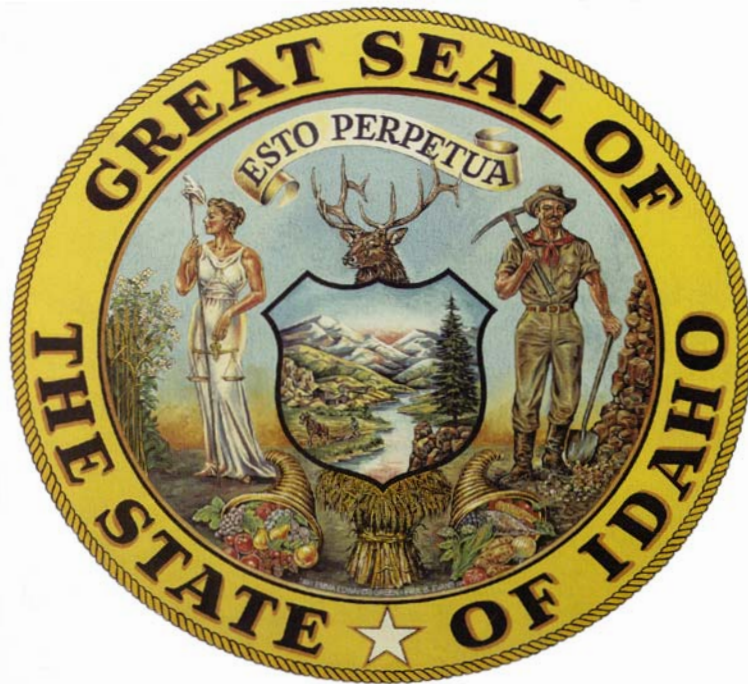


IDAHO ADMINISTRATIVE BULLETIN

September 2, 2015 -- Volume 15-9

Idaho Department of Administration
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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 August 2015 Bulletin is cited as Volume **15-8**.

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 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	**September 4, 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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2016

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
16-1	January 2016	*November 27, 2015	January 6, 2016	January 26, 2016
16-2	February 2016	January 8, 2016	February 3, 2016	February 24, 2016
16-3	March 2016	February 5, 2016	March 2, 2016	March 23, 2016
16-4	April 2016	March 4, 2016	April 6, 2016	April 27, 2016
16-5	May 2016	April 8, 2016	May 4, 2016	May 25, 2016
16-6	June 2016	May 6, 2016	June 1, 2016	June 22, 2016
16-7	July 2016	June 3, 2016	July 6, 2016	July 27, 2016
16-8	August 2016	July 8, 2016	August 3, 2016	August 24, 2016
16-9	September 2016	August 5, 2016	September 7, 2016	September 28, 2016
16-10	October 2016	**September 2, 2016	October 5, 2016	October 26, 2016
16-11	November 2016	October 7, 2016	November 2, 2016	November 23, 2016
16-12	December 2016	November 4, 2016	December 7, 2016	December 28, 2016

****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. 02-0214-1501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2016 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 2016 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 1, 2015, Idaho Administrative Bulletin, **Vol. 15-7, pages 16 and 17**.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government, because 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 by 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:

IDSA 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 Kevin Merritt, Section Manager at (208) 332-8692.

DATED this 6th Day of August, 2015.

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
02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1501
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 16, 2015.

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 Western States Livestock Health Association has issued recommendations to harmonize Trichomoniasis import regulations for all western states. On May 20, 2015, Idaho Trichomoniasis Task Force approved the recommendations and is willing to cooperate with the harmonization effort. As a result, the proposed rule changes would allow imported bulls to be considered virgins up to eighteen (18) months of age and Trichomoniasis tests to be valid for sixty (60) days.

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.

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 1, 2015, Idaho Administrative Bulletin, [Vol. 15-7, page 18](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 24, 2015. Two members of the public participated in the meeting. No written comments were received.

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 this proposed rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dr. Scott Leibsle and must be delivered on or before September 23, 2015. Comments can be delivered via email to scott.leibsle@agri.idaho.gov or via regular mail to Dr. Leibsle's attention at the address listed below.

DATED this 6th Day of August, 2015.

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. 02-0421-1501
(Only Those Sections With Amendments Are Shown.)

260. TRICHOMONIASIS.

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

01. Virgin Bulls Less Than ~~Twelve~~ Eighteen Months of Age. The virgin bull(s) are less than ~~twelve~~ ~~(12)~~ eighteen (18) months of age and have not serviced a cow; or (4-7-11)()

02. Tested Bulls. The bull(s) have been tested by culture or PCR for trichomoniasis within ~~thirty (30)~~ sixty (60) days of shipment, were negative to the test, and have not been exposed to female cattle since the test sample was collected. (4-2-08)()

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

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

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

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

d. Rodeo bulls imported by an Idaho based rodeo producer, with an approved rodeo bull lot as described in IDAPA 02.04.29, "Rules Governing Trichomoniasis," Section 400 or rodeo bulls imported to perform at specific rodeos in Idaho. (4-7-11)

e. Bulls imported for exhibition at livestock shows, provided the bull will be returned to its state of origin, will not be exposed to female cattle, and will not be offered for sale. (4-7-11)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.29 - RULES GOVERNING TRICHOMONIASIS

DOCKET NO. 02-0429-1501

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 16, 2015.

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 Western States Livestock Health Association has issued recommendations to harmonize Trichomoniasis import regulations for all western states. On May 20, 2015, Idaho Trichomoniasis Task Force approved the recommendations and is willing to cooperate with the harmonization effort. As a result, the proposed rule changes would allow imported bulls to be considered virgins up to eighteen (18) months of age and Trichomoniasis tests to be valid for sixty (60) days.

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.

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 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 19](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 23, 2015. Two members of the public participated in the meeting. No written comments were received.

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 this proposed rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540. Anyone may submit written comments regarding this proposed rulemaking.

All written comments must be directed to Dr. Scott Leibsle and must be delivered on or before September 23, 2015. Comments can be delivered via email to scott.leibsle@agri.idaho.gov or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 6th Day of August, 2015.

