eligible children in foster care.

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

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

There is no anticipated fiscal impact to the state general fund. Costs will be paid from the existing Independent Living appropriation. Approximately 100 foster children will be eligible each year in Idaho. The cost for adding a foster child to a foster parent's auto insurance in the minimum statutory amounts is estimated to be \$1320 per child per year, for a total estimated annual cost of \$132,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule simply confers a benefit, subject to the availability of funding.

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 Falen LeBlanc at (208) 334-4932.

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 24, 2014.

DATED this 7th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
Boise, ID 83720-0036

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Tel: (208) 334-5564 phone / Fax: (208) 334-6558 fax
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0601-1401
(Only those Sections being amended are shown.)

451. DRIVERS' TRAINING, ~~AND~~ DRIVERS' LICENSES, AND PERMITS FOR CHILDREN IN ALTERNATE CARE.

No Department employee or foster parent is allowed to sign for any foster child's driver's license or permit without written authorization from the Child and Family Services Program Manager. Any Department employee or foster parent signing for a foster child's driver's license or permit without the approval of the Child and Family Services Program Manager assumes full personal responsibility and liability for any driving related damages that may be assessed against the child. Those damages will not be covered by the Department's insurance. (5-8-09)

01. **Payments by Department.** Subject to existing appropriations, ~~The~~ Department may make payments for driver's training, driver's license, and permits for a child~~ren~~ in the Department's guardianship legal custody when driver's training or obtaining a driver's license or permit is part of ~~an older teen's~~ the child's Independent Living Plan. In addition, subject to existing appropriations, the Department may reimburse a foster parent, licensed by the Department, for the cost of procuring owner's or operator's insurance listing a child residing in his home as a named insured with respect to the operation of a motor vehicle subject to the limits exclusive of interest and costs with respect to each motor vehicle as provided in Section 49-117, Idaho Code. ~~(3-30-01)~~()

02. **Payment by Parent(s) or Legal Guardian(s).** The parent(s) or legal guardian(s) of children in foster care may authorize drivers' training, provide payment and sign for drivers' licenses and permits. (5-3-03)

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.44 - SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES

DOCKET NO. 18-0144-1401 (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 41-211, 41-401, 41-1025, 41-4020, and 41-5820, 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 17, 2014.

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:

Title 41, Chapter 40, was amended in 2013 to provide that post-secondary educational institutions could provide students self-funded health care plans in Idaho. Previously, registration of such plans was limited to employee plans. The rulemaking will seek to clarify the language that the registration fee is paid by all self-funded plans registering with the department.

Title 41, Chapter 58, Idaho Code, permits the department to license public adjusters. The proposed rule provides that public adjusters pay the same licensing and examination fees as producers and adjusters.

The department contracts with a private contractor to administer insurance producer, adjuster and public adjuster examinations. The examination fee is currently established per rule at \$60. The rulemaking will seek to revise language concerning the fee for producer, adjuster and public adjuster examinations to allow an amount not to exceed \$80.

Technical corrections are also made.

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

- The fee amount of \$500 for self-funded health plans applying to register and filing their annual statements with the department is not changing, but current language referring to “self-funded employee health care plans” will be revised consistent with recent legislation so the rule is not improperly read to limit the fee to employee plans but will also apply to post-secondary student plans. Idaho Code Sections 41-4005(4) and 41-4011(4) authorize the fees.
- Producers and adjusters pay an initial application and biennial license fees of \$80. This rule will apply the same fee to public adjusters.
- The current fee to take an examination to be licensed as a producer, adjuster, or public adjuster (the latter license category will be expressly added in this rulemaking) is \$60. The department contracts with a vendor to administer the testing. The department seeks to increase the fee to an amount “not to exceed \$80.” Idaho Code Sections 41-401, 41-1006(2), 41-1007(1)(d), 41-1108, 41-5806(1)(g) and 41-5807(2) and (3) authorize the 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:

The fiscal impact of the changes is expected to be revenue neutral.

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 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, page 82](#).

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 proposed rule, contact Thomas Donovan, tom.donovan@doi.idaho.gov, (208) 334-4214.

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 24, 2014.

DATED this 6th Day of August, 2014.

William Deal, Director
Idaho Department of Insurance
700 W. State St - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 18-0144-1401
(Only those Sections being amended are shown.)

020. INSURER FEES.

01. Annual Continuation Fee. All insurers and other entities (set forth in Section 020) licensed, listed, or otherwise approved to do business in the state of Idaho shall pay an annual continuation fee. (7-1-00)

a. The annual continuation fee shall be due on March 1st each year and shall provide for payment of the insurer's fees due through the last day of February next proceeding. (7-1-00)

b. The annual continuation fee shall be charged at the time the insurer applies for admission to do business in the state of Idaho. If the application is approved, the fee paid shall cover the insurer's fees through the last day of February next proceeding. (7-1-00)

02. Fee for Insurers. For all insurance companies receiving a certificate of authority pursuant to Chapter 3, Title 41, Idaho Code, the amount of the annual continuation fee shall be as follows: (7-1-00)

a. If insurer's surplus as regards policyholders at the preceding December 31 is less than ten million dollars (\$10,000,000) - One thousand dollars (\$1,000). (7-1-00)

b. If insurer's surplus as regards policyholders at the preceding December 31 is ten million (\$10,000,000) or more, but less than one hundred million (\$100,000,000) -- Two thousand five hundred dollars (\$2,500). (7-1-00)

c. If insurer's surplus as regards policyholders at the preceding December 31 is one hundred million (\$100,000,000) or greater - Four thousand five hundred dollars (\$4,500). (7-1-00)

03. Fees of Other Entities. For the following entities, the amount of the annual continuation fee shall be: (7-1-01)

a.	Five hundred dollars (\$500):	(7-1-01)
i.	Accredited reinsurers, listed pursuant to Section 41-514(1)(b), Idaho Code.	(7-1-00)
ii.	Trusteed reinsurers, listed pursuant to Section 41-514(1)(d), Idaho Code.	(7-1-00)
iii.	Authorized surplus line insurers.	(7-1-00)
iv.	County mutual insurers.	(7-1-00)
v.	Fraternal benefit societies.	(7-1-00)
vi.	Hospital and/or professional service corporations.	(7-1-00)
vii.	Hospital liability trusts.	(7-1-00)
viii.	Self funded <i>employee</i> health care plans.	(7-1-00) ()
ix.	Domestic Risk retention groups.	(7-1-01)
x.	Petroleum clean water trusts.	(7-1-00)
xi.	Rating organizations.	(7-1-00)
xii.	Advisory organizations.	(7-1-00)
b.	One hundred dollars (\$100):	(7-1-01)
i.	Purchasing groups.	(7-1-00)
04.	What Payment of Fee Shall Cover. Payment of the annual continuation fee shall be deemed to be payment of all fees that would ordinarily be paid to the Department by the insurer or entity during the relevant year, including, but not limited to, the following:	(7-1-00)
a.	Certificate of authority renewal, license renewal, and annual registration.	(7-1-00)
b.	Arson, Fire and Fraud.	(7-1-00)
c.	Annual statement filing.	(7-1-00)
d.	Agent appointment and renewal of appointment.	(7-1-00)
e.	Filings under Chapter 38, Title 41, Idaho Code, Acquisition of control and insurance holding company systems.	(7-1-00)
f.	Filing of amendments to Articles of Incorporation.	(7-1-00)
g.	Filing of amendments to Bylaws.	(7-1-00)
h.	Amendments to Certificate of Authority.	(7-1-00)
i.	Filing of notice of significant transactions pursuant to Section 41-345, Idaho Code.	(7-1-00)
j.	Quarterly statement filing.	(7-1-00)
k.	Examination expenses, <i>except for those set forth in Subsection 020.05.g.</i>	(7-1-01) ()

05. Fees Not Included. Payment of the annual continuation fee will not exempt the insurer or entity from the following: (7-1-00)

- a. Fees for application for producer license. (7-1-00)
- b. Costs incurred by the Department for investigation of an applicant for producer license. (7-1-00)
- c. Attorney's fees and costs incurred by the Department when allowed pursuant to Idaho Code. (7-1-00)
- d. Costs incurred for experts and consultants when allowed by Idaho Code. (7-1-00)
- e. Penalties or fines levied by or payable to the Department of Insurance. (7-1-00)
- f. All fees set forth under Section 040. (7-1-00)

06. Failure to Pay Fee. Failure to pay the annual continuation fee on or before March 1st each year shall be treated as failure to pay the continuation fee and will result in expiration of the insurer's or entity's authority to do business in the state of Idaho pursuant to Section 41-324, Idaho Code. (7-1-00)

07. Reinstatement Fee. The reinstatement fee referenced in Section 41-324(3), Idaho Code, shall be the amount referenced above for the insurer or entity continuation fee. (7-1-00)

(BREAK IN CONTINUITY OF SECTIONS)

030. PRODUCER AND MISCELLANEOUS LICENSING FEES.

01. Original License Application. The following fees are due and must be paid with the filing application for original license, which fees include the issuance of a license, if issued: (3-13-02)

- a. Administrators -- three hundred dollars (\$300). (7-1-00)
- b. Producers -- eighty dollars (\$80). (3-13-02)
- c. Designation as a managing general agent -- eighty dollars (\$80). (3-13-02)
- d. Adjusters and public adjusters -- eighty dollars (\$80). (~~3-13-02~~)()
- e. Reinsurance intermediary -- eighty dollars (\$80). (3-13-02)
- f. Surplus line brokers -- eighty dollars (\$80). (3-13-02)
- g. Life settlement providers -- five hundred dollars (\$500). (3-29-10)
- h. Life settlement brokers -- three hundred dollars (\$300). (3-29-10)
- i. Independent review organization -- five hundred dollars (\$500). (3-29-10)
- j. Vendor of portable electronics insurance, a type of limited lines producer: (3-27-13)
 - i. A vendor of portable electronic insurance who is engaged in portable electronic transactions at more than ten (10) locations in the state of Idaho -- one thousand dollars (\$1,000). (3-27-13)
 - ii. A vendor of portable electronic insurance who is engaged in portable electronic transactions at ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100). (3-27-13)

02. Examination Fees. The following fees are due and must be paid in order to take examinations for the following licenses: (3-13-02)

a. Producers, public adjusters, and adjusters -- application for examination and each time taken— ~~sixty~~ not to exceed eighty dollars (\$~~60~~80). (~~3-13-02~~)()

03. Fingerprint Processing. Processing fingerprints (when required) -- not to exceed eighty dollars (\$80). (3-27-13)

04. License Renewal. The following fees are due and must be paid for each license in order to renew or continue each and every license: (3-13-02)

a. Adjusters, public adjusters, and producers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. (~~3-16-04~~)()

i. A vendor of portable electronic insurance who is engaged in portable electronic transactions at more than ten (10) locations in the state of Idaho -- five hundred dollars (\$500). (3-27-13)

ii. A vendor of portable electronic insurance who is engaged in portable electronic transactions at ten (10) or fewer locations in the state of Idaho -- one hundred dollars (\$100). (3-27-13)

b. Redesignation as managing general agent (annual) -- eighty dollars (\$80). (3-13-02)

c. Administrators (biennial) -- eighty dollars (\$80). (3-19-07)

i. Renewal form shall be filed on or before December 31. (3-19-07)

ii. Any renewal form postmarked after December 31 shall include a penalty in an amount equal to the renewal fee. (3-19-07)

iii. A renewal form postmarked after January 31 must be submitted as a new application with supporting documents and the full application fee. (3-19-07)

d. Surplus line brokers (biennial) -- eighty dollars (\$80), or sixty dollars (\$60) if renewed electronically. (3-16-04)

e. Life settlement providers (biennial) -- three hundred dollars (\$300). (3-29-10)

f. Life settlement brokers (biennial) -- eighty dollars (\$80). (3-29-10)

g. Independent review organization (biennial) -- three hundred dollars (\$300). (3-29-10)

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.46 - RECOGNITION OF NEW ANNUITY MORTALITY TABLES FOR USE IN DETERMINING RESERVE LIABILITIES FOR ANNUITIES AND PURE ENDOWMENT CONTRACTS

DOCKET NO. 18-0146-1401

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 and 41-612, 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 17, 2014.

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

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

The rulemaking amends Rule 46 to adopt the NAIC 2012 individual annuity reserve table (2012 IAR), consistent with NAIC Model Regulation 821, for annuities issued January 1, 2015, and later. There is a nationwide effort to have the table apply effective January 1, 2015, since it will require higher reserving so as not to unfairly prejudice companies in states that adopt it early.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, p. 83](#).

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 proposed rule or to submit comments, contact Thomas Donovan, tom.donovan@doi.idaho.gov, (208) 334-4214.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be delivered on or before September 24, 2014.

DATED this 6th Day of August, 2014.

William Deal, Director
Idaho Department of Insurance
700 W. State St – 3rd Floor
P.O. Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0146-1401
(Only those Sections being amended are shown.)

001. TITLE AND SCOPE.

01. **Title.** This rule shall be cited as IDAPA 18.01.46, "Recognition of New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities and Pure Endowment Contracts." (3-29-12)

02. **Scope.** The purpose of this rule is to recognize the following mortality tables for use in determining the minimum standard valuation for annuity and pure endowment contracts: the 1983 Table 'a,' the 1983 Group Annuity Mortality (1983 GAM) Table, the 1994 Group Annuity Reserving (1994 GAR) Table, ~~and~~ the Annuity 2000 Mortality Table, and the 2012 Individual Annuity Reserve (2012 IAR) Table. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **1983 Table 'a'.** As used in this rule "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and shown on page 708 of Volume 33 of the Transactions of Society of Actuaries 1981 and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners. (3-29-12)

02. **1983 GAM Table.** As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and shown on pages 880-881 of Volume 35 of the Transactions of Society of Actuaries 1983 and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners. (3-29-12)

03. **1994 GAR Table.** As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume 47 of the Transactions of Society of Actuaries 1995. (3-29-12)

04. **2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table.** As used in this rule, the "2012 Individual Annuity Mortality Period Life Table" or the "2012 IAM Period" means the Period table containing loaded mortality rates for calendar year 2012. This table contains rates, q_x^{2012} , developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendices I and II. ()

05. **2012 Individual Annuity Reserving (2012 IAR) Table.** As used in this rule, the "2012 Individual Annuity Reserving Table" or the "2012 IAR" means the generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, q_x^{2012+n} derived from a combination of the 2012 IAM Period table and Projection Scale G2, using the methodology stated in Section 014. ()

06. **Annuity 2000 Mortality Table.** As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 266 of Volume 47 of the Transactions of Society of Actuaries 1995 – 96 Reports. (3-29-12)

07. **Generational Mortality Table.** As used in this rule, "generational mortality table" means a mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement. ()

08. **Period Table.** As used in this rule, "period table" means a table of mortality rates applicable to a given calendar year (the Period). ()

09. **Projection Scale G2 (Scale G2).** As used in this rule, "projection scale G2" is a table of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. This table was developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendices 3 and 4. ()

(BREAK IN CONTINUITY OF SECTIONS)

011. INDIVIDUAL ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Individual Annuity Mortality Table. Except as provided in Subsections 011.02 and 011.03, of this rule, the 1983 Table 'a' is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1982. (3-29-12)

02. Minimum Standard for Valuation. Except as provided in Subsection 011.03 of this rule, either the 1983 Table 'a' or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987. (3-29-12)

03. The Annuity 2000 Mortality Table. Except as provided in Subsection 011.04 of this rule, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after the effective date of Subsections 011.03 and 011.04. (3-29-12)

04. The 2012 IAR Mortality Table. Except as provided in Subsection 011.05 of this rule, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after the effective date of Subsection 011.04. ()

04.5. The 1983 Table 'a.' The 1983 Table 'a' without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after the effective date of Subsections 011.034 and 011.045 of this rule solely when the contract is based on life contingencies and issued to fund periodic benefits arising from: (3-29-12)()

- a. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions; (3-29-12)
- b. Settlements involving similar actions such as workers' compensation claims; or (3-29-12)
- c. Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

014. APPLICATION OF THE 2012 IAR MORTALITY TABLE.

01. Mortality Rate Formula. In using the 2012 IAR Mortality Table, the mortality rate for a person age x in year $(2012 + n)$ is calculated as follows: ()

a. $q_x^{2012+n} = q_x^{2012} (1 - G2_x)^n$ ()

b. The resulting q_x^{2012+n} shall be rounded to three (3) decimal places per one thousand (1,000), e.g., 0.741 deaths per one thousand (1,000). The rounding shall occur according to the formula above, starting at the 2012 period table rate. ()

02. Mortality Rate Formula Example. For a male age 30, $q_x^{2012} = 0.741$: ()

a. $q_x^{2013} = 0.741 * (1 - 0.010) ^ 1 = 0.73359$, which is rounded to 0.734. ()

b. $q_x^{2014} = 0.741 * (1 - 0.010) ^ 2 = 0.7262541$, which is rounded to 0.726. ()

c. A method leading to incorrect rounding would be to calculate q_x^{2014} as $q_x^{2013} * (1 - 0.010)$, or $0.734 * 0.99 = 0.727$. It is incorrect to use the already rounded q_x^{2013} to calculate q_x^{2014} . ()

0145. SEVERABILITY.

If any provision of this rule or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby. (7-1-93)

0156. -- 999. (RESERVED)

APPENDIX I							
2012 IAM Period Table							
Female, Age Nearest Birthday							
AGE	1000 - q_x^{2012}	AGE	1000 - q_x^{2012}	AGE	1000 - q_x^{2012}	AGE	1000 - q_x^{2012}
<u>0</u>	<u>1.621</u>	<u>30</u>	<u>0.300</u>	<u>60</u>	<u>3.460</u>	<u>90</u>	<u>88.377</u>
<u>1</u>	<u>0.405</u>	<u>31</u>	<u>0.321</u>	<u>61</u>	<u>3.916</u>	<u>91</u>	<u>97.491</u>
<u>2</u>	<u>0.259</u>	<u>32</u>	<u>0.338</u>	<u>62</u>	<u>4.409</u>	<u>92</u>	<u>107.269</u>
<u>3</u>	<u>0.179</u>	<u>33</u>	<u>0.351</u>	<u>63</u>	<u>4.933</u>	<u>93</u>	<u>118.201</u>
<u>4</u>	<u>0.137</u>	<u>34</u>	<u>0.365</u>	<u>64</u>	<u>5.507</u>	<u>94</u>	<u>130.969</u>
<u>5</u>	<u>0.125</u>	<u>35</u>	<u>0.381</u>	<u>65</u>	<u>6.146</u>	<u>95</u>	<u>146.449</u>
<u>6</u>	<u>0.117</u>	<u>36</u>	<u>0.402</u>	<u>66</u>	<u>6.551</u>	<u>96</u>	<u>163.908</u>
<u>7</u>	<u>0.110</u>	<u>37</u>	<u>0.429</u>	<u>67</u>	<u>7.039</u>	<u>97</u>	<u>179.695</u>
<u>8</u>	<u>0.095</u>	<u>38</u>	<u>0.463</u>	<u>68</u>	<u>7.628</u>	<u>98</u>	<u>196.151</u>
<u>9</u>	<u>0.088</u>	<u>39</u>	<u>0.504</u>	<u>69</u>	<u>8.311</u>	<u>99</u>	<u>213.150</u>
<u>10</u>	<u>0.085</u>	<u>40</u>	<u>0.552</u>	<u>70</u>	<u>9.074</u>	<u>100</u>	<u>230.722</u>
<u>11</u>	<u>0.086</u>	<u>41</u>	<u>0.600</u>	<u>71</u>	<u>9.910</u>	<u>101</u>	<u>251.505</u>
<u>12</u>	<u>0.094</u>	<u>42</u>	<u>0.650</u>	<u>72</u>	<u>10.827</u>	<u>102</u>	<u>273.007</u>
<u>13</u>	<u>0.108</u>	<u>43</u>	<u>0.697</u>	<u>73</u>	<u>11.839</u>	<u>103</u>	<u>295.086</u>
<u>14</u>	<u>0.131</u>	<u>44</u>	<u>0.740</u>	<u>74</u>	<u>12.974</u>	<u>104</u>	<u>317.591</u>
<u>15</u>	<u>0.156</u>	<u>45</u>	<u>0.780</u>	<u>75</u>	<u>14.282</u>	<u>105</u>	<u>340.362</u>
<u>16</u>	<u>0.179</u>	<u>46</u>	<u>0.825</u>	<u>76</u>	<u>15.799</u>	<u>106</u>	<u>362.371</u>
<u>17</u>	<u>0.198</u>	<u>47</u>	<u>0.885</u>	<u>77</u>	<u>17.550</u>	<u>107</u>	<u>384.113</u>
<u>18</u>	<u>0.211</u>	<u>48</u>	<u>0.964</u>	<u>78</u>	<u>19.582</u>	<u>108</u>	<u>400.000</u>
<u>19</u>	<u>0.221</u>	<u>49</u>	<u>1.051</u>	<u>79</u>	<u>21.970</u>	<u>109</u>	<u>400.000</u>
<u>20</u>	<u>0.228</u>	<u>50</u>	<u>1.161</u>	<u>80</u>	<u>24.821</u>	<u>110</u>	<u>400.000</u>
<u>21</u>	<u>0.234</u>	<u>51</u>	<u>1.308</u>	<u>81</u>	<u>28.351</u>	<u>111</u>	<u>400.000</u>
<u>22</u>	<u>0.240</u>	<u>52</u>	<u>1.460</u>	<u>82</u>	<u>32.509</u>	<u>112</u>	<u>400.000</u>
<u>23</u>	<u>0.245</u>	<u>53</u>	<u>1.613</u>	<u>83</u>	<u>37.329</u>	<u>113</u>	<u>400.000</u>
<u>24</u>	<u>0.247</u>	<u>54</u>	<u>1.774</u>	<u>84</u>	<u>42.830</u>	<u>114</u>	<u>400.000</u>
<u>25</u>	<u>0.250</u>	<u>55</u>	<u>1.950</u>	<u>85</u>	<u>48.997</u>	<u>115</u>	<u>400.000</u>
<u>26</u>	<u>0.256</u>	<u>56</u>	<u>2.154</u>	<u>86</u>	<u>55.774</u>	<u>116</u>	<u>400.000</u>
<u>27</u>	<u>0.261</u>	<u>57</u>	<u>2.399</u>	<u>87</u>	<u>63.140</u>	<u>117</u>	<u>400.000</u>
<u>28</u>	<u>0.270</u>	<u>58</u>	<u>2.700</u>	<u>88</u>	<u>71.066</u>	<u>118</u>	<u>400.000</u>
<u>29</u>	<u>0.281</u>	<u>59</u>	<u>3.054</u>	<u>89</u>	<u>79.502</u>	<u>119</u>	<u>400.000</u>
						<u>120</u>	<u>1000.000</u>

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APPENDIX II 2012 IAM Period Table Male, Age Nearest Birthday							
AGE	$1000 - q_x^{2012}$	AGE	$1000 - q_x^{2012}$	AGE	$1000 - q_x^{2012}$	AGE	$1000 - q_x^{2012}$
<u>0</u>	<u>1.605</u>	<u>30</u>	<u>0.741</u>	<u>60</u>	<u>5.096</u>	<u>90</u>	<u>109.993</u>
<u>1</u>	<u>0.401</u>	<u>31</u>	<u>0.751</u>	<u>61</u>	<u>5.614</u>	<u>91</u>	<u>123.119</u>
<u>2</u>	<u>0.275</u>	<u>32</u>	<u>0.754</u>	<u>62</u>	<u>6.169</u>	<u>92</u>	<u>137.168</u>
<u>3</u>	<u>0.229</u>	<u>33</u>	<u>0.756</u>	<u>63</u>	<u>6.759</u>	<u>93</u>	<u>152.171</u>
<u>4</u>	<u>0.174</u>	<u>34</u>	<u>0.756</u>	<u>64</u>	<u>7.398</u>	<u>94</u>	<u>168.194</u>
<u>5</u>	<u>0.168</u>	<u>35</u>	<u>0.756</u>	<u>65</u>	<u>8.106</u>	<u>95</u>	<u>185.260</u>
<u>6</u>	<u>0.165</u>	<u>36</u>	<u>0.756</u>	<u>66</u>	<u>8.548</u>	<u>96</u>	<u>197.322</u>
<u>7</u>	<u>0.159</u>	<u>37</u>	<u>0.756</u>	<u>67</u>	<u>9.076</u>	<u>97</u>	<u>214.751</u>
<u>8</u>	<u>0.143</u>	<u>38</u>	<u>0.756</u>	<u>68</u>	<u>9.708</u>	<u>98</u>	<u>232.507</u>
<u>9</u>	<u>0.129</u>	<u>39</u>	<u>0.800</u>	<u>69</u>	<u>10.463</u>	<u>99</u>	<u>250.397</u>
<u>10</u>	<u>0.113</u>	<u>40</u>	<u>0.859</u>	<u>70</u>	<u>11.357</u>	<u>100</u>	<u>268.607</u>
<u>11</u>	<u>0.111</u>	<u>41</u>	<u>0.926</u>	<u>71</u>	<u>12.418</u>	<u>101</u>	<u>290.016</u>
<u>12</u>	<u>0.132</u>	<u>42</u>	<u>0.999</u>	<u>72</u>	<u>13.675</u>	<u>102</u>	<u>311.849</u>
<u>13</u>	<u>0.169</u>	<u>43</u>	<u>1.069</u>	<u>73</u>	<u>15.150</u>	<u>103</u>	<u>333.962</u>
<u>14</u>	<u>0.213</u>	<u>44</u>	<u>1.142</u>	<u>74</u>	<u>16.860</u>	<u>104</u>	<u>356.207</u>
<u>15</u>	<u>0.254</u>	<u>45</u>	<u>1.219</u>	<u>75</u>	<u>18.815</u>	<u>105</u>	<u>380.000</u>
<u>16</u>	<u>0.293</u>	<u>46</u>	<u>1.318</u>	<u>76</u>	<u>21.031</u>	<u>106</u>	<u>400.000</u>
<u>17</u>	<u>0.328</u>	<u>47</u>	<u>1.454</u>	<u>77</u>	<u>23.540</u>	<u>107</u>	<u>400.000</u>
<u>18</u>	<u>0.359</u>	<u>48</u>	<u>1.627</u>	<u>78</u>	<u>26.375</u>	<u>108</u>	<u>400.000</u>
<u>19</u>	<u>0.387</u>	<u>49</u>	<u>1.829</u>	<u>79</u>	<u>29.572</u>	<u>109</u>	<u>400.000</u>
<u>20</u>	<u>0.414</u>	<u>50</u>	<u>2.057</u>	<u>80</u>	<u>33.234</u>	<u>110</u>	<u>400.000</u>
<u>21</u>	<u>0.443</u>	<u>51</u>	<u>2.302</u>	<u>81</u>	<u>37.533</u>	<u>111</u>	<u>400.000</u>
<u>22</u>	<u>0.473</u>	<u>52</u>	<u>2.545</u>	<u>82</u>	<u>42.261</u>	<u>112</u>	<u>400.000</u>
<u>23</u>	<u>0.513</u>	<u>53</u>	<u>2.779</u>	<u>83</u>	<u>47.441</u>	<u>113</u>	<u>400.000</u>
<u>24</u>	<u>0.554</u>	<u>54</u>	<u>3.011</u>	<u>84</u>	<u>53.233</u>	<u>114</u>	<u>400.000</u>
<u>25</u>	<u>0.602</u>	<u>55</u>	<u>3.254</u>	<u>85</u>	<u>59.855</u>	<u>115</u>	<u>400.000</u>
<u>26</u>	<u>0.655</u>	<u>56</u>	<u>3.529</u>	<u>86</u>	<u>67.514</u>	<u>116</u>	<u>400.000</u>
<u>27</u>	<u>0.688</u>	<u>57</u>	<u>3.845</u>	<u>87</u>	<u>76.340</u>	<u>117</u>	<u>400.000</u>
<u>28</u>	<u>0.710</u>	<u>58</u>	<u>4.213</u>	<u>88</u>	<u>86.388</u>	<u>118</u>	<u>400.000</u>
<u>29</u>	<u>0.727</u>	<u>59</u>	<u>4.631</u>	<u>89</u>	<u>97.634</u>	<u>119</u>	<u>400.000</u>
						<u>120</u>	<u>1000.000</u>

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APPENDIX III Projection Scale G2 Female, Age Nearest Birthday							
<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>
<u>0</u>	<u>0.010</u>	<u>30</u>	<u>0.010</u>	<u>60</u>	<u>0.013</u>	<u>90</u>	<u>0.006</u>
<u>1</u>	<u>0.010</u>	<u>31</u>	<u>0.010</u>	<u>61</u>	<u>0.013</u>	<u>91</u>	<u>0.006</u>
<u>2</u>	<u>0.010</u>	<u>32</u>	<u>0.010</u>	<u>62</u>	<u>0.013</u>	<u>92</u>	<u>0.005</u>
<u>3</u>	<u>0.010</u>	<u>33</u>	<u>0.010</u>	<u>63</u>	<u>0.013</u>	<u>93</u>	<u>0.005</u>
<u>4</u>	<u>0.010</u>	<u>34</u>	<u>0.010</u>	<u>64</u>	<u>0.013</u>	<u>94</u>	<u>0.004</u>
<u>5</u>	<u>0.010</u>	<u>35</u>	<u>0.010</u>	<u>65</u>	<u>0.013</u>	<u>95</u>	<u>0.004</u>
<u>6</u>	<u>0.010</u>	<u>36</u>	<u>0.010</u>	<u>66</u>	<u>0.013</u>	<u>96</u>	<u>0.004</u>
<u>7</u>	<u>0.010</u>	<u>37</u>	<u>0.010</u>	<u>67</u>	<u>0.013</u>	<u>97</u>	<u>0.003</u>
<u>8</u>	<u>0.010</u>	<u>38</u>	<u>0.010</u>	<u>68</u>	<u>0.013</u>	<u>98</u>	<u>0.003</u>
<u>9</u>	<u>0.010</u>	<u>39</u>	<u>0.010</u>	<u>69</u>	<u>0.013</u>	<u>99</u>	<u>0.002</u>
<u>10</u>	<u>0.010</u>	<u>40</u>	<u>0.010</u>	<u>70</u>	<u>0.013</u>	<u>100</u>	<u>0.002</u>
<u>11</u>	<u>0.010</u>	<u>41</u>	<u>0.010</u>	<u>71</u>	<u>0.013</u>	<u>101</u>	<u>0.002</u>
<u>12</u>	<u>0.010</u>	<u>42</u>	<u>0.010</u>	<u>72</u>	<u>0.013</u>	<u>102</u>	<u>0.001</u>
<u>13</u>	<u>0.010</u>	<u>43</u>	<u>0.010</u>	<u>73</u>	<u>0.013</u>	<u>103</u>	<u>0.001</u>
<u>14</u>	<u>0.010</u>	<u>44</u>	<u>0.010</u>	<u>74</u>	<u>0.013</u>	<u>104</u>	<u>0.000</u>
<u>15</u>	<u>0.010</u>	<u>45</u>	<u>0.010</u>	<u>75</u>	<u>0.013</u>	<u>105</u>	<u>0.000</u>
<u>16</u>	<u>0.010</u>	<u>46</u>	<u>0.010</u>	<u>76</u>	<u>0.013</u>	<u>106</u>	<u>0.000</u>
<u>17</u>	<u>0.010</u>	<u>47</u>	<u>0.010</u>	<u>77</u>	<u>0.013</u>	<u>107</u>	<u>0.000</u>
<u>18</u>	<u>0.010</u>	<u>48</u>	<u>0.010</u>	<u>78</u>	<u>0.013</u>	<u>108</u>	<u>0.000</u>
<u>19</u>	<u>0.010</u>	<u>49</u>	<u>0.010</u>	<u>79</u>	<u>0.013</u>	<u>109</u>	<u>0.000</u>
<u>20</u>	<u>0.010</u>	<u>50</u>	<u>0.010</u>	<u>80</u>	<u>0.013</u>	<u>110</u>	<u>0.000</u>
<u>21</u>	<u>0.010</u>	<u>51</u>	<u>0.010</u>	<u>81</u>	<u>0.012</u>	<u>111</u>	<u>0.000</u>
<u>22</u>	<u>0.010</u>	<u>52</u>	<u>0.011</u>	<u>82</u>	<u>0.012</u>	<u>112</u>	<u>0.000</u>
<u>23</u>	<u>0.010</u>	<u>53</u>	<u>0.011</u>	<u>83</u>	<u>0.011</u>	<u>113</u>	<u>0.000</u>
<u>24</u>	<u>0.010</u>	<u>54</u>	<u>0.011</u>	<u>84</u>	<u>0.010</u>	<u>114</u>	<u>0.000</u>
<u>25</u>	<u>0.010</u>	<u>55</u>	<u>0.012</u>	<u>85</u>	<u>0.010</u>	<u>115</u>	<u>0.000</u>
<u>26</u>	<u>0.010</u>	<u>56</u>	<u>0.012</u>	<u>86</u>	<u>0.009</u>	<u>116</u>	<u>0.000</u>
<u>27</u>	<u>0.010</u>	<u>57</u>	<u>0.012</u>	<u>87</u>	<u>0.008</u>	<u>117</u>	<u>0.000</u>
<u>28</u>	<u>0.010</u>	<u>58</u>	<u>0.012</u>	<u>88</u>	<u>0.007</u>	<u>118</u>	<u>0.000</u>
<u>29</u>	<u>0.010</u>	<u>59</u>	<u>0.013</u>	<u>89</u>	<u>0.007</u>	<u>119</u>	<u>0.000</u>
						<u>120</u>	<u>0.000</u>

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APPENDIX IV Projection Scale G2 Male, Age Nearest Birthday							
AGE	G2 _x	AGE	G2 _x	AGE	G2 _x	AGE	G2 _x
<u>0</u>	<u>0.010</u>	<u>30</u>	<u>0.010</u>	<u>60</u>	<u>0.015</u>	<u>90</u>	<u>0.007</u>
<u>1</u>	<u>0.010</u>	<u>31</u>	<u>0.010</u>	<u>61</u>	<u>0.015</u>	<u>91</u>	<u>0.007</u>
<u>2</u>	<u>0.010</u>	<u>32</u>	<u>0.010</u>	<u>62</u>	<u>0.015</u>	<u>92</u>	<u>0.006</u>
<u>3</u>	<u>0.010</u>	<u>33</u>	<u>0.010</u>	<u>63</u>	<u>0.015</u>	<u>93</u>	<u>0.005</u>
<u>4</u>	<u>0.010</u>	<u>34</u>	<u>0.010</u>	<u>64</u>	<u>0.015</u>	<u>94</u>	<u>0.005</u>
<u>5</u>	<u>0.010</u>	<u>35</u>	<u>0.010</u>	<u>65</u>	<u>0.015</u>	<u>95</u>	<u>0.004</u>
<u>6</u>	<u>0.010</u>	<u>36</u>	<u>0.010</u>	<u>66</u>	<u>0.015</u>	<u>96</u>	<u>0.004</u>
<u>7</u>	<u>0.010</u>	<u>37</u>	<u>0.010</u>	<u>67</u>	<u>0.015</u>	<u>97</u>	<u>0.003</u>
<u>8</u>	<u>0.010</u>	<u>38</u>	<u>0.010</u>	<u>68</u>	<u>0.015</u>	<u>98</u>	<u>0.003</u>
<u>9</u>	<u>0.010</u>	<u>39</u>	<u>0.010</u>	<u>69</u>	<u>0.015</u>	<u>99</u>	<u>0.002</u>
<u>10</u>	<u>0.010</u>	<u>40</u>	<u>0.010</u>	<u>70</u>	<u>0.015</u>	<u>100</u>	<u>0.002</u>
<u>11</u>	<u>0.010</u>	<u>41</u>	<u>0.010</u>	<u>71</u>	<u>0.015</u>	<u>101</u>	<u>0.002</u>
<u>12</u>	<u>0.010</u>	<u>42</u>	<u>0.010</u>	<u>72</u>	<u>0.015</u>	<u>102</u>	<u>0.001</u>
<u>13</u>	<u>0.010</u>	<u>43</u>	<u>0.010</u>	<u>73</u>	<u>0.015</u>	<u>103</u>	<u>0.001</u>
<u>14</u>	<u>0.010</u>	<u>44</u>	<u>0.010</u>	<u>74</u>	<u>0.015</u>	<u>104</u>	<u>0.000</u>
<u>15</u>	<u>0.010</u>	<u>45</u>	<u>0.010</u>	<u>75</u>	<u>0.015</u>	<u>105</u>	<u>0.000</u>
<u>16</u>	<u>0.010</u>	<u>46</u>	<u>0.010</u>	<u>76</u>	<u>0.015</u>	<u>106</u>	<u>0.000</u>
<u>17</u>	<u>0.010</u>	<u>47</u>	<u>0.010</u>	<u>77</u>	<u>0.015</u>	<u>107</u>	<u>0.000</u>
<u>18</u>	<u>0.010</u>	<u>48</u>	<u>0.010</u>	<u>78</u>	<u>0.015</u>	<u>108</u>	<u>0.000</u>
<u>19</u>	<u>0.010</u>	<u>49</u>	<u>0.010</u>	<u>79</u>	<u>0.015</u>	<u>109</u>	<u>0.000</u>
<u>20</u>	<u>0.010</u>	<u>50</u>	<u>0.010</u>	<u>80</u>	<u>0.015</u>	<u>110</u>	<u>0.000</u>
<u>21</u>	<u>0.010</u>	<u>51</u>	<u>0.011</u>	<u>81</u>	<u>0.014</u>	<u>111</u>	<u>0.000</u>
<u>22</u>	<u>0.010</u>	<u>52</u>	<u>0.011</u>	<u>82</u>	<u>0.013</u>	<u>112</u>	<u>0.000</u>
<u>23</u>	<u>0.010</u>	<u>53</u>	<u>0.012</u>	<u>83</u>	<u>0.013</u>	<u>113</u>	<u>0.000</u>
<u>24</u>	<u>0.010</u>	<u>54</u>	<u>0.012</u>	<u>84</u>	<u>0.012</u>	<u>114</u>	<u>0.000</u>
<u>25</u>	<u>0.010</u>	<u>55</u>	<u>0.013</u>	<u>85</u>	<u>0.011</u>	<u>115</u>	<u>0.000</u>
<u>26</u>	<u>0.010</u>	<u>56</u>	<u>0.013</u>	<u>86</u>	<u>0.010</u>	<u>116</u>	<u>0.000</u>
<u>27</u>	<u>0.010</u>	<u>57</u>	<u>0.014</u>	<u>87</u>	<u>0.009</u>	<u>117</u>	<u>0.000</u>
<u>28</u>	<u>0.010</u>	<u>58</u>	<u>0.014</u>	<u>88</u>	<u>0.009</u>	<u>118</u>	<u>0.000</u>
<u>29</u>	<u>0.010</u>	<u>59</u>	<u>0.015</u>	<u>89</u>	<u>0.008</u>	<u>119</u>	<u>0.000</u>
						<u>120</u>	<u>0.000</u>

()

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.53 - CONTINUING EDUCATION

DOCKET NO. 18-0153-1401

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, 41-1013, 41-1108, 41-5813, and 41-5820, 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 17, 2014.

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

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

The rulemaking will expressly provide that resident adjusters and public adjusters are required to meet continuing education requirements, and that the specifics of this chapter (Rule 53), such as the approval of courses by the CE Committee, will apply. The revised rule also adds required rule sections.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, [Vol. 14-7, p. 84](#).

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 proposed rule or to submit comments, contact Thomas Donovan, tom.donovan@doi.idaho.gov, (208) 334-4214. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 24, 2014.

DATED this August 6, 2014.

William Deal, Director
Idaho Department of Insurance
700 W. State St, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0153-1401
(Only those Sections being amended are shown.)

000. LEGAL AUTHORITY.

The statutory authority for this rule is Title 41, Chapter 10, set forth in Sections 41-211, 41-1013(5) and 41-1013(7), 41-1108, 41-5813, and 41-5820, Idaho Code. ~~(5-3-03)~~()

001. TITLE AND SCOPE.

01. Title. This rule shall be referred to as IDAPA 18.01.53, "Continuing Education." ()

02. Scope. The purpose of this rule is to help protect the public by maintaining high standards of professional competence in the insurance industry and to maintain and improve the insurance skills and knowledge of producers, adjusters, and public adjusters licensed by the Department of Insurance by prescribing a minimum education in approved subjects that a licensee must periodically complete, procedures and standards for the approval of such education, and a procedure for establishing that continuing education requirements have been met. ~~(3-20-04)~~()

002. WRITTEN INTERPRETATIONS.

This agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying in accordance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

003. ADMINISTRATIVE APPEALS.

Any administrative appeal regarding this chapter should be made in accordance with Title 41, Chapter 2, Idaho Code, and to the extent not in conflict therewith, Title 67, Chapter 52, Idaho Code, as well as IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

There are no documents to be incorporated by reference. ()

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 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 department's principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ()

04. Web Site Address. The department's website 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 Act, Title 9, Chapter 3, Idaho Code. ()

~~007.~~ -- ~~0409.~~ (RESERVED)

010. DEFINITIONS.

01. Licensee. As used in this rule a "licensee" means an individual holding a license as a producer.

adjuster, or public adjuster pursuant to Title 41, Chapters 10, 11, or 58, Idaho Code. ()

011. APPLICABILITY.

01. Applicability to Certain Insurance Professionals. This rule applies to all resident producers licensed by the Department of Insurance licensees except for producers licensed to sell only “limited lines (other than crop) insurance” as defined by Title 41, Chapter 10, Idaho Code. (3-19-10)()

02. High Standards for Programs. The Department of Insurance anticipates and expects that licensees will maintain high standards of professionalism in selecting quality education programs to fulfill the continuing education requirements set forth herein. (7-1-93)

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. (4-7-11)

c. No more than four (4) hours of continuing education credit from courses approved for adjusters or 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 licensee 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 licensees who were former resident agents licensees 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)

016. PROGRAMS WHICH QUALIFY.

01. Requirements of Acceptable Program. A specific program will qualify as an acceptable continuing education program if it is a formal program of learning which contributes directly to the professional competence of a licensee. It will be left to each individual licensee to determine the course of study to be pursued. All programs must meet the standards outlined in Section 018. (7-1-93)

02. Subjects Which Qualify. (7-1-93)

a. The following general subjects are acceptable for producers as long as they contribute to the knowledge and professional competence of an individual licensee as a producer and demonstrate a direct and specific application to insurance. (3-0-04)()

i. Insurance, annuities, and risk management. (7-1-93)

- ii. Insurance laws and rules. (7-1-93)
- iii. Mathematics, statistics, and probability. (7-1-93)
- iv. Economics. (7-1-93)
- v. Business law. (7-1-93)
- vi. Finance. (7-1-93)
- vii. Taxes, Trusts, Estate Planning. (4-5-00)
- viii. Business environment, management, or organization. (7-1-93)
- ix. Securities. (7-1-98)

b. The following general subjects are acceptable for adjusters and public adjusters as long as they contribute to the knowledge and professional competence of an individual licensee as an adjuster or public adjuster and demonstrate a direct and specific application to adjusting. ~~(3-19-10)~~ ()

- i. Insurance. (3-19-10)
- ii. Insurance laws and rules. (3-19-10)
- iii. Mathematics, statistics, and probability. (3-19-10)
- iv. Economics. (3-19-10)
- v. Business law. (3-19-10)
- vi. Restoration. (3-19-10)
- vii. Communications. (3-19-10)
- viii. Arbitration. (3-19-10)
- ix. Mitigation. (3-19-10)
- x. Glass replacement and/or repair. (3-19-10)

c. Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule. The responsibility for substantiating that a particular program meets the requirements of this rule rests solely upon the licensee. (7-1-93)

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY
19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1401
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, 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 17, 2014.

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

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

The purpose of this rulemaking is to clarify the requirements for the administration of sedation to patients. The rule changes revise the minimal, moderate, and general anesthesia and deep sedation rules by inclusion of additional standards currently contained in the American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. Additionally, rules concerning facility requirements, records, and patient monitoring have been revised for clarification purposes.

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 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, page 86](#).

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 Susan Miller, Executive Director, at (208) 334-2369 or at susan.miller@isbd.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 24, 2014.

DATED this 6th Day of August, 2014.

Susan Miller
Executive Director
Board of Dentistry
350 N. 9th St., Ste. M-100
P. O. Box 83720
Boise, ID 83720-0021
Phone: (208) 334-2369
Fax: (208) 334-3247

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1401
(Only those Sections being amended are shown.)

054. DEFINITIONS (RULE 54).

For the purposes of these anesthesia rules, the following terms will be used, as defined below: (4-11-06)

01. Methods of Anxiety and Pain Control. (4-11-06)

a. Analgesia shall mean the diminution or elimination of pain. (4-7-11)

b. Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. (4-7-11)

c. Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough never to render unintended loss of consciousness. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of minimal sedation. (4-7-11)

d. Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (4-7-11)

e. Deep sedation shall mean a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-7-11)

f. General anesthesia shall mean a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-7-11)

02. Sedation Terms. (4-11-06)

a. Advanced ~~Cardiac~~ Life Support (A~~C~~LS) shall mean an advanced ~~cardiac~~ life support course ~~or a pediatric advanced life support course~~ offered by a recognized accredi~~ted~~ organization. (4-11-06)()

b. Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

c. Operator shall mean the supervising dentist or another person who is authorized by these rules ~~or holds a permit~~ to induce and administer the proper level of anesthesia/sedation. (4-11-06)()

d. Titration shall mean the administration of incremental doses of a drug until a desired effect is reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug

increment. (4-7-11)

e. Maximum recommended dose (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use. (3-20-14)

f. Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD). (4-7-11)

g. Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half-life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment. (4-7-11)

03. Routes of Administration. (4-11-06)

a. Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)

b. Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the lungs and whose primary effect is due to absorption through the gas/blood interface. (4-7-11)

c. Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract [i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), intraosseous (IO)]. (4-7-11)

d. Transdermal. A technique of administration in which the drug is administered by patch or iontophoresis through skin. (4-7-11)

e. Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

060. MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

01. Requirements for a Moderate Enteral Sedation Permit. To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a moderate enteral sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a moderate enteral sedation permit, a dentist must provide ~~certification~~ verification of the following: (4-7-11)()

a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must

include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and (4-7-11)

- b. ~~Proof of e~~Current certification ~~of in~~ Advanced ~~Cardiac~~ Life Support ~~or its equivalent.~~ (4-7-11)()

02. Requirements for a Moderate Parenteral Sedation Permit. To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall: (4-7-11)

a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and (4-7-11)

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

d. In addition, the dentist must maintain current certification in Advanced ~~Cardiac~~ Life Support ~~or its equivalent.~~ (4-7-11)()

03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits. (4-7-11)

~~a. Facility Requirements. The dentist must have a properly equipped facility for the administration of moderate sedation.~~ The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. (4-7-11)()

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: ()

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; ()

ii. An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; ()

iii. A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; ()

iv. Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; ()

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; ()

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; ()

vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and ()

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. ()

ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope, intravenous fluid administration equipment, vasopressors, and anticonvulsants. ()

b. Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)

i. The operator; and (10-1-87)

ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)

iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The practitioner dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-7-11)()

c. Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: ()

i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; ()

ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; ()

iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and ()

iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. ()

d. Patient Monitoring. Patients shall be monitored as follows: ()

i. Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded at regular intervals, but at least every fifteen (15) minutes, and these recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; ()

ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; ()

iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a

responsible third party: ()

iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and ()

v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. ()

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. ()

ef. Permit Renewal. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: (3-20-14)

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced ~~cardiac~~ life support; ~~or~~ (3-20-14)()

ii. For a moderate parenteral sedation permit, maintain current certification in advanced ~~cardiac~~ life support. (3-20-14)()

eg. Reinstatement. A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-7-11)

061. GENERAL ANESTHESIA AND DEEP SEDATION (RULE 61).

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: (4-7-11)

01. ~~General~~ Requirements for a General Anesthesia and Deep Sedation Permit. A dentist applying for a permit to administer general anesthesia or deep sedation shall provide proof that the dentist: (4-7-11)()

a. Has completed an advanced education program accredited by the ADA Commission on Dental Accreditation that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia, commensurate with Part IV.C of the American Dental Association's "Guidelines for the Use of Sedation and General Anesthesia by Dentists" within the five (5) year period immediately prior to the date of application for a permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application; and (4-7-11)

b. Current Certification in Advanced ~~Cardiac~~ Life Support ~~or its equivalent~~; and (4-7-11)()

c. Has an established protocol or admission to a recognized hospital. (3-18-99)

02. ~~Facility~~ General Requirements for General Anesthesia and Deep Sedation Permits. ~~The dentist must have a properly equipped facility for the administration of general anesthesia or deep sedation.~~ The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of general anesthesia or deep sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the

standards incorporated by reference in Section 004 of these rules, as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual. (4-7-11)()

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: ()

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient: ()

ii. An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support: ()

iii. A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure: ()

iv. Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure: ()

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system: ()

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room: ()

vii. A sphygmomanometer, precordial/pretracheal stethoscope, end-tidal carbon dioxide monitor, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, intravenous fluid administration equipment, and automated external defibrillator (AED); and ()

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, vasopressors, bronchodilators, antihistamines, and anticonvulsants. ()

~~03b.~~ Personnel. For general anesthesia or deep sedation, the minimum number of personnel shall be three (3) including: (4-7-11)

~~a.i.~~ A qualified operator to direct the sedation as specified in Section 061 of this rule; and (4-7-11)

~~b.ii.~~ Two (2) additional individuals who have current certification in Basic Life Support for the Healthcare Provider. (4-7-11)

~~e.iii.~~ When the same individual administering the deep sedation or general anesthesia is performing the dental procedure, one (1) of the additional appropriately trained team members must be designated for patient monitoring. (4-7-11)

c. Pre-sedation Requirements. Before inducing general anesthesia or deep sedation, a dentist shall: ()

i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation; ()

ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; ()

- iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and ()
- iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. ()
- d. Patient Monitoring. Patients shall be monitored as follows: ()
 - i. Patients must have continuous monitoring using pulse oximetry and end-tidal carbon dioxide monitors. The patient's blood pressure, heart rate, and respiration shall be recorded at regular intervals, but at least every fifteen (15) minutes, and these recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation or general anesthesia shall be continuously monitored; ()
 - vi. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from general anesthesia and deep sedation; ()
 - vii. A dentist shall not release a patient who has undergone general anesthesia, deep sedation or moderate sedation except to the care of a responsible third party; ()
 - viii. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and ()
 - ix. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. ()
- e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. ()

043. Moderate Sedation. A dentist holding a permit to administer general anesthesia or deep sedation under this rule may also administer moderate sedation. (4-7-11)

054. Permit Renewal. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours of continuing education in general anesthesia or deep sedation and proof of current certification in Advanced ~~Cardiac~~ Life Support will be required to renew a permit. A fee shall be assessed to cover administrative costs. ~~(4-7-11)~~()

065. Reinstatement. A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in general anesthesia or deep sedation for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

065. DETERMINATION OF DEGREE OF SEDATION BY THE BOARD (RULE 65).

In any matter under review or in any proceeding being conducted in which the Board must determine the degree of ~~sedation or level of consciousness of a patient~~ central nervous system depression, the Board may base its findings or conclusions on, among other matters, the ~~following:~~ (4-11-06)

01. Medication and Dosage. ~~The type, and dosages, and of medication(s) that was administered to the patient as well as the routes of administration of the medication(s); and~~ drugs administered to the patient and what

result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status. ~~(4-11-06)~~()

~~02- **Expected Results.** The result that can reasonably be expected from the medication(s) administered when considering the physical and psychological status of the patient.~~ (4-11-06)

066. -- 999. (RESERVED)

IDAPA 20 - IDAHO DEPARTMENT OF LANDS

20.07.02 - RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS IN THE STATE OF IDAHO

DOCKET NO. 20-0702-1401

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 47-319(8), Idaho Code.

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

**Wednesday, September 24, 2014
5:00 p.m. MDT**

**Idaho Department of Lands
Garnet Conference Rooms
300 N. 6th Street, Suite 103
Boise, Idaho**

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

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

Sections of the rules have been grouped by subject matter into five subchapters to improve the organization and readability of the rules. Non-substantive housekeeping changes were also made to the rules.

The Department added new sections addressing the following topics which were not previously covered in the rules: organization reports (Section 032), integration within spacing units (Sections 130 and 131), the disclosure of chemicals used in well treatments (Paragraph 210.06.d.), well site operations (Section 301), step-off requests (Subsection 310.09), production reports (Section 400), gas-oil ratio for well classification (Section 403), tank batteries (Section 420), and gas processing facilities (Section 430). New definitions were added to Section 010 for bonus payment, gas processing facility, surface water, tank, tank battery, tank dike, and well site. New abbreviations were added to Section 011 for oilfield barrel, one thousand cubic foot, and polyvinyl chloride.

Several existing sections have been revised. Sections 001 and 003 were revised since the Board of Land Commissioners no longer comprises the Oil and Gas Conservation Commission. Section 006 was revised to correct statutory references and clarify that all records relating to this chapter are public records unless records are by law exempt from disclosure. Section 030 was revised to include a period to publish legal notices. Section 040 was revised to allow public comment on applications for geophysical permits. Section 130 was revised to clarify the location of gas wells within a spacing unit, as well as the requirements for exemptions to well locations and changes to spacing units. Section 220 was revised to increase the inactive well bond amount and clarify where interest on cash bonds will be deposited. In Section 300, the requirements for well signs were updated. In Section 310, the notice and inspection requirements were revised for spud, surface casing, blowout prevention, intermediate casing, and production casing activities. In Subsection 310.12, revisions were made to the requirements for cable tools. In Section 341, a standardized scale requirement was added for drilling logs. The requirements for flaring of gas were revised in Section 413.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 67 and 68](#).

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 proposed rule, contact Bobby Johnson, Oil and Gas Program Manager.

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 24, 2014.

DATED this 11th day of August 2014.

Bobby Johnson
Oil and Gas Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0050
Tel: (208) 334-0243 / Fax: (208) 334-5342
brjohnson@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0702-1401
(Only those Sections being amended are shown.)

20.07.02 - RULES GOVERNING OIL AND GAS CONSERVATION ~~OF OIL AND NATURAL GAS~~
IN THE STATE OF IDAHO

SUBCHAPTER A - GENERAL PROVISIONS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of ~~Title 58, Chapter 1, Sections 58-104(6), 58-105, and 58-127, Idaho Code;~~ Title 47, Chapter 3, Idaho Code; and Title 67, Chapter 52, Idaho Code. ~~(3-29-12)()~~

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, ~~IDAPA 20.01.01~~, Title 47, Chapter 3, Idaho Code, and IDAPA 20.07.01, "Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission."

~~(3-29-12)()~~

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS ACT COMPLIANCE.

~~01. Promulgation. The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-29-12)~~

~~02. Confidentiality. All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code. Upon request in any application or material submitted to the Department, confidentiality protection shall be provided for trade secrets consistent with Section 9-340D(1), Idaho Code, and for "[a]rchaeological and geologic records concerning exploratory drilling, logging, mining and other excavation" consistent with Section 9-340E(2), Idaho Code. information by law exempt from disclosure, and only those parts of an application or other materials that fall under these provisions of Section 9-340, Idaho Code, are by law exempt from disclosure can be held as confidential. The owner or operator shall not unreasonably designate other parts of their application or other materials as confidential. (3-29-12)()~~

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3, Idaho Code. (10-21-92)
02. Active Well. A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. (3-29-12)
03. Barrel. Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure. (10-21-92)
04. Blowout. An unplanned sudden or violent escape of fluids from a well. (3-29-12)
05. Blowout Preventer. A casinghead control equipped with special gates or rams that can be closed and sealed around the drill pipe, or that otherwise completely closes the top of the casing. (3-29-12)()
06. Bonus Payment. Monetary consideration that is paid by the lessee to the lessor for the execution of an oil and gas lease. ()
- ~~067. Casing Pressure. The pressure within the casing or between the casing, tubing, or drill pipe. (3-29-12)~~
- ~~078. Casinghead. A metal flange attached to the top of the conductor pipe that is the primary interface for the diverter system during drilling out for surface casing. (3-29-12)~~
- ~~089. Casinghead Gas. Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. (3-29-12)~~
- ~~0910. Commission. The Oil and Gas Conservation Commission of the state of Idaho. (10-21-92)~~
101. Common Source of Supply. The geographical area or horizon definitely separated from any other such area or horizon and which contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil or gas or both oil and gas. (3-29-12)
112. Completion. An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. (3-29-12)

123. Conductor Pipe. The first and largest diameter string of casing to be installed in a well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for the diverter system prior to setting surface casing. (3-29-12)

134. Cubic Foot of Gas. The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base shall be sixty (60) Degrees F. (3-29-12)

145. Day. A period of twenty-four (24) consecutive hours from 8 a.m. one day to 8 a.m. the following day. (3-29-12)

156. Department. The Idaho Department of Lands or its designee. (3-29-12)

167. Development. Any work which actively promotes bringing in production. (10-21-92)

178. Director. The head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or his designee. (3-29-12)

189. Drilling Logs. The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole. (3-29-12)

1920. Field. The general area underlaid by one (1) or more pools. (10-21-92)

201. Fresh Water. All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. (3-29-12)

212. Gas-Oil Ratio. The volume of gas produced in standard cubic feet to each barrel of oil or condensate produced concurrently during any stated period. (3-29-12)

23. Gas Processing Facility. A facility that conditions liquids or gas by compression, dehydration, refrigeration, or by other means. ()

224. Gas Well. (10-21-92)

a. A well which produces primarily natural gas; (3-29-12)

b. Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or (10-21-92)

c. Any well classed as a gas well by the Commission for any reason. (10-21-92)

235. Geophysical or Seismic Operations. Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth that may contain oil or gas and is inclusive of, but not limited to, the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis. (3-29-12)

246. Hydraulic Fracturing, or Fracing. A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. (3-29-12)

257. Inactive Well. An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has

- been granted. (3-29-12)
- 268. Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. (3-29-12)
- 279. Junk.** Debris in a hole that impedes drilling or completion. (3-29-12)
- 2830. Lease.** A tract(s) of land which by virtue of an oil and gas lease, fee or mineral ownership, a drilling, pooling or other agreement, a rule, regulation or order of a governmental authority, or otherwise constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. (10-21-92)
- 2931. Mechanical Integrity Test.** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. (3-29-12)
- 302. Oil and Gas.** Oil or gas or both. (10-21-92)
- 313. Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. (3-29-12)
- 324. Operator.** Any duly authorized person who is in charge of the development of a lease or the operation of a producing well. (10-21-92)
- 335. Owner.** The person who has the right to drill into and produce from a pool and to appropriate the oil or gas that produces there from either for himself and/or others. (10-21-92)
- 346. Person.** Any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter gender. (10-21-92)
- 357. Pit.** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, produced water, or other fluids at the drill site. This does not include enclosed, mobile, or portable tanks used to contain fluids. (3-29-12)
- 368. Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules," as the result of the drilling, casing, treating, operation or plugging of wells. (3-29-12)
- 379. Pool or Reservoir.** An underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool. (3-29-12)
- 3840. Pressure Maintenance.** The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. (10-21-92)
- 3941. Produced Water.** Water that is produced along with oil or gas. (3-29-12)
- 402. Producer.** The owner of a well(s) capable of producing oil or gas or both. (10-21-92)
- 413. Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. (3-29-12)
- 424. Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. (3-29-12)

~~43~~**5.** **Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (3-29-12)

~~46.~~ **Spud.** To start the drilling process by removing rock, dirt, and other sedimentary material with the drill bit. ()

~~44~~**7.** **Surface Casing.** The first casing which is run after the conductor pipe to anchor blow out prevention equipment and to seal out fresh water zones. (3-29-12)

~~48.~~ **Surface Water.** Rivers, streams, lakes, and springs when flowing in their natural channels. ()

~~49.~~ **Tank.** A concrete, metal, or plastic stationary vessel used to contain fluids. ()

~~50.~~ **Tank Battery.** One (1) or more tanks that are connected to receive crude oil, condensate, or produced waters from a well(s) and which serves as the point of collection and disbursement of oil or gas from a well(s). ()

~~51.~~ **Tank Dike.** An impermeable man-made structure constructed around a tank to contain leakage from the tank. ()

~~45~~**2.** **Tubing.** Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. (3-29-12)

~~46~~**53.** **Volatile Organic Compound.** Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) psi atmospheric. (3-29-12)

~~54~~**7.** **Waterflooding.** The injection into a reservoir through one (1) or more wells with volumes of water for the purpose of increasing the recovery of oil therefrom. (3-29-12)

~~48~~**55.** **Waste as Applied to Oil.** Underground waste; inefficient, excessive, improper use, or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage, and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use, and sale; the locating, drilling, equipping, operating, or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations. (10-21-92)

~~49~~**56.** **Waste as Applied to Gas.** The escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing, and testing of wells and in furnishing power for the production of wells. (10-21-92)

~~59~~**7.** **Well Report.** The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, etc., as is usually recorded in normal procedure of drilling; also, it includes electrical radioactivity, or other similar logs run, lithologic description of all cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. (3-29-12)

~~58.~~ **Well Site.** The areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well, and its associated well pad. ()

~~54~~**9.** **Well Treatment.** Actions performed on a well to acidize, fracture, or stimulate the target reservoir.

(3-29-12)

~~52~~60. **Wildcat Well.** An exploratory well drilled in an area of unknown subsurface conditions. (3-29-12)

011. ABBREVIATIONS.

01. API. American Petroleum Institute. (3-29-12)

02. ASTM. American Society for Testing and Materials. (3-29-12)

~~03.~~ **BBL.** Oilfield Barrel. ()

~~034.~~ **BOP.** Blowout Preventer. (3-29-12)

~~045.~~ **CAS.** Chemical Abstracts Service. (3-29-12)

~~056.~~ **EPA.** United States Environmental Protection Agency. (3-29-12)

~~067.~~ **F.** Fahrenheit. (3-29-12)

~~078.~~ **GPS.** Global Positioning System. (3-29-12)

~~089.~~ **HDPE.** High Density Polyethylene. (3-29-12)

~~0910.~~ **IDAPA.** Idaho Administrative Procedure Act. (3-29-12)

~~101.~~ **IDEQ.** Idaho Department of Environmental Quality. (3-29-12)

~~112.~~ **IDWR.** Idaho Department of Water Resources. (3-29-12)

~~13.~~ **MCF.** One thousand cubic foot. ()

~~124.~~ **MSDS.** Material Safety Data Sheet. (3-29-12)

~~135.~~ **OSHA.** Occupational Safety & Health Administration. (3-29-12)

~~146.~~ **PSI.** Pounds per Square Inch. (3-29-12)

~~17.~~ **PVC.** Polyvinyl Chloride. ()

(BREAK IN CONTINUITY OF SECTIONS)

~~250~~021. **CLASS II INJECTION WELLS.**

Class II injection wells, as described in IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," are currently not authorized under this rule. Permits for Class II injection wells must be obtained through IDAPA 37.03.03. (3-29-12)

~~022. -- 029.~~ **(RESERVED)**

~~0430.~~ **NOTICES - GENERAL.**

01. Written Authorization Required. Any written notice of intention to do work or to change plans previously approved must be filed with the Department, unless otherwise directed, and must be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the Department in writing. Written notices may be submitted to the Department by e-mail or facsimile. (~~3-29-12~~)()

02. Emergency Authorization. In case of emergency, or a situation where operations might be unduly delayed, any written notice required by these rules and regulations to be given the Department may be given orally or by wire and if approval is obtained, the transaction shall be confirmed in writing, as a matter of record. (3-29-12)

03. Publication of Legal Notices. Whenever these rules require a legal notice to be published in a newspaper, the notice must be published once a week for two (2) consecutive weeks. ()

~~350~~**031. WRITTEN NOTICES, REQUESTS, PERMITS AND REPORTS FORMS.**

The Department shall adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules and regulations. (3-29-12)()

032. ORGANIZATION REPORTS.

01. Required Content. Before any person engages in any activity covered by the statutes and rules of the Commission, that person must file an organization report with the Department. The organization report must include the following information: ()

a. The person's name and the type of the business being operated or conducted; ()

b. The mailing address to which all correspondence from the Department is to be sent; ()

c. The telephone number(s), facsimile number(s), and e-mail address(es) for which contact by the Department may be made; ()

d. The names of persons authorized to submit required forms, reports, and other documents to the Department; and ()

e. If a legal entity, proof the person is authorized to transact business within the state. ()

02. Updates. A supplementary report must be filed with the Department within thirty (30) days of any change to facts stated in a previously-filed organization report. ()

~~#0~~**33. DESIGNATION OF AGENT.**

A "Designation of Agent" shall be submitted to the Department in a manner and form approved by the Department prior to the commencement of operations. A Designation of Agent(s) will be accepted as authority of agent to fulfill the obligations of the owner and to sign any papers or reports required under these oil and gas operating regulations, and all authorized orders or notices given by the Department when given in the manner hereinafter provided shall be deemed service of such orders or notices upon the owner and the lessee. All changes of address and any termination of the agent's authority shall be immediately reported in writing to the Department and, in the latter case, the designation of a new agent(s) shall be immediately made. If the designated agent(s) shall at any time be incapacitated for duty or absent from the address provided, the owner shall designate in writing a substitute to serve in his or their stead, and in the absence of such owner or of notice of appointment of a substitute then, in such case, notices may be given by the Department by delivering a registered letter to the United States Post Office at Boise, Idaho, directed to the agent(s) at the address shown on the current Designation of Agent on file in the Department's office, and such notice will be deemed service upon the owner and lessee. (3-29-12)

~~024~~**34. -- 039. (RESERVED)**

[Codified Section 040 is being moved and renumbered to Section 030.]

~~054~~**40. PUBLIC COMMENT.**

Applications submitted under Sections ~~050, 055, 085,~~ 100, 200, 210, 230 and ~~170~~ 330 of these rules will be posted on the Department's website for a fifteen-day (15) written comment period. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is located. The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments

will be posted on the Department's website following the comment period.

~~(3-29-12)~~()

041. -- 049. (RESERVED)

[Codified Section 050 is being moved and renumbered to Section 200.]

~~370~~50. ENFORCEMENT.

The Department shall enforce these rules pursuant to Section 47-325, Idaho Code.

(3-29-12)

[Codified Section 051 is being moved and renumbered to Section 040.]

~~052. -- 054.~~ (RESERVED)

[Codified Sections 055 and 056 are being moved and renumbered to Sections 210 and 211, respectively.]

~~057. -- 059.~~ (RESERVED)

[Codified Section 060 is being moved and renumbered to Section 221.]