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. 02-0429-1501
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

12. PCR. Polymerase Chain Reaction. ()

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

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

145. Quarantined. Isolation of all cattle diseased or exposed thereto, from contact with healthy cattle and exclusion of such healthy cattle from enclosures or grounds where said diseased or exposed cattle are, or have

been kept. (3-30-07)

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

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

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

189. T Brand. A two inch by three inch (2" x 3") single-character hot iron T brand, applied to the left of the tail-head of a bull, signifying that the bull is infected with trichomoniasis. (4-7-11)

1920. Trichomoniasis. A venereal disease caused by the organism *Tritrichomonas foetus*. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

200. BULLS FOR SALE.

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

01. Returned to Home Premises. Such bulls shall be returned to home premises for official testing; or (4-2-08)

02. Sold Directly to Slaughter. Such bulls shall be sold directly to slaughter at an approved slaughter establishment, an Idaho approved feedlot, as defined in IDAPA 02.04.20, "Rules Governing Brucellosis"; or (4-7-11)

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

04. Virgin Bulls. Virgin bulls native to Idaho that are less than twenty-four (24) months of age, which have never serviced a cow shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season. (4-7-11)

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

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

(BREAK IN CONTINUITY OF SECTIONS)

210. IMPORTED BULLS.

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

a. If the bull originates from a herd of bulls wherein all bulls have tested negative for Trichomoniasis

since being removed from cows, the bull shall have been tested negative to a Trichomoniasis culture test within ~~thirty~~ ~~sixty~~ ~~(360)~~ days prior to import and shall have had no contact with female cattle from the time of test to the time of import; or ~~(3-30-07)~~()

b. If the bull originates from a herd where one (1) or more bulls or cows have been found infected with Trichomoniasis, the bull shall have three (3) consecutive negative Trichomoniasis culture ~~or PCR~~ tests. The samples for each test shall be collected at least seven (7) days apart and ~~cultured tested~~ for Trichomoniasis, the last test being within ~~thirty~~ ~~sixty~~ ~~(360)~~ days prior to import into Idaho; or ~~(3-30-07)~~()

c. If the bull is a single bull with no prior herd test history or originates from a herd of bulls that is still with cows or that has not been tested for Trichomoniasis since being removed from cows, the bull shall have three (3) consecutive negative Trichomoniasis culture ~~or PCR~~ tests. The samples for each test shall be collected at least seven (7) days apart and ~~cultured tested~~ for Trichomoniasis, the last test being within ~~thirty~~ ~~sixty~~ ~~(360)~~ days prior to import into Idaho. ~~(3-30-07)~~()

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

02. Virgin Bulls. Bulls imported into Idaho that are less than ~~twelve~~ ~~eighteen~~ ~~(128)~~ months of age which have never serviced a cow are not required to be Trichomoniasis tested prior to import into Idaho, provided that: ~~(4-7-11)~~()

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

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

03. Bulls for Grazing. Bulls that are entering Idaho for grazing purposes shall meet the Trichomoniasis test requirements of Section 100 of this rule. A copy of the certificate of negative Trichomoniasis test shall accompany the grazing permit application. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

310. INFECTED BULLS AND HERDS.

Any bull or cow that is positive to a Trichomoniasis culture ~~or PCR~~ test shall be considered infected. A herd in which one (1) or more bulls or cows are found infected with Trichomoniasis shall be considered infected. ~~(3-30-07)~~()

01. Confirmatory Testing of Culture Positive Bulls. Any culture positive bull must be confirmed positive for *Trichomonas foetus* by Polymerase Chain Reaction (PCR) test unless the animal is destined directly to slaughter. The positive culture specimen shall be submitted to a qualified laboratory, approved by the Administrator, in accordance with the qualified laboratories submission requirements. ~~The culture positive specimen must arrive at the laboratory within forty eight (48) hours after being found to contain trichomonad organisms.~~ ~~(4-7-11)~~()

a. If polymerase chain reaction (PCR) determines the bull is positive or inconclusive for *Trichomonas foetus*, the bull will be considered positive for trichomoniasis. (4-7-11)

b. If polymerase chain reaction (PCR) determines the bull is negative for *Trichomonas foetus*, the bull will be considered negative for trichomoniasis. (4-7-11)

02. Quarantine of Infected Herds. Any veterinarian that discovers an infected herd shall immediately place the herd under a Hold Order, and notify the Division of Animal Industries within forty-eight (48) hours that the test was positive. Upon notification of an infected Trichomoniasis herd, a state or federal animal health official shall

conduct an epidemiological investigation of the infected herd and issue a quarantine. The quarantine may include a provision requiring all breeding age female cattle in the infected herd to be held in isolation from all bulls for a period of up to one hundred twenty (120) days as determined by the Administrator. (3-30-07)

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

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

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

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

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

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

05. Identifying Infected Bulls. All bulls testing positive for trichomoniasis shall, within seven (7) days of diagnosis, be identified with a hot iron T brand applied to the left of the tail-head indicating that the bull is positive for trichomoniasis. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

331. OFFICIAL TRICHOMONIASIS TESTS.

01. Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, ~~within forty eight (48) hours of collection~~ and such sample is tested according to the official Idaho "Protocol for *Trichomonas foetus* Diagnosis in Cattle." ~~Samples in transit for more than forty eight (48) hours will not be accepted for official testing and shall be discarded.~~ Samples, which have been frozen or exposed to high temperatures, shall ~~also~~ be discarded. (4-7-11)()

02. Polymerase Chain Reaction. Polymerase Chain Reaction is accepted as an official test when completed by a qualified laboratory, approved by the Administrator, ~~and the sample is received by the laboratory~~ ~~within forty eight (48) hours of collection.~~ (4-2-08)()

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

332. REGISTERED VETERINARIANS.

Only veterinarians registered with the Division of Animal Industries shall collect samples for official tests for Trichomoniasis within the state of Idaho. (3-30-07)

01. Use of Official Laboratories. Registered veterinarians shall only utilize official laboratories for

~~culture~~ testing of Trichomoniasis samples.

~~(3-30-07)~~()

02. Education Requirements. All veterinarians shall attend an educational seminar on Trichomoniasis and proper sample collection techniques, conducted by the Division of Animal Industries, prior to being granted registered status. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

400. RODEO BULLS.

Bulls currently in a rodeo string, bulls purchased under the feedlot exemption at a specifically approved livestock market, bulls purchased by private treaty, and bulls purchased in other states and imported into Idaho for rodeo purposes are exempt from Trichomoniasis testing under the following conditions: (3-30-07)

01. Division Approval. The owner of the rodeo bulls has completed and submitted an application to the Division of Animal Industries, which the Division has approved; and (3-30-07)

02. Not Mixed with Cows. The rodeo bulls are confined to a dry lot and not mixed with cows or used for breeding purposes; and (3-30-07)

03. Permanently Identified. All bulls in the rodeo string are permanently identified with official ear tags or unique numbers hot iron branded on the animal; and (3-30-07)

04. Records Maintained. The identification numbers are maintained in a permanent record file at the owner's premises and a copy of the record will be provided to the Division of Animal Industries upon request; and (3-30-07)