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

[Codified Section 070 is being moved and renumbered to Section 220.]

~~071. -- 074.~~ (RESERVED)

[Codified Section 075 is being moved and renumbered to Section 110.]

~~076. -- 079.~~ (RESERVED)

[Codified Section 080 is being moved and renumbered to Section 310.]

~~081. -- 084.~~ (RESERVED)

[Codified Section 085 is being moved and renumbered to Section 230.]

~~086. -- 089.~~ (RESERVED)

[Codified Sections 090 and 091 are being moved and renumbered to Sections 340 and 341, respectively.]

~~092. -- 094.~~ (RESERVED)

[Codified Sections 095 and 096 are being moved and renumbered to Sections 500 and 501, respectively.]

~~097~~051. -- 099. (RESERVED)

SUBCHAPTER B - EXPLORATION AND DEVELOPMENT

[Codified Section 100 is being moved and renumbered to Section 300.]

360100. GEOPHYSICAL OPERATIONS.

01. Permit Required. Before beginning seismic operations in the state of Idaho, a representative of the client company and the seismic contractor shall meet with the staff of the Department, file an application for a permit to conduct seismic operations, and pay an application fee. No seismic operation shall be conducted without such a permit. The Department has discretion to waive the requirement of the pre-permit meeting for the client company. The permit for seismic operations may be revoked or suspended or the application for the permit denied by the Department for failure to comply with the Commission's rules, statutes, and orders. The Department may revoke, suspend, or deny the application for a seismic permit without a hearing; provided that the seismic contractor shall be given an opportunity for a hearing at the next regularly scheduled Commission meeting. The fact that a permit is revoked or suspended does not excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit the person(s) from drilling any more. The application for a permit for seismic operations must include: (3-29-12)

a. The proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and Section, Township, and Range lines. The map must also show additional area as needed for any alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; and (3-29-12)

b. The energy sources proposed to be used for the seismic operation, such as vibroseis, shot holes, surface shot, or others. (3-29-12)

c. The approximate number, depth, and location of the seismic holes and the size of the explosive charges. The application shall be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shotholes. (10-21-92)

d. The name and permanent address of the client company the Department may contact about the seismic operation. (3-29-12)

e. The name, permanent address, and phone number of the seismic contractor and his local representative whom the Department may contact about the seismic activity. (3-29-12)

f. The name, phone number, and permanent address of the hole plugging contractor, if different from the seismic contractor. (10-21-92)

g. A detailed description of the hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. (3-29-12)

h. The anticipated starting date of seismic operations. (3-29-12)

i. The anticipated completion date of seismic operations, and the anticipated date of any required reclamation or hole plugging. (3-29-12)

j. A description of the identifying mark that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole. (10-21-92)

02. Operating Requirements. All geophysical operations must comply with the following requirements: (3-29-12)

a. All vehicles utilized by the permit holder, or its agents or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of such agent. (3-29-12)

b. No seismic source generation from vibroseis, shot holes, surface shot, or other method shall be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall

be responsible for any resulting damages. (3-29-12)

c. Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained from the owner(s) if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

DISTANCE TO STRUCTURE (Feet)*	MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*
50	0.5
100	2.0
150	4.5
200	8.0
250	12.0
300	18.0
350	25.0
* Based upon a charge weight of seventy (70) Foot/Pound ^{1/2}	

(3-29-12)

d. The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the prior written authorization from the Department. (3-29-12)

e. All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and shall be handled with due care in accordance with industry standards. The cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. (3-29-12)

f. All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. (3-29-12)

g. Unless otherwise consented to by the surface owner in writing, permit holder shall not cut down any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees. (3-29-12)

h. All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-29-12)

i. All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-29-12)

j. All debris associated with the seismic activity shall be removed and properly disposed. (3-29-12)

03. Bond Required. (3-29-12)

a. Before beginning geophysical operations, the geophysical contractor must file and have approved by the Department a bond in the amount of at least ten thousand dollars (\$10,000). The Department may increase this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation. The condition of such bond shall comply with the Act, the rules and orders of the Commission, and orders of the Department. The obligation of the bond shall not be discharged until one (1) year from completion of the survey or until the geophysical contractor has complied with the Oil and Gas Conservation Law, the Commission's rules, and the orders of the Commission and the Department. (3-29-12)

b. Persons or other entities who engage in the plugging of seismic holes and are not a regular full-time

employee of the seismic company, owner, or operator shall have posted with the director a surety bond in favor of the Department. Said bond shall be on a form prescribed by the Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the Oil and Gas Conservation Law and the regulations and orders of the Commission and the Department. (3-29-12)

04. Newspaper Notice. Before a geophysical contractor conducts the geophysical operation, the contractor shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. The notice shall state the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well or conducted by aerial surveys. (3-29-12)

05. Owner and Occupant Notification. No entry shall be made by any person to conduct seismic operations, upon the lands where such seismic operations are to be conducted, without the permit holder having first given notice at least thirty (30) calendar days prior to commencement of field seismic operations. (3-29-12)

a. The notice shall be in writing and given either personally or by certified United States mail to the following persons: (3-29-12)

i. Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records; (3-29-12)

ii. Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and (3-29-12)

iii. Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records. (3-29-12)

b. The notice shall contain the following: (3-29-12)

i. Name of the person or entity that is conducting the seismic operations; (3-29-12)

ii. Proposed location of the seismic operations; and (3-29-12)

iii. Approximate date the person or entity proposes to commence seismic operations. (3-29-12)

06. Department Notifications. (3-29-12)

a. The permit holder shall also notify the Department within five (5) business days of the commencement and completion of each seismic operation. (3-29-12)

b. Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project. (3-29-12)

07. Reports and Notices Required. (10-21-92)

a. Activity Report. Upon completion of the seismic activity or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the Department a report of the completion or progress of the seismic project. The final completion report shall be in affidavit form and shall include a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet or one (1) inch equals four thousand (4,000) feet that shows section, township, and range) and the location of each survey so that the shotholes and other potential impacts can be easily located. The final completion report shall also include a statement that all work has been performed in compliance with the application for a permit to perform seismic activity, [Commission Rule 360 Section 100 of these rules](#), and permit provisions. Said maps, applications, and reports shall be kept confidential by the Department for a period of one (1) year from the date of receipt, subject to the needs of the Department to use them to enforce these regulations, the Act, and the orders of the Commission or the Department. Also, the owner of the surface of the land

may be advised of the location of seismic lines or seismic holes on his land and of the exploration method used.

(3-29-12)()

b. Plugging Notice. Seismic contractors shall give the Department at least twenty-four (24) hours advance notice of shothole plugging operations, provided that notice of plugging operations planned for Sunday or Monday may be given on the previous Friday.

(3-29-12)

08. Client-Contractor Responsibility. The client company may be held responsible along with the seismic contractor for conducting the operation in compliance with the Commission's rules and orders, the Department's orders, and the Act for the seismic contractor's failure to comply with such rules, statutes, and orders. The hats used in the plugging of seismic holes shall be imprinted with the name of the contractor responsible for the plugging of the hole.

(3-29-12)

09. Plugging. Unless the seismic contractor can prove to the satisfaction of the Department that another method will provide better protection to ground water and long-term land stability, seismic shothole operations shall be conducted in the following manner:

(3-29-12)

a. When water is used in conjunction with the drilling of seismic shotholes and artesian flow is not encountered at the surface, seismic holes are to be filled with a high grade bentonite/water slurry mixture. Said slurry shall have a density that is at least four percent (4%) greater than the density of fresh water; said slurry shall also have a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are to be measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of in accordance with [Subsections Paragraph 360100.09.f.](#) of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of said substitute are at least comparable to those of the bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the Department shall be used as a plugging material.

(3-29-12)()

b. The hole will be filled with the slurry from the bottom up to a depth of three (3) feet (three (3) feet below ground level). A nonmetallic plug will be set at this depth of three (3) feet, and the remaining hole will be filled and tamped to the surface with cuttings and native soil.

(10-21-92)

c. When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in [Subsections Paragraph 360100.09.a.](#), supra.

(3-29-12)()

d. When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet, and setting the permaplug topped with more cuttings and soil as per [Subsection Paragraph 360100.09.b.](#) above. A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner.

(3-29-12)()

e. The foregoing seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; however, a shot hole shall not be left unplugged for more than thirty (30) days without approval of the Department.

(3-29-12)

f. Any slurry, drilling fluid, or cuttings which are deposited on the surface around the seismic hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired.

(10-21-92)

g. The requirements of Paragraphs [360100.09.a.](#) through [360100.09.f.](#) of this rule may be modified by any reasonable written agreement between the seismic company and the surface owner.

(3-29-12)()

h. If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately.

(3-29-12)

i. After completing the plugging of seismic shot holes and spreading the cuttings as required by this

rule, the seismic contractor shall record the GPS location of the seismic hole, and the contractor shall provide the location data to the Department. (3-29-12)

10. Forfeiture of Geophysical Exploration Bond. The Department may forfeit the bond submitted under Subsection ~~360~~100.03 of this rule upon failure of the owner or operator to conduct the seismic survey and complete reclamation in conformance with Section ~~360~~100 of this rule. The owner or operator will be given an opportunity to address compliance issues prior to the Department taking action against the bond. (~~3-29-12~~)()

~~101.~~ -- ~~104.~~ (~~RESERVED~~)

[Codified Section 105 is being moved and renumbered to Section 320.]

~~106.~~—109. (RESERVED)

[Codified Section 110 is being moved and renumbered to Section 033.]

~~075~~110. SURFACE OWNER PROTECTIONS.

01. Surface Use Agreement. If the mineral estate has been severed from the surface estate where an oil or gas well is to be located, the owner or operator shall attempt a good faith negotiation of a surface use agreement with the surface owner. The surface use agreement must address how the surface owner will be compensated for lost agricultural income and lost value of improvements directly caused by oil and gas exploration and production. The owner or operator may rely on the tax records of the respective county assessor to identify the surface owner. (3-29-12)

02. Surface Owner Notification. If a surface use agreement cannot be negotiated, then the owner or operator must notify the surface owner of the intent to drill by certified mail at least sixty (60) days prior to the commencement of surface disturbing activities, unless otherwise agreed to by the surface owner. The notification must include a proposed surface use bond amount, and a copy must be sent to the Department. (3-29-12)

03. Surface Owner Objection. If the surface owner disagrees with the owner's or operator's proposed surface use bond amount, the surface owner must send a written objection to the Department within thirty (30) days of receiving the notification from the owner or operator. The objection must contain the owner's or operator's proposed surface use bond amount. Any objection filed will not delay the owner's or operator's proposed start of surface disturbing activities. (3-29-12)

04. Surface Use Bond. The minimum surface use bond in all instances with no surface use agreement will be five thousand dollars (\$5,000), and will be paid in cash to the Department. If the surface owner objects to the owner's or operator's proposed bond amount, the Department will determine a surface use bond based on the information received from both the owner or operator and the surface owner. The Department will then request that the owner or operator submit this bond. The Department may issue the permit and authorize the commencement of drilling operations after this bond has been received. The purpose of this bond is to safeguard the surface owner's loss of agricultural income and improvement values pending the results of a hearing on the final bond. (3-29-12)

05. Hearing to Determine Surface Use Bond. When the owner, operator, or surface owner objects to the Department's proposed surface use bond, a hearing will be scheduled as soon as possible to determine the final bond amount. The owner, operator, surface owner, and Department may offer testimony to the hearing officer. The hearing officer will recommend a final bond amount to the Commission. After the Commission's final order, the owner or operator and surface owner will have twenty-eight (28) days to file a request for judicial review. (3-29-12)

06. Release of Surface Use Bond. The Department will hold the bond pending either a surface use agreement between the two (2) parties that negates the need for a surface use bond, or reclamation of the surface disturbance. (3-29-12)

07. Forfeiture of Surface Use Bond. The Department may forfeit this bond upon failure of the owner or operator to reclaim the disturbed area in a timely manner, or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations. (3-29-12)

111. -- ~~124~~19. (RESERVED)

~~330~~120. WELL SPACING.

In the absence of an order by the Commission setting spacing units for a pool, or a unit operation as described in Section ~~3~~140, the following rules shall apply: ~~(3-29-12)~~()

01. Wells Drilled for Oil; Standard Spacing Unit and Well Location. Every well drilled for oil must be located in the center of a forty (40) acre governmental quarter quarter section, lot or tract, or combination of lots or tracts substantially equivalent thereto as shown by the most recent governmental survey, with a tolerance of two hundred (200) feet in any direction from the center location; provided that no oil well shall be drilled less than nine hundred twenty (920) feet from any other well drilling to or capable of producing oil from the same pool, or no oil well shall be completed in a known pool unless it is located more than nine hundred twenty (920) feet from any other well completed in and capable of producing oil from the same pool. (10-21-92)

02. Wells Drilled for Gas; Standard Spacing Unit and Well Location. Every well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool. In areas not covered by United States Public Land Surveys, such drilling unit shall consist of an area which is: 1) bounded by four (4) sides intersecting at angles of not less than eighty five (85) degrees or more than ninety five (95) degrees; 2) the distance between two (2) points farthest apart thereon shall not exceed eight thousand five hundred (8,500) feet; and 3) shall contain at least six hundred (600) contiguous surface acres. In areas covered by United States Public Land Surveys, such drilling unit shall consist of one governmental section containing not less than six hundred (600) surface acres. ~~Each well drilled for gas shall be located within a square, each side of which is one thousand six hundred sixty (1,660) feet in length and parallel to a center line of the section. The center of such square shall coincide with the geometric center of the section.~~ A gas well must have a minimum setback of three hundred thirty (330) feet from the governmental section line. ~~(10-21-92)~~()

03. Well Locations Adjacent to Spaced Areas. The Commission shall have the discretion to determine the pattern location of wells adjacent to an area spaced by the Commission, or under application for spacing where there is sufficient evidence to indicate that the pool or reservoir spaced or about to be spaced may extend beyond the boundary of the spacing order or application, and the uniformity of spacing patterns is necessary to insure orderly development of the reservoir pool. (10-21-92)

04. Exceptions to Location of Wells and Well-Spacing Orders. Upon proper application therefore, the Department may approve, as an administrative matter, an exception to Subsections ~~330~~120.01 and ~~330~~120.02 or any order of the Commission establishing well spacing for a pool. The application shall state fully the reasons why such an exception is necessary or desirable, include the consent of the owners of all drilling units directly or diagonally offsetting the drilling unit for which an exception is requested, and shall be accompanied by a plat showing: ~~(3-29-12)~~()

a. The location at which an oil or gas well could be drilled in compliance with Subsections ~~330~~120.01 or ~~330~~120.02 or the applicable order; ~~(10-21-92)~~()

b. The location at which the applicant requests permission to drill an oil or gas well and the location of the proposed spacing unit; and ~~(10-21-92)~~()

c. The location at which oil or gas wells have been drilled or could be drilled, in agreement with Subsections ~~330~~120.01 or ~~330~~120.02 or the applicable order, directly or diagonally offsetting the proposed exception. No exception shall prevent any owner or operator from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by Subsections ~~330~~120.01 or ~~330~~120.02 or any applicable order of the Commission establishing oil or gas well-spacing units for the pool involved. ~~(3-29-12)~~()

05. Spacing Unit Changes. The Commission will review applications to change the size or shape of spacing units established by Subsections 120.01 or 120.02 of these rules or an order by the Commission. ()

[Codified Section 125 is being moved and renumbered to Section 311.]

126~~1~~. -- 129. (RESERVED)

[Codified Section 130 is being moved and renumbered to Section 301.]

130. INTEGRATION.

When two (2) or more separately owned tracts or interests are within a spacing unit, the owners of the tracts or interests may voluntarily integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration and upon an application by an owner within a spacing unit, the Commission may, either before or after drilling a well, make an order integrating all tracts or interests within the spacing unit for the development and operation of the spacing unit. ()

01. Integration Application Requirements. Integration applications must be filed with the Commission in hard copy and electronic formats. The application must contain the following information: ()

- a.** Name and address of the applicant; ()
- b.** Description of the spacing unit to be integrated; ()
- c.** Plat of the subject spacing unit identifying the location of the well site, tank battery, gas processing facility, pipelines, roads, and the ownerships of tracts and interests within the spacing unit; ()
- d.** A statement explaining why integration is requested; ()
- e.** A geologic report explaining the likely presence of hydrocarbons, reservoir characteristics, the depth to proposed pool(s) and the regional or local extent of the pool(s); ()
- f.** A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator; ()
- g.** A proposed joint operating agreement and a proposed lease form; ()
- h.** A list of all mineral interest owners in the spacing unit and a list of the owners to be integrated under the application, including names, addresses, and respective acreages within the spacing unit; ()
- i.** Affidavits indicating that at least fifty-five percent (55%) of the mineral interest owners in the spacing unit support the integration application by leasing or participating as a working interest owner; ()
- j.** A list of bonus payments paid to leased mineral interest owners prior to filing the integration application; and ()
- k.** A resume of efforts documenting the applicant's good faith efforts on at least three (3) separate occasions within a period of time no less than sixty (60) days to inform mineral interest owners of the applicant's intentions to develop the mineral resources in the spacing unit and reach an agreement with owners in the spacing unit. At least one (1) contact must be by certified U.S. mail return receipt requested sent to an owner's last known address. If an owner of a tract cannot be found, the applicant must publish a legal notice in a newspaper in the county where the tract is located. The resume of efforts must show the applicant has exhausted all reasonable efforts to reach an agreement with owners in a spacing unit. ()

02. Response to the Application and Hearing. At the time the integration application is filed with the Commission, the applicant must certify that a copy of the integration application and supporting information was served on all mineral interest owners in the spacing unit to be integrated under the application. The affected mineral interest owners in the spacing unit will have twenty-one (21) days from the date of service of the application to file a response to the application with the Commission. The Commission will schedule a hearing on the application for integration. The applicant will give notice of the hearing to all mineral interest owners in the unit to be integrated under the application in the manner required by Section 47-324(b), Idaho Code. ()

131. INTEGRATION ORDERS.

The Commission will issue an integration order if the Commission approves an application for integration. The integration order will authorize the drilling and operation of a well in a spacing unit, prescribe the time and manner in which all owners in the spacing unit may elect to participate therein, and prescribe the manner for the payment of the costs of drilling and operating the well upon terms that are just and reasonable pursuant to Section 47-322, Idaho Code. ()

01. Participation Terms. Upon issuance of an integration order by the Commission, the operator of the integrated spacing unit must issue an elections form to all non-leased owners in the spacing unit by certified U.S. mail, return receipt requested. The election form must clearly identify the participation terms, the course of action if an owner does not respond to the election form, and a response deadline. The terms in Subsections 131.02, 03, and 04 of these rules are available to non-leased owners in an integrated spacing unit. ()

02. Working Interest Owner. An owner who elects to participate as a working interest owner will pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well after deducting their respective shares of the drilling and operating costs. The operator of the integrated spacing unit and working interest owners must enter into a joint operating agreement approved by the Commission in the integration order. ()

03. Nonconsenting Working Interest Owner. An owner who refuses to share in the risk and actual costs of drilling and operating the well is a nonconsenting working interest owner. Nonconsenting working interest owners are entitled to their respective shares of the production of the well, not to exceed one-eighth (1/8) royalty, until the operator of the integrated spacing unit has recovered up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner owns the proportionate share in the well, surface facilities, and production, and will be liable for further costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners must enter into a joint operating agreement approved by the Commission in the integration order. ()

04. Lease. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner will receive one-eighth (1/8) royalty. The operator of an integrated spacing unit must pay a leasing mineral owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. ()

~~132.~~ -- 139. (RESERVED)

[Codified Section 140 is being moved and renumbered to Section 312.]

~~3140.~~ **UNIT OPERATIONS AGREEMENTS.**

Any person desiring to obtain the benefits of Section 47-323, Idaho Code, relating to any method of unit, cooperative development, or operation of a field or pool or a part of either, shall file an application with the Department for approval of such agreement which shall have attached a copy of such agreement. Notice of the hearing of such application shall be given by publication of a legal notice in a newspaper of general circulation in Ada County, Idaho, and the county of the unit operation. (3-29-12)()

~~141.~~ -- ~~149.~~ (RESERVED)

[Codified Section 150 is being moved and renumbered to Section 411.]

~~151.~~ -- ~~159.~~ (RESERVED)

~~160.~~ **FIRE PROTECTION.**

~~Dikes or firewalls shall be required where it is deemed necessary by the Department to protect life, health, or property. Such dikes or firewalls must be erected and continuously maintained in good condition around all permanent oil tanks or batteries that are within the corporate limits of any city, town, or village, or where such tanks are closer than one hundred fifty (150) feet to any highway or inhabited dwelling, or closer than one thousand (1,000) feet to any school or church. The capacity of the dike, or firewall, shall be one and one half (1 1/2) times the capacity of the tank(s) that it surrounds. The reservoir so formed within the dike shall be kept free from vegetation, water, and oil.~~ (3-29-12)

~~161.—169. (RESERVED)~~

[Codified Section 170 is being moved and renumbered to Section 330.]

~~171.—179. (RESERVED)~~

[Codified Section 180 is being moved and renumbered to Section 314.]

~~181.—189. (RESERVED)~~

[Codified Section 190 is being moved and renumbered to Section 315.]

~~191.—199. (RESERVED)~~

SUBCHAPTER C - DRILLING, WELL TREATMENT, AND PIT PERMITS

[Codified Section 200 is being moved and renumbered to Section 302.]

050200. PERMIT TO DRILL, DEEPEN, OR PLUG BACK.

01. Permits Required. Prior to the commencement of operations to drill, deepen, or plug back to any source of supply other than the existing producing horizon, application shall be delivered to the Department of intention to drill, deepen, or plug back any well for oil or gas, and approval obtained. (3-29-12)

02. Fees. An application fee must accompany each application for permit to drill, deepen, or plug back. No service fee is required for a permit to deepen or plug back in a well for which the fee has been paid for permit to drill unless the drilling permit has expired. (3-29-12)

03. Time Required to Commence Operations; Term of Permit. On the first anniversary of the date of issuance of a permit to drill, deepen, or plug back, said permit will expire and be of no further force or effect, unless the work for which the permit was issued has been started. Prior to the anniversary date, the owner or operator may apply for a one-time, six-month extension if work has not started. If conditions have not changed and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires due to the failure to commence operations, then reapplication is required prior to commencing operations. (3-29-12)

04. Application. The Application for Permit to Drill shall include a Department approved form and the following: (3-29-12)

a. An accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey. (3-29-12)

b. The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. (3-29-12)

c. Information on the type of tools to be used and the proposed logging program. (3-29-12)

d. Proposed total depth to which the well will be drilled, estimated depth to the top of the important

- geologic markers, and the estimated depth to the top of the target formations. (3-29-12)
- e. The proposed casing program, including size and weight thereof, the depth at which each casing type is to be set. (3-29-12)
 - f. The type and amount of cement to be used, and the intervals cemented. (3-29-12)
 - g. Information on the drilling plan. (3-29-12)
 - h. Best management practices to be used for erosion and sediment control. (3-29-12)
 - i. Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection ~~080310.156~~ and Section ~~32510~~ of these rules. ~~(3-29-12)~~()
 - j. Applications that include the following actions must also provide the information from the respective Section of these rules: (3-29-12)
 - i. Well treatments require the submittal of the information in Section ~~055210~~. ~~(3-29-12)~~()
 - ii. Pit construction and use requires the submittal of the information in Section ~~085230~~. ~~(3-29-12)~~()
 - iii. Directional or horizontal drilling requires the submittal of the information in Section ~~170330~~. ~~(3-29-12)~~()
 - k. Any other information which may be required by the Department based on site specific reasons. (3-29-12)
- 05. Permit Denial.** Applications may be denied for the following reasons: (3-29-12)
- a. Application fee was not submitted. (3-29-12)
 - b. Application is incomplete. (3-29-12)
 - c. Failure to post required bonds. (3-29-12)
 - d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-29-12)

~~201~~. MULTIPLE ZONE COMPLETIONS.

01. Requirements of the Owner or Operator; Request for Approval. A multiple zone completion may be approved by the Department upon application by the owner or operator and payment of an application fee, as herein provided. The application shall be accompanied by an exhibit showing the location of wells on applicant's lease and all offset wells on leases, and shall set forth all material facts involved and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well. The application fee may not exceed that required by Subsection ~~050200.02~~ of these rules. Notice of the filing of such application shall be given by the applicant by mailing to each offset operator a notice containing a full description of the proposed completion for which approval is requested, and proof of mailing such notice shall be made by affidavit, which shall be attached to the application showing names and addresses of those to whom notice was mailed. ~~(3-29-12)~~()

02. Conditions for Approval; Cause for Hearing. In the event the Department is in agreement with the application and that no offset operator files a written objection to the application with the Department within

fifteen (15) days of the date of the offset operator's receipt of application, the application shall be approved as an amendment to the drilling permit. If any offset operator shall file in writing with the Department an objection to such multiple completion, or if the Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the Department. (3-29-12)

03. Zone Effectiveness; Requirement for Production Testing. The Department may require such tests as necessary to determine the effectiveness of the segregation of the different productive zones. (3-29-12)

04. Commingling Production. The Department may require that oil or gas from multiple zones be produced through different sets of tubing, if needed to protect correlative rights or to prevent waste. (3-29-12)

~~2042.~~ -- 209. (RESERVED)

[Codified Section 210 is being moved and renumbered to Section 412.]

~~055~~**210. WELL TREATMENTS.**

01. Application Required. An Application for Permit to Drill required by Section ~~050~~**200** must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the well treatments being implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but ~~a notice to operators must notify~~ the Department ~~as described in Section 350 of these rules is still required~~ when such actions occur. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and the following: (~~3-29-12~~)()

- a. Depth to perforations or the openhole interval; (3-29-12)
- b. The source of water or type of base fluid; (3-29-12)
- c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and MSDS for each additive; (3-29-12)
- d. Type of proppant(s); (3-29-12)
- e. Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); (3-29-12)
- f. Estimated pump pressures; (3-29-12)
- g. Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; (3-29-12)
- h. Size and design of storage pits, if proposed, in conformance with Section ~~085~~**230** of these rules; (~~3-29-12~~)()
- i. Information specific to hydraulic fracturing as described in Section ~~056~~**211** of these rules; (~~3-29-12~~)()
- j. Summary identifying all water bearing zones from the surface down to the bottom of the well; (3-29-12)
- k. Fresh water protection plan that describes the proposed site specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh Water Protection Plan shall include the following information: (3-29-12)

- i. Ground water and storm water best management practices; (3-29-12)
 - ii. Statement certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA; (3-29-12)
 - iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, wells, perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; (3-29-12)
 - iv. A brief description of the structural geology that may influence ground water flow and direction; and (3-29-12)
 - v. The general hydrogeological characteristics of the treatment area and surrounding land. (3-29-12)
 - l. Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; (3-29-12)
 - m. Affidavit signed by the owner or operator stating that all home owners and water well owners within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have a IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, prior to and after the oil or gas well being treated. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; (3-29-12)
 - n. Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in ~~Paragraph 055210.01~~.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and ~~(3-29-12)~~()
 - o. Additional information as required by the Department. (3-29-12)
- 02. Master Drilling/Treatment Plans.** Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. (3-29-12)
- 03. Application Denial.** The Department may deny well treatment applications for one (1) or more of the following reasons: (3-29-12)
- a. Application does not contain the information in Subsection ~~055210.01~~ of these rules; ~~(3-29-12)~~()
 - b. Application fee was not submitted. (3-29-12)
 - c. Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-29-12)
- 04. Time Limit.** If a treatment approved in a drilling permit or amended drilling permit is not started within one (1) year of the approval of the well treatment, the well treatment permit will expire and reapplication will be required prior to conducting the well treatment. Prior to the anniversary date, the owner or operator may apply for a six-month (6) extension. If conditions have not changed, and no changes to the permit are requested, the extension

may be approved by the Department. (3-29-12)

05. Inspections. The Department may conduct inspections prior, during, and after well treatments. (3-29-12)

06. Reporting Requirements. A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: (3-29-12)

a. The daily production of oil, gas, and water both prior to and after the operation. (3-29-12)

b. The size and depth of perforations. (3-29-12)

c. Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. (3-29-12)

d. Documentation demonstrating the chemicals used in the well treatment have been reported to the website www.fracfocus.org, its successor website, or another publicly accessible database approved by the Department. The chemical information must be reported in a systems approach. ()

e. Information specific to hydraulic fracturing, as described in Section 056211 of these rules. (~~3-29-12~~) ()

f. Static pressure testing results before and after the well treatment. (3-29-12)

g. The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Reporting of recovered fluids shall be included with other monthly production reports required by the Department. Storage of such fluid shall be protective of ground water as demonstrated by the use of either tanks or authorized lined pits as described in Section 085230 of these rules. (~~3-29-12~~) ()

h. Any other information related to operations which alter the performance or characteristics of the well. (3-29-12)

07. Fresh Water Protections for Well Treatments. (3-29-12)

a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. (3-29-12)

b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet above or below fresh water aquifers. (~~3-29-12~~) ()

c. The Department shall require the owner or operator to complete fresh water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with the IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with the IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following:

- (3-29-12)
- i. Location of proposed monitoring sites; (3-29-12)
 - ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and drilling log. For existing wells, the operator must make every reasonable attempt to locate this information; (3-29-12)
 - iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; (3-29-12)
 - iv. List of proposed analytes, testing methods, and their detection limits; (3-29-12)
 - v. Additional tests such as stable isotopic analysis; and (3-29-12)
 - vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. (3-29-12)
- d.** The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. (3-29-12)
- e.** Pollution of fresh water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. (3-29-12)

056211. HYDRAULIC FRACTURING.

01. Application Requirements. In addition to the information required by Subsection ~~055210~~210.01 of this rule, the owner or operator shall provide the following application information regarding hydraulic fracturing: ~~(3-29-12)~~()

- a.** The geological names and descriptions of the formation into which well stimulation fluids are to be injected; (3-29-12)
- b.** Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including: (3-29-12)
 - i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); (3-29-12)
 - ii. The chemical compound name and Chemical Abstracts Service (CAS) number as found on the previously submitted MSDS shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); (3-29-12)
 - iii. The proposed rate or concentration for each additive and the total volume of each shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and (3-29-12)
 - iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. (3-29-12)
- c.** A detailed description of the proposed well stimulation design that shall include: (3-29-12)
 - i. The anticipated surface treating pressure range; (3-29-12)

ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; ~~(3-29-12)~~()

iii. The estimated or calculated fracture height in both the horizontal and vertical directions. (3-29-12)

02. Volatile Organic Compounds and Petroleum Distillates. The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of the applicable ground water quality standards is prohibited. Volatile organic compounds or petroleum distillates may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of volatile organic compounds or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the director. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring volatile organic compounds or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. (3-29-12)

03. Well Integrity. Prior to the well stimulation, the owner or operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. (3-29-12)

04. Pressure Monitoring. During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. (3-29-12)

05. Post Treatment Report. In addition to the information required by Subsection ~~055210~~.06 of this rule, the owner or operator shall provide the following post-treatment reporting: ~~(3-29-12)~~()

a. The actual total well stimulation treatment volume pumped; (3-29-12)

b. The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; (3-29-12)

c. The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; (3-29-12)

d. A continuous record of the annulus pressure during the well stimulation; (3-29-12)

e. A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy ~~Paragraphs 056211.05.a. through 056211.05.d.~~ of this rule. ~~(3-29-12)~~()

f. A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection ~~056211~~.04 of this rule. The report shall include corrective actions taken, if necessary. ~~(3-29-12)~~()

g. Results of post treatment fluid analysis used to help determine where the fluid can be disposed. (3-29-12)

~~2142~~ -- 219. (RESERVED)

[Codified Section 220 is being moved and renumbered to Section 201.]

~~070~~220. BONDING.

01. Individual Bond. The Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section ~~325~~10 of these rules, or the bond is released by the Department. (3-29-12)()

02. Blanket Bond. In lieu of the bond in Subsection ~~070~~220.01 of this rule, any owner or operator may file with the Department a good and sufficient blanket bond covering all active wells drilled or to be drilled in the state of Idaho. ~~The bond(s) herein before referred to shall be by a corporate surety authorized to do business in the state of Idaho or in cash.~~ The amount of the blanket bond will be as follows according to the number of active wells covered by the bond: (3-29-12)()

- a. Up to ten (10) wells, fifty thousand dollars (\$50,000); (3-29-12)
- b. Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or (3-29-12)
- c. More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). (3-29-12)

03. Inactive Well Bond. An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus ~~one~~ eight dollars (~~\$7~~8) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection ~~070~~220.02 of this rule. (3-29-12)()

04. Additional Bonding. The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. (3-29-12)

05. Authorized Bonds. The bond(s) referred to in Section 220 must be by a corporate surety authorized to do business in the state of Idaho or in cash. If cash is used to satisfy the bonding requirements in these rules, interest on the cash will be allocated to the general fund. ()

~~060~~221. TRANSFER OF DRILLING PERMITS.

No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with: (10-21-92)

01. Prior to Drilling Well. If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, he shall submit a letter so stating and another application properly filled out showing the new location. Drilling shall not be started until the transfer has been approved and the new permit posted at the new location. (3-29-12)

02. During Drilling or After Completion. If, while a well is being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his interest in the well, he shall submit a written statement to the Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. (3-29-12)

03. Terms for Acceptance of Transfer. Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit a written statement setting forth that he has acquired such well and

assumes full responsibility for its operation and abandonment in conformity with the law, rules, regulations, and orders issued by the Commission. If bond is required to guarantee compliance with the rules and regulations of the Commission, the person acquiring such well shall furnish bond. (3-29-12)

~~2242~~ -- 229. (RESERVED)

[Codified Section 230 is being moved and renumbered to Section 313.]

~~085230~~. PIT REQUIREMENTS.

01. Plans Required. If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. (3-29-12)

02. Location. (3-29-12)

a. Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild fires, floods, landslides, surface and ground water systems, equipment operation, and public access. (3-29-12)

b. Pits located in a one hundred-year floodplain must be in conformance with any applicable floodplain ordinances pertaining to activities within the one hundred-year floodplain. (3-29-12)

c. Pits shall not be located within an IDEQ recognized source water assessment or protection areas for public drinking water systems. (3-29-12)

03. Site Preparation. All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. (3-29-12)

04. Pit Sizing Criteria. (3-29-12)

a. Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." (3-29-12)

b. Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred-year, twenty-four-hour precipitation event. (3-29-12)

c. Snowmelt events shall be considered in determining the containment capacity. (3-29-12)

d. Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. (3-29-12)

e. Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time shall fluids in a pit be allowed to escape from the impoundment. (3-29-12)

05. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short Term Pits. Pits used for one (1) year or less, not including extensions, are short term pits. Construction plans and specifications for short term pits must include the requirements under Subsections ~~085230~~.02 through ~~085230~~.04 of this rule and the following: (3-29-12)()

- a.** A prepared subbase, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; (3-29-12)
- b.** Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; (3-29-12)
- c.** A primary liner system consisting of a synthetic liner of at least twenty (20) mils thickness and constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges shall be anchored in a compacted earth filled trench at least eighteen (18) inches in depth. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility shall comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; (3-29-12)
- d.** Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining system of the pit; (3-29-12)
- e.** Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; (3-29-12)
- f.** Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-disturbance land use after pit closure; and (3-29-12)
- g.** A closure plan including the following: (3-29-12)
- i.** Testing of residual fluids and any accumulated solids, if anything other than water based drilling fluid was placed in the pit; (3-29-12)
- ii.** Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; (3-29-12)
- iii.** Regrading plan, replacement of topsoil, and erosion control measures; and (3-29-12)
- iv.** Reseeding and Revegetation. (3-29-12)
- 06. Minimum Plans and Specifications for Long Term Pits.** Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections ~~085230.02~~ through ~~085230.05~~ of this rule and the following: ~~(3-29-12)~~()
- a.** A quality control/quality assurance construction and installation plan; (3-29-12)
- b.** Type of fluids to be contained in the pit; (3-29-12)
- c.** Secondary containment synthetic liners, which shall have a minimum thickness of sixty (60) mils consisting of HDPE and a maximum coefficient of permeability of 10^{-9} cm/sec, or comparable liners approved by the Department; (3-29-12)
- d.** Leak detection and collection systems. The plans and specifications shall: (3-29-12)
- i.** Provide a material between primary and secondary containment synthetic liners to collect, transport and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; (3-29-12)

ii. Provide routines and schedules for the evaluation of the efficiency and effectiveness of the removal of fluids from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; (3-29-12)

iii. Provide specific triggers for maintenance routines, which shall be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and (3-29-12)

iv. Specify operation and maintenance procedures, which shall be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. (3-29-12)

e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of PVC ~~S~~Schedule 80 and be designed to: ~~(3-29-12)~~()

ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and (3-29-12)

iii. Facilitate clean-out and maintenance. (3-29-12)

f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines shall not penetrate the liner; (3-29-12)

g. Plans for erosion control during and immediately following construction; and (3-29-12)

h. Operating and maintenance plans. (3-29-12)

07. Time Limits for Short Term Pits. Reserve, well treatment, and other short term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. (3-29-12)

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension for up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. (3-29-12)

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. (3-29-12)

08. Emergency Pits. Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections ~~085230.02~~ through ~~085230.05~~ of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. ~~(3-29-12)~~()

09. Operating Requirements. (3-29-12)

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste. (3-29-12)

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. (3-29-12)

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the

liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. (3-29-12)

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short term pits immediately following the cessation of activity for which the pit was constructed. Visible oil must be removed from long term pits as soon as it is discovered. (3-29-12)

10. Closure of Pits. (3-29-12)

a. The owner or operator shall remove all liquids from the pit prior to closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. (3-29-12)

b. Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. (3-29-12)

c. The owner or operator must notify the Department at least forty-eight (48) hours prior to removal of the pit liner so an inspection may be conducted. (3-29-12)

d. The pit foundation will be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and the IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852. (3-29-12)

e. After addressing any pit leakage concerns, the owner or operator shall perform the activities described in Subsections ~~325~~510.04 through ~~325~~510.08 of these rules. (~~3-29-12~~)()

11. Condemnation Due to Improper Impoundment. The Department shall have authority to condemn any pit that does not properly impound fluids and order the disposal of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. (3-29-12)

~~231. -- 249.~~ (~~RESERVED~~)

[Codified Section 250 is being moved and renumbered to Section 021.]

~~251. -- 254.~~ (~~RESERVED~~)

[Codified Section 255 is being moved and renumbered to Section 410.]

~~256. -- 259.~~ (~~RESERVED~~)

[Codified Section 260 is being moved and renumbered to Section 401.]

~~261. -- 269.~~ (~~RESERVED~~)

[Codified Section 270 is being moved and renumbered to Section 402.]

~~271. -- 279.~~ (~~RESERVED~~)

[Codified Section 280 is being moved and renumbered to Section 404.]

~~281. -- 289.~~ (~~RESERVED~~)

[Codified Section 290 is being moved and renumbered to Section 405.]

~~291.~~ 299. (RESERVED)

SUBCHAPTER D - WELL SITES AND DRILLING

[Codified Section 300 is being moved and renumbered to Section 413.]

~~300.~~ IDENTIFICATION OF WELLS.

01. Signs; Lease Access Roads. To identify all producing leases the owner or operator thereof shall cause a sign to be placed where the principal lease road enters the lease and such sign shall show the name of the lease and the owner or operator thereof and the section, township, and range. (10-21-92)

02. Signs; Well Sites. ~~A legible numeral shall be attached to or painted on~~ Prior to spud activity, a legible sign must be placed near the well to identify the operator, permit number, well number name, and emergency telephone number. If a multiple completion, each well head connection shall be identified. (~~10-21-92~~)()

~~301.~~ FIRE HAZARD WELL SITE OPERATIONS.

The owner or operator must conduct all operations and maintain the well site at all times in a safe and workmanlike manner. Best management practices and good housekeeping practices must be used at well sites. ()

01. Fencing. Within sixty (60) days after completion of the well, the owner or operator must install a fence around the well site to maintain safe working conditions, secure the well site, and prevent access by wildlife and livestock. The fence design must be acceptable to both the landowner and owner or operator. ()

02. Storage. All chemicals must be stored and maintained in accordance with the applicable MSDS requirements. Materials related to operations must be palletized where applicable. Vehicles and materials not in use must be removed from the well site. ()

03. Vegetation. All well sites must be kept free of excessive vegetation. ()

04. Trash. All trash, debris, and scrap metal must be removed from the well site. Pending removal, Any rubbish trash or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. (~~3-29-12~~)()

~~200~~302. ACCIDENTS AND FIRES.

The owner or operator shall take all reasonable precautions to prevent accidents and fires. An emergency response plan will be prepared and available at the well for use or inspection. Coordination with local emergency responders and the Idaho Bureau of Homeland Security is recommended prior to rig set up. The following actions must be taken in event of a release, industrial accident, or fire of major consequence: (3-29-12)

01. Provide Information to Emergency Response. Emergency workers will be given information on all fluids or chemicals involved in a spill or accident as needed according to OSHA Standard 1910.1200 (Hazard Communication). Nothing in this rule shall authorize any person to withhold information that is required by state or federal law to be provided to a health care professional, a doctor, or a nurse. All information required by a health care professional, a doctor, or a nurse shall be supplied, immediately upon request, by the owner or operator, or their contractors, directly to the requesting health care professional, doctor, or nurse, including the percent by volume of the chemical constituents (and associated CAS numbers) in the fluids and the additives; (3-29-12)

02. Initiate Spill Response and Corrective Actions. Owner or operator must comply with the requirements of IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852; and (3-29-12)

03. Notify the Department. Notify the Department within twenty-four (24) hours and submit a full report thereon within fifteen (15) days. (3-29-12)

303. -- 309. (RESERVED)

310. GENERAL DRILLING RULES.

01. General Design Requirements for Casing and Cementing. Casing and cementing programs adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards for cementing in API SPEC 10A. (3-29-12)

02. Wildcat and High-Pressure Conditions. When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and shall use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. (3-29-12)

03. High Temperature Conditions. Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. (3-29-12)

04. Conductor Pipe or Casing Requirements. A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength. (3-29-12)

05. Surface Casing Requirements. (3-29-12)

a. The Department must be notified in writing seventy-two (72) hours in advance of planned spud activity for surface casing. The Department will post the spud activity notice on its website and send an electronic copy of the notice to the county where the well is located. ()

b. Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total depth of the well. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set. (3-29-12)

c. This Surface casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or rapidly increasing thermal gradients or formation pressures are encountered. (3-29-12)

d. All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other approved method. When surface samples are cured, additional drilling activities may commence. (3-29-12)

e. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for surface casing. The Department will witness and document all surface casing cementing activities. ()

06. Requirements for BOP Equipment. Unless altered, modified, or changed for a particular pool(s) upon hearing before the Commission, BOP and related equipment shall be installed and maintained during the drilling of all wells in accordance with the following rules: (3-29-12)

a. BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In

addition, upper and lower kelly cocks, pit level indicators with alarms and/or flow sensors with alarms, and surface facilities to handle pressure kicks shall be installed prior to drilling any formation with known abnormal pressure. (10-21-92)

i. Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. (10-21-92)

ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other with blind rams, and sufficient valving to permit fluid circulation at the surface. (10-21-92)

b. All ~~blowout preventers~~ **BOP equipment**, choke lines, and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible. ~~(3-29-12)~~()

c. BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. (3-29-12)

d. The working pressure rating of all ~~blowout preventers~~ **BOP** and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. ~~(10-21-92)~~()

e. All ram-type ~~blowout preventers~~ **BOP** and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type ~~blowout preventers are to~~ **BOP and related equipment must** be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted prior to the resumption of any drilling operation. In addition to the initial pressure tests, ram-type ~~preventers~~ **BOP** shall be checked for physical operation at least once per week and all components, again with exception of the annular-type ~~blowout preventer~~ **BOP**, tested at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment and/or to the maximum anticipated pressure to be contained at the surface, whichever is greater. ~~(3-29-12)~~()

f. The Department ~~may will~~ require an affidavit covering the initial pressure tests after installation signed by the owner, operator, or contractor attesting to the satisfactory pressure tests. The Department ~~is to~~ **must** be advised at least twenty-four (24) hours in advance of all tests. ~~The Department may inspect and witness all BOP operations and testing.~~ ~~(3-29-12)~~()

g. A schematic diagram of the BOP and well head assembly shall be submitted to the Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. (3-29-12)

h. Studs on all well head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well head assembly shall be kept clean of mud and ice. (10-21-92)

i. A drillstem safety valve shall be available on the rig floor at all times with correct thread for the pipe in use. (3-29-12)

j. A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. (3-29-12)

07. Intermediate Casing. (3-29-12)

a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. (3-29-12)

b. Intermediate casing not run to surface will be lapped into at least one hundred (100) feet of the

surface casing, or at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-29-12)

c. Such casing shall be cemented and pressure tested before cement plugs are drilled. (3-29-12)

d. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for intermediate casing. The Department may witness and document all intermediate casing cementing activities. ()

08. Production Casing; Cementing and Testing Requirements. (3-29-12)

a. If and when it becomes necessary to run a production casing, such casing shall be cemented and pressure tested before cement plugs are drilled. (3-29-12)

b. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for production casing. The Department may witness and document all production casing cementing activities. ()

~~c.~~ When not run to the surface, production casing will be cemented from the bottom of the hole up into at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-29-12)

~~d.~~ If the bottom plug will be drilled out, the open hole interval must be completed to protect any potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. (3-29-12)

09. Step-off. An owner or operator may submit to the Department a step-off request to complete a new borehole from surface if a borehole without production casing deviates from vertical plumb by more than five (5) degrees. A step-off borehole must be drilled within the existing pad of the permitted well. The incomplete borehole must be plugged and abandoned in accordance with Section 502 of these rules. ()

~~09~~**10. Blowout Well Control (Rotary Tools); Reserve Mud Tanks.** When drilling with rotary tools, the owner or operator shall provide, as required by the Department, a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain an on-site supply of mud additives that can raise the mud weight by one (1) pound per gallon in case of blowouts loss of well control. (3-29-12)()

101. Mud Pits. Before commencing to drill, proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of fresh waters. These pits must conform to the standards in Section ~~085~~**230** of these rules. If tanks will be used, then mud pits may not be required. (3-29-12)()

~~14~~**2. Well Control (Cable Tools); Fluid Containment and Gas Flaring.** Natural gas or oil which may be encountered in a substantial quantity in any section of a cabletool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or by casing, or other approved method, and confined to its original source to the satisfaction of the Department. Any gas escaping from the well during drilling operations shall be, as far as practicable, conducted to a safe distance from the well site and burned. The use of cable tools for drilling activities requires written approval by the Department prior to spud activities. A request to use cable tools must include the following: (3-29-12)()

a. Proposed pressure control measures; ()

b. Diversion and disposal methods for stray gas; ()

c. Safety protocols for mud weights and well controls; and ()

d. Annual drill rig safety inspection information, including the date of last replacement of cables, draw works inspection report, and metallurgic report of safety compliance for structural integrity of the drill rig. ()

123. Drilling Mud Disposal. Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. (3-29-12)

134. Report of Water Encountered; Owner's or Operator's Duties. It shall be the duty of any owner or operator drilling an oil or gas well or drilling a seismic, core or other exploratory hole to report to the Department all potential water bearing zones encountered; such report shall be in writing and give the location of the well or hole, the depth at which the zones were encountered, the thickness of such zones, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section ~~090340~~ of this rule. (~~3-29-12~~)()

145. Spill Prevention, Control, and Countermeasures Plan. The owner or operator must have a Spill Prevention, Control, and Countermeasures Plan in conformance with the requirements of the EPA. This plan must be updated as needed when facilities or activities change. (3-29-12)

156. Interim Drill Site Clean Up. If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following activities: (3-29-12)

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. (3-29-12)

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections ~~32510.04~~ through ~~32510.07~~ of these rules, shall apply. (~~3-29-12~~)()

~~125311~~. LOSS OF TOOL WITH RADIOACTIVE MATERIAL.

01. Recovery or Cementing of Tool. If a gamma ray tool, or some other tool containing radioactive material, becomes lost in a well, the owner or operator shall make every reasonable attempt to retrieve the tool from the well. If the tool cannot be recovered, the owner or operator must immediately cover the tool with cement sufficient to secure it in place and prevent it from contacting any fluids in the well. A whipstock or other approved deflection device shall be placed on top of the cement plug to prevent accidental or intentional mechanical disintegration of the radioactive source. (3-29-12)

02. Sidetracking. If the hole is later sidetracked above the radioactive material, the sidetracked hole must be at least fifteen (15) feet from the original hole with the lost radioactive material. (3-29-12)

03. Reporting. A report must be sent to the Department and IDEQ within thirty (30) days of cementing the tool. The report must describe the tool that was lost, the depth it was lost at, the specific type and amount of radioactive material in the tool, and an estimate of the length of cement covering the tool. This report may be included in a plugging report if the well will be plugged. (3-29-12)

~~140312~~. CHOKES.

All flowing wells shall be equipped with adequate chokes or beans to properly control the flow thereof. (10-21-92)

~~230313~~. USE OF EARTHEN RESERVOIRS.

Oil shall not be produced, stored, or retained in earthen reservoirs or in open receptacles. (10-21-92)

~~180314~~. VACUUM PUMPS PROHIBITED.

The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. (3-29-12)

~~190315~~. PULLING OUTSIDE STRINGS OF CASING.

Casing shall not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. (3-29-12)

~~3016~~ -- 319. (RESERVED)

[Codified Section 320 is being moved and renumbered to Section 502.]

~~405320~~. MECHANICAL INTEGRITY TESTING.

01. Mechanical Integrity Testing. (3-29-12)

a. The mechanical integrity test shall include one (1) of the following tests to determine whether leaks are present in the casing, tubing, or packer: (3-29-12)

i. A pressure test with liquid or gas at a pressure of not less than three hundred (300) psi or the minimum injection pressure, whichever is greater, and not more than the maximum injection pressure; or (3-29-12)

ii. The monitoring and reporting to the Department, on a monthly basis for sixty (60) consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or (3-29-12)

iii. In lieu of Subsections paragraphs ~~405320~~.01.a.i. and ~~405320~~.01.a.ii. of this rule, any equivalent test or combinations of tests approved by the Department. (~~3-29-12~~)()

b. The mechanical integrity test shall include one (1) of the following tests to determine whether there are fluid movements in vertical channels adjacent to the well bore: (3-29-12)

i. Tracer surveys; (3-29-12)

ii. Cement bond log or other acceptable cement evaluation log; (3-29-12)

iii. Temperature surveys; or (3-29-12)

iv. In lieu of Subsections paragraphs ~~405320~~.01.b.i. through ~~405320~~.01.b.iii. of this rule, any other equivalent test or combination of tests approved by the Department. (~~3-29-12~~)()

c. Mechanical integrity tests shall be performed at the rate of not less than one (1) test every five (5) years, regardless of well status. The first five-year period shall commence on the date the initial mechanical integrity test is performed. (3-29-12)

02. Inactive Wells. If, at any time, surface equipment excluding the wellhead is removed or the well becomes incapable of production, a mechanical integrity test shall be performed within thirty (30) days. The mechanical integrity test for an inactive well shall be isolation of the wellbore with a bridge plug or similar approved isolating device set one hundred (100) feet or less above the highest perforations and a pressure test with liquid or gas at a pressure of not less than three hundred (300) psi surface pressure or any equivalent test or combination of tests approved by the Department. (3-29-12)

03. Prior Notification. Not less than ten (10) days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Department, in writing, of the scheduled date on which the test will be performed. (3-29-12)

04. Reporting Requirements. Mechanical integrity test results shall be submitted to the Department within thirty (30) days of testing. (3-29-12)

05. Mechanical Integrity Required. All wells shall maintain mechanical integrity. All wells that fail a

mechanical integrity test, or that are determined through any other means to lack mechanical integrity, shall immediately be investigated by the owner or operator. The well shall be repaired or immediately shut down following the investigation. Repairs shall be completed within six (6) months, or the well shall be plugged and abandoned. If the repair cannot be completed within six (6) months, the owner or operator may request an extension and provide a plan for the repair. (3-29-12)

321. -- ~~324.~~ (RESERVED)

[Codified Section 325 is being moved and renumbered to Section 510.]

~~326.~~— 329. (RESERVED)

[Codified Section 330 is being moved and renumbered to Section 120.]

~~170~~330. WELL DIRECTIONAL CONTROL.

01. General Restrictions; Allowable Deviation. The maximum point at which a well penetrates the producing formation shall not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. (10-21-92)

02. Controlled Directional Drilling. Except for the purposes recited in Subsection ~~170~~330.01, no well hereafter drilled may be intentionally directionally deviated from the vertical unless the owner or operator thereof shall first file an application and application fee to amend the drilling permit and receive approval from the Department. Such application shall contain the following information: (~~3-29-12~~)()

- a. Name and address of the owner or operator. (3-29-12)
- b. Lease name, well number, name of field and reservoir and county. (10-21-92)
- c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). (10-21-92)
- d. Reason for intentional deviation. (10-21-92)
- e. List of offset operators and statement that each has been furnished a copy of the application by registered mail. (10-21-92)
- f. Signature of representative of owner or operator. (3-29-12)
- g. Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the Department within fifteen (15) days of receipt of a copy of the application. (3-29-12)
- h. The application shall be accompanied by a neat, accurate plat or sketch of the lease and all offset leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat shall be drawn to a scale which will permit facile observation of all pertinent data. (10-21-92)

03. Copy of Application to Offset Operators. At the time the application is filed with the Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled. (3-29-12)

04. Department Action. Upon receipt, the Department will hold the application for fifteen (15) days. If objection from any offset operator to the proposed intentional deviation is received within fifteen (15) days of receipt of the application by said operator, or if the Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the Department is interposed within the fifteen (15) day period, the application shall be approved and permit issued by the Department.

If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the Department may immediately approve the application without waiting fifteen (15) days. (3-29-12)

05. Angular Deviation and Directional Survey. Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the Department, together with other regularly required reports. (3-29-12)

06. Application for Exceptions. In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval. (3-29-12)

331. -- 339. (RESERVED)

[Codified Section 340 is being moved and renumbered to Section 140.]

~~090~~340. WELL COMPLETION/RECOMPLETION REPORT AND WELL REPORT.

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Department, on a form prescribed by the Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon reservoir(s), if a multiple completion, from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well report as defined in Section 010; and such other relevant information as the Department may require. (3-29-12)

~~091~~341. DRILLING LOGS.

01. Minimum Required Logs. All wells shall have a lithologic log from the bottom of the hole to the top, to the extent practicable. (3-29-12)

02. Bottom Hole Survey. All wells shall have a bottom hole location survey. (3-29-12)

03. Cement Bond Log. All wells that are cased and cemented shall have a cement bond log run across the casing. (3-29-12)

04. Other Logs. If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator shall retain a copy regardless of results. (3-29-12)

05. Log Submittal. The above logs shall be submitted to the Department in paper and digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies shall also be in color. Digital formats must be Tiff and LAS 2.0 or higher. Logs submitted to the Department must have a scale of one (1) inch for correlation logs and five (5) inches for detail logs. (~~3-29-12~~)()

~~341~~2. -- ~~349.~~ (RESERVED)

[Codified Section 350 is being moved and renumbered to Section 031.]

~~351. — 359.~~ (RESERVED)

[Codified Section 360 is being moved and renumbered to Section 100.]

~~361. — 369.~~ (RESERVED)

[Codified Section 370 is being moved and renumbered to Section 050.]

~~371~~ ~~93~~99. (RESERVED)

SUBCHAPTER E - PRODUCTION

400. PRODUCTION REPORTS.

01. Required Content. An owner or operator must report production on a form created by the Department. Production reports submitted to the Department must include gas quantities sold in thousand cubic feet (mcf), condensate sold in barrel quantities (bbl), oil sold in barrel quantities (bbl), and formational waters produced in barrel quantities (bbl). ()

02. Frequency. Initial production reports must be submitted to the Department no later than the twenty-first (21st) day of the month following the sixth month after the beginning of production. After the initial production report, operators must report production monthly to the Department. Monthly reports must be submitted to the Department no later than the twenty-first (21st) day of the following month. In the event the twenty-first (21st) day of the month falls on a non-business day, the report is due the next business day. ()

03. Annual Production Report. By January 31 of each year, an owner or operator must submit to the Department an aggregated report of all hydrocarbons and formational waters produced and sold or disposed of for each well during the previous calendar year. ()

260401. MEASUREMENT OF OIL.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: (10-21-92)

01. Correction for Impurities. The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the Department, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities. (3-29-12)

02. Temperature Correction. The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Table 7, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the Department. (3-29-12)

03. Gravity Determination. The gravity of oil at sixty (60) degrees F shall be determined in accordance with ASTM D-1250-08, Table 5, or any revisions thereof and any supplements thereto approved by the Department. (3-29-12)

270402. MEASUREMENT OF GAS.

01. Gas Metering. For protection of correlative rights of all parties, the owner or operator of a natural gas well shall meter or caused to be metered all natural gas produced from a well, utilizing a standard industry meter approved by the American Gas Association and capable of recording accurately the volume of natural gas produced at each well, unless another methodology, approved by the director, is utilized to provide for proper production allocation back to the individual well from a central point production meter or central point sales meter, which ever meter occurs first. (3-29-12)

02. Gas Measurement. For computing volume of gas to be reported to the Department, the standard of pressure shall be fourteen point seventy-three (14.73) psi atmospheric, and the standard of temperature shall be sixty (60) Degrees F. All volumes of gas to be reported to the Department shall be adjusted by computation to these standards, unless otherwise authorized by the Department. (3-29-12)

403. GAS-OIL RATIO FOR WELL CLASSIFICATIONS.

In the absence of an order by the Commission setting a field-specific oil-gas ratio, a well that produces gas of five

thousand (5,000) cubic feet or greater to one (1) bbl of oil at standard temperature and pressure will be classified as a gas well. ()

280404. GAS-OIL RATIO LIMITATION.

01. Waste Prevention; Conditions for Emergency Order. To further prevent waste resulting from the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The order shall specify a date for the hearing described in Subsection 280404.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. (3-29-12)()

02. Notice and Cause for Hearing. The Department will notify all offset operators and owners or operators in the common source of supply of the hearing date. A hearing regarding waste due to inefficient gas-oil ratios will held for any of the following reasons: (3-29-12)

i. If an emergency order is issued as described in Subsection 280404.01 of these rules. The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order. (3-29-12)()

ii. Upon application to the Department from any person with an ownership interest in the common source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must include credible evidence of such waste. The hearing shall be held within thirty (30) days of the Department receiving the application. (3-29-12)

iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may schedule a hearing regarding potential waste due to inefficient gas-oil ratios. (3-29-12)

03. Determination of Inefficient Ratios; Power to Limit Production. If the Department after notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for, shall find that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. (3-29-12)

290405. GAS-OIL RATIO SURVEYS AND REPORTS.

Within thirty (30) days following the completion or recompletion of each well producing oil and gas and thereafter as the Department may require, the owner or operator of such well shall make a gas-oil ratio test of such well and the results of such test shall be reported to the Department within twenty (20) days after the test is made. Certain wells may be excepted from this rule by the Department upon written request. Entire fields may be excepted from this rule after notice and hearing. (3-29-12)

406. -- 409. (RESERVED)

255410. SURFACE EQUIPMENT METERS.

01. General Requirements. Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. (3-29-12)

02. Meter Calibration. All required meters shall be calibrated at least once per calendar year. The records of such calibration shall be maintained or made available by the owner or operator of the well and shall be available for inspection by the Department. Such records shall be maintained by the owner or operator for a period of at least five (5) years. (3-29-12)

03. Visibility. All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly and/or cumulative production volumes from individual wells. (3-29-12)

~~150~~411. SEPARATORS.

All flowing oil wells must be produced through an adequate oil and gas separator or emulsion treater, provided, however, the director may approve producing wells without a separator or emulsion treater. (10-21-92)

~~210~~412. PRODUCING FROM DIFFERENT POOLS THROUGH THE SAME CASING STRING.

No well shall be permitted to produce either oil or gas from different pools through the same string of casing without first receiving written permission from the Department. (3-29-12)

~~300~~413. GAS UTILIZATION.

~~After a well is completed and while it is being tested, the owner or operator may flare gas for no more than fourteen (14) days without paying royalties and severance taxes on the flared gas. Under no conditions may gas be flared for more than sixty (60) days after a well is completed or recompleted. Prior to flaring gas, owners or operators must notify the county in which the well is located and all owners of occupied structures within one-quarter (1/4) mile radius of the well. After the owner or operator has completed and has had a reasonable opportunity to test a gas well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste.~~ (3-29-12)()

~~414. -- 419. (RESERVED)~~

~~420. TANK BATTERIES.~~

~~Tank batteries must meet the following requirements.~~ ()

~~01. Location of Tank Batteries.~~ ~~No tank batteries may be constructed within two hundred (200) feet of existing occupied structures, water wells, canal, ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the tank dike. The owner of a water well or existing occupied structure may provide express written permission to construct a tank battery closer than two hundred (200) feet, but in no event may a tank battery be constructed within one hundred (100) feet of a water well or existing occupied structure.~~ ()

~~02. Containment Requirements.~~ ~~All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids must be surrounded by tank dikes that meet the following requirements:~~ ()

~~a.~~ ~~Tank dikes must be designed to have a capacity of at least one and one-half (1½) times the volume of the largest tank which the dike surrounds.~~ ()

~~b.~~ ~~The material used to construct a tank dike and the material used to line the bottom and sides of the containment reservoir must have a maximum coefficient of permeability of 10⁻⁹ cm/sec so as to contain fluids and resist erosion. An operator must submit proof of compliance for tank dike liner construction to the Department in the form of a manufacturer's statement of design or a nuclear density test performed by a third party trained to perform the test.~~ ()

~~c.~~ ~~All piping and manmade improvements that perforate the tank dike wall or tank battery floor must be sealed to a minimum radius of twelve (12) inches from the outside edge of the piping or improvement.~~ ()

~~d.~~ ~~Valves and quick-connect couplers on tank batteries must be at least eighteen (18) inches from the inside wall of the tank dike.~~ ()

~~e.~~ ~~Vegetation on the top and outside surface of tank dike must be properly maintained so as to not pose a fire hazard.~~ ()

~~f.~~ ~~A ladder or other permanent device must be installed over the tank dike to access the containment reservoir.~~ ()

g. The containment reservoir must be kept free of vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the tank dike for the purpose of draining storm water from the containment reservoir must have a valve installed which must remain closed and capped when not in use. Any fluids collected, spilled or discharged within the containment reservoirs must be removed as soon as practical, characterized, treated if necessary, and disposed in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. ()

421. -- 429. (RESERVED)

430. GAS PROCESSING FACILITIES.

Gas processing facilities must meet the following requirements. ()

01. Location of Gas Processing Facilities. No gas processing facility may be constructed within two hundred (200) feet of existing occupied structures, water wells, canals and ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the gas processing facility. The owner of a water well or existing occupied structure may provide express written permission to construct a gas processing facility closer than two hundred (200) feet, but in no event may a gas processing facility be constructed within one hundred (100) feet of a water well or existing occupied structure. ()

02. Operations. Operators of gas processing facilities must notify the Department which wells, by API number, are served by a gas processing facility. All gas processing facilities not constructed on a well site must comply with the requirements in Sections 301 and 302 of these rules. ()

03. Meters and Facility Plans. Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. A supervisory control and data acquisition systems or other data recording system must be used to monitor the liquids and gas in the facility. Operators of gas processing facilities must submit an as-built facility design plan to the Department upon completion of the facility, a facility design plan must contain at the minimum: ()

- a. Site layout; ()
- b. Piping and instrumentation diagram; ()
- c. Process Flow schematics; ()
- d. Electronic controls and sensing schematic; ()
- e. Equipment operations and maintenance manuals for, pumps, meters, heat exchangers and any other operationally critical equipment that requires periodic maintenance and calibration; ()
- f. Periodic maintenance schedule for critical equipment; ()
- g. Troubleshooting metric; and ()
- h. Other information or documentation necessary for the safe and continued operation of a gas processing facility. ()

04. Flaring. A gas processing facility not constructed on a well site may release gas by flaring for a period not to exceed twenty-four (24) hours due to maintenance needs or emergency situations. The operator of a gas processing facility must notify the Department when gas is flared at the facility as soon as reasonably possibly after flaring begins. The Department may administratively approve flaring for a period greater than twenty-four (24) hours, but no longer than sixty (60) days, per event if the operator of the facility presents information that shows the necessity for flaring. If gas will be flared for more than twenty-four (24) hours, operators of gas processing facilities must notify the county in which the gas processing facility is located and all owners of occupied structures within one-quarter (1/4) mile radius of the gas processing facility. ()

05. Inspections. Gas processing facilities must have site specific facility design plans and a log book of gas metered in and out of the facility available for review by Department staff during the inspections of gas processing facilities. During inspections, gas process facility staff must demonstrate knowledge of all operations and the location of all emergency shut off equipment, direction of flow lines, and heat exchangers. The Department will conduct quarterly inspections of facilities. ()

06. Reports. A quarterly report must be submitted to the Department accounting for receipt, processing, and disposition of all gas by the gas processing facility within the reporting period. The report is due to the Department by the twenty-first (21st) day following the end of the reporting period. ()

431. -- 499. (RESERVED)

SUBCHAPTER F - WELL ACTIVITY AND RECLAMATION

0500. ACTIVE WELLS.

01. Gas Storage Wells. Gas storage wells are to be considered active at all times unless physically plugged. (3-29-12)

02. Extension of Active Status. An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed five (5) years and may be renewed upon request. (3-29-12)

03. Annual Reports for Active Wells. The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation by January 31 of each year. Failure to submit the annual report may result in the Department declaring the well inactive. ~~(3-29-12)~~()

0501. INACTIVE WELLS.

01. Determination of Inactive Status. The Department shall declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status, or after an owner or operator fails to submit an annual report for an active well. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission. (3-29-12)

02. Owner's or Operator's Responsibility for Inactive Wells. The owner or operator must plug and abandon an inactive well in accordance with Section ~~320~~502 of these rules within six (6) months of being notified by the Department unless the owner or operator supplies the following information within the six-month time period: ~~(3-29-12)~~()

a. A written request to extend inactive status; (3-29-12)

b. An individual bond, as provided for in Subsection ~~070~~220.03 of these rules, if the well was covered by a blanket bond; and ~~(3-29-12)~~()

c. A description of how the well is closed to the atmosphere with a swedge and valve, packer, or other approved method, and how the well is to be maintained. (3-29-12)

03. Inactive Review and Decision. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed three (3) years and may be renewed upon request. (3-29-12)

04. Testing of Inactive Wells. In addition to the requirements of Section ~~405~~320 of these rules,

inactive wells shall have a mechanical integrity test performed within two (2) years after the date of last use in order to retain inactive status. ~~(3-29-12)~~()

05. Converting Inactive Wells to Active Wells. The owner or operator must apply to the Department to change the status of a well from inactive to active. The Department shall review the request for approval, modification, or denial. A mechanical integrity test may be required by the Department if the well has been worked over or if a test has not been conducted for five (5) years or longer. If approved, the well may again be covered by a blanket bond. (3-29-12)

~~320~~502. WELL PLUGGING.