05. Bulls Purchased. Bulls purchased for addition to the rodeo string shall meet all other health requirements. Purchased bulls shall be immediately identified as specified in Subsection 400.03 of this rule. Official back tag and ear tag numbers on the bull at time of purchase shall be correlated to the permanent identification in the permanent record; and (4-2-08)

06. Bulls Removed for Slaughter. Removal of bulls to slaughter is documented in the permanent record file; and (3-30-07)

07. Bulls Removed for Breeding Purposes. Bulls that are removed from the rodeo string for breeding purposes shall undergo three (3) consecutive negative PCR tests or cultures for Trichomoniasis. The samples for each test shall be collected at least seven (7) days apart and cultured tested for Trichomoniasis to be eligible to receive a certificate of negative test. ~~(3-30-07)~~()

401. -- 409. (RESERVED)

410. FEEDING BULLS OF UNKNOWN TRICHOMONIASIS STATUS.

Bulls of unknown Trichomoniasis status may be fed for slaughter in an Idaho approved feedlot where the bulls are isolated from all female cattle. (3-30-07)

01. Removal of Untested Bulls. Untested bulls shall be sold directly to slaughter at an approved slaughter establishment. (3-30-07)

02. Removal of Bulls for Breeding Purposes. Bulls that are removed for breeding purposes shall undergo three (3) consecutive negative PCR tests or cultures for Trichomoniasis. The samples for each test shall be collected at least seven (7) days apart and cultured tested for Trichomoniasis to be eligible to receive a certificate of negative test. ~~(3-30-07)~~()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2016 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 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 July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7 pages 20-21](#).

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 the 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 Jared Stuart, Agriculture Section Manager at (208) 332-8620.

DATED this 6th Day of August, 2015.

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. 02-0612-1501
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2016 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 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 July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, pages 22-23](#).

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 the 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 Jared Stuart, Agriculture Section Manager at (208) 332-8620.

DATED this 6th Day of August, 2015.

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
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IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.22 - NOXIOUS WEED RULES

DOCKET NO. 02-0622-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2403, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later September 16, 2015.

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 noxious weed list proposal is to make permanent the addition of Purple starthistle (*Centauria calcitrapa*) and Iberian starthistle (*Centauria iberica*) to the Early Detection Rapid Response (EDRR) section of the noxious weed list. Both of these species have been listed for the past 15 months as EDRR noxious weeds under the Director's temporary listing authority Section 22-2404(1)(u), Idaho Code.

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 from the changes to be made to the Rule 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 July 1, 2015, Idaho Administrative Bulletin, [Vol. 15-7 page 24](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 14, 2015.

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 Matt Voile, Agriculture Section Manager, Invasive Species, at (208) 332-8667 or email Matt.Voile@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 23, 2015.

DATED this 6th Day of August, 2015.

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. 02-0622-1501
(Only Those Sections With Amendments Are Shown.)

100. NOXIOUS WEEDS - DESIGNATIONS.

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

01. Statewide EDRR Noxious Weed List.

Common Name		Scientific Name	
1.	Brazilian Elodea	1.	<i>Egeria densa</i>
2.	Common/European Frogbit	2.	<i>Hydrcharis morsus-ranae</i>
3.	Fanwort	3.	<i>Cobomba caroliniana</i>
4.	Feathered Mosquito Fern	4.	<i>Azolla pinnata</i>
5.	Giant Hogweed	5.	<i>Heracleum mantegazzianum</i>
6.	Giant Salvinia	6.	<i>Salvinia molesta</i>
7.	Hydrilla	7.	<i>Hydrilla verticillata</i>
8.	Iberian Starthistle	8.	<i>Centaurea iberica</i>
89.	Policeman's Helmet	89.	<i>Impatiens glandulifera</i>
10.	Purple Starthistle	10.	<i>Centaurea calcitrapa</i>
911.	Squarrose Knapweed	911.	<i>Centaurea triumfetti</i>
102.	Syrian Beancaper	102.	<i>Zygophyllum fabago</i>
143.	Tall Hawkweed	143.	<i>Hieracium piloselloides</i>
124.	Variable-Leaf-Milfoil	124.	<i>Myriophyllum heterophyllum</i>
135.	Water Chestnut	135.	<i>Trapa natans</i>
146.	Water Hyacinth	146.	<i>Eichhornia crassipes</i>
157.	Yellow Devil Hawkweed	157.	<i>Hieracium glomeratum</i>
168.	Yellow Floating Heart	168.	<i>Nymphoides pelata</i>

If any of the above listed plants (Subsection 100.01) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified. (3-20-14)()

02. Statewide Control Noxious Weed List.

Common Name		Scientific Name	
1.	Black Henbane	1.	<i>Hyoscyamus niger</i>
2.	Bohemian Knotweed	2.	<i>Polygonum X bohemicum</i>

Common Name	Scientific Name
3. Buffalobur	3. <i>Solanum rostratum</i>
4. Common Crupina	4. <i>Crupina vulgaris</i>
5. Common Reed (Phragmites)	5. <i>Phragmites australis</i>
6. Dyer's Woad	6. <i>Isatis tinctoria</i>
7. Eurasian Watermilfoil	7. <i>Myriophyllum spicatum</i>
8. Giant Knotweed	8. <i>Polygonum sachalinense</i>
9. Japanese Knotweed	9. <i>Polygonum cuspidatum</i>
10. Johnsongrass	10. <i>Sorghum halepense</i>
11. Matgrass	11. <i>Nardus stricta</i>
12. Meadow Knapweed	12. <i>Centaurea debeauxii</i>
13. Mediterranean Sage	13. <i>Salvia aethiopsis</i>
14. Musk Thistle	14. <i>Carduus nutans</i>
15. Orange Hawkweed	15. <i>Hieracium aurantiacum</i>
16. Parrotfeather Milfoil	16. <i>Myriophyllum aquaticum</i>
17. Perennial Sowthistle	17. <i>Sonchus arvensis</i>
18. Russian Knapweed	18. <i>Acroptilon repens</i>
19. Scotch Broom	19. <i>Cytisus scoparius</i>
20. Small Bugloss	20. <i>Anchusa arvensis</i>
21. Vipers Bugloss	21. <i>Echium vulgare</i>
22. Yellow Hawkweed	22. <i>Hieracium caespitosum</i>

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

(3-29-10)

03. Statewide Containment Noxious Weed List.

Common Name	Scientific Name
1. Canada Thistle	1. <i>Cirsium arvense</i>
2. Curlyleaf Pondweed	2. <i>Potamogeton crispus</i>
3. Dalmatian Toadflax	3. <i>Linaria dalmatica ssp. dalmatica</i>
4. Diffuse Knapweed	4. <i>Centaurea diffusa</i>
5. Field Bindweed	5. <i>Convolvulus arvensis</i>
6. Flowering Rush	6. <i>Butomus umbellatus</i>
7. Hoary Alyssum	7. <i>Berteroa incana</i>
8. Houndstongue	8. <i>Cynoglossum officinale</i>

Common Name		Scientific Name	
9.	Jointed Goatgrass	9.	<i>Aegilops cylindrica</i>
10.	Leafy Spurge	10.	<i>Euphorbia esula</i>
11.	Milium	11.	<i>Milium vernale</i>
12.	Oxeye Daisy	12.	<i>Leucanthemum vulgare</i>
13.	Perennial Pepperweed	13.	<i>Lepidium latifolium</i>
14.	Plumeless Thistle	14.	<i>Carduus acanthoides</i>
15.	Poison Hemlock	15.	<i>Conium maculatum</i>
16.	Puncturevine	16.	<i>Tribulus terrestris</i>
17.	Purple Loosestrife	17.	<i>Lythrum salicaria</i>
18.	Rush Skeletonweed	18.	<i>Chondrilla juncea</i>
19.	Saltcedar	19.	<i>Tamarix sp.</i>
20.	Scotch Thistle	20.	<i>Onopordum acanthium</i>
21.	Spotted Knapweed	21.	<i>Centaurea stoebe</i>
22.	Tansy Ragwort	22.	<i>Senecio jacobaea</i>
23.	White Bryony	23.	<i>Bryonia alba</i>
24.	Whitetop (Hoary Cress)	24.	<i>Cardaria draba</i>
25.	Yellow Flag Iris	25.	<i>Iris pseudocorus</i>
26.	Yellow Starthistle	26.	<i>Centaurea solstitialis</i>
27.	Yellow Toadflax	27.	<i>Linaria vulgaris</i>

Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. (3-29-10)

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

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

- h.** Sod. (7-1-93)
- i.** Manure, fertilizers and material of similar nature. (7-1-93)
- j.** Soil, sand, mulch, and gravel. (3-30-07)
- k.** Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.25 - RULES GOVERNING THE PLANTING OF BEANS,
OTHER THAN *PHASEOLUS* SPECIES, IN IDAHO
DOCKET NO. 02-0625-1501
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2006, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

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 amended to add a small trial ground exemption from disease testing for non-phaseolus beans from seed lots of one (1) pound or less. This exemption will allow researchers the ability to grow seed without a loss of seed from destruction during testing.

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 from the changes to be made to the Rule 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 July 1, 2015, Idaho Administrative Bulletin, [Vol. 15-7, page 25](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 22, 2015. Representatives from industry were present and provided comments to the draft rule. The final language of the proposed rule incorporates the comments from the industry.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jared Stuart, Agriculture Section Manager at (208) 332-8620 or jared.stuart@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 23, 2015.

DATED this 6th Day of August, 2015.

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. 02-0625-1501
(Only Those Sections With Amendments Are Shown.)

013. SOIL.

There shall be a zero (0) tolerance, as defined by the soil tolerance standards of the Association of Official Seed Analysts (AOSA), for soil in any lot of a regulated article imported into Idaho and destined for planting in Idaho. This prohibition shall not apply to seed of Idaho or Malheur County, Oregon origin. ~~(3-20-14)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

150. REQUIREMENTS FOR PLANTING REGULATED ARTICLES IN IDAHO.

In order to be eligible for planting seed in Idaho: (3-20-14)

01. Idaho Origin Seed to be Replanted. Seeds planted must be from a lot that was produced in accordance with these rules and has an in-state planting tag number (state number) assigned by the Department based on growing season and pre-harvest or windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag). (3-20-14)

02. Malheur County, Oregon Grown Seed. Seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and pre-harvest or windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. (3-20-14)

03. Imported Seed From Other Than Malheur County, Oregon. Imported seed must: (3-20-14)

a. Be certified by the seed certification agency of the state of origin and be accompanied by a state phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests and soil as defined in Sections 012 and 013 of these rules; or (3-20-14)

b. Each seed lot shall successfully pass laboratory tests on untreated seed for regulated pests and soil conducted by the Department (in the case of nematodes and soil by a Department approved lab) from samples officially drawn in the state of Idaho by the Department; and (3-20-14)

c. Must bear a Department Approved Tag (Yellow Tag) at the time of planting; and (3-20-14)

d. Be submitted for a growing season inspection in compliance with Section 200 of this rule; and (3-20-14)

~~**e.** If intended for replanting for future seed or commercial production, be submitted for a growing season inspection in accordance with Section 200 of this rule; and (3-20-14)~~

~~**f.** If intended for seed production, not be planted under sprinkler irrigation for the first growing season. (3-20-14)~~

04. Contaminated Seeds. The seeds from any field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, or soil as defined in Section 013, shall not be planted in Idaho. (3-20-14)

05. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (3-20-14)

06. Tags. Seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho:

- (3-20-14)
- a. Department in-state planting tag (green tag); (3-20-14)
- b. Department approved tag (yellow tag); (3-20-14)
- c. Oregon Department of Agriculture inspection tag. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

201. -- 249. (RESERVED)

250. TRIAL GROUNDS.

01. General Trial Ground Requirements. ()

a. A written request for trial ground must be submitted to the Director for approval prior to May 20 of the year the seed will be planted and must contain: ()

i. Name of person in charge. ()

ii. Geographic location and size of trial ground. ()

iii. Detailed varietal planting plan. If the original planting plan is changed, the person in charge of the trial ground must notify the Director. ()

b. Must be jointly supervised by the Department and personnel approved by the Director. ()

c. The land must be owned or leased by the applicant. If leased, a copy of the lease must accompany the application. ()

d. More than one (1) trial ground may be approved provided that a separate application is submitted and each trial ground meets the requirements of Section 250. ()

02. Trial Ground Subdivisions. ()

a. Experimental Plots. A maximum of one (1) pound of seed per variety may be planted in an experimental plot without laboratory testing. ()

03. Trial Ground Restrictions and Inspection Procedures. ()

a. Any machinery used in production of bean seed on trial grounds must be disinfected, to the satisfaction of the Director, prior to movement to other bean fields. ()

b. Approved trial grounds shall not be planted under sprinkler irrigation. ()

c. During each growing season there will be a minimum of four (4) active growth inspections and one (1) pre-harvest or windrow inspection. ()

04. Detection of Regulated Pest. If a regulated pest is found by field inspection, windrow inspection or subsequent laboratory seed testing, the infested seed must be destroyed. None of the remaining bean seed produced on that farmstead may be released for general planting in Idaho. The remaining seeds must be sampled and laboratory tested by the Department. If the laboratory test is negative for the regulated pests, then the seeds must be planted on an approved trial ground for one (1) additional year and are limited to a maximum of two (2) acres. ()

251. -- 299. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0641-1501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2016 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 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 July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, pages 26-27](#).