01. Plugging Required. The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. (10-21-92)

02. Notice of Intention to Abandon Well. Before beginning abandonment work on an oil or gas well, a Notice of Intention to Abandon shall be filed with the Department and approval obtained as to the method of abandonment before the work is started. The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information. (3-29-12)

03. Plugging Dry Holes. If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the written notification referenced in Subsection ~~320~~502.02 of these rules. The standards in Subsections ~~320~~502.04 through ~~320~~502.06 of these rules will still apply. ~~(3-29-12)~~()

04. Plugging of Wells. The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter shall be responsible for the plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations shall be placed in any well at any time during plugging operations. (3-29-12)

05. Plugged Intervals. The following plugging standards shall be followed for all wells: (3-29-12)

a. Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing will be cemented. (3-29-12)

b. In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata. (3-29-12)

c. A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. (3-29-12)

d. A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: (3-29-12)

- i. Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. (3-29-12)
- ii. Top and bottom of fresh water zones. If fresh water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. (3-29-12)
- e. The top of all cement plugs will be tagged to verify their depth. (3-29-12)
- f. The owner or operator shall have the option as to the method of placing cement in the hole by:
 - i. Dump bailer; (3-29-12)
 - ii. Pumping a balanced cement plug through tubing or drill pipe; (3-29-12)
 - iii. Pump and plug; or (3-29-12)
 - iv. Equivalent method approved by the Director prior to plugging. (3-29-12)
- g. Unless prior approval is given, all wellbores shall have water based drilling muds, high viscosity pills, or other approved fluids between all plugs. (3-29-12)
- h. All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. (3-29-12)

06. Subsequent Report of Abandonment. If a well is plugged or abandoned, a subsequent record of work done must be filed with the Department. This report shall be filed separately within thirty (30) days after the work is done. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. (3-29-12)

07. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit) or Geothermal Wells (>212 Degrees Fahrenheit). (3-29-12)

- a. Oil and gas wells, seismic, core or other exploratory holes no longer being used for their original purpose may not be converted into fresh water, low temperature geothermal, or geothermal wells unless the following actions occur: (3-29-12)
 - i. Owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; (3-29-12)
 - ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; (3-29-12)
 - iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and (3-29-12)

iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. (3-29-12)

b. The Department's bond may not be released, and the oil and gas permit cancelled, until all requirements in Paragraph ~~320~~502.07.a. of these rules are met. (~~3-29-12~~)()

503. -- 509. (RESERVED)

32510. SURFACE RECLAMATION.

01. Timing of Reclamation. After the plugging and abandonment of a well or closure of other oil and gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. (3-29-12)

02. General Clean Up. All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. (3-29-12)

03. Road Removal. All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads to be left will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. (3-29-12)

04. Regrading. Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. (3-29-12)

05. Compacted Areas. All areas compacted by drilling and subsequent oil and gas operations that are no longer needed following completion of such operations shall be cross-ripped. Ripping shall be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. (3-29-12)

06. Topsoiling. Stockpiled topsoil shall be replaced in a manner that will support reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas shall be tilled adequately in order to establish a proper seedbed. (3-29-12)

07. Revegetation. (3-29-12)

a. The owner or operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. (3-29-12)

b. The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. (3-29-12)

c. Unless otherwise specified in the approved permit, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: (3-29-12)

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; (3-29-12)

ii. Ground cover shall be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; (3-29-12)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the Department, in approving a drilling permit or a pit, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species; (3-29-12)

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation; and (3-29-12)

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. (3-29-12)

d. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-reclamation land use, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (3-29-12)

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-29-12)

f. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (3-29-12)

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical binders, or other acceptable means during establishment of the shrubs. (3-29-12)

h. Tree stocking of forestlands should meet the following criteria: (3-29-12)

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; (3-29-12)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (3-29-12)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (3-29-12)

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. (3-29-12)

j. Mulch should be used on severe sites and may be required by the permit where slopes are steeper than three (3) horizontal feet to one (1) vertical foot (3H:1V) or the mean annual rainfall is less than twelve (12) inches. When used, straw, or hay mulch should be obtained from certified weed free sources. “Mulch” means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be

replaced by permanent species within a reasonable length of time.

(3-29-12)

08. Reclamation Under a Surface Use Agreement. Notwithstanding the requirements of Subsections ~~32510.03~~ through ~~32510.07~~ of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact fresh waters. ~~(3-29-12)~~()

511. -- 999. (RESERVED)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404, 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 17, 2014.

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

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

The 2014 Legislature amended the Board of Nursing's disciplinary statute to provide that sexual conduct or sexual exploitation by a nurse of a current or, in certain situations, a former patient constitutes grounds for discipline. The rulemaking is intended to define the terms sexual conduct and sexual exploitation, clarify the prohibited conduct, and otherwise implement the statutory amendment.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 69](#).

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 proposed rule, contact Sandra Evans, M.A. Ed., R.N., Executive Director, (208) 334-3110 ext. 2476.

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 24, 2014.

DATED this 7th day of August, 2014.

Sandra Evans, M.A. Ed., R.N., Executive Director
Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Phone: (208) 334-3110 ext. 2476
Fax: (208) 334-3262

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1401
(Only those Sections being amended are shown.)

101. STANDARDS OF CONDUCT.

01. Violations. Any violation of these Standards of Conduct shall be grounds for disciplinary action in accordance with Section 54-1413(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100 of these rules. (3-30-07)

02. Classification. For purposes of convenience only, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category will not be relevant for any purpose other than ease of use. (3-15-02)

03. License. (3-15-02)

a. Period of Practice. The nurse shall practice registered or practical nursing in Idaho only with a current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law. (3-15-02)

b. Aiding in Violation of Law. The nurse shall not aid, abet, or assist any other person to violate or circumvent laws or rules pertaining to the conduct and practice of nursing. (11-28-84)

c. Reporting Grossly Negligent or Reckless Practice. The nurse shall report to the Board any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board rules. (7-1-93)

d. Unlawful Use of License. The nurse shall not permit his license to be used by another person for any purpose or permit unlicensed persons under his jurisdiction or supervision to indicate in any way that they are licensed to perform functions restricted to licensed persons. (7-1-93)

e. Impairment of Ability. The nurse shall not practice nursing while the ability to practice is impaired by alcohol or drugs or physical, mental or emotional disability. (11-28-84)

04. Practice. (3-15-02)

a. Perform Acts. The nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained. (3-15-02)

b. Delegating Activities to Others. The nurse shall delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and shall not delegate to non-licensed persons functions that are to be performed only by licensed nurses. (4-4-13)

c. Supervision. The nurse delegating functions shall supervise the persons to whom the functions have been assigned or delegated. (11-28-84)

d. Safeguarding Patient. The nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person. (7-1-93)

e. Prescription Drugs. The nurse shall not obtain, possess, furnish or administer prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs. (11-28-84)

f. Leaving Assignment. The nurse shall not abandon patients in need of nursing care in a negligent or

wanton manner. The nurse shall leave a nursing assignment only after properly reporting and notifying appropriate personnel and shall transfer responsibilities to appropriate personnel or care giver when continued care is required by the patient's condition. (7-1-91)

g. Respecting Patient's Privacy. The nurse shall respect the patient's privacy. (7-1-91)

h. Confidentiality. The nurse shall not disseminate information about the patient to individuals not entitled to such information except where such information is required by law or for the protection of the patient. (7-1-91)

i. Observe and Report. The nurse shall observe the condition and signs and symptoms of a patient, record the information, and report to appropriate persons any significant changes. (7-1-91)

j. Collaboration. The nurse shall function as a member of the health team and shall collaborate with other health team members as necessary to meet the patient's health needs. (7-1-91)

k. Universal Standards. The nurse shall adhere to universal standards and carry out principles of asepsis and infection control and shall not place the patient, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. (3-15-02)

05. Professional Responsibility. (3-15-02)

a. Disclosing Contents of Licensing Examination. The nurse shall not disclose contents of any licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. (11-28-84)

b. Considerations in Providing Care. In providing nursing care, the nurse shall respect and consider the individual's human dignity, health problems, personal attributes, national origin, and handicaps and shall not discriminate on the basis of age, sex, race, religion, economic or social status or sexual preferences in the rendering of nursing services. (11-28-84)

c. Responsibility and Accountability Assumed. The nurse shall be responsible and accountable for his nursing judgments, actions and competence. (7-1-93)

d. Witnessing Wastage of Controlled Substances Medication. Controlled substances may not be wasted without witnesses. The nurse shall not sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse shall not solicit the signatures on any record of a person as a witness to the wastage of a controlled substance when that person did not witness the wastage. The nurse shall solicit signatures of individuals who witnessed the wastage in a timely manner. (3-30-07)

e. Record-keeping. The nurse shall make or keep accurate, intelligible entries into records required by law, employment or customary practice of nursing, and shall not falsify, destroy, alter or knowingly make incorrect or unintelligible entries into patients' records or employer or employee records. (11-28-84)

f. Diverting or Soliciting. The nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor shall the nurse solicit or borrow money, materials or property from patients. (3-15-02)

g. Exploit, Solicit, or Receive Fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (3-15-02)

h. Professionalism. The nurse must not abuse the patient's trust. The nurse shall respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and the nurse's coworkers. The nurse will not engage in [sexual misconduct or](#) violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse must be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and

ensure that all aspects of that relationship focus exclusively upon the needs of the patient. ~~(3-15-02)~~()

i. For purposes of this rule and Section 54-1413, Idaho Code, sexual misconduct violations include, but are not limited to: ()

(1) Engaging in or soliciting any type of sexual conduct with a patient; ()

(2) Using the nurse-patient relationship, trust and confidence of the patient derived from the nurse-patient relationship, or any information obtained as a result of the nurse-patient relationship, to solicit, suggest or discuss dating or a romantic or sexual relationship with a patient; ()

(3) Using confidential information obtained during the course of the nurse-patient relationship to solicit, suggest or discuss dating or a romantic relationship, or engaged in sexual conduct with a patient, former patient, colleague, or member of the public; and ()

(4) Engaging in or attempting to engage in sexual exploitation or criminal sexual misconduct directed at patients, former patients, colleagues, or members of the public, whether within or outside the workplace. ()

ii. For purposes of this rule: ()

(1) Consent of a patient shall not be a defense. In the case of sexual exploitation or criminal sexual misconduct, consent of the victim shall not be a defense. ()

(2) A patient ceases to be a patient thirty (30) days after receiving the final nursing services, or final reasonably anticipated nursing services from a nurse, unless the patient is determined by the Board to be particularly vulnerable by his minority; known mental, emotional, or physical disability; known alcohol or drug dependency; or other circumstance. A patient that is deemed particularly vulnerable ceases to be a patient one (1) year after receiving the final nursing services, or final reasonably anticipated nursing services from a nurse. ()

(3) It is not a violation of this rule for a nurse to continue a sexual relationship with a spouse or individual of majority if a consensual sexual relationship existed prior to the establishment of the nurse-patient relationship. ()

iii. The following definitions apply to this rule: ()

(1) "Sexual conduct" means any behavior that might reasonably be interpreted as being designed or intended to arouse or gratify the sexual desires of an individual. This includes, but is not limited to, physical touching of breasts, buttocks or sexual organs, creation or use of pornographic images, discussion about sexual topics unrelated to the patient's care, intentional exposure of genitals, and not allowing a patient privacy, except as may be medically necessary. ()

(2) "Sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual conduct of another, or withholding or threatening to withhold care, medication, food or other services to coerce sexual conduct. ()

(3) "Criminal sexual misconduct" means any sexual conduct that, if proven, would constitute a felony or misdemeanor under state or federal law. ()

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1402

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404, 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 17, 2014.

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

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

Current statute authorizes the Board of Nursing to develop standards and criteria to evaluate the continued competency of licensed nurses. This rulemaking establishes those standards and criteria. For public safety, the rulemaking will require registered and licensed practical nurses seeking to renew their licenses to demonstrate their continued competence to practice nursing in Idaho. The rule establishes several methods for nurses to comply with this obligation.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 70](#).

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 proposed rule, contact Sandra Evans, M.A. Ed., R.N., Executive Director, (208) 334-3110 ext. 2476.

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 24, 2014.

DATED this 7th day of August, 2014.

Sandra Evans, M.A. Ed., R.N., Executive Director
Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1402
(Only those Sections being amended are shown.)

061. CONTINUED COMPETENCY REQUIREMENTS FOR RENEWAL OF AN ACTIVE LICENSE.

01. Learning Activities or Courses. In order to renew an active LPN or RN license, a licensee shall complete or comply with at least two (2) of the following learning activities or courses within the renewal period: ()

- a.** Current specialty certification by a national certifying organization recognized by the Board:()
- b.** Completion of a minimum of two (2) semester credit hours of post-licensure academic education relevant to nursing practice, offered by a college or university accredited by an organization recognized by the U.S. Department of Education; ()
- c.** A Board-approved refresher course in nursing; ()
- d.** Completion of nursing-related publication as the author or co-author during a renewal cycle;()
- e.** Teaching or developing a nursing-related course resulting in no less than two (2) semester hours of college credit, a fifteen-week course, or specialty certification; ()
- f.** Teaching or developing nursing-related continuing education course(s) for up to thirty (30) contact hours; ()
- g.** Two hundred (200) hours of active practice as a nurse; ()
- h.** Participation in or presentation of thirty (30) hours of workshops, seminars, conferences, or courses relevant to the practice of nursing and approved by an organization recognized by the Board to include, but not limited to: ()
 - i.** A nationally recognized nursing organization; ()
 - ii.** An accredited academic institution; ()
 - iii.** A provider of continuing education recognized by another board of nursing; ()
 - iv.** A provider of continuing education recognized by a regulatory board of another discipline; or ()
 - v.** A program that meets criteria established by the Board; ()
 - i.** Thirty (30) hours of participation in related professional activities including, but not limited to, research, published professional materials, teaching (if not licensee's primary employment), peer reviewing, precepting, professional auditing, and service on nursing or healthcare related boards, organizations, associations or committees. ()

02. APRN Continued Competency Requirements. Registered nurses who also hold an active license as an APRN shall only meet the requirements of Section 300 of these rules. ()

03. First Renewal Exemption. A licensee is exempt from the continued competency requirement for the first renewal following initial licensure by examination or endorsement. ()

04. Extension. The Board may grant an extension for good cause for up to one (1) year for the completion of continuing competency requirements upon written request from the licensee at least sixty (60) days prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirements. ()

05. Beyond the Control of Licensee Exemption. The Board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters. ()

06. Disciplinary Proceeding. Continued competency activities or courses required by Board order in a disciplinary proceeding shall not be counted as meeting the requirements for licensure renewal. ()

062. DOCUMENTING COMPLIANCE WITH CONTINUED COMPETENCY REQUIREMENTS.

01. Retention Of Original Documentation. All licensees are required to maintain original documentation of completion for a period of two (2) years following renewal and to provide such documentation within thirty (30) days of a request from the Board for proof of compliance. ()

02. Documentation of Compliance. Documentation of compliance shall be as follows: ()

a. Evidence of national certification shall include a copy of a certificate that includes the name of licensee, name of certifying body, date of certification, and date of certification expiration. Certification shall be initially attained during the licensure period, have been in effect during the entire licensure period, or have been recertified during the licensure period. ()

b. Evidence of post-licensure academic education shall include a copy of the transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade, and number of credit hours received. ()

c. Evidence of completion of a Board-approved refresher course shall include written correspondence from the provider with the name of the licensee, name of provider, and verification of successful completion of the course. ()

d. Evidence of completion of a nursing project or research shall include an abstract or summary, the name of the licensee, role of the licensee as principal or co-principal investigator, date of completion, statement of the problem, research or project objectives, methods used, and summary of findings. ()

e. Evidence of authoring or co-authoring a published nursing-related article, paper, book, or book chapter, shall include a copy of the publication to include the name of the licensee and publication date. ()

f. Evidence of teaching a course for college credit shall include documentation of the course offering indicating instructor, course title, course syllabus, and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competency requirement unless the course offering and syllabus has changed. ()

g. Evidence of teaching a course for continuing education credit shall include a written attestation from the director of the program or authorizing entity including the date(s) of the course and the number of hours awarded. If the total number of hours totals less than thirty (30), the licensee shall obtain additional hours in continuing learning activities or courses. ()

h. Evidence of hours of continuing learning activities or courses shall include the name of the licensee, title of educational activity, name of the provider, number of hours, and date of activity. ()

i. Evidence of two hundred (200) hours of active practice in nursing shall include documentation satisfactory to the Board of the name of the licensee, number of hours worked during review period, name and address of employer, and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours

worked may be validated by the recipient agency.

()

06~~3~~4. LICENSE REINSTATEMENT (NON-DISCIPLINE).

01. Within One Year. A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: (3-30-07)

- a. Filing a completed renewal application; and (3-30-01)
- b. Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.05 of these rules. (4-2-03)

02. After One Year. After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: (3-30-07)

- a. Filing a completed reinstatement application; and (3-30-01)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)
- d. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-7-11)

03. After Three Years. After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: (3-30-07)

- a. Filing a completed reinstatement application; and (3-30-07)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and (4-2-03)
- d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-07)
- e. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-7-11)

04. Reinstatement of Emeritus License to Current Status. A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)

- a. Submitting a completed application for reinstatement; and (4-2-03)
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
- c. Providing evidence, satisfactory to the Board, of the applicant's current competency to practice. (3-30-07)

06~~2~~4. REINSTATEMENT AFTER DISCIPLINE.

01. Submission of Application Materials. A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by: (4-7-11)

- a. Submitting a completed application for reinstatement; and (4-7-11)

- b.** Payment of the fees prescribed in Subsection 900.05 of these rules; and (4-7-11)
- c.** Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and (4-7-11)
- d.** Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (4-7-11)
- e.** Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-7-11)
- 02. Appearance Before Board.** Applicants for reinstatement may be required to appear before the Board. (3-15-02)
- 03. Evaluation of Applications.** In considering applications for reinstatement, the Board will evaluate: (3-15-02)

 - a.** The nature and severity of the act which resulted in discipline; (4-7-11)
 - b.** The conduct of the applicant subsequent to the discipline; (4-7-11)
 - c.** The lapse of time since discipline; (4-7-11)
 - d.** The degree of compliance with all terms and conditions the Board may have set forth as a prerequisite for reinstatement; (3-15-02)
 - e.** Any intervening circumstances that may have altered the need for compliance; (3-15-02)
 - f.** The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; (11-28-84)
 - g.** The applicant's adherence to or violation of any applicable law or rule regulating the practice of nursing; and (4-6-05)
 - h.** The applicant's criminal background information as evidenced by a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)
- 04. Board Action Possible.** After evaluation, the Board may deny a reinstatement, grant a reinstatement, or issue a license permitting the applicant to practice nursing under specified terms and conditions. (3-15-02)
- 05. Assessment of Costs.** As a condition of withdrawing, reversing, modifying, or amending a prior disciplinary order, the applicant may be required to pay all or any part of the costs incurred by the Board in the proceedings in which the order was entered. (4-7-11)
- 06. Application for Reinstatement After Revocation.** Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses may not apply for reinstatement for a period of two (2) years after entry of the order. (3-15-02)

0635. -- 075. (RESERVED)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.11.01 - RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-1401 (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 54-605, 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 17, 2014.

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:

House Bill 356 passed in the 2014 Legislative Session allows the Board to adopt by rule an inactive license status. The Idaho Board of Podiatry is establishing rules and a renewal fee for an inactive license status.

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

Rule 300 is being amended to add a renewal fee of \$250 for an inactive license.

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

This rulemaking will have no impact on general funds. The impact on the dedicated fund will depend on the number of licensees who choose to convert active licenses to inactive licenses or choose an inactive license instead of not renewing.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the passage of House Bill 356 allows the board to establish rules regarding an inactive license status. The additions to the rule establish a renewal fee for an inactive license and the process for placing a license on inactive status. The additions to the fee rule are simple in nature and confer a benefit to the licensees. No opposition to this proposed rule is anticipated.

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 proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 8th Day of August, 2014.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1101-1401
(Only those Sections being amended are shown.)

300. FEES (RULE 300).

- 01. Application Fee.** A fee shall accompany all applications. The fee shall be two hundred dollars (\$200). (7-1-97)
- 02. Original License Fee.** The original license fee shall be four hundred dollars (\$400). (4-9-09)
- 03. Written Exam Fee.** The fee for examination shall be equal to that charged by the national examining entity and shall be paid directly to the examination provider. (3-20-14)
- 04. Annual Renewal Fee.** Fee for annual renewal of licenses, five hundred dollars (\$500). (3-21-12)
- 05. Annual Renewal Fee for Inactive License. Annual renewal fee is two hundred fifty dollars (\$250).** ()
- 06. Fee Non-Refundable.** All fees are non-refundable, except that if a license is not issued, the license fee will be refunded. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

411. -- ~~424~~. (RESERVED)

425. INACTIVE STATUS (RULE 425).

- 01. Request for Inactive Status. Each person requesting an inactive status during the renewal of their active license must submit a written request and pay the inactive license fee.** ()
- 02. Inactive License Status.** ()
- a. All continuing education requirements will be waived during the time that a licensee maintains an inactive license in Idaho.** ()
- b. Inactive license renewal applications and licenses will be marked "Inactive."** ()
- c. When the licensee desires active status, the licensee must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee.** ()
- d. A licensee shall not practice in Idaho while on inactive status.** ()

426. -- 449. (RESERVED)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-1401 (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 54-4205, 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 17, 2014.

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

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

The Board of Examiners of Residential Care Facility Administrators operates on dedicated funds from fees paid by its licensees and applicants. The Board's expenses have been exceeding its revenues. This change will help balance the Board's annual budget while maintaining the services necessary to protect the health and safety of the public.

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

Rule 600 is being amended to increase the application fee from \$100 to \$150; the annual renewal fee from \$100 to \$150; and the provisional/temporary permit fee from \$100 to \$150.

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

This rulemaking will have no impact on general funds. The rule change will result in an annual increase of approximately \$24,050.00 in the Board's dedicated fund based on the current number of licensees and an estimated number of 19 applications received last year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed increases are needed because the Board's expenses have been exceeding its revenues. This change was discussed during a noticed, open meeting of the Board.

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 proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 8th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1901-1401
(Only those Sections being amended are shown.)

600. FEES (RULE 600).

- 01. License Application Fee.** License application -- one hundred fifty dollars (\$1050). ~~(3-19-07)~~()
- 02. Annual Renewal Fee.** Annual renewal fee -- one hundred fifty dollars (\$1050). ~~(3-19-07)~~()
- 03. Provisional/Temporary.** Provisional/temporary -- one hundred fifty dollars (\$1050). ~~(3-19-07)~~()
- 04. Reinstatement Fee.** Reinstatement -- twenty-five dollars (\$25). (7-1-93)
- 05. Reissuance of Lost License Fee.** Reissuance of lost license -- ten dollars (\$10). (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.23.01 - RULES OF THE SPEECH AND HEARING SERVICES LICENSURE BOARD

DOCKET NO. 24-2301-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 17, 2014.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2909, 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 17, 2014.

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

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

The rules of the Board need to be updated to conform with House Bill 357, which passed in the 2014 Legislative Session. Rule 100 is being updated to define a quorum of the Board.

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

House Bill 357 passed by the 2014 Legislature amends the Board's definition of a quorum. The change provides that a quorum can be established if at least one member of the relevant profession is present when taking action that affects the profession, its applicants or licensees. The change to the rules is necessary to conform with statute.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules of the Speech and Hearing Services Licensure Board need to be updated to conform with House Bill 357, which passed in the 2014 Legislative Session.

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 Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 28th day of July, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 24-2301-1401
(Only those Sections being amended are shown.)**

100. ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet not less than twice annually and at other such times and places as designated by the Board or the Chairman of the Board. Special meetings may be held at the call of the Chairman, and all members shall be notified. (3-30-06)

a. All meetings shall be held in accordance with the Idaho Open Meeting Law, Sections 67-2340 through 67-2347, Idaho Code. (3-30-06)

b. Four (4) members of the Board shall constitute a quorum, provided at least one (1) ~~audiologist, one (1) speech language pathologist, the hearing aid dealer and fitter member and the public board~~ member are of the relevant profession is present when any board action is taken that affects the profession, its licensees, or applicants. The Board may act by virtue of a majority vote of members present in which a quorum is present. The Chairman may vote only in the event of a tie vote. ~~(3-30-06)~~(7-17-14)T

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (3-30-06)

a. The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (3-30-06)

b. The Chief of the Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (3-30-06)

IDAPA 29 - IDAHO POTATO COMMISSION

29.01.02 - RULES GOVERNING PAYMENT OF TAX AND USAGE OF CERTIFICATION MARKS AND TRADEMARKS

DOCKET NO. 29-0102-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-1201 through 1215, Idaho Code, and Section 22-1207, Idaho Code, specifically.

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

Wednesday, September 24, 2014 – 10:00 a.m.

**Idaho Potato Commission
661 S. Rivershore Lane, Suite 230
Eagle, ID 83616**

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:

Changing circumstances in the way labels are marked on potato containers as well as how containers are made have led the industry to request the rules be updated. The type of containers used for packing potatoes, the size of the seal used on potato containers and the manner in which variety labeling takes place will be reviewed for bringing the rules current. The Food and Safety Modernizations Act as well as Good Agricultural Practices also impacts the industry particularly as it relates to traceability.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these proposed changes resulted from recommendations made by IPC's Marketing Committee. The Marketing Committee includes potato growers, shippers and container manufacturers. This committee reviewed and discussed the proposal at several meetings. Nevertheless, as a cautionary measure and to insure that there is full opportunity for additional industry input, IPC's Commissioner's believe that it is preferable to conduct a formal hearing.

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 Patrick J. Kole (208) 514-4208.

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 24, 2014.

DATED this 8th Day of August, 2014.

Patrick J. Kole
Idaho Potato Commission
661 S. Rivershore Ln., Ste 230
PO Box 1670
Eagle, Idaho 83616
Phone (208) 334-2350
Fax (208) 334-2274

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 29-0102-1401
(Only those Sections being amended are shown.)

102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the Commission's registered Certification Marks, and ~~the~~ a "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears in appendix A. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. No container may use a "Check Off" box format for state of origin. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. No Seal, Trademark, Certification Mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on a container. (3-26-08)()

a. Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission. (3-26-08)

02. Marks. No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers Idaho grown potatoes or potato products made from Idaho, grown potatoes. (3-30-01)

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission. (7-1-93)

04. Recognition. Whenever the "GROWN IN IDAHO®," "IDAHO®," or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital "R" inside a circle ®, immediately after the word "IDAHO" or where designated by a duly authorized employee of the Commission. (3-26-08)

05. No Certification Mark. No Certification Mark shall be incorporated into any private label, brand or seal but shall be portrayed without embellishment as shown in appendix A. (3-30-01)

06. Not Incorporated. The word "IDAHO®," shall not be incorporated into any private label, brand or seal unless such label, brand or seal was registered with the U.S. Patent Office prior to January 1, 1966. (3-26-08)

07. Size. A Certification Mark shall be used on the front of a one hundred pound (100) sack type container, it shall not be less than five (5) inches in diameter or width and shall not be placed closer than two (2) inches from the bottom of said container. Any Certification Mark used on the rear of a one hundred-pound (100) sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred pound (100) sack type containers, if placed as indicated and in the sizes indicated. (3-26-08)

08. Limitation of Use. On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes. (7-1-93)

09. Other Type Containers. On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers; and it shall be in relative proportion to brands, labels or other printed matter thereon, but not less ~~than one and one half (1 1/2)~~ two and one quarter (2.25) inches in diameter or width. ~~(3-26-08)~~(____)

10. Box Type Containers. (3-30-01)

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark ~~may shall~~ be located on the ~~sides front and back, ends or top panels~~ of the container as ~~desired, but and~~ shall be not less than a width measurement of three and one half inches and a length measurement of five and one half inches so placed ~~and of such size~~ as to be plainly visible. Unless an approved product traceability sticker is used, the top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container. The container shall be packed with an approved box bottom bearing Idaho® Potato Certification Marks as specified by the commission. ~~(3-15-02)~~(____)

b. On all box type containers in which number two (2) grade Idaho, Potatoes will be packed, packing is permitted only when the following requirements are met: (3-30-01)

i. The container must be manufactured in a kraft, or non-colored cardboard material and may either be of a single or double piece construction that uses a box bottom bearing Idaho® Potato Certification Marks as specified by the commission; ~~(3-30-01)~~(____)

ii. The rectangular “Grown in Idaho®” certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches. The mark shall be located as shown in Appendix B; (3-26-08)

iii. The certification mark “Idaho® Potatoes” shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B; (3-26-08)

iv. The words “U.S. NO. 2” shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B and on one (1) of the top flaps of the container; (3-30-01)

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; (3-30-01)

vi. One (1) of the elongated top flaps shall contain the “Grown in Idaho®” certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark “Idaho® Potatoes” in one (1) inch height and the words “U.S. NO. 2” in one (1) inch height; (3-26-08)

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and (3-15-02)

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. (3-30-01)

11. Tote Bin Type. On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. (7-1-93)

12. Identity of Commodity. All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission shall not be used by any grower, dealer, handler, shipper, processor or out-of-state repacker for any potatoes or potato products subject to these rules. (3-26-08)

13. Words Printed. All potatoes grown in Idaho and packed or repacked in Idaho shall have the words "PACKED IN IDAHO" printed on the container. (7-1-93)

14. Sack Type Containers -- Fifty Pounds or Over. On all sack type containers for fifty (50) pounds or over the words "PACKED IN IDAHO" shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. (7-1-93)

15. Sack Type Containers -- Less Than Fifty Pounds. On all sack type containers containing less than fifty (50) pounds of potatoes the words "PACKED IN IDAHO" may be placed anywhere on the container but shall be so placed as to be plainly visible. (7-1-93)

16. Location of Words. On all box type containers the words "PACKED IN IDAHO" may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. (7-1-93)

17. Colors. All marks when used and the words "PACKED IN IDAHO" shall be in color or colors in contrast with the color of the container. (7-1-93)

18. Use. Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors and packers use the name "IDAHO®" in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. (3-26-08)

19. Compulsory Printing. Printing of the mark "GROWN IN IDAHO®" and the words "PACKED IN IDAHO" is compulsory on all potato containers printed or contracted for after December 1, 1964. (3-26-08)

20. Idahos. The word "IDAHOS" shall not be used on any container for potatoes, potato products nor on any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. (3-30-01)

21. Exemption. Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. (7-1-93)

22. Other Rules. Other rules on containers, grade and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. (7-1-93)

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.02.01 - PUBLIC RECORDS ACT RULES OF THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-0201-1401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated a proposed rulemaking procedure. This action is authorized pursuant to Sections 9-347 and 61-601, 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 17, 2014.

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 Commission's address below.

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

The Public Utilities Commission is proposing to repeal its Public Records Rules and replace them with "Public Records Guidelines" as authorized by Section 9-347, Idaho Code. The Commission's Public Records Guidelines are substantially the same as its existing rules at IDAPA 31.02.01 and will be updated to reflect recent changes to the Idaho Public Records Law. The Guidelines will be posted on the Commission's webpage.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Commission is repealing its Public Records Rules and replacing them with Public Records Guidelines.

INCORPORATION BY REFERENCE: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed repeal, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before September 24, 2014.

DATED this 25th Day of July 2014.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:

472 W. Washington
Boise, Idaho 83702-5918

IDAPA 31.02.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS

DOCKET NO. 37-0303-1401

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 42-3913, 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 17, 2014.

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 which will appear in IDAPA 37.03.03.010.49 will update the definition of an "injection well" to match that found in Section 42-3902(10), Idaho Code. This rule revision is being proposed in order to make the reinforcing regulation match the statute.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiations regarding the parent statute revision were held prior to its adoption by the 2014 Idaho Legislature under House Bill 410 rendering negotiations for this proposed rule unnecessary.

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 proposed rule, contact Brian Ragan at (208) 287-4934 or brian.ragan@idwr.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 24, 2014.

DATED this August 11, 2014.