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 the 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 Jared Stuart, Agriculture Section Manager at (208) 332-8620.

DATED this 6th Day of August, 2015.

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 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS
05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS
DOCKET NO. 05-0102-1501
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 20-504A(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

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 changes were made in an effort to provide better clarity. All changes were vetted by the Standards Committee which consists of juvenile detention administrators.

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 the changes will only increase clarity to existing rules and to strike the outdated rules.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Skow, (208) 884-7323.

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 23, 2015.

DATED this 6th Day of August, 2015.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0102-1501
(Only Those Sections With Amendments Are Shown.)

212. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

01. Twenty-Four Hour Supervision. The detention center shall be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. (3-30-07)

02. Staffing. The detention center shall have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center shall have policy and procedures in place governing staffing and shall submit a staffing plan to the department prior to licensing and renewal. The following staffing plan is a recommendation only, and is not mandatory. It is recommended that each secure juvenile facility shall maintain staff ratios of a minimum of one to eight (1:8) plus one (1) during resident waking hours and one to sixteen (1:16) during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. (3-20-14)

a. If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. (3-30-07)

b. If the detention center houses more than eight (8) juvenile offenders, there should be one (1) direct care staff for each eight (8) juvenile offenders plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. (3-29-12)

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. An employee of the same gender as the juvenile offender being detained shall be on duty at the time of intake. (3-30-07)

04. Minimum Qualifications. (3-30-07)

a. Direct care staff, at the time of employment, shall meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

b. Direct care volunteers, before starting volunteer services, shall meet the minimum criminal history background requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

c. The agency shall conduct criminal background records checks at least every five (5) years of current employees, contractors, and volunteers who may have contact with residents as outlined in PREA Standard Section 115.317. (3-20-14)

05. Training and Staff Development Plan. Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." (3-30-07)

a. All new direct care staff shall be provided orientation training. The orientation and training plan shall address areas including, but not limited to: (3-29-12)

i. First aid/CPR; (3-30-07)

- ii. Security procedures; (3-30-07)
 - iii. Supervision of juvenile offenders; (3-30-07)
 - iv. Suicide prevention; (3-20-14)
 - v. Fire and emergency procedures; (3-30-07)
 - vi. Safety procedures; (3-30-07)
 - vii. Appropriate use of physical intervention, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified appropriate use of force instructor using a P.O.S.T. approved grading matrix; ~~(3-30-07)~~()
 - viii. Report writing; (3-30-07)
 - ix. Juvenile offender rules of conduct; (3-30-07)
 - x. Rights and responsibilities of juvenile offenders; (3-30-07)
 - xi. Fire and emergency procedures; (3-30-07)
 - xii. Safety procedures; (3-30-07)
 - xiii. Key control; (3-30-07)
 - xiv. Interpersonal relations; (3-30-07)
 - xv. Social/cultural life styles of the juvenile population; (3-30-07)
 - xvi. Communication skills; (3-29-12)
 - xvii. Mandatory reporting laws and procedures; (3-20-14)
 - xviii. Professional boundaries; and (3-20-14)
 - xix. All training as outlined in section 115.331 of the PREA Standards. (3-20-14)
- b.** All direct care staff who are considered part-time, on-call, or working fewer than forty (40) hours per week and any direct care staff who works in a facility classified as Rural Exception, must obtain a part-time juvenile detention officer certification as mandated by IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers." ()
- bc.** Ongoing training shall be provided at the minimum rate of twenty-eight (28) hours for each subsequent year of employment, which shall include, but not be limited to: (3-20-14)
- i. A total of eight (8) hours of appropriate use of force, and demonstrate an adequate level of proficiency as determined by a P.O.S.T. certified appropriate use of force instructor using a P.O.S.T. approved grading matrix; and ~~(3-20-14)~~()
 - ii. All ongoing training as outlined in section 115.331 of the PREA Standards; and ()
 - iii. All other trainings that require recertification. (3-20-14)
- ed.** Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. (3-29-12)

- d.e.** Each facility shall maintain accurate training documentation. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

216. DOCUMENTATION.

01. Shift Log. The detention center shall maintain documentation including time notations on each shift which includes the following information, at a minimum: (3-30-07)

- a.** Direct care staff on duty; (3-30-07)
- b.** Time and results of security or well-being checks and head counts; (4-5-00)
- c.** Names of juvenile offenders received or discharged with times recorded; (3-30-07)
- d.** Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the detention center with times recorded; (3-30-07)
- e.** Time of meals served; (4-5-00)
- f.** Times and shift activities, including any action taken on the handling of any routine incidents; (3-29-12)
- g.** Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; (4-5-00)
- h.** Notations and times of unusual incidents, problems, disturbances, escapes; (3-29-12)
- i.** Notations and times of any use of emergency or restraint equipment; and (4-5-00)
- j.** Notation and times of perimeter security checks. (4-5-00)

02. Housing Assignment Roster. The detention center shall maintain a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. (3-30-07)

03. Visitor's Register. The detention center shall maintain a visitor's register in which the following will be recorded: (3-30-07)

- a.** Name of each visitor; (4-5-00)
- b.** Time and date of visit; (4-5-00)
- c.** Juvenile offender to be visited; and (3-30-07)
- d.** Relationship of visitor to juvenile offender and other pertinent information. (3-30-07)

04. Juvenile Detention Records. The detention center shall classify, retain and maintain an accurate and current record for each juvenile offender detained in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record shall contain, at a minimum, the following: (3-30-07)

- a.** Booking and intake records; (4-5-00)
- b.** Record of court appearances; (4-5-00)

- c. Documentation of authority to hold; (4-5-00)
- d. Probation officer or caseworker, if assigned; (4-5-00)
- e. Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; (3-30-07)
- ~~f. Record of deposits/withdrawals from the juvenile offender's account; (3-30-07)~~
- gf. Classification records and information about a resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident; (3-20-14)
- ~~hg.~~ Documentation of education as outlined in PREA Standard Section 115.333; (3-20-14)
- ~~ih.~~ Rule infraction reports; (4-5-00)
- ~~ji.~~ Records of disciplinary actions; (4-5-00)
- ~~kj.~~ Grievances filed and their dispositions; (4-5-00)
- ~~lk.~~ Release records; (4-5-00)
- ~~ml.~~ Personal information and emergency contact information; (4-5-00)
- ~~nm.~~ Documentation of a completed intake medical screening; (3-29-12)
- ~~on.~~ Visitor records; (4-5-00)
- ~~po.~~ Incident reports; (4-5-00)
- ~~qd.~~ Photographs. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