Brian Ragan, P.G., Technical Hydrogeologist
Idaho Department of Water Resources
Underground Injection Control Program
322 East Front Street
Boise, Idaho 83720
Phone: (208) 287-4934
FAX: (208) 287-6700

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0303-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

- 01. Abandonment.** See “permanent decommission. (4-4-13)
- 02. Abandoned Well.** See “permanent decommission”. (4-4-13)
- 03. Agricultural Runoff Waste.** Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. (4-4-13)
- 04. Applicant.** Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. (7-1-93)
- 05. Application.** The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. (4-4-13)
- 06. Aquifer.** Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. (5-3-03)
- 07. Area of Review.** The area surrounding an injection well described according to the criteria set forth in Subsection 045.07 of these rules. (4-4-13)
- 08. Beneficial Use.** One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. (5-3-03)
- 09. Best Management Practice (BMP).** A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. (4-4-13)
- 10. Casing.** A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mudfluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. (4-4-13)
- 11. Cementing.** The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. (4-4-13)
- 12. Cesspool.** An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides. (4-4-13)
- 13. Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (7-1-93)
- 14. Confining Bed.** A body of impermeable or distinctly less permeable material stratigraphically

- adjacent to one (1) or more aquifers. (4-4-13)
- 15. Confining Zone.** A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone. (4-4-13)
- 16. Construct.** To create a new injection well or to convert any structure into an injection well. (7-1-93)
- 17. Contaminant.** Any physical, chemical, biological, or radiological substance or matter. (4-4-13)
- 18. Contamination.** The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: (4-4-13)
- a.** Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 “Ground Water Quality Rule” or the federal drinking water quality standards, whichever is more stringent; or (4-4-13)
- b.** Adversely affect the health of the public; or (4-4-13)
- c.** Adversely affect a designated or beneficial use of the State’s ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. (4-4-13)
- 19. Conventional Mine.** An open pit or underground excavation for the production of minerals. (4-4-13)
- 20. Decommission.** To remove a well from operation such that injection through the well is not possible. See “permanent decommission” and “unauthorized decommission”. (4-4-13)
- 21. DEQ.** The Idaho Department of Environmental Quality. (5-3-03)
- 22. Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface. (4-4-13)
- 23. Department.** The Idaho Department of Water Resources. (7-1-93)
- 24. Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
- 25. Disposal Well.** A well used for the disposal of waste into a subsurface stratum. (4-4-13)
- 26. Draft Permit.** A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit.” Permit conditions, compliance schedules, and monitoring requirements are typically included in a “draft permit”. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of “draft permits.” A denial of a request for modification, revocation and reissuance, or termination is not a “draft permit.” (4-4-13)
- 27. Drilling Fluid.** Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. (4-4-13)
- 28. Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. (5-3-03)
- 29. Emergency Permit.** A UIC “permit” issued in accordance with Subsection 045.09 of these rules. (4-4-13)
- 30. EPA.** The United States Environmental Protection Agency. (5-3-03)

31. Endangerment. Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. (4-4-13)

32. Exempted Aquifer. An “aquifer” or its portion that meets the criteria in the definition of “underground source of drinking water” but which has been exempted according to the procedures in Section 025 of these rules and been recategorized as “other” according to the procedures in IDAPA 58.01.11 “Ground Water Quality Rule”. (4-4-13)

33. Existing Injection Well. An “injection well” other than a “new injection well.” (4-4-13)

34. Experimental Technology. A technology which has not been proven feasible under the conditions in which it is being tested. (4-4-13)

35. Facility or Activity. Any UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program. (4-4-13)

36. Fault. A surface or zone of rock fracture along which there has been displacement. (4-4-13)

37. Flow Rate. The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. (4-4-13)

38. Fluid. Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)

39. Formation. A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth’s surface or traceable in the subsurface. (4-4-13)

40. Formation Fluid. Fluid present in a “formation” under natural conditions as opposed to introduced fluids. (4-4-13)

41. Generator. Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. (4-4-13)

42. Ground Water. Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. (5-3-03)

43. Ground Water Quality Standards. Standards found in IDAPA 58.01.11, “Ground Water Quality Rule,” Section 200. (5-3-03)

44. Hazardous Waste. Any substance defined by IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,”. (5-3-03)

45. Indian Lands. “Indian Country” as defined in 18 U.S.C. 1151. That section defines Indian Country as: (4-4-13)

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (4-4-13)

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (4-4-13)

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (4-4-13)

46. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. (4-4-13)

47. Improved Sinkhole. A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. (4-4-13)

48. Injection. The subsurface emplacement of fluids through an injection well, but excludes the following: (4-4-13)

a. The underground injection of natural gas for purposes of storage; (4-4-13)

b. The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas, or geothermal activities. (4-4-13)

49. Injection Well. Any feature that is operated to allow injection which also meets at least one (1) of the following criteria: (4-4-13)

a. A bored, or driven shaft whose depth is greater than the largest surface dimension; (4-4-13)

b. A dug hole whose depth is greater than the largest surface dimension; (4-4-13)

c. An improved sinkhole; or (4-4-13)

d. A subsurface fluid distribution system. (4-4-13)

e. Provided however, that "injection well" does not mean or include any well *drilled used* for oil, gas, or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations ~~(4-4-13)~~()

50. Injection Zone. A geological "formation", or those sections of a formation receiving fluids through an "injection well." (4-4-13)

51. IWRB. Idaho Water Resource Board. (5-3-03)

52. Large Capacity Cesspools. Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). (5-3-03)

53. Large Capacity Septic System. Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system. (4-4-13)

54. Lithology. The description of rocks on the basis of their physical and chemical characteristics. (4-4-13)

55. Maintain. To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (4-4-13)

56. Mechanical Integrity. The condition or status of an injection well and its physical components as they relate to the flow of fluids inside or outside the injection well. A well is said to have mechanical integrity if there

is no significant leak in the casing, tubing, or packer, and there is no significant fluid movement into a underground source of drinking water through vertical channels adjacent to the wellbore. (4-4-13)

57. Modify. To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. (7-1-93)

58. Motor Vehicle Waste Disposal Wells. Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. (5-3-03)

59. New Injection Well. An “injection well” which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. (4-4-13)

60. Open-Loop Heat Pump Return Wells. Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. (4-4-13)

61. Operate. To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)

62. Operator. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. (7-1-93)

63. Owner. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)

64. Packer. A device lowered into a well to produce a fluid-tight seal. (4-4-13)

65. Perched Aquifer. Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)

66. Permanent Decommission. The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements. (4-4-13)

67. Permit. An authorization, license, or equivalent control document issued by the Department. (4-4-13)

68. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law. (4-4-13)

69. Plugging. The act or process of stopping the flow of water, oil or, gas, or other fluids into or out of a formation through a borehole or well penetrating that formation. (4-4-13)

70. Plugging Record. A systematic listing of permanent or temporary decommissioning of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures. (4-4-13)

71. Point of Beneficial Use. The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. (4-4-13)

72. Point of Diversion for Beneficial Use. A location such as a producing well or spring where ground

water is taken under control and diverted for a beneficial use. (7-1-93)

73. Point of Injection. The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (4-4-13)

74. Pressure. The total load or force per unit area acting on a surface. (4-4-13)

75. Project. A group of wells in a single operation. (4-4-13)

76. Radioactive Material. Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)

77. Radioactive Waste. Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (5-3-03)

78. RCRA. The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. (4-4-13)

79. Remediation Project. Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. (4-4-13)

80. Residential (Domestic) Activities. Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. (4-4-13)

81. Sanitary Waste. Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. (4-4-13)

82. Schedule of Compliance. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)

83. Septic System. An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (5-3-03)

84. Shallow Injection Well. An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)

85. Site. The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity. (4-4-13)

86. State. The state of Idaho. (7-1-93)

87. Stratum (plural strata). A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. (4-4-13)

88. Subsidence. The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. (4-4-13)

89. Subsurface Fluid Distribution System. An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. (4-4-13)

90. Surface Casing. The largest diameter permanent pipe string set and sealed following setting of the

- conductor pipe. (4-4-13)
- 91. Total Dissolved Solids.** The total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR part 136. (4-4-13)
- 92. Transferor.** The owner or operator transferring ownership and/or operational control of the well. (4-4-13)
- 93. UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.” (4-4-13)
- 94. Unauthorized Decommission.** The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. (4-4-13)
- 95. Underground Injection.** See “injection.” (4-4-13)
- 96. Underground Source of Drinking Water (USDW).** An aquifer or its portion: (4-4-13)
- a.** Which: (4-4-13)
- i.** Supplies any public water system; or (4-4-13)
- ii.** Contains a sufficient quantity of ground water to supply a public water system; or (4-4-13)
- (1)** Currently supplies drinking water for human consumption; or (4-4-13)
- (2)** Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and (4-4-13)
- b.** Which is not an exempted aquifer. (4-4-13)
- 97. Unreasonable Contamination.** Endangerment of a USDW or the health of persons or other beneficial uses by injection. See “endangerment.” (4-4-13)
- 98. USDW.** Underground Source of Drinking Water. (4-4-13)
- 99. Water Quality Standards.** Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” (5-3-03)
- 100. Well.** For the purposes of these rules, “well” means “injection well.” (5-3-03)
- 101. Well Monitoring.** The measurement, by on-site instruments or laboratory methods, of the quality of water in a well. (4-4-13)

IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01 - RULES OF THE SEXUAL OFFENDER MANAGEMENT BOARD

DOCKET NO. 57-0101-1401

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 18-8314, Idaho Code.

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

Information on date, time and location for public meeting(s) will be posted on the agency website: www.somb.idaho.gov.

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

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

The Sexual Offender Management Board is responsible for developing, advancing and overseeing sound sexual offender management practices statewide. This rulemaking applies to practitioners who provide services to juveniles who have been adjudicated for sexual offenses by establishing standards and qualifications for psychosexual evaluations and evaluators, as well as sexual offender treatment and treatment providers. The adopted standards document will be incorporated into this rulemaking.

The chapter is also being modified for applicability to sexual offender management practices and practitioners for juveniles who have been adjudicated for sexual offenses.

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

There is no change to fees currently established in IDAPA 57.01.01.

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: There is no negative fiscal impact on general funds with this rulemaking.

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 as Docket No. 57-0102-1401 in the June 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 103**.

The juvenile practice standards and certification documents are posted on the agency website for public review and comment. Public meetings will be conducted for additional comments.

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 practice standards and certification qualifications established by the agency pursuant to Section 18-8314, Idaho Code, are compiled and incorporated into IDAPA 57.01.01. With this rulemaking, new documents entitled "Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders" 2014 edition, and the Sexual Offender Management Board's "Required Format for Juvenile Psychosexual Evaluation Reports" effective 2015, are incorporated by reference to give them the force and effect of law. These documents are not being reprinted in this chapter of rules due to their length and format and because of the cost for republication. They can be found on the agency's website.

Also incorporated by reference into this chapter are professional and ethical standards from nationally recognized organizations, as applicable to sexual offender management. The following citation is updated in this rulemaking:

“Association for the Treatment of Sexual Abusers Practice Guidelines for the Assessment, Treatment and Management of Male Adult Sexual Abusers” 2014 edition. This document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. It is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Baird, (208) 954-8511.

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 November 14, 2014.

DATED this eleventh day of August, 2014.

Kathy Baird, Management Assistant
Sexual Offender Management Board
IDOC Clinical Services Annex
3125 S. Shoshone St., Boise, ID 83705
Phone: (208) 954-8511
Fax: (208) 954-8519
www.somb.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 57-0101-1401
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (3-20-14)

01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics” 2001 revision, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, Website <http://www.atsa.com/>. (3-20-14)

02. “Association for the Treatment of Sexual Abusers Practice ~~Standards and~~ Guidelines for the ~~Evaluation~~ Assessment, Treatment and Management of ~~Adult~~ Male ~~Adult~~ Sexual Abusers” 2005 ~~revision~~ 14 edition, is herein incorporated by reference and is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005, website <http://www.atsa.com/>. (3-20-14)()

03. “Bylaws and Constitution of the American Association of Police Polygraphists” effective May, 2010, is herein incorporated by reference and is available from the American Association of Police Polygraphists, PO Box 657, Waynesville, Ohio 45068, website <http://www.policepolygraph.org/>. (3-20-14)

04. “Bylaws of the American Polygraph Association” effective January 2012, is herein incorporated by reference and is available from the American Polygraph Association, PO Box 8037, Chattanooga, Tennessee 37414, website <http://www.polygraph.org/>. (3-20-14)

05. “Idaho Sexual Offender Management Board Standards and Guidelines for Adult Sexual Offender Management Practices” edition 2013 November 2013 revision, is herein incorporated by reference and is available from the Board’s office and on the Board website, <http://somb.idaho.gov/>. (3-20-14)

06. **“Idaho Sexual Offender Management Board Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders”** 2014 edition, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ()

07. **The Sexual Offender Management Board's “Required Format for Juvenile Psychosexual Evaluation Reports”** effective 2015, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. ()

068. **The Sexual Offender Management Board’s “Required Format for Psychosexual Evaluation Reports”** effective 2013, is herein incorporated by reference and is available from the Board's office and on the Board's website, <http://somb.idaho.gov/>. (3-20-14)()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

The office of the Sexual Offender Management Board is located within the Idaho Department of Correction Clinical Services Annex, 3125 S. Shoshone St., Boise, Idaho 83705. Business hours are typically 8 a.m. to 5 p.m. Monday through Friday except legal holidays. The Board's telephone number is (208) 954-8511 and the FAX number is (208) 954-8518. The Board's official website is <http://somb.idaho.gov/>. (3-20-14)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Board. The Sexual Offender Management Board described in Section 18-8312, Idaho Code. (3-20-14)

02. Central Roster. A roster of evaluators, treatment providers and polygraph examiners, who meet the qualifications and are certified by the Board to conduct psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

03. Certificate Holder. A person who has been approved by the Board and certified as meeting qualifications to conduct or assist in the conduct of psychosexual evaluations, provide sexual offender treatment or conduct post conviction sexual offender polygraphs. (3-20-14)

04. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 18, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, shall meet the qualifications and shall be approved by the Board to perform psychosexual evaluations in this state, as described in Section 18-8314, Idaho Code. A person meeting this definition may be certified by the Board as either a senior/approved certified evaluator or an associate/supervised certified evaluator. (3-20-14)

05. Certified Polygraph Examiner. A polygraph examiner who has received specialized post conviction sex offender testing training, and who is certified by the Board to conduct post conviction sexual offender polygraph examinations as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole. (3-20-14)

06. Certified Treatment Provider. A person who has been certified by the Board as meeting qualifications to provide sexual offender treatment as ordered by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or Idaho Department of Juvenile Corrections. Such person shall be licensed by this state or another state or jurisdiction as a psychiatrist, or a master's or doctoral level mental health professional, and who has by education, experience and training, expertise in the treatment of sexual offenders. A person meeting this definition may be certified by the Board as either a senior/approved sex offender treatment provider or an associate/supervised sex offender treatment provider. (3-20-14)

067. Client. An person adult or juvenile receiving services from a person certified by the Board pursuant to Section 18-8314, Idaho Code. (3-20-14)(____)

08. Established Standards. The “Idaho Sexual Offender Management Board’s Standards and Guidelines for Adult Sexual Offender Management Practices;” and the “Idaho Sexual Offender Management Board’s Standards and Guidelines for Practitioners, Evaluations and Treatment of Juvenile Sexual Offenders” as referenced in Section 004 of these rules and established pursuant to Section 18-8314, Idaho Code. (3-20-14)(____)

09. Provisional/Supervised Psychosexual Evaluator. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master’s or doctoral level mental health professional, who is authorized by the Board to assist with the conduct of psychosexual evaluations under the direct supervision of a senior/approved psychosexual evaluator. A person with a provisional/supervised psychosexual evaluator certificate is not considered to be a certified evaluator as defined in Section 18-8303, Idaho Code or for the purposes of conducting a psychosexual evaluation in accordance with Section 18-8316, Idaho Code. Certification approval is specific to adult or juvenile clients. (3-20-14)(____)

10. Provisional/Supervised Sex Offender Treatment Provider. A person with limited clinical experience and specialized training, who may be licensed or is working toward licensure as a psychiatrist or master’s or doctoral level mental health professional, who is authorized by the Board to provide sexual offender treatment under the direct supervision of a senior/approved sex offender treatment provider. Certification approval is specific to adult or juvenile clients. (3-20-14)(____)

11. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing a person’s sexual development, sexual deviancy, sexual history and risk of re-offense. A psychosexual evaluation for the purpose of these rules is conducted post conviction, as ordered by the court pursuant to Section 18-8316, Idaho Code, or Title 20, Chapter 5, Idaho Code, by a person who has been certified by the Board. (3-20-14)(____)

12. Quality Assurance. Processes established by the Board to review psychosexual evaluations and sexual offender treatment procedures to assure minimum standards and certificate holder qualifications are met. All quality assurance reviews will be conducted under the direction of the Board. (3-20-14)

13. Sexual Offender. A person adjudicated or convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts; or who has been adjudicated or convicted of a sexual offense-related crime. (3-20-14)(____)

14. Sexual Offender Classification Board. A board in effect from 1998 to 2011 that determined whether a sexual offender should be designated as a violent sexual predator; set certified evaluator qualifications and standards; and administered an evaluator certification process. (3-20-14)

15. Supervision. (3-20-14)

a. For purposes of clinical practice supervision for associate/supervised psychosexual evaluator or associate/supervised sex offender treatment provider certification, supervision is generally considered as face-to-face direct contact, documented teleconferencing, or interactive video conferencing with a Board-approved supervisor using a ratio of one (1) hour of clinical supervision for every twenty (20) hours of direct service provided; or (3-20-14)

b. For purposes of clinical practice supervision for provisional/supervised psychosexual evaluator or provisional/supervised treatment provider certification, supervision is considered as continual face-to-face direct contact with a Board-approved supervisor. (3-20-14)

16. Treatment. For purposes of certification eligibility the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense or sexual offense-related crime. Treatment must be directly relevant to the client’s sexually offending behavior. (3-20-14)

17. Violent Sexual Predator. A person who was designated as a violent sexual predator by the Sexual Offender Classification Board where such designation has not been removed by judicial action or otherwise. (3-20-14)

011. ABBREVIATIONS.

- 01. ATSA.** The Association for the Treatment of Sexual Abusers. (3-20-14)
- 02. DSM.** The “Diagnostic and Statistical Manual of Mental Disorders,” published by the American Psychiatric Association. (3-20-14)
- 03. IDOC.** The Idaho Department of Correction. (3-20-14)
- 04. IDJC.** The Idaho Department of Juvenile Corrections. ()
- 045. PCSOT.** “Post conviction sex offender testing” is specialized instruction beyond the basic polygraph training for the purpose of specific polygraph testing of post convicted sex offenders. (3-20-14)
- 056. SOCB.** The Sexual Offender Classification Board. (3-20-14)
- 067. SOMB.** The Sexual Offender Management Board. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

040. CERTIFIED EVALUATOR QUALIFICATIONS.

01. Certified Evaluators. Each evaluator who conducts or assists with the conduct of a psychosexual evaluation pursuant to Section 18-8316, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (3-20-14)

- a.** Certification approval is specific to adult or juvenile clients. ()
- b.** A certificate holder may be separately approved to provide services to both adult and juvenile clients. ()

02. Certification Requirements. Minimum requirements for certification as a psychosexual evaluator include criteria, requirements, and expectations in the following categories: (3-20-14)

- a.** Formal educational requirements; (3-20-14)
- b.** Professional licensure requirements; (3-20-14)
- c.** Clinical experience requirements; (3-20-14)
- d.** Specialized training requirements; and (3-20-14)
- e.** Continuing education and professional development requirements. (3-20-14)

041. LEVELS OF PSYCHOSEXUAL EVALUATOR CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person’s training and experience specific to the population to be served: (3-20-14)()

- 01. Senior/Approved Psychosexual Evaluator.** (3-20-14)
- a.** Possesses a valid Idaho license to practice as a psychiatrist or master’s or doctoral level

psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 1500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (3-20-14)

c. Has conducted a minimum of nine (9) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level. (3-20-14)

02. Associate/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses a valid Idaho license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)

b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; (3-20-14)

c. Has conducted a minimum of six (6) psychosexual evaluations within the three (3) years preceding an initial application for certification at this level; and (3-20-14)

d. Shall only conduct psychosexual evaluations under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Psychosexual Evaluator. (3-20-14)

a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; (3-20-14)

b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; (3-20-14)

c. May assist with the conduct of psychosexual evaluations only under the direct supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

080. SEXUAL OFFENDER TREATMENT PROVIDER QUALIFICATIONS.

01. Certified Sexual Offender Treatment Provider. Each person who provides treatment to sexual offenders as ordered or required by the court, Idaho Department of Correction, Idaho Commission for Pardons and Parole, or the Idaho Department of Juvenile Corrections, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. (3-20-14)

a. Certification approval is specific to adult or juvenile clients. ()

b. A certificate holder may be separately approved to provide services to both adult and juvenile clients. ()

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria, requirements, and expectations in the following categories: (3-20-14)

- a. Formal educational requirements; (3-20-14)
- b. Professional licensure requirements; (3-20-14)
- c. Clinical experience requirements; (3-20-14)
- d. Specialized training requirements; and (3-20-14)
- e. Continuing education and professional development requirements. (3-20-14)

081. LEVELS OF SEXUAL OFFENDER TREATMENT PROVIDER CERTIFICATION.

The Board issues certificates within three (3) levels reflective of a person's training and experience specific to the population to be served: ~~(3-20-14)~~ ()

01. Senior/Approved Sexual Offender Treatment Provider. (3-20-14)

- a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist; and (3-20-14)
- b. Has engaged in a combination of direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 1500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board. (3-20-14)

02. Associate/Supervised Sexual Offender Treatment Provider. (3-20-14)

- a. Possesses a valid license to practice in this state or another state or jurisdiction as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)
- b. Has engaged in a combination of supervised direct, face-to-face clinical practice with sexual offenders and received specialized training for a minimum of 500 hours which were accumulate within the three (3) years immediately preceding an initial application for certification at this level, as set forth in the established standards issued by the Board; and (3-20-14)

c. Shall only provide treatment services under the clinical practice supervision of a Board-approved supervisor as defined in Paragraph 010.15.a. of these rules, and under the terms of a formal clinical supervision agreement. (3-20-14)

03. Provisional/Supervised Sexual Offender Treatment Provider. (3-20-14)

- a. Possesses or is currently enrolled in a graduate program of study toward the attainment of a master's or doctoral degree, preferably with an emphasis on the application of forensic clinical practice; and (3-20-14)
- b. Possesses or is pursuing a valid license to practice as a psychiatrist or master's or doctoral level psychologist, social worker, professional counselor, or marriage and family therapist. (3-20-14)
- c. Shall only provide treatment services under the direct supervision of a Board-approved supervisor as defined in Paragraph 010.15.b. of these rules, and under the terms of a formal clinical supervision agreement. Face-to-face supervision is required when providing direct clinical services to sex offenders. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

100. SPECIALIZED TRAINING FOR PSYCHOSEXUAL EVALUATORS AND SEXUAL OFFENDER TREATMENT PROVIDERS.

For initial certification as a psychosexual evaluator or sexual offender treatment provider, an applicant must have participated in specialized training in the field of sexual abuse, as set forth in the established standards issued by the Board. Sources for such training may be formal conferences, symposia, seminars and workshops in areas such as:

(3-20-14)

01. Sexually Abusive Behavior. Contemporary research regarding the etiology of sexually abusive behavior; (3-20-14)

02. Offending Behavior. Research-identified risk factors for the development and continuation of sexually abusive/offending behavior; (3-20-14)

03. Assessment, Treatment, and Management of Adult Or Juvenile Sex Offenders. Contemporary research and practice in the areas of assessment, treatment, and management of adult or juvenile sex offenders; ~~(3-20-14)~~()

04. Specific Risk Assessment Tools. Research-supported, sex offender-specific risk assessment tools; and (3-20-14)

05. Deviant Sexual Arousal and/or Interests. Physiological assessment of deviant sexual arousal and/or interests. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

200. POST CONVICTION SEXUAL OFFENDER POLYGRAPH EXAMINER QUALIFICATIONS.

01. Certified Examiner. Each person who conducts post conviction sexual offender polygraphs as ordered or required by the court, Idaho Department of Correction, or Idaho Commission for Pardons and Parole, in accordance with Section 18-8314, Idaho Code, must meet the qualifications as set forth in the established standards issued by the Board and be certified by the Board. There shall not be a separate certification specific to adult or juvenile clients. ~~(3-20-14)~~()

02. Certification Requirements. Minimum requirements for certification as a sexual offender treatment provider include criteria and requirements in the following categories: (3-20-14)

a. Educational requirements; (3-20-14)

b. Experience requirements; (3-20-14)

c. Specialized training requirements; and (3-20-14)

d. Continuing education and professional development requirements. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

300. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

01. General Considerations for Certified Evaluators and Certified Treatment Providers. Each

person who is certified by the Board to conduct or assist with the conduct of psychosexual evaluations or provide sexual offender treatment shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's respective discipline and area of professional licensure; (3-20-14)

b. Adhere to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice ~~Standards and~~ Guidelines, as referenced in Section 004 of these rules; ~~(3-20-14)~~()

c. Be knowledgeable of statutes and scientific data relevant to specialized sexual offender evaluation and sexual offender treatment; (3-20-14)

d. Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Section 18-8316, Idaho Code; (3-20-14)

e. Be committed to community protection and safety; (3-20-14)

f. Provide services in a manner that ensures humane and ethical treatment of clients; (3-20-14)

g. Conduct testing in accordance with the person's licensing body, qualifications and experience, and in a manner that ensures the integrity of testing data; (3-20-14)

h. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; and (3-20-14)

i. Have no sexual relationships with any client. (3-20-14)

02. General Considerations for Certified Post Conviction Sexual Offender Polygraph Examiners. Each person who is certified by the Board to conduct post conviction sexual offender polygraph examinations shall: (3-20-14)

a. Adhere to the ethical principles and codes, and all practice standards and guidelines for the person's discipline, area of professional practice, or licensure as promulgated by any applicable regulatory board or licensing authority; (3-20-14)

b. Adhere to the standards and guidelines specific to post conviction sexual offender testing as promulgated by the American Polygraph Association; (3-20-14)

c. Adhere to the ethical principles and codes, and all practice standards and guidelines for the administration of polygraph examinations generally, as promulgated by the American Polygraph Association or the American Association of Police Polygraphists, as referenced in Section 004 of these rules; (3-20-14)

d. Adhere to the current practice standards and guidelines pertaining to post conviction sexual offender polygraphs within the context of sexual offender management as established by the Association for the Treatment of Sexual Abusers, as referenced in Section 004 of these rules; (3-20-14)

e. Avoid relationships with clients that may constitute a conflict of interest, impair professional judgment and risk exploitation; ~~and~~ ~~(3-20-14)~~()

f. Have no sexual relationships with any client; ~~and~~ ~~(3-20-14)~~()

g. Take factors such as age, mental capacity and co-occurring mental health concerns into consideration when utilizing polygraphy with juvenile offenders. ()

(BREAK IN CONTINUITY OF SECTIONS)

330. INITIAL CERTIFICATION APPLICATION.

An applicant seeking certification by the Board must submit a completed application on forms provided by the Board for the applicant's area of practice and client population if applicable, accompanied by documentation as outlined in the established standards issued by the Board and an initial certification application fee made payable to the Board. (3-20-14)()

331. EXPIRATION AND RENEWAL OF CERTIFICATION.

No certification shall be renewed, except as follows: (3-20-14)

01. Renewal. At least thirty (30) days prior to the expiration of a certification, a certificate holder shall apply for renewal of the certification on forms provided by the Board for the applicant's area of practice and client population if applicable, accompanied by documentation as outlined in the established standards issued by the Board and a renewal certification application fee made payable to the Board. (3-20-14)()

02. Removal from the Roster. A certificate holder who has not renewed his certification shall be removed from the central roster thirty (30) days after his certification has expired. (3-20-14)

03. Renewal After Certification Expiration. A certificate holder whose certification has expired may reapply at any time for certification as follows: (3-20-14)

a. A certificate holder whose certification has been expired for less than three hundred sixty-five (365) days may reapply following the certification renewal process as referenced in Subsection 331.01 of these rules. (3-20-14)

b. A certificate holder whose certification has been expired for three hundred sixty-five (365) days or longer may reapply for certification following the initial certification process as referenced in Section 330 of these rules. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

350. CENTRAL ROSTER OF PSYCHOSEXUAL EVALUATORS, SEXUAL OFFENDER TREATMENT PROVIDERS AND POST CONVICTION SEXUAL OFFENDER POLYGRAPH PROVIDERS.

01. Identification. The Board shall publish a central roster of psychosexual evaluators, sexual offender treatment providers and post conviction sexual offender polygraph providers pursuant to Sections 18-8312 through 18-8316, Idaho Code. The central roster shall indicate: (3-20-14)

a. The certificate holder's name; (3-20-14)

b. The certificate holder's business address and telephone number; (3-20-14)

c. Whether the certificate holder is certified or approved by conditional waiver; (3-20-14)

d. The category and applicable level of certification; (3-20-14)

e. The expiration date of the certification or conditional waiver; ~~and~~ (3-20-14)()

f. Whether the certificate holder is approved to provide services to adult or juvenile clients or both; ()
and

g. Current formal disciplinary action imposed on a certificate holder by the Board. (3-20-14)

02. Availability. A copy of the central roster may be obtained from the Board, and shall be posted on

the Board's website.

(3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

450. PSYCHOSEXUAL EVALUATIONS.

01. Adult Psychosexual Evaluations. Pre-sentence psychosexual evaluations on adult sexual offenders shall be conducted pursuant to the established standards issued by the Board and written utilizing the "Required Format for Psychosexual Evaluation ~~s~~ Reports," as referenced in Section 004 of these rules.

~~(3-20-14)~~()

02. Juvenile Psychosexual Evaluations. Psychosexual evaluations on juveniles adjudicated for sexual offenses shall be conducted in accordance with the established standards issued by the Board and written utilizing the "Required Format for Juvenile Psychosexual Evaluation Reports," as referenced in Section 004 of these rules. ()

03. Testing. The evaluator shall utilize testing instrumentation and assessment measures as outlined in the established standards issued by the Board. (3-20-14)

04. Client Participation. The client being evaluated may refuse or decline to participate in any testing, assessment measure, or physiological measure used for the pre-sentence psychosexual evaluation. The evaluator shall document the client's refusal or declination in the psychosexual evaluation report. (3-20-14)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
ASSESSMENT OF WATER QUALITY IN KOOTENAI RIVER AND MOYIE RIVER SUBBASINS
TOTAL MAXIMUM DAILY LOAD (TMDL) 2014 TEMPERATURE ADDENDUM
(HUC ID 17010104 AND 17010105)

DOCKET NO. 58-0000-1405

NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Assessment of Water Quality in Kootenai River and Moyie River Subbasins TMDL 2014 Temperature Addendum (“Kootenai River and Moyie River Subbasins TMDL 2014 Temperature Addendum”).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Kootenai River and Moyie River Subbasins TMDL 2014 Temperature Addendum. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Kootenai River and Moyie River Subbasins TMDL 2014 Temperature Addendum (Hydrologic Unit Codes 17010104 and 17010105) addresses thirty-four (34) assessment units on Idaho’s 2012 § 303(d) list that are impaired for temperature and three (3) additional assessment units found to be impaired for temperature. DEQ has submitted the Kootenai River and Moyie River Subbasins TMDL 2014 Temperature Addendum to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at <http://www.deq.idaho.gov/water-quality/surface-water/tmdls/table-of-sbas-tmdls/kootenai-and-moyie-rivers-subbasins.aspx> or by contacting Ms. Marti Bridges, TMDL Program Manager, (208) 373-0382, marti.bridges@deq.idaho.gov.

Dated this 8th day of August, 2014.

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

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1401

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 Sections 39-105 and 39-107, Idaho Code.

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

Tuesday, October 7, 2014, 3:00 p.m.

**Department of Environmental Quality
Conference Room C
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to clarify the application of fugitive dust rules to agricultural activities.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 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: NA

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 § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the April 2014 Idaho Administrative Bulletin, **Vol. 14-4, pages 17 and 18**, and a preliminary draft rule was made available for public review. Meetings were held on May 14, June 20, and July 16, 2014. Several members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments received, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at www.deq.idaho.gov/58-0101-1401.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at tiffany.floyd@deq.idaho.gov or (208) 373-0440.

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 7, 2014.

DATED this 8th day of August, 2014.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208) 373-0418/Fax No. (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1401
(Only those Sections being amended are shown.)

650. RULES FOR CONTROL OF FUGITIVE DUST.

The purpose of Sections 650 through 654 is to require that all reasonable precautions be taken to prevent the generation of fugitive dust. ~~(5-1-94)~~()

(BREAK IN CONTINUITY OF SECTIONS)

652. AGRICULTURAL ACTIVITIES.

For agricultural activity purposes, operating in conformance with generally recognized agricultural practices constitutes reasonable control of fugitive dust. For the purpose of Section 652: ()

01. Agricultural Activity. An “agricultural activity” means any activity that is exempt from the requirement to obtain a permit to construct under Subsection 222.02.f, wherein “agricultural activities and services” is defined in Section 007, that occurs in connection with the production of agricultural products for food, fiber, fuel, feed and other lawful purposes, and including, but not limited to: ()

a. Preparing land for agricultural production; ()

b. Applying or handling pesticides herbicides, or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil; ()

c. Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticulture crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plant products, plant by-products, plant waste and animal compost; ()

d. Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal by-products, animal waste, animal compost, and bees, bee products and bee by-products; ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1402

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 Sections 39-105 and 39-107, Idaho Code.

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

Tuesday, October 7, 2014, 3:00 p.m.

**Department of Environmental Quality
Conference Room C
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: This rulemaking contains three main objectives. The first objective is to acknowledge feedback received from the U.S. Environmental Protection Agency regarding necessary changes to the Rules for the Control of Air Pollution in Idaho (Idaho's rules) for inclusion into Idaho's State Implementation Plan (SIP). Including Idaho's rules in the SIP will provide certainty to the regulated community that their permits fulfill all state and federal requirements. These changes include minor clarifications to the following rules: Facility Emission Cap, Sulfur Content in Fuels Alternative, and Nonmetallic Mineral Processing Plants.