223. SAFETY AND EMERGENCY PROCEDURES.

01. Written Policy and Procedures. The detention center shall have written policy and procedures that address fire safety; ~~fire emergency evacuation plans, other safety-related practices, and the detention center's plans for responding to emergency situations.~~ (3-30-07)()

02. Compliance with Fire Code. The detention center shall comply with local and state fire codes. A request for an annual inspection shall be made to the local fire marshal or authorized agency. The detention center shall maintain documentation of this inspection. (3-30-07)

224. DETENTION CENTER SECURITY.

01. Security and Control Policy. The detention center's policy and procedures manual shall contain all procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual shall be made available to all staff. (3-30-07)

02. Personal Observation. The detention center shall have written policy and procedures that ~~detention center policy and procedures shall~~ govern the observation of all juvenile offenders and shall, at a minimum, require direct care staff to personally observe all juvenile offenders every thirty (30) minutes on an irregular schedule and the time of such checks shall be logged. More frequent checks should be made of juvenile offenders who are

violent, suicidal, mentally ill, or who have other special problems or needs warranting closer observation.

~~(3-30-07)~~()

03. Cross Gender Supervision. The detention center shall have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which shall be based on privacy needs and legal standards. Except in emergencies, detention center employees shall not observe juvenile offenders of the opposite sex in shower areas. Reasonable accommodation of privacy needs shall be observed. (4-2-08)

04. Head Counts. The detention center shall have written policy and procedures which shall outline a system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts shall be conducted every twenty-four (24) hours. At least one (1) count shall be conducted each shift and there shall be at least four (4) hours between each count. (3-30-07)

05. Camera Surveillance. Camera surveillance equipment shall not be used in place of the personal observation of juvenile offenders. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

226. PERIMETER SECURITY CHECKS AND SECURITY INSPECTIONS.

01. Perimeter Security Checks. The detention center shall have written policy and procedures which govern the frequency and performing of perimeter security checks. (3-30-07)

02. Security Inspections. The detention center ~~administrator or his designee shall conduct monthly inspections of all locks, windows, floors, walls, ventilator covers, access plates, glass panels, protection screens, doors, and other security equipment. The date, time, and results of these inspections shall be recorded on a checklist or log. The detention center administrator shall promptly correct any identified problems~~ shall have written policy and procedures that require timely notification to the detention center administrator or designee of any structural or security deficiencies. The detention center administrator shall promptly correct any identified problems. The facility shall maintain documentation of any corrective action. ~~(3-30-07)~~()

(BREAK IN CONTINUITY OF SECTIONS)

228. SECURITY DEVICES.

01. Key Control. The detention center shall have policy and procedures in place to govern key and tool control. (3-30-07)

02. Security Devices. The detention center shall have written policy and procedures that govern the use of security devices. Detention center employees shall use only security equipment on which they have been properly trained and is issued through, or authorized by, the detention center administrator. ~~Certification~~ The facility shall maintain documentation of proper training ~~shall be kept in detention records.~~ (3-30-07)()

03. Weapons Locker. The detention center shall provide a weapons locker or similar arrangement at security perimeter entrances for the temporary storage of weapons belonging to law enforcement officers who must enter the detention center. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

234. MEALS.

01. Providing Meals. The detention center shall have written policy and procedures which govern the providing of meals. Three (3) meals, at least two (2) of which includes a hot entree, shall be served daily. (3-29-12)

a. Meals must be served at approximately the same time every day. No more than fourteen (14) hours shall elapse between the evening meal and breakfast the next day unless an evening snack is served. If snacks are provided, up to sixteen (16) hours may elapse between the evening meal and breakfast. (4-5-00)

b. Juvenile offenders out of the detention center attending court hearings or other approved functions when meals are served shall have a meal provided upon their return if they have not already eaten. (3-30-07)

c. If meals are provided to staff, the menu should be the same as provided to juvenile offenders. (3-30-07)

d. The health authority or a medical employee shall be notified when a juvenile offender does not eat three (3) consecutive meals. (3-30-07)

02. ~~Use of Food~~ **Withholding of Meals as Disciplinary Sanction Prohibited.** The detention center shall have written policy and procedures which dictate that ~~food meals~~ shall not be withheld from juvenile offenders, nor the menu varied as a disciplinary sanction. (~~3-30-07~~)()

03. Control of Utensils. The detention center shall have a control system for the issuance and return of all food preparation and eating utensils. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

245. PERSONAL HYGIENE.

01. Personal Hygiene Items. The detention center shall have written policy and procedures which shall govern the provision of, without charge, the following articles necessary for maintaining proper personal hygiene: (3-30-07)

a. Soap; (4-5-00)

b. Toothbrush; (4-5-00)

c. Toothpaste; (4-5-00)

d. Comb or brush; (3-30-07)

e. Shaving equipment upon request; (3-30-07)

f. Products for female hygiene needs; and (3-30-07)

g. Toilet paper. (3-30-07)

02. Removal of Personal Hygiene Items. The detention center shall have written policy and procedures that govern the removal of personal hygiene items from juvenile offenders' sleeping areas. Removal must be based upon sufficient reason to believe that the juvenile offender's access to the items poses a risk to the safety of juvenile offenders, staff or others, or poses a security risk to the detention center. (3-30-07)

03. Clothing and Linens. The detention center shall provide for the issue of clean clothing, bedding, linens, and towels to new juvenile offenders held overnight. At a minimum, the following shall be provided: (3-30-07)