Facility emission cap (FEC) rule: Two changes have to be made: 1) Language will be added to strengthen the prohibition against new major facilities from using the FEC rule and thus circumventing PSD/NSR review. 2) Language is being added to ensure that the air quality modeling parameters will be consistent throughout the 5 year term of the FEC permit. These changes are consistent with the original intent of the rule and will not change how it is currently being implemented.

Sulfur in fuels: The original rule provides an option for facilities to use higher sulfur content fuel as long as there is no increase in air emissions. The rule does not explicitly state how DEQ will implement this option. The added language states that it will be implemented through an air permitting action from DEQ. This change is consistent with the original intent of this rule.

Nonmetallic mineral processing: Clarifying language that the Permit by Rule option is only available to non-major sources is being added. This change should have no effect on how the industry is using this rule and is consistent with the original intent of this rule.

The second objective is to add references to PM_{2.5} in order to capture updated federal requirements. Idaho DEQ is currently treating PM_{2.5} as a criteria pollutant but has not yet updated all references to PM_{2.5} in the rules. These changes are needed for clarification and consistency.

The third objective is to update a source test reporting deadline to more realistically reflect existing practices. Currently there is a deadline that facilities submit a source test to Idaho DEQ within 30 days in certain situations. This deadline has proven impractical and DEQ is proposing to increase the deadline to 60 days.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 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: Not applicable.

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 § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the June 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 104 and 105](#), and a preliminary draft rule was made available for public review. A meeting was held on June 26, 2014. Several members of the public participated in the negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at www.deq.idaho.gov/58-0101-1402.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT 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 technical questions concerning this rulemaking, contact Tiffany Floyd at tiffany.floyd@deq.idaho.gov or (208) 373-0440.

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 7, 2014.

DATED this 8th Day of August, 2014.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1402
(Only those Sections being amended are shown.)

006. GENERAL DEFINITIONS.

01. Accountable. Any SIP emission trading program must account for the aggregate effect of the

emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. (4-5-00)

02. Act. The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)

03. Actual Emissions. The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: (4-5-00)

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. (4-5-00)

b. The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. (4-5-00)

c. For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. (4-5-00)

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. (4-5-00)

04. Adverse Impact on Visibility. Visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I Area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: (3-30-07)

a. Times of visitor use of the Federal Class I Area; and (3-30-07)

b. The frequency and timing of natural conditions that reduce visibility. (3-30-07)

c. This term does not include affects on integral vistas when applied to 40 CFR 51.307. (3-30-07)

05. Air Pollutant/Air Contaminant. Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. (4-5-00)

06. Air Pollution. The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. (4-5-00)

07. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)

08. Air Quality Criterion. The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)

09. Allowable Emissions. The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally

enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: (4-5-00)

- a. The applicable standards set forth in 40 CFR part 60 and 61; (4-5-00)
- b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or (4-5-00)
- c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. (4-5-00)

10. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)

11. Ambient Air Quality Violation. Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. (4-11-06)

12. Atmospheric Stagnation Advisory. An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (4-11-06)

13. Attainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (4-11-06)

14. BART-Eligible Source. Any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit two hundred fifty (250) tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. (3-30-07)

- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- b. Coal cleaning plants (thermal dryers); (3-30-07)
- c. Kraft pulp mills; (3-30-07)
- d. Portland cement plants; (3-30-07)
- e. Primary zinc smelters; (3-30-07)
- f. Iron and steel mill plants; (3-30-07)
- g. Primary aluminum ore reduction plants; (3-30-07)
- h. Primary copper smelters; (3-30-07)
- i. Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day; (3-30-07)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (3-30-07)
- k. Petroleum refineries; (3-30-07)
- l. Lime plants; (3-30-07)
- m. Phosphate rock processing plants; (3-30-07)

- n. Coke oven batteries; (3-30-07)
- o. Sulfur recovery plants; (3-30-07)
- p. Carbon black plants (furnace process); (3-30-07)
- q. Primary lead smelters; (3-30-07)
- r. Fuel conversion plants; (3-30-07)
- s. Sintering plants; (3-30-07)
- t. Secondary metal production facilities; (3-30-07)
- u. Chemical process plants; (3-30-07)
- v. Fossil-fuel boilers of more than two hundred fifty (250) million BTU's per hour heat input; (3-30-07)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (3-30-07)
- x. Taconite ore processing facilities; (3-30-07)
- y. Glass fiber processing plants; and (3-30-07)
- z. Charcoal production facilities. (3-30-07)
- 15. Baseline (Area, Concentration, Date).** See Section 579. (5-1-94)
- 16. Best Available Retrofit Technology (BART).** Means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. (3-30-07)
- 17. Board.** Idaho Board of Environmental Quality. (5-1-94)
- 18. Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. (4-5-00)
- 19. BTU.** British thermal unit. (5-1-94)
- 20. Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
- 21. Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
- 22. Commence Construction or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. (4-5-00)

23. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
24. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
25. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)
26. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)
27. **Criteria Air Pollutant.** Any of the following: PM₁₀; ~~PM_{2.5}~~; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. ~~(4-5-00)~~()
28. **Deciview.** A measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview Haze Index = $10 \ln_e (b_{\text{ext}} / 10\text{Mm}^{-1})$ where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}). (3-30-07)
29. **Department.** The Department of Environmental Quality. (5-1-94)
30. **Designated Facility.** Any of the following facilities: (5-1-94)
- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)
- b. Coal cleaning plants (thermal dryers); (5-1-94)
- c. Kraft pulp mills; (5-1-94)
- d. Portland cement plants; (5-1-94)
- e. Primary zinc smelters; (5-1-94)
- f. Iron and steel mill plants; (5-1-94)
- g. Primary aluminum ore reduction plants; (5-1-94)
- h. Primary copper smelters; (5-1-94)
- i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)
- j. Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)
- k. Petroleum refineries; (5-1-94)
- l. Lime plants; (5-1-94)
- m. Phosphate rock processing plants; (5-1-94)
- n. Coke oven batteries; (5-1-94)

- o.** Sulfur recovery plants; (5-1-94)
- p.** Carbon black plants (furnace process); (5-1-94)
- q.** Primary lead smelters; (5-1-94)
- r.** Fuel conversion plants; (5-1-94)
- s.** Sintering plants; (5-1-94)
- t.** Secondary metal production facilities; (5-1-94)
- u.** Chemical process plants; (5-1-94)
- v.** Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w.** Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x.** Taconite ore processing facilities; (5-1-94)
- y.** Glass fiber processing plants; and (5-1-94)
- z.** Charcoal production facilities. (5-1-94)
- 31. Director.** The Director of the Department of Environmental Quality or his designee. (5-1-94)
- 32. Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)
- 33. Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
- 34. Emission Standard.** A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. (4-5-00)
- 35. Emissions Unit.** An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)
- 36. EPA.** The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)
- 37. Environmental Remediation Source.** A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. (5-1-95)
- 38. Excess Emissions.** Emissions that exceed an applicable emissions standard established for any

facility, source or emissions unit by statute, regulation, rule, permit, or order. (4-11-06)

39. Existing Stationary Source or Facility. Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)

40. Facility. All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

41. Federal Class I Area. Any federal land that is classified or reclassified "Class I." (3-30-07)

42. Federal Land Manager. The Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee). (3-30-07)

43. Federally Enforceable. All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. (3-30-07)

44. Fire Hazard. The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)

45. Fuel-Burning Equipment. Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)

46. Fugitive Dust. Fugitive emissions composed of particulate matter. (5-1-94)

47. Fugitive Emissions. Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)

48. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)

49. Gasoline. Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels. (3-29-10)

50. Gasoline Cargo Tank. Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. (3-29-10)

51. Gasoline Dispensing Facility (GDF). Any facility with underground gasoline storage tanks used for dispensing gasoline. (3-29-10)

52. Grain Elevator. Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)

53. Grain Storage Elevator. Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). (5-1-94)

54. Grain Terminal Elevator. Any grain elevator which has a permanent storage capacity of more

than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

55. Hazardous Air Pollutant (HAP). Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. (4-11-94)

56. Hazardous Waste. Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may: (5-1-94)

a. Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)

b. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

57. Hot-Mix Asphalt Plant. Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

58. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)

59. Indian Governing Body. The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

60. Integral Vista. A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. (3-30-07)

61. Kraft Pulping. Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

62. Least Impaired Days. The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the lowest amount of visibility impairment. (3-30-07)

63. Lowest Achievable Emission Rate (LAER). For any source, the more stringent rate of emissions based on the following: (4-5-00)

a. The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or (4-5-00)

b. The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. (4-5-00)

64. Mandatory Class I Federal Area. Any area identified in 40 CFR 81.400 through 81.437.

(3-30-07)

65. Member of the Public. For purposes of Subsection 006.103.a.xvi., a person located at any off-site point where there is a residence, school, business or office. (3-30-07)

66. Mercury. Total mercury including elemental mercury and mercury compounds. (4-7-11)

67. Mercury Best Available Control Technology (MBACT). An emission standard for mercury based on the maximum degree of reduction practically achievable as specified by the Department on an individual case-by-case basis taking into account energy, economic and environmental impacts, and other relevant impacts specific to the source. A Department approved MBACT shall be valid until the source subject to the MBACT is modified. If the proposed modification to the source subject to MBACT occurs within ten (10) years of the MBACT determination, a new MBACT review shall not be triggered as long as the source can meet the existing MBACT requirements. If the proposed modification occurs more than ten (10) years after the MBACT determination, then the proposed modification shall be subject to a new MBACT review. (4-7-11)

68. Modification. (4-11-06)

a. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an emission increase as defined in Section 007 or which results in the emission of any regulated air pollutant not previously emitted. (4-11-06)

b. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. (4-11-06)

c. Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law. (4-11-06)

d. For purposes of this definition of modification, routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation: (3-30-07)

i. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and (5-1-94)

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material before January 6, 1975 and use of such fuel or raw material is not specifically prohibited in a permit. (4-4-13)

69. Monitoring. Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

70. Most Impaired Days. The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the highest amount of visibility impairment. (3-30-07)

71. Multiple Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

72. Natural Conditions. Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration. (3-30-07)

- 73. New Stationary Source or Facility.** (5-1-94)
- a.** Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)
- b.** The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)
- i.** The restart involves a modification to the facility; or (5-1-94)
- ii.** After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)
- 74. Nonattainment Area.** Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)
- 75. Noncondensibles.** Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)
- 76. Odor.** The sensation resulting from stimulation of the human sense of smell. (5-1-94)
- 77. Opacity.** A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)
- 78. Open Burning.** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)
- 79. Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. (4-5-00)
- 80. Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)
- 81. Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. (4-5-00)
- 82. Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 228. (7-1-02)
- 83. Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)
- 84. PM₁₀.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)
- 85. PM₁₀ Emissions.** All particulate matter, including condensable particulates, with an aerodynamic

diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. (4-5-00)

86. PM_{2.5}. All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers measured by a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. ()

87. PM_{2.5} Emissions. All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. ()

868. **Potential to Emit/Potential Emissions.** The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a facility or stationary source. (3-30-07)

879. **Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. (5-1-94)

8890. **PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)

891. **Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)
- f. The preparation of planting and seeding sites for forest regeneration; and (5-1-94)
- g. Other accepted natural resource management purposes. (5-1-94)

902. **Primary Ambient Air Quality Standard.** That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)

913. **Process or Process Equipment.** Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

924. **Process Weight.** The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of

the process weight. (5-1-94)

935. Process Weight Rate. The rate established as follows: (5-1-94)

a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (4-5-00)

b. For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (4-5-00)

946. Quantifiable. The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). (4-5-00)

957. Radionuclide. A type of atom which spontaneously undergoes radioactive decay. (5-1-94)

968. Regional Haze. Visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. (3-30-07)

979. Regulated Air Pollutant. (4-11-06)

a. For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section 7661 et seq., “regulated air pollutant” shall have the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; (4-11-06)

b. For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 410, the federal definition of “regulated air pollutant” as defined in Subsection 006.94.a. shall also apply; (3-30-07)

c. For purposes of determining applicability of permit to construct requirements, issuing, and modifying permits pursuant to Sections 200 through 228, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., “regulated air pollutant” shall mean those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and (4-11-06)

d. For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 228, except Section 214, “regulated air pollutant” shall mean those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. (4-11-06)

98100. Replicable. Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. (4-5-00)

99101. Responsible Official. One (1) of the following: (5-1-94)

a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall

operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

i. The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or (4-5-00)

ii. The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (4-5-00)

d. For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

1042. Safety Measure. Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. (4-5-00)

1043. Salvage Operation. Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

1044. Scheduled Maintenance. Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (3-20-97)

1045. Secondary Ambient Air Quality Standard. That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

1046. Secondary Emissions. Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. (3-30-07)

1047. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

1048. Significant. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: (4-11-06)

a. Pollutant and emissions rate: (4-11-06)

- i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
 - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
 - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
 - iv. Particulate matter: (4-4-13)
 - (1) Twenty-five (25) tons per year of particulate matter emissions; (4-4-13)
 - (2) Fifteen (15) tons per year of PM₁₀ emissions; or (4-4-13)
 - (3) Ten (10) tons per year of direct PM_{2.5} emissions; or forty (40) tons per year of sulfur dioxide emissions; or forty (40) tons per year of nitrogen oxide emissions; (4-4-13)
 - v. Ozone, forty (40) tons per year of volatile organic compounds; (4-11-06)
 - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
 - vii. Fluorides, three (3) tons per year; (5-1-94)
 - viii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
 - ix. Hydrogen sulfide (H₂S), ten (10) tons per year; (5-1-94)
 - x. Total reduced sulfur (including H₂S), ten (10) tons per year; (5-1-94)
 - xi. Reduced sulfur compounds (including H₂S), ten (10) tons per year; (5-1-94)
 - xii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
 - xiii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; (5-1-94)
 - xiv. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
 - xv. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year; or (4-11-06)
 - xvi. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least one tenth (0.1) mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year. (5-1-95)
- b.** In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.103.a. above and not a toxic air pollutant, any emission rate; or (3-30-07)
- c.** For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (4-5-00)

1079. Significant Contribution. Any increase in ambient concentrations which would exceed the

- following: (5-1-94)
- a.** Sulfur dioxide: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
 - iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
 - b.** Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
 - c.** Carbon monoxide: (5-1-94)
 - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)
 - ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)
 - d.** PM₁₀: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average; (4-4-13)
 - e.** PM_{2.5}: (4-4-13)
 - i. Three-tenths (0.3) microgram per cubic meter, annual average; (4-4-13)
 - ii. One point two (1.2) micrograms per cubic meter, twenty-four (24) hour average. (4-4-13)
- 1108. Small Fire.** A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)
- 10911. Smoke.** Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)
- 1102. Smoke Management Plan.** A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)
- 1173. Smoke Management Program.** A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)
- 1124. Source.** A stationary source. (5-1-94)
- 1135. Source Operation.** The last operation preceding the emission of air pollutants, when this operation: (5-1-94)
- a.** Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)
 - b.** Is not an air cleaning device. (5-1-94)
- 1146. Special Fuels.** All fuel suitable as fuel for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for

the operation or propulsion of motor vehicles. (3-29-10)

1157. Stack. Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)

1168. Stage 1 Vapor Collection. Used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Two (2) types of Stage 1 systems exist: coaxial and dual point. (3-29-10)

a. Coaxial System. A Stage 1 vapor collection system that requires only one (1) tank opening. The tank opening is usually four (4) inches in diameter with a three (3) inch diameter product fill tube inserted into the opening. Fuel flows through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. (3-29-10)

b. Dual Point System. A Stage 1 vapor collection system that consists of two (2) separate tank openings, one (1) for delivery of the product and the other for the recovery of vapors. (3-29-10)

1179. Standard Conditions. Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. (4-5-00)

11820. Startup. The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

11921. Stationary Source. Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. (4-11-06)

1202. Tier I Source. Any of the following: (5-1-94)

a. Any source located at any major facility as defined in Section 008; (4-5-00)

b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; (4-11-06)

c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (4-11-06)

d. Any Phase II source; and (5-1-94)

e. Any source in a source category designated by the Department. (5-1-94)

1243. Total Suspended Particulates. Particulate matter as measured by the method described in 40 CFR 50 Appendix B. (4-5-00)

1244. Toxic Air Pollutant. An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)

1235. Toxic Air Pollutant Carcinogenic Increments. Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m³) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)

1246. Toxic Air Pollutant Non-carcinogenic Increments. Those ambient air quality increments based

on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)

1257. Toxic Substance. Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)

1268. Trade Waste. Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)

1279. TRS (Total Reduced Sulfur). Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)

12830. Unclassifiable Area. An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

12931. Uncontrolled Emission. An emission which has not been treated by control equipment. (5-1-94)

1302. Upset. An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. (4-5-00)

1343. Visibility Impairment. Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions. (3-30-07)

1324. Visibility in Any Mandatory Class I Federal Area. Includes any integral vista associated with that area. (3-30-07)

1335. Wigwam Burner. Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

1346. Wood Stove Curtailment Advisory. An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

157. TEST METHODS AND PROCEDURES.

The purpose of this Section is to establish procedures and requirements for test methods and results. Unless otherwise specified in these rules, permit, order, consent decree, or prior written approval by the Department: (4-5-00)

01. General Requirements. If a source test is performed to satisfy a performance test requirement or a compliance test requirement imposed by state or federal regulation, rule, permit, order or consent decree, then the test methods and procedures shall be conducted in accordance with the requirements of Section 157. (4-5-00)

a. Prior to conducting any emission test, owners or operators are strongly encouraged to submit to the Department in writing, at least thirty (30) days in advance, the following for approval: (4-5-00)

i. The type of method to be used; (4-5-00)

ii. Any extenuating or unusual circumstances regarding the proposed test; and (4-5-00)

iii. The proposed schedule for conducting and reporting the test. (4-5-00)

b. Without prior Department approval, any alternative testing is conducted solely at the owner's or operator's risk. If the owner or operator fails to obtain prior written approval by the Department for any testing

deviations, the Department may determine the test does not satisfy the testing requirements. (4-5-00)

02. Test Requirements. Tests shall be conducted in accordance with the following requirements. (4-5-00)

a. The test must be conducted under operational conditions specified in the applicable state or federal regulation, rule, permit, order, consent decree or by Department approval. If the operational requirements are not specified, the source should test at worst-case normal operating conditions. Worst-case normal conditions are those conditions of fuel type, and moisture, process material makeup and moisture and process procedures which are changeable or which could reasonably be expected to be encountered during the operation of the facility and which would result in the highest pollutant emissions from the facility. (4-5-00)

b. The Department may impose operational limitations or require additional testing in a permit, order or consent decree if the test is conducted under conditions other than worst-case normal. (4-5-00)

c. The Department will accept the methods approved for the applicable pollutants, source type and operating conditions found in 40 CFR Parts 51, 60, 61, and 63 in determining the appropriate test method for an emission limit where one is not otherwise specified. (4-5-00)

d. The following requirements apply to owners or operators requesting minor changes in the test method. As stated in Subsection 157.01 above, without prior Department approval, other changes may result in rejection of the test results by the Department. (4-5-00)

i. For federal emission standards codified at 40 CFR Parts 60, 61, and 63, the Department will accept those minor changes which have received written approval of the U.S. EPA Administrator so long as the Department determines they are appropriate for the specific application. (4-5-00)

ii. For all other emission standards in these rules or for permit requirements, the Department will accept those minor changes that the Department determines are appropriate for the specific application. (4-5-00)

e. An owner or operator proposing to use an alternative test method not considered a minor change in Subsection 157.02.d. above, must: (4-5-00)

i. Demonstrate to the Department by comparative testing or sufficient analysis, that the alternative method is comparable and equivalent to the designated test method. (4-5-00)

ii. Submit the request for approval to use an alternative test method to the Department at least thirty (30) days in advance of a scheduled test. (4-5-00)

iii. Obtain, and submit to the Department, EPA approval for use of the alternative test method for emission standards in these rules (except for state only toxic air pollutant standards) or for federal emission standards codified at 40 CFR Parts 60, 61, and 63. (4-5-00)

iv. Obtain verification that any prior approval of an alternative test method by the Department continues to be acceptable. Alternative methods may cease to be acceptable if new or different information indicates that the alternative test method is less accurate, less reliable, or not comparable with any current state or federal regulation, rule order, permit, or consent decree. (4-5-00)

f. Prior approval by the Department may not constitute Department approval for subsequent tests if new or different information indicates that a previously Department approved test method is less accurate, less reliable or not comparable with any current state or federal regulation, rule, order, permit or consent decree. (4-5-00)

03. Observation of Tests by Department Staff. The owner or operator shall provide notice of intent to test to the Department at least fifteen (15) days prior to the scheduled test, or shorter time period as provided in a permit, order, consent decree or by Department approval. The Department may, at its option, have an observer present at any emissions tests conducted on a source. (4-5-00)

04. Reporting Requirements. If the source test is performed to satisfy a performance test requirement imposed by state or federal regulation, rule, permit, order, or consent decree, a written report shall be submitted to the Department within ~~thirty (30)~~ sixty (60) days of the completion of the test. The written report shall: ~~(4-5-00)~~()

a. Meet the format and content requirements specified by the Department in any applicable rule, regulation, guidance, permit, order, or consent decree. Any deviations from the format and contents specified require prior written approval from the Department. Failure to obtain such approval may result in the rejection of the test results. (4-5-00)

b. Include all data required to be noted or recorded in any referenced test method. (4-5-00)

05. Test Results Review Criteria. The Department will make every effort to review test results within a reasonable time. The Department may reject tests as invalid for: (4-5-00)

a. Failure to adhere to the approved/required method; (4-5-00)

b. Using a method inappropriate for the source type or operating conditions; (4-5-00)

c. An incomplete written report; (4-5-00)

d. Computational or data entry errors; (4-5-00)

e. Clearly unreasonable results; (4-5-00)

f. Failure to comply with the certification requirements of Section 123 of these rules; or (4-5-00)

g. Failure of the source to conform to operational requirements in orders, permits, or consent decrees at the time of the test. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

176. FACILITY EMISSIONS CAP.

01. Optional Facility Emissions Cap. An owner or operator of a facility may request a FEC to establish an enforceable facility-wide emission limitation. (4-11-06)

02. Applicability. (4-11-06)

a. The owner or operator of any facility, which is not a major facility as defined in Sections 204 or 205, may apply to the Department for a permit to establish a FEC. (4-11-06)

b. FECs are available ~~to~~ for new ~~sources~~, and existing facilities that are not major as defined in Section 204 or 205 or existing ~~sources~~ facilities undergoing a modification, ~~and existing sources that request a FEC that does not make the facility a major facility as defined in Section 204 or 205.~~ (4-11-06)()

c. Facilities that become major facilities as defined in Section 204 or 205 are no longer eligible for a FEC under Section 176. ()

03. Definitions. For the purposes of Sections 175 through 181, the following terms shall be defined as below. (4-11-06)

a. Baseline actual emissions. As defined in Section 007. (4-11-06)

b. Design concentration. The ambient concentration used in establishing the FEC. (4-11-06)

c. Facility emissions cap (FEC). A facility-wide emission limitation expressed in tons per year, for any criteria pollutant or hazardous air pollutant established in accordance with Sections 176 through 181. A FEC is calculated using baseline actual emissions plus an operational variability component and a growth component. A FEC, which is defined in tons per year on a twelve (12) month rolling basis, must be set below major facility thresholds as defined in Sections 204 and 205. (4-11-06)()

d. FEC pollutant. The pollutant for which a FEC is established. (4-11-06)

e. Growth component. The level of emissions requested by the applicant and approved by the Department to allow for potential future business growth or facility changes that may increase emissions above baseline actual emissions plus the operational variability component. (4-11-06)

f. Operational variability component. The level of emissions up to the significant emission rate (SER) minus one (1) ton per year but no more than the facility's potential to emit (PTE). If the proposed FEC pollutant does not have a SER listed in Section 006 or has a SER less than or equal to ten (10) tons per year, the operational variability component is the level of emissions requested by the applicant and approved by the Department. The operational variability component cannot be more than the facility's PTE. (4-11-06)()

177. APPLICATION PROCEDURES.

In addition to the information required pursuant to Sections 202 or 402, whichever is applicable, applications requesting a FEC must include the information required under Sections 176 through 181 and Subsections 177.01 through 177.03. (4-11-06)

01. Estimates of Emissions. A proposed FEC for each pollutant requested by the facility, including the basis for calculating the FEC. (4-11-06)

02. Estimates of Ambient Concentrations. (4-11-06)

a. Estimates of ambient concentrations will be ~~based on the most recent applicable and technically appropriate methods and most representative data available to the Department unless otherwise approved by the Department~~ determined as described in Subsection 202.02. (4-11-06)()

b. Estimates of ambient concentrations may include projections of alternative future changes within the proposed FEC. (4-11-06)

c. For a new, existing, or modified facility, a demonstration that for each FEC pollutant, the FEC will not cause or significantly contribute to a violation of any ambient air quality standard. (4-11-06)

d. For renewal of terms and conditions establishing a FEC, it is presumed that the previous permitting analysis is satisfactory, unless the Department determines otherwise. (4-11-06)

03. Monitoring and Recordkeeping. The application must include proposed means for the facility to determine facility emissions on a rolling twelve (12) month consecutive basis. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

181. NOTICE AND RECORD-KEEPING OF ESTIMATES OF AMBIENT CONCENTRATIONS.

Section 181 authorizes facility changes that comply with the terms and conditions establishing the FEC, but that are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC. No permit revision shall be required for facility changes implemented in accordance with Section 181. (4-11-06)

01. Notice. For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. (4-11-06)

a. In the event that the facility change would result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, but does not cause or significantly contribute to a violation to any ambient air quality standard, the permittee shall provide notice to the Department in accordance with Subsection 181.01.b. (4-11-06)

b. Notice procedures. The permittee may make a facility change under Section 181 if the permittee provides written notification to the Department so that the notification is received at least seven (7) days in advance of the proposed change or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. For each such change, the written notification shall: (4-11-06)

- i. Describe the proposed change; (4-11-06)
- ii. Describe and quantify expected emissions; and (4-11-06)
- iii. Provide the estimated ambient concentration analysis. (4-11-06)

02. Recordkeeping. For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. In the event the facility change would not result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall record and maintain documentation on-site of the review. (4-11-06)

03. Estimates of Ambient Concentrations. Estimates of ambient concentrations shall be *consistent determined during the term of this permit using the same model and model parameters as used* with the estimate of ambient concentration analysis approved for the permit establishing the FEC *unless the Department determines that other technical methods are appropriate*. The permittee shall include any changes to the facility that are not included in the originally approved estimate of ambient concentration analysis. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

202. APPLICATION PROCEDURES.

Application for a permit to construct must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official in accordance with Section 123 and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 228. (7-1-02)

01. Required Information. Depending upon the proposed size and location of the new or modified stationary source or facility, the application for a permit to construct shall include all of the information required by one or more of the following provisions: (5-1-94)

- a.** For any new or modified stationary source or facility: (5-1-94)
 - i. Site information, plans, descriptions, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. (5-1-94)
 - ii. A schedule for construction of the stationary source, facility, or modification. (5-1-94)
- b.** For any new major facility or major modification in a nonattainment area which would be major for the nonattainment regulated air pollutant(s): (4-5-00)
 - i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the lowest achievable

emission rate would be applied. (5-1-94)

ii. A description of the emission offsets proposed for the new major facility or major modification, including information on the stationary sources, mobile sources, or facilities providing the offsets, emission estimates, and other information necessary to determine that a net air quality benefit would result. (4-5-00)

iii. Certification that all other facilities in Idaho, owned or operated by (or under common ownership of) the proposed new major facility or major modification, are in compliance with all local, state or federal requirements or are on a schedule for compliance with such. (5-1-94)

iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed major facility or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. (5-1-94)

v. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would impact (including the monitoring of visibility in any Class I area near the new major facility or major modification, if requested by the Department). (4-6-05)

c. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. (4-6-05)

i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the best available control technology would be applied. (5-1-94)

ii. An analysis of the effect on air quality by the new major facility or major modification, including meteorological and topographical data necessary to estimate such effects. (5-1-94)

iii. An analysis of the effect on air quality projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new major facility or major modification. (5-1-94)

iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the new major facility or major modification would affect. (5-1-94)

v. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new major facility or major modification and general commercial, residential, industrial, and other growth associated with establishment of the new major facility or major modification. The owner or operator need not provide an analysis of the impact on vegetation or soils having no significant commercial or recreational value. (5-1-94)

vi. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would affect. (5-1-94)

vii. An analysis of the existing ambient air quality in the area that the new major facility or major modification would affect for each regulated air pollutant that a new major facility would emit in significant amounts or for which a major modification would result in a significant net emissions increase. (4-5-00)

viii. Ambient analyses as specified in Subsections 202.01c.vii., 202.01c.ix., 202.01c.x., and 202.01c.xii., may not be required if the projected increases in ambient concentrations or existing ambient concentrations of a particular regulated air pollutant in any area that the new major facility or major modification would affect are less than the **following amounts listed under 40 CFR 52.21(i)(5)(i)**, or the regulated air pollutant is not listed therein: ~~carbon monoxide—five hundred and seventy-five (575) micrograms per cubic meter, eight (8) hour average; nitrogen dioxide—fourteen (14) micrograms per cubic meter, annual average; PM-10—ten (10) micrograms per cubic meter, twenty-four (24) hour average; sulfur dioxide—thirteen (13) micrograms per cubic meter, twenty-four (24) hour average; ozone—any net increase of one hundred (100) tons per year or more of volatile organic~~

~~compounds, as a measure of ozone; lead— one-tenth (0.1) of a microgram per cubic meter, calendar quarterly average; mercury— twenty five hundredths (0.25) of a microgram per cubic meter, twenty four (24) hour average; beryllium— one thousandth (0.001) of a microgram per cubic meter, twenty four (24) hour average; fluorides— twenty five hundredths (0.25) of a microgram per cubic meter, twenty four (24) hour average; vinyl chloride— fifteen (15) micrograms per cubic meter, twenty four (24) hour average; hydrogen sulfide— two tenths (0.2) of a microgram per cubic meter, one (1) hour average.~~ (4-5-00)()

ix. For any regulated air pollutant which has an ambient air quality standard, the analysis shall include continuous air monitoring data, gathered over the year preceding the submittal of the application, unless the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not less than four (4) months, which is adequate for determining whether the emissions of that regulated air pollutant would cause or contribute to a violation of the ambient air quality standard or any prevention of significant deterioration (PSD) increment. (4-5-00)

x. For any regulated air pollutant which does not have an ambient air quality standard, the analysis shall contain such air quality monitoring data that the Department determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect. (4-5-00)

xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. (5-1-94)

xii. Operation of monitoring stations shall meet the requirements of Appendix B to 40 CFR Part 58 or such other requirements as extensive as those set forth in Appendix B as may be approved by the Department. (5-1-94)

02. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models). (4-5-00)

a. Where an air quality model specified in the “Guideline on Air Quality Models,” is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 209.01.c.; provided that modifications and substitutions of models used for toxic air pollutants will be reviewed by the Department. (4-5-00)

b. Methods like those outlined in the U.S. Environmental Protection Agency's “Interim Procedures for Evaluating Air Quality Models (Revised)” (September 1984) should be used to determine the comparability of air quality models. (5-1-94)

03. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 200 through 225 shall be furnished upon request. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION.

01. Baseline Date(s). (5-1-94)

a. Major Source Baseline Date. ~~January 6, 1975 in the case of particulate matter and sulfur dioxide; February 8, 1988 in the case of nitrogen dioxide.~~ (5-1-94)()

i. In the case of PM₁₀ and sulfur dioxide, January 6, 1975; ()

ii. In the case of nitrogen dioxide, February 8, 1988, and ()

iii. In the case of PM_{2.5}, October 10, 2010. ()

b. Minor Source Baseline Date. The earliest date after the trigger date on which a major stationary source or a major modification subject to prevention of significant deterioration (PSD) submits a complete application. The trigger date is: (4-5-00)

i. In the case of ~~particulate matter~~ PM₁₀ and sulfur dioxide, August 7, 1977; and (4-5-00)()

ii. In the case of nitrogen dioxide, February 8, 1988. (4-5-00)

iii. In the case of PM_{2.5}, October 20, 2011. ()

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if: (4-5-00)

i. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d) of the Clean Air Act for the pollutant on the date of its complete prevention of significant deterioration (PSD) application; and (4-5-00)

ii. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. (4-5-00)

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions. (4-5-00)

02. **Baseline Area.** Any intrastate area designated as attainment or unclassifiable under 42 U.S.C. Section 7407(d), in which the major facility or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 µg/m³ (annual average) for SO₂, NO₂, or PM₁₀; or equal or greater than 0.3 µg/m³ (annual average) for PM_{2.5} equal to or greater than a one (1) microgram per cubic meter (annual average) of the regulated air pollutant for which the minor source baseline date is established. (4-5-00)()

03. **Baseline Concentration.** The ambient concentration for a particular regulated air pollutant which exists in the applicable baseline area on the applicable minor source baseline date. (4-5-00)

a. The baseline concentration shall represent: (5-1-94)

i. The actual emissions from sources in existence on the applicable minor source baseline date; and (5-1-94)

ii. The allowable emissions of major facilities and major modifications which commenced construction before the applicable major source baseline date, but were not in operation by the applicable minor source baseline date. (5-1-94)

b. The baseline concentration shall not include the actual emissions of new major facilities and major modifications which commenced construction on or after the applicable major source baseline date. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

725. RULES FOR SULFUR CONTENT OF FUELS.

This section applies to fuel burning sources in Idaho. Its purpose is to prevent excessive ground level concentrations of sulfur dioxide. The reference test method for measuring fuel sulfur content shall be ASTM method, D129-95

Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157.