- a. A set of standard detention center clothing or uniform; (3-30-07)
- ~~b.~~ A set of standard detention center bedding and linens; ()
- ~~b.c.~~ Fire-retardant mattress; (4-5-00)
- ~~e.~~ Pillow and pillow case; (4-5-00)
- ~~d.~~ Two (2) sheets or one (1) sheet and one (1) mattress cover; (4-5-00)
- ~~ed.~~ Sufficient blankets to provide comfort under existing temperature conditions; and (4-5-00)
- ~~fe.~~ One (1) clean towel. (4-5-00)
- 04. Laundry Services.** Laundry services shall be sufficient to allow required clothing, bedding, and towel exchanges for juvenile offenders. (3-30-07)
- a. Clothing and towels used by the juvenile offender while in the detention center shall be laundered or exchanged at least twice each week. (3-30-07)
- b. Linen shall be changed and laundered or exchanged at least once weekly or more often, as necessary. (4-5-00)
- c. Blankets in use shall be laundered or exchanged at least monthly, or before re-issue to another juvenile offender. (3-30-07)
- 05. Clothing and Linen Supplies.** The detention center inventory of clothing, bedding, linen, and towels shall exceed the maximum population to ensure that a reserve is always available. (3-30-07)
- 246. -- 249. (RESERVED)**
- 250. HEALTH SERVICES.**
- 01. Written Policy and Procedures.** The detention center shall have written policy and procedures to govern the delivery of reasonable medical, dental, and mental health services. These written policy and procedures must at a minimum address, but are not limited to the following: (3-30-07)
- a. Intake medical screening must be documented and performed on all juvenile offenders upon admission to the detention center. (3-29-12)
- i. The medical screening should include inquiry of current illness and health problems, dental problems, sexually transmitted and other infectious diseases, medication taken and special health requirements, if any, the use of alcohol or drugs, mental illness and/or suicidal behavior. (3-29-12)
- ii. The screening should also include observations of unusual behavior, including state of consciousness, mental status, appearance, conduct, tremor, sweating, body deformities, physical injuries, trauma markings, bruises, rashes, evidence of body vermin, and ease of movement; (3-29-12)
- b. Handling of juvenile offenders' requests for medical treatment; (3-30-07)
- c. Non-emergency medical services; (4-5-00)
- d. Emergency medical and dental services; (4-5-00)
- ~~e.~~ Emergency evacuation plan of juvenile offenders from the detention center; (3-30-07)

- ~~f.e.~~ Use of ~~an~~ a vehicle for emergency ~~vehicle~~ transport; (4-5-00)()
- ~~g.~~ Use of one (1) or more hospital emergency rooms or other appropriate health care facility; (4-5-00)
- ~~h.f.~~ Emergency on-call physician and dental services when the emergency health care facility is not located nearby; (4-5-00)
- ~~g.~~ First-aid and CPR instructions and training, including the availability of first-aid supplies; (4-5-00)
- ~~h.~~ Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; (3-30-07)
- ~~i.~~ Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; (3-30-07)
- ~~j.~~ Delousing; (3-29-12)
- ~~k.~~ Infectious disease control and medical isolation; (4-5-00)
- ~~l.~~ Temporary, immediate isolation, and proper examination by the medical employee of juvenile offenders suspected of having contagious or infectious diseases; (3-30-07)
- ~~m.~~ Management of pharmaceuticals, including storage in a secure location; and (3-30-07)
- ~~n.~~ Notification of next of kin or appropriate authorities in case of serious illness, injury or death. (3-30-07)

02. Medical Judgments. Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental judgment shall be the sole province of the health authority, who shall have final responsibility for decisions related to medical judgments. (3-30-07)

03. Informed Consent. Permission to perform medical, surgical, dental or other remedial treatment shall be obtained from parents, spouse, guardian, court or other competent person as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. (3-30-07)

04. Health Appraisal. A health appraisal for each juvenile offender shall be provided by the health authority or medical employee within fourteen (14) days of admission. (3-30-07)

251. -- 254. (RESERVED)

255. RULES AND DISCIPLINE.

01. Written Policy and Procedures. The detention center shall have written policy and procedures for maintaining discipline and regulating juvenile offenders' conduct. The following general principle shall apply: (3-30-07)

a. The conduct of juvenile offenders shall be regulated in a manner which encourages and supports appropriate behavior, with penalties for negative behavior; (3-30-07)

b. The detention center shall have written rules of conduct which specify prohibited acts, the penalties that may be imposed for various degrees of violation, and the disciplinary procedures to be followed; (3-30-07)

c. Disciplinary action shall be of a nature to regulate juvenile offenders' behavior within acceptable limits and shall be taken at such times and in such degrees as necessary to accomplish this objective; (3-30-07)

d. The behavior of juvenile offenders shall be controlled in an impartial and consistent manner;

- (3-30-07)
- e. Disciplinary action shall not be arbitrary, capricious, retaliatory, or vengeful; (4-5-00)
 - f. Corporal or unusual punishment is prohibited, and care shall be taken to insure juvenile offenders' freedom from personal abuse, humiliation, mental abuse, personal injury, disease, property damage, harassment, or punitive interference with daily functions of living, such as eating or sleeping; (3-30-07)
 - g. Use of restraints or use of physical force as punishment is prohibited; (3-30-07)
 - h. Withholding of ~~food meals~~ or variation of diet as punishment is prohibited; and ~~(4-5-00)~~()
 - i. Juvenile offenders shall not be subject to any situation in which juvenile offenders impose discipline on each other. (3-30-07)
- 02. Resolution of Rule Infractions.** The detention center shall have written policy and procedures to define and govern the resolution of rule infractions. (3-30-07)
- 03. Grievance Procedures.** The detention center shall have written policy and procedures for juvenile offenders which will identify grievable issues and define the grievance process. (3-30-07)
- 04. Criminal Law Violations.** The detention center shall have written policy and procedures to govern the handling of incidents that involve the violation of federal, state, or local criminal law, including prompt referral to the appropriate authority for possible investigation and prosecution. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

261. ADMISSION.

- 01. Orientation Materials.** Written policy and procedures shall provide that new juvenile offenders receive orientation materials, including conduct rules. If, at any time, a literacy or language barrier is recognized, the detention center shall make good faith efforts to assure that the juvenile offender understands the material. (3-30-07)
- 02. Written Procedures for Admission.** The detention center shall have written policy and procedures for admission of juvenile offenders which shall address, but are not limited to, the following: (3-30-07)
- a. Determination that the juvenile offender is lawfully detained in the detention center; (3-29-12)
 - b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; (3-30-07)
 - c. If the juvenile offender shows signs of illness, injury, is incoherent, or unconscious, he shall not be admitted to the detention center until the detaining officer has provided written documentation from medical personnel or a physician of examination, treatment, and fitness for confinement; (3-29-12)
 - d. A complete search of the juvenile offender and possessions; (3-30-07)
 - e. The ~~care and~~ disposition of personal property; ~~(3-30-07)~~()
 - f. Provision of shower and the issuance of detention clothing and personal hygiene articles; (3-30-07)
 - g. The provision of medical, dental and mental health screening; (3-30-07)
 - h. Male and female juvenile offenders shall not occupy the same sleeping room; (3-30-07)

- i.** The recording of basic personal data and information; (3-30-07)
 - j.** Providing assistance to juvenile offenders in notifying their families of their admission and the discussion of procedures for mailing and visiting; (3-29-12)
 - k.** The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; and (3-29-12)
 - l.** The administration of the MAYSI or other approved risk tool. (3-29-12)
- 03. Court Appearance Within Twenty-Four Hours.** According to Title 20, Chapter 5, Section 20-516(4), Idaho Code, written policy and procedures shall ensure that any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays for a detention hearing to determine where the juvenile offender will be placed until the next hearing. Status offenders shall not be placed in any jail or detention center, but instead may be placed in juvenile shelter care facilities. (3-30-07)
- 04. Limitations of Detention.** Written policy and procedures shall limit the use of detention in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code. (3-30-07)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.01 - RULES FOR RESIDENTIAL TREATMENT PROVIDERS

DOCKET NO. 05-0201-1501

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 16, 2015.

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 minor changes made to this rule are in an effort to clarify the currently existing rules, and as requested during the 2015 legislative session. The changes include:

In the definition of "body cavity search" the term medical "authority" has been changed to medical "health professional" for consistency in the rule; adds the words "provider employee" to clarify that staff at the residential treatment provider are prohibited from transporting juveniles in their personal vehicles unless an emergency situation exists.

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 many contracted providers are already in compliance with these rules, and the changes made will only increase clarity and decrease any duplicative efforts made by contracted providers.

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 Jessica Moncada, (208) 334-5100 ext. 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 23, 2015.

DATED this 6th Day of August, 2015.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0201-1501
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

- 01. Adult.** A person eighteen (18) years of age or older. (4-11-15)
- 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. (4-11-15)
- 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~~ health professional. (~~4-11-15~~) ()
- 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. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)
- 07. Commit.** To transfer legal custody to the Idaho Department of Juvenile Corrections. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)
- 10. Contraband.** Any item not issued or authorized by the residential treatment provider. (4-11-15)
- 11. Confidential Information.** Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. (4-11-15)
- 12. Court.** District court or magistrate's division thereof. (4-11-15)
- 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. (4-11-15)
- 14. Department.** The Idaho Department of Juvenile Corrections. (4-11-15)
- 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. (4-11-15)
- 16. Director.** The director of the Idaho Department of Juvenile Corrections. (4-11-15)

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. (4-11-15)
18. **Facility.** The physical plant associated with the operation of residential or nonresidential programs. (4-11-15)
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. (4-11-15)
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. (4-11-15)
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. (4-11-15)
22. **Judge.** A district or a magistrate judge. (4-11-15)
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. (4-11-15)
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. (4-11-15)
25. **Juvenile Records.** Information concerning the juvenile offender's delinquent or criminal, personal, and medical history, behavior and activities. (4-11-15)
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. (4-11-15)
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. (4-11-15)
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. (4-11-15)
29. **Mechanical Restraints.** Mechanical devices used to prevent an uncontrollable juvenile offender from injuring themselves or others. (4-11-15)
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. (4-11-15)
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. (4-11-15)

- 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. (4-11-15)
- 33. Observation and Assessment Program.** A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)
- 36. Program Director.** The administrator of the residential treatment provider for juvenile offenders. (4-11-15)
- 37. Progress Report.** A written report summarizing progress toward the goals and objectives set in the service implementation plan. (4-11-15)
- 38. Quality Improvement Services Bureau.** Department employees responsible for overseeing residential treatment provider's compliance with contract terms and these rules. (4-11-15)
- 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. (4-11-15)
- 40. Region.** Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. (4-11-15)
- 41. Regional Facility.** Department-operated juvenile correctional centers located in each region of the state. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)
- 44. Release from Department Custody.** Termination of the department's legal custody of a juvenile. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)
- 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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

54. Subcontractor. A person or business which has contracted with the residential treatment provider for provision of some portion of work or services. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

61. Vocational Services. Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-15)

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. (4-11-15)

03. Transport in Personal Vehicles. Juveniles in the custody of the department will not be transported in personal provider employee vehicles unless an emergency situation exists and is substantiated by documentation. (4-11-15)()

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.02 - RULES FOR STAFF SECURE PROVIDERS

DOCKET NO. 05-0202-1501

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 16, 2015.

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 minor changes made to this rule are in an effort to clarify the currently existing rules, and as requested during the 2015 legislative session. The changes include:

In the definition of "body cavity search" the term medical "authority" has been changed to medical "health professional" for consistency in the rule; adds provisions for unclothed body and body cavity searches that state that "unclothed body searches must be conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched..."; clarifies that body cavity searches may only be conducted "in a medical facility outside of the residential treatment provider."

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 many contracted providers are already in compliance with these rules, and the changes made will only increase clarity and decrease any duplicative efforts made by contracted providers.

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 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 23, 2015.

DATED this 6th Day of August, 2015.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0202-1501
(Only Those Sections With Amendments Are Shown.)

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~~ health professional. (4-11-15)()

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

05. **General Education Student.** A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). (4-11-15)

06. **Health Services.** Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-11-15)

07. **Independent Living Services.** Services that increase a juvenile offender's ability to achieve independence in the community. (4-11-15)

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: (4-11-15)

- a. Day passes with family or other, approved individuals; (4-11-15)
- b. Day or overnight home visits; (4-11-15)
- c. Recreational activities not otherwise approved as a part of a group activity; and (4-11-15)
- d. Funeral leave. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-15)

02. Policies and Procedures Governing Consequences. The provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. (4-11-15)

03. Visitor Searches. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

04. Clothed Body Searches. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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 conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched. 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." (4-11-15)()

06. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted in a medical facility outside of the residential treatment provider, 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." (4-11-15)()

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. (4-11-15)

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. (4-11-15)

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.02.03 - RULES FOR REINTEGRATION PROVIDERS

DOCKET NO. 05-0203-1501

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 16, 2015.

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 minor changes made to this rule are in an effort to clarify the currently existing rules, and as requested during the 2015 legislative session. The changes include:

In the definition of "body cavity search" the term medical "authority" has been changed to medical "health professional" for consistency in the rule; adds provisions for unclothed body and body cavity searches that state that "unclothed body searches must be conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched..."; clarifies that body cavity searches may only be conducted "in a medical facility outside of the residential treatment provider."

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 many contracted providers are already in compliance with these rules, and the changes made will only increase clarity and decrease any duplicative efforts made by contracted providers.

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 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 23, 2015.

DATED this 6th Day of August, 2015.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0203-1501
(Only Those Sections With Amendments Are