(5-8-09)

01. Definitions. (5-8-09)

a. ASTM. American Society for Testing and Materials. (5-1-94)

b. Distillate Fuel Oil. Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. (5-1-94)

c. Residual Fuel Oil. Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. (5-1-94)

02. Residual Fuel Oils. No person shall sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight. (5-8-09)

03. Distillate Fuel Oil. No person shall sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: (5-8-09)

a. ASTM Grade 1. ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. (5-8-09)

b. ASTM Grade 2. ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. (5-8-09)

04. Coal. No person shall sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. (5-8-09)

05. Exemptions Alternative. The Department may approve in a permit issued in accordance with these rules an exemption alternative fuel sulfur content from the requirements of Subsections 725.01 through 725.04 if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions (based on a one (1) hour averaging period) are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

794. PERMIT REQUIREMENTS.

No owner or operator may commence construction, reconstruction, modification or operation of any nonmetallic mineral processing plant regardless of whether or not the source is an affected facility pursuant to 40 CFR 60.670(e) without first obtaining a permit or complying with Sections 795 through 799. The owner or operator shall comply with the permitting requirements of Subsection 794.0~~2~~² or Subsection 794.0~~2~~³ and the applicable portions of Subsection 794.0~~3~~⁴ and/or Subsection 794.0~~4~~⁵. (4-4-13)()

01. Permit By Rule Eligibility. New major facilities or major modifications subject to Sections 204 and 205 are not eligible for a Permit by Rule. ()

0~~2~~. **Permit by Rule.** Owners and operators of nonmetallic mineral processing plants that meet all of the applicable requirements set forth in Sections 795 through 799 shall be deemed to have a permit by rule (PBR) and shall not be required to obtain a permit to construct under Sections 200 through 228. (3-15-02)

0~~2~~3. **Permit to Construct.** Owners and operators of nonmetallic mineral processing plants that do not meet all of the requirements set forth in Sections 795 through 799, or that operate or intend to operate a nonmetallic mineral processing plant at a single site of operations for more than twelve (12) consecutive months, or that choose to construct and operate under specific permit requirements rather than the provisions of the permit by rule shall obtain a permit to construct pursuant to Sections 200 through 228. An existing permit to construct shall be considered valid until the permit is modified, incorporated into a Tier II operating permit, or terminated by the Department. Existing

permits to construct may be terminated by the Department by registering the source under the permit by rule provisions in accordance with Section 797 after June 15, 2001. (3-15-02)

034. Tier I Operating Permits. Owners and operators of nonmetallic mineral processing plants that are affected facilities subject to a requirement of the New Source Performance Standards (NSPS) in 40 CFR 60 are Tier I sources as defined in Section 006. Tier I sources must comply with the applicable permitting requirements of Sections 300 through 399. (4-11-06)

045. Tier II Operating Permits. Owners and operators of nonmetallic mineral processing plants that are required by the Department or choose to obtain a Tier II operating permit pursuant to Sections 400 through 410 shall operate in accordance with the specific provisions of the Tier II operating permit until such time as the operating permit is terminated in writing by the Department. The Department may require owners and operators of nonmetallic mineral processing plants to obtain a Tier II operating permit whenever the Department determines that: (3-15-02)

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or (3-15-02)

b. Specific emissions standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. (3-15-02)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1401

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

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 19, 2014. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking docket has been initiated to update DEQ's Mixing Zone Policy in the Water Quality Standards to take into account modern tools for evaluating mixing, lessons learned from years of implementation, and to provide greater clarity for DEQ and the regulated community.

A mixing zone is defined as “an area or volume of the receiving water surrounding or adjacent to a point source discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards” (IDAPA 58.01.02.010.61). Mixing zones are granted to NPDES dischargers to calculate the “reasonable potential to exceed” (RPTE) water quality criteria, which serve as the basis for effluent limits in discharge permits. If a mixing zone is not granted by DEQ, the discharger receives end-of-pipe limits. End-of-pipe limits are much more stringent and typically require facilities to undertake technology upgrades, which can be very resource intensive. Mixing zones are used as a tool to help meet the goals of the Clean Water Act (CWA) while also giving the regulated community reprieve from meeting more stringent, and often very costly, effluent limits. Use of mixing zones is recognition that usually it is not necessary to meet ambient water quality everywhere in the receiving water in order to support beneficial uses.

DEQ's current Mixing Zone Policy (IDAPA 58.01.02.060) was adopted over 20 years ago (1991) and contains language that is outdated and/or is no longer relevant. Since the inception of DEQ's Mixing Zone Policy in 1991, numerous updates to Idaho's water quality standards have been made. DEQ recognizes that some parts of the current rule need to be revised in order to meet the intent of related policies. DEQ has also determined from working with dischargers that the current mixing zone rule is ambiguous and does not clearly articulate mixing zone requirements.

In recent years, there has been an increasing interest in, and investigation of, the agency's methods for establishing mixing zones. As technology and information availability have expanded and improved, the methods for establishing mixing zones have also changed. Changes to the rule were made to be reflective of current procedures and tools used to appraise the biological, chemical, and physical properties of the receiving water, and the proposed discharge, in order to best establish mixing zones.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any 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.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 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: Not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the April 2014 Idaho Administrative Bulletin, [Vol. 14-4, pages 19 and 20](#), and a preliminary draft rule was made available for public review. Meetings were held on May 1,

June 12, and July 10, 2014. 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, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at www.deq.idaho.gov/58-0102-1401.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

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.

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: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Mary Anne Nelson at Mary.anne.nelson@deq.idaho.gov, (208)373-0173.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 3, 2014.

DATED this 8th day of August, 2014.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1401
(Only those Sections being amended are shown.)

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. Activity. For purposes of antidegradation review, an activity that causes a discharge to a water subject to the jurisdiction of the Clean Water Act. (3-18-11)

02. 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)

03. 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)

04. 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)

05. Assigned Criteria. Criteria associated with beneficial uses from Section 100 of these rules. (3-18-11)

06. 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)

07. Basin Advisory Group. No 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)

08. 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)

09. 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)

10. 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)

11. Bioaccumulative Pollutants. A compound with a bioaccumulation factor of greater than one thousand (1,000) or a bioconcentration factor of greater than three hundred (300). ()

12. 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)

13. Board. The Idaho Board of Environmental Quality. (7-1-93)

14. 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)

145. 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)

156. 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)

167. 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. (3-18-11)

178. 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)

189. 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)

1920. Degradation or Lower Water Quality. “Degradation” or “lower water quality” means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body. (3-29-12)

201. 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)

212. Department. The Idaho Department of Environmental Quality. (7-1-93)

223. Design Flow. The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

234. 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)

245. 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)

256. Desirable Species. Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

267. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

278. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For purposes of antidegradation review, means "discharge" as used in Section 401 of the Clean Water Act. (3-18-11)

289. Dissolved Oxygen (DO). The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

2930. Dissolved Product. Petroleum product constituents found in solution with water. (8-24-94)

301. 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)

312. E. coli (Escherichia coli). A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)

323. Effluent. Any wastewater discharged from a treatment facility. (7-1-93)

334. Effluent Biomonitoring. The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)

345. EPA. The United States Environmental Protection Agency. (7-1-93)

356. 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)

367. Existing Activity or Discharge. An activity or discharge that has been previously authorized or did not previously require authorization. (3-18-11)

378. 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)

389. 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)

3940. Four Day Average. The average of all measurements within a period of ninety-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)

401. 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)

412. 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)

423. General Permit. An NPDES permit issued by the U.S. Environmental Protection Agency authorizing a category of discharges under the federal Clean Water Act or a nationwide or regional permit issued by the U.S. Army Corps of Engineers under the federal Clean Water Act. (3-29-12)

434. Geometric Mean. The geometric mean of “n” quantities is the “nth” root of the product of the quantities. (7-1-93)

445. 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)

456. 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)

467. 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)

478. 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 requiring measures to achieve applicable effluent limits and other permit conditions required by the Clean Water Act. (3-18-11)

489. 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)

4950. 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)

501. 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)

542. 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. (3-18-11)

523. 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)

534. 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)

545. 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)

556. 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)

567. **Loading Capacity.** The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

578. **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)

589. **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 loss, and be operated or maintained to promote water conveyance. (3-30-07)

5960. **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)

601. **Milligrams Per Liter (mg/l).** Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

642. **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)

623. **National Pollutant Discharge Elimination System (NPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

634. **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)

645. **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)

656. **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. An activity or discharge that has previously taken place without need for a license or permit is not a new activity or discharge when first licensed or permitted. (3-18-11)

667. **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)
- 678. 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)
- 689. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)
- 6970. One Day Minimum.** The lowest daily instantaneous value measured. (3-20-97)
- 701. 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)
- 712. 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)
- 723. 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)
- 734. 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 nonpoint source activities 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)
- 745. 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)
- 756. 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. (3-18-11)

767. 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)

778. Petroleum Products. Products derived from petroleum through various refining processes. (7-1-93)

789. 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)

7980. 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)

801. 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)

842. 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)

823. 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)

834. Receiving Waters. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

845. 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)

856. Release. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

867. 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)

878. 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)

889. Sediment. Undissolved inorganic matter. (3-30-07)

890. Seven Day Mean. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

901. 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)

912. 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)

923. 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)

934. Sludge. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

945. 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)

956. State. The state of Idaho. (7-1-93)

967. 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)

978. Suspended Sediment. The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)

989. Suspended Solids. The undissolved organic and inorganic matter suspended in surface water. (3-30-07)

~~99~~**100. 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)

~~101. Thermal Shock.~~ A rapid temperature change that causes aquatic life to become disoriented or more susceptible to predation or disease. ()

~~102. 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)

~~103. 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)

~~104. 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)

~~1035. Treatment.~~ A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

~~1046. Treatment System.~~ Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. (4-11-06)

~~1057. 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)

~~1068. 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)

~~1079. 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)

~~1108. 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)

~~10911. Water Body Unit.~~ Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

~~1102. 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)

1143. 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)

1144. 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)

1145. 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)

1146. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

1157. 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)

1168. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

1179. 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~~ shall be no larger than necessary and assure shall be sized to prevent lethality to swimming or drifting organisms by ensuring that drifting organisms are not exposed to acute concentrations exceeding acute criteria 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)

060. MIXING ZONE POLICY.

~~01. **Mixing Zones for Point Source Wastewater Discharges.** After a biological, chemical, and physical appraisal of the receiving water and the proposed discharge and after consultation with the person(s) responsible for the wastewater discharge, the Department will determine the applicability of a mixing zone and, if applicable, its size, configuration, and location. In defining a mixing zone, the Department will consider the following principles:~~ (7-1-93)

~~a. The mixing zone may receive wastewater through a submerged pipe, conduit or diffuser. (7-1-93)~~

~~b. The mixing zone is to be located so it does not cause unreasonable interference with or danger to existing beneficial uses. (7-1-93)~~

~~e. When two (2) or more individual mixing zones are needed for a single activity, the sum of the areas and volumes of the several mixing zones is not to exceed the area and volume which would be allowed for a single zone. (7-1-93)~~

~~d. Multiple mixing zones can be established for a single discharge, each being specific for one (1) or more pollutants contained within the discharged wastewater. (7-1-93)~~

~~e. Mixing zones in flowing receiving waters are to be limited to the following: (7-1-93)~~

~~i. The cumulative width of adjacent mixing zones when measured across the receiving water is not to exceed fifty percent (50%) of the total width of the receiving water at that point. (7-1-93)~~

~~ii. The width of a mixing zone is not to exceed twenty five percent (25%) of the stream width or three hundred (300) meters plus the horizontal length of the diffuser as measured perpendicularly to the stream flow, whichever is less. (7-1-93)~~

~~iii. The mixing zone is to be no closer to the ten (10) year, seven (7) day low flow shoreline than fifteen percent (15%) of the stream width. (7-1-93)~~

~~iv. The mixing zone is not to include more than twenty five percent (25%) of the volume of the stream flow. (7-1-93)~~

~~f. Mixing zones in reservoirs and lakes are to be limited to the following: (7-1-93)~~

~~i. The total horizontal area allocated to mixing zones is not to exceed ten percent (10%) of the surface area of the lake. (7-1-93)~~

~~ii. Adjacent mixing zones are to be no closer than the greatest horizontal dimension of any of the individual zones. (7-1-93)~~

~~g. The water quality within a mixing zone may exceed chronic water quality criteria so long as chronic water quality criteria are met at the boundary of any approved mixing zone. Acute water quality criteria may be exceeded within a zone of initial dilution inside the mixing zone if approved by the Department. (3-23-98)~~

~~h. Concentrations of hazardous materials within the mixing zone must not exceed the ninety six (96) hour LC50 for biota significant to the receiving water's aquatic community. (7-1-93)~~

~~02. **Mixing Zones for Outstanding Resource Waters.** An ORW mixing zone will be downstream from the discharge of a tributary or segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities 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 these rules. (8-24-94)~~

01. Mixing Zones for Point Source Discharges. A mixing zone, including its size, configuration and location, must be authorized by the Department each time a permit is issued or renewed and is valid until permit renewal or modification. Such an authorization is required before a mixing zone can be used to determine the need for, or level of, effluent limits for a particular pollutant. Narrative criteria in Subsection 200.05 apply within the mixing zone. ()

a. Mixing zones shall not be authorized for a given pollutant when the receiving water does not meet water quality criteria for that pollutant; provided, however, the Department may authorize a mixing zone when the permitted discharge is consistent with an approved TMDL allocation or other applicable plans or analyses (such as 4b implementation plans, watershed loading analyses, or facility-specific water quality analyses) that demonstrate that authorizing a mixing zone is consistent with achieving compliance with water quality standards in the receiving water. ()

b. Water quality within an authorized mixing zone is allowed to exceed chronic water quality criteria for those parameters approved by the Department. If approved by the Department, acute water quality criteria for one (1) or more parameters may be exceeded within the zone of initial dilution inside the mixing zone. All water quality criteria must be met at the boundary of any mixing zone under its design conditions. ()

c. The size of mixing zone(s) and the concentration of pollutant(s) present shall be evaluated based on the permitted design flow. The Department shall not authorize a mixing zone that is determined to be larger than is necessary. ()

d. Mixing zones, individually or in combination with other mixing zones, shall not cause unreasonable interference with, or danger to, beneficial uses. Unreasonable interference with, or danger to, beneficial uses includes, but is not limited to, the following: ()

i. Blocking or impeding passage to any life stage of fish or other aquatic life, preventing successful spawning, egg incubation or rearing, or causing injury to attached aquatic life. ()

ii. Heat in the discharge that causes thermal shock, lethality, or loss of cold water refugia. ()

iii. Bioaccumulation of pollutants (as defined in Section 010) resulting in tissue levels in aquatic organisms higher than the applicable water column criteria would predict. ()

iv. Lethality to aquatic life passing through the mixing zone. ()

v. Concentrations of pollutants that exceed Maximum Contaminant Levels at drinking water intake structures. ()

vi. Conditions which impede or prohibit recreation in or on the water body. Mixing zones shall not be authorized for E. coli. ()

e. Multiple nested mixing zones may be established for a single point of discharge, each being specific for one (1) or more pollutants contained within the discharge. ()

f. Multiple mixing zones can be established for a single activity with multiple points of discharge. When these individual mixing zones overlap or merge, their combined area and volume shall not exceed that which would be allowed if there was a single point of discharge. When these individual mixing zones do not overlap or merge, they may be authorized as individual mixing zones. ()

g. Adjacent mixing zones of independent activities shall not overlap. ()

h. Mixing zones shall meet the following restrictions; provided, however, that the Department may authorize mixing zones that vary from the restrictions under the circumstances set forth in Subsection 060.01.i. below: ()

i. For flowing waters: ()

(1) The width of a mixing zone is not to exceed twenty-five percent (25%) of the stream width; and ()

(2) The mixing zone shall not include more than twenty-five percent (25%) of the low flow design discharge conditions as set forth in Subsection 210.03.b. of these rules. ()

ii. For all new discharges to nonflowing waters authorized after July 1, 2015: ()

(1) The size of the mixing zone is not to exceed five percent (5%) of the total open surface area of the water body or one hundred (100) meters from the point of discharge, whichever is smaller; ()

(2) Shore-hugging plumes are not allowed; and ()

(3) Diffusers shall be used. ()

iii. Lakes and reservoirs with a mean detention time of fifteen (15) days or greater shall be considered nonflowing waters for this purpose. Detention time will be calculated as the mean annual storage volume divided by the mean annual flow rate out of the reservoir for the same time period. ()

i. The Department may authorize a mixing zone that varies from the limits in Subsection 060.01.h. if it is established that: ()

i. A smaller mixing zone is needed to avoid an unreasonable interference with, or danger to, beneficial uses as described in Subsection 060.01.d., and the mixing zone meets the other requirements set forth in Section 060; or ()

ii. A larger mixing zone is needed by the discharger and does not cause an unreasonable interference with, or danger to, beneficial uses as described in Subsection 060.01.d., and the mixing zone meets the other requirements set forth in Section 060. The discharger shall provide to the Department an analysis that demonstrates a larger mixing zone is needed given siting, technological, and managerial options. ()

i. The following elements shall be considered when designing an outfall: ()

i. Encourage rapid mixing to the extent possible. This may be done through careful location and design of the outfall; and ()

ii. Avoid shore-hugging plumes in those water bodies where the littoral zone is a major supply of food and cover for migrating fish and other aquatic life or where recreational activities are impacted by the plume. ()

02. Points of Compliance as Alternatives to Mixing Zones. Specification of mixing zones for some 404 dredge and fill activities, stormwater, and nonpoint source discharges may not be practicable due to the generally intermittent and diffuse nature. Rather, the Department may establish points for monitoring compliance with ambient water quality criteria. These alternatives to a mixing zone are still subject to requirements outlined in Subsection 060.01.d. ()

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.03 - PERSI CONTRIBUTION RULES

DOCKET NO. 59-0103-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective October 15, 2013, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, pages 119 through 122](#).

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

There is no negative fiscal impact to the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, PERSI, (208) 287-9271.

DATED this 16th day of July, 2014.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
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IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - PERSI RETIREMENT RULES

DOCKET NO. 59-0106-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective May 20, 2014, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code., Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 137 and 138](#).

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:

Any fiscal impact is considered insignificant. The potential number of employees who could fall into the amended rule is few and not all those will make the election provided.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, (208) 287-9271.

DATED this 25th day of July, 2014.

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IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.02.01 - RULES FOR THE JUDGES' RETIREMENT FUND

DOCKET NO. 59-0201-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2014, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 1-2012, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 139 through 154](#).

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:

These rules include an increased contribution rate for the contributions required by the employer. The increased employer contribution rate will reflect an estimated total net increase of \$2,851,900, of which approximately \$2.0 million is anticipated to be offset by civil filing fees to be redirected from the Judges' Retirement Fund to the General Fund, resulting in an estimated net increase of \$851,900 (2014 HB 636).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfooy, (208) 287-9271.

DATED this 25th day of July, 2014.

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is September 24, 2014 unless otherwise noted.
Public hearing request deadline is September 17, 2014 unless otherwise noted.
(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

02-0214-1403, Rules for Weights and Measures. Deletes the requirement for the proration of device license fees.

02-0405-1401, Rules of the Department of Agriculture Governing Manufacture Grade Milk. Updates and expands the documents incorporated by reference; removes obsolete provisions and those provided for in other department rules; establishes quality standards and testing for butter and whey butter; adds required sections and reformats and adds to definition section.

02-0419-1401, Rules Governing Domestic Cervidae. (Temp & Prop) Defines "harvest"; establishes new fee schedule for producers; increases frequency of facility inspections; establishes new chronic wasting disease surveillance standards for cervids that die or are harvested on cervidae facilities and describes how an administrator implements surveillance standards at facilities with high exposure risk.

02.04.21 - Rules Governing the Importation of Animals

02-0421-1401, Requires a deworming treatment for the meningeal worm (*P. tenuis*) prior to importing domestic cervids into Idaho; an accredited veterinarian signing a certificate of veterinary inspection (CVI) for a shipment of domestic cervidae into Idaho must provide a statement, on the CVI, verifying that none of the cervids have been diagnosed or exposed to *P. tenuis*; removes the restriction that prohibits importing domestic cervidae from regions endemic with *P. tenuis*, but now prohibits importing cervids known to be infected with *P. tenuis*.

02-0421-1402, Removes requirement that prohibits importing livestock that originate from within a 10-mile radius of a confirmed case of vesicular stomatitis (VS); allows dairy cattle breeds to be granted a tuberculosis testing exemption when consigned directly to feedlots approved for finish feeding.

02-0424-1401, Rules Governing Tuberculosis. Establishes criteria for cattle of unknown tuberculosis testing status to be fed to slaughter in feedlots approved for finish feeding.

02-0428-1401, Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots. All livestock leaving an approved livestock trader lot must be inspected by an accredited veterinarian and an official certificate of veterinary inspection (CVI) must be issued prior to release.

02-0801-1401, Sheep and Goat Rules of the Idaho Sheep and Goat Health Board. Per statute assesses eighty cents (\$.80) per head on goats and increases wool from eight (\$.08) to ten cents (\$.10) per pound; clarifies the age at which dairy goats must be tested for brucellosis prior to entering Idaho.

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS
PO Box 83720, Boise, ID 83720-0285

05-0101-1401, Rules for Contract Providers. Chapter repeal.

05-0105-1401, Rule for Reintegration Providers. Chapter repeal.

05-0201-1401, Rules for Residential Treatment Providers. Clarifies and consolidates requirements applicable to all residential treatment providers who contract with IDJC that coordinate needed treatment services identified in individual service implementation plans for juvenile offenders and eliminates duplication in other rule chapters; includes additional requirements relating to DOJ PREA Standards.

05-0202-1401, Rules for Staff Secure Providers. Establishes standards and requirements for providers of intensive supervision to juvenile offenders and includes architecturally secure residential facilities.

05-0203-1401, Rules for Reintegration Providers. Establishes standards and requirements for providing independent living and reintegration skills to a juvenile offender.

05-0204-1401, Rules for Supported Living Providers. Establishes standards and requirements for providers of supported living that coordinate needed treatment services identified in individual service implementation plans for juvenile offenders.

IDAPA 09 - DEPARTMENT OF LABOR
317 W. Main Street, Boise, ID 83735

09-0104-1401, Unemployment Insurance Benefit Fraud and Overpayment Rules. Implements a legal standard in unemployment insurance benefit fraud cases by clarifying that to “willfully” make a false statement or to “willfully” fail to report a material fact in order to obtain unemployment insurance benefits only requires a purpose or willingness to commit the act or make the omission.

09-0106-1401, Rules of the Appeals Bureau. Requires appeals to be filed by mail or electronically transmitted directly to the Department's Appeals Bureau to avoid delays or misdirected filings.

09-0130-1401, Unemployment Insurance Benefits Administration Rules. Deletes references to mailed and in-person claims which are no longer used by the Department.

IDAPA 11 - IDAHO STATE POLICE - IDAHO STATE RACING COMMISSION
700 S Stratford Dr., Meridian, ID 83642

11-0402-1401, Rules Governing Simulcasting. (Temp & Prop) Stipulates that a licensee who applies to conduct historic racing will not be granted a license unless licensee holds a current simulcast license and has conducted simulcasting of live racing for at least 1 year.

IDAPA 15 - OFFICE OF THE GOVERNOR - OFFICE ON AGING
PO Box 83720, Boise, ID 83720-0012

15-0202-1401, Vocational Rehabilitation Services. Increases the cost coverages available under the VR Program Payment Policy to cover increased costs for rehabilitation services.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036

16-0208-1401, Vital Statistics Rules. Increases fees for certified copies, searches, verifications, corrections, amended certificates, establishing new birth certificates for adoption, delayed certificates, and related services to cover operational costs.

16-0210-1401, Idaho Reportable Diseases. Aligns rule language with current taxonomy and public health practices; adds Echinococcosis to the list of reportable diseases; clarifies reportable disease restrictions at facilities, daycares, food establishments, and other areas of concern when the public health may be at risk.

16.02.27, Idaho Radiation Control Rules
16-0227-1401, Chapter repeal.

16-0227-1402, Chapter rewrite establishes x-ray licensure requirements and fees, including specification of standard licensure cycles; incorporates by reference current standards and federal regulations to ensure current terminology, best practices, and safety standards are used.

16.03.11 - Rules Governing Intermediate Care Facilities for People with Intellectual Disabilities (ICF/ID)

***16-0311-1401**, (*PH) Chapter repeal

***16-0311-1402**, (*PH) Chapter rewrite updates licensing and enforcement provisions; incorporates by reference several documents needed for health and safety standards and for best practice, active treatment, and intervention strategies for individuals with intellectual disabilities and related conditions.

16-0501-1401, Use and Disclosure of Department Records. Allows Department to provide a “fact of death” verification to other state agencies that are in need of verifying an individual’s death.

16.06.01 - Child and Family Services

16-0601-1401, Allows eligible children in foster care to attend driver's training and obtain a permit and driver's license with written approval from the Department; provides that the Department can pay the costs for the training, permit, and license for an eligible foster child and to reimburse foster parents the cost of car insurance for the foster child.

16-0601-1402 (VOID - Pulled and Not Published)

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0043

18-0144-1401, Schedule of Fees, Licenses, and Miscellaneous Charges. Clarifies that the registration fee is paid by all self-funded plans registering with the department; requires that public adjusters pay the same licensing and examination fees as producers and adjusters and revises the fee for examinations to an amount not to exceed \$80.

18-0146-1401, Recognition of New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities and Pure Endowment Contracts. (Temp & Prop) Adds the NAIC 2012 individual annuity reserve table (2012 IAR), consistent with NAIC Model Regulation 821, for annuities issued January 1, 2015, and later. There is a nationwide effort to have the table apply effective January 1, 2015, since it will require higher reserving so as not to unfairly prejudice companies in states that adopt it early.

18-0153-1401, Continuing Education. Requires that resident adjusters and public adjusters must meet continuing education requirements and that they are subject to these rules; adds required sections.

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY

PO Box 83720, Boise, ID 83720-0021

19-0101-1401, Rules of the Idaho State Board of Dentistry. Revises the provisions for minimal, moderate, and general anesthesia and deep sedation; clarifies requirements for facilities, records, and patient monitoring.

IDAPA 20 - IDAHO DEPARTMENT OF LANDS

PO Box 83720, Boise, ID 83720-0050

***20-0702-1401, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho.** (*PH) Reorganizes chapter and adds new sections regarding organization reports, integration within spacing units, disclosure of chemicals used in well treatments, well site operations, step-off requests, productions reports, gas-oil ration for well classification, tank batteries, and gas processing facilities; adds definitions for “bonus payments,” “processing facility,” “surface water,” “tank,” “tank battery,” “tank dike,” and “well site”; adds abbreviations for “oilfield barrel,” “one thousand cubic foot,” and “polyvinyl chloride”; clarifies the Board of Land Commissioners no longer comprises the Oil and Gas Conservation Commission; clarifies public records compliance provisions; stipulates legal notice publication time requirement; allows for public comment on applications for geophysical permits; clarifies the location of gas wells within a spacing unit and the requirements for exemptions to well locations and changes to spacing units; increases the inactive well bond amount and clarifies where interest on cash bonds is deposited; updates requirements for well signs; revises notice and inspection requirements for spud, surface casing, blowout prevention, intermediate casing, and production casing activities; revises the requirements for cable tools; adds a standardized scale requirement for drilling logs; revises requirements for flaring of gas.

**IDAPA 23 - IDAHO BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061**

23.01.01 - Rules of the Idaho Board of Nursing

23-0101-1401, Defines the terms “sexual conduct” and “sexual exploitation” and clarifies prohibited conduct.

23-0101-1402, Requires registered and licensed practical nurses to demonstrate their competency to practice nursing in Idaho for license renewal; establishes the standards and criteria to evaluate continued competency and provides several methods for compliance.

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
PO Box 83720, Boise, ID 83720-0063**

24-1101-1401, Rules of the Board of Podiatry. Establishes the criteria and a renewal fee for an inactive license status.

24-1901-1401, Rules of the Board of Examiners of Residential Care Facility Administrators. Increases fees for application, annual renewal, and provisional/temporary licenses to increase fund balance to maintain current service delivery levels.

24-2301-1401, Rules of the Speech and Hearing Services Licensure Board. (Temp & Prop) Clarifies and updates what constitutes a quorum of the board.

**IDAPA 29 - IDAHO POTATO COMMISSION
PO Box 1670, Eagle, Idaho 83616**

***29-0102-1401, Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks.** (*PH) Updates the type of containers used for packing potatoes, the size of the seal used on potato containers and the way variety labeling takes place.

**IDAPA 31 - PUBLIC UTILITIES COMMISSION
PO Box 83720, Boise, ID 83720-0074**

31-0201-1401, Public Records Act Rules of the Idaho Public Utilities Commission. Repeal of chapter; public records guidelines will replace rule as allowed by state law.

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES
322 E. Front St., Boise, ID 83720**

37-0303-1401, Rules and Minimum Standards for the Construction and Use of Injection Wells. Updates definition of an “injection well” to match definition in Section 42-3902(10), Idaho Code.

**IDAPA 57 - SEXUAL OFFENDER MANAGEMENT BOARD
3125 S. Shoshone St., Boise, ID 83705**

57-0101-1401, Rules of the Sexual Offender Management Board. Updates incorporation by reference; establishes standards and qualifications for psychosexual evaluations and evaluators, and sexual offender treatment and treatment providers, who provide services to juveniles convicted of sexual offenses.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
PO Box 83720, Boise, ID 83720-0078**

58.01.01 - Rules for the Control of Air Pollution in Idaho

***58-0101-1401**, (*PH) Clarifies the application of fugitive dust rules to agricultural activities.

***58-0101-1402**, (*PH) Strengthens the prohibition against new major facilities from using the FEC rule and thus circumventing PSD/NSR review; ensures air quality modeling parameters will be consistent throughout the 5-year term of the FEC permit; adds references to PM2.5 in order to capture updated federal requirements; updates a source test reporting deadline to more realistically reflect existing practices

58-0102-1401, Water Quality Standards. Revises DEQ's Water Quality Standards for consistency with DEQ's Mixing Zone Policy.

NOTICES OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16-0201-1401, Rules of the Idaho Time Sensitive Emergency System Council. (New chapter)

Please refer to the Idaho Administrative Bulletin, [September 3, 2014, Volume 14-9](#), for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at adminrules.idaho.gov.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306
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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.*

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES (Index of Current Rulemakings)

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

March 20, 2014 -- September 3, 2014

(eff. PLR) - Final Effective 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 20, 2014 that are still in process
and all current rulemakings promulgated after March 20, 2014 - Sine Die.)*

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01-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8

IDAPA 02 -- DEPARTMENT OF AGRICULTURE***02.01.05, Rules Governing Certificates of Free Sale***

02-0105-1401 Proposed Rulemaking, Bulletin Vol. 14-8

02.02.14, Rules for Weights and Measures

02-0214-1401 Proposed Rulemaking, Bulletin Vol. 14-7

02-0214-1402 Proposed Rulemaking, Bulletin Vol. 14-7

02-0214-1403 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

02-0214-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02-0214-1402 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02-0214-1403 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-9

02.03.03, Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application

02-0303-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6

02-0303-1401 Proposed Rulemaking, Bulletin Vol. 14-8

02.04.05, Rules of the Idaho Department of Agriculture Governing Manufacture Grade Milk

02-0405-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6

02-0405-1401 Proposed Rulemaking, Bulletin Vol. 14-9

02.04.06, Requirements for Licensed Dairy Plants

02-0406-1401 Proposed Rulemaking, Bulletin Vol. 14-6

02-0406-1401 Adoption of Pending Rule, Bulletin Vol. 14-8 (eff. PLR 2015)

02.04.14, Rules Governing Dairy Waste

02-0414-1401 Proposed Rulemaking, Bulletin Vol. 14-6

02-0414-1401 Adoption of Pending Rule, Bulletin Vol. 14-8 (eff. PLR 2015)

02.04.19, Rules Governing Domestic Cervidae

02-0419-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6

02-0419-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-9 (eff. 9-1-14)T

02.04.21, Rules Governing the Importation of Animals

02-0421-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6

02-0421-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

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02-0421-1402 Proposed Rulemaking, Bulletin Vol. 14-9

02.04.24, Rules Governing Tuberculosis

02-0424-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

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- 59-0103-1401** Temporary Rulemaking, Bulletin Vol. 14-1 (eff. 10-15-13)T
- 59-0103-1401** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 148, Bulletin Vol. 14-5 (eff. 10-15-13)T
- 59-0103-1401** Proposed Rulemaking, Bulletin Vol. 14-6
- 59-0103-1401** Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

59.01.06, PERSI Retirement Rules

- 59-0106-1400** Notice of Correction to Final Rule, Bulletin Vol. 14-5 (eff. 3-20-14)
- 59-0106-1401** Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (5-20-14)T
- 59-0106-1401** Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

59.02.01, Rules for the Judges' Retirement Fund

- 59-0201-1401** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 14-7 (eff. 7-1-14)T
- 59-0201-1401** Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

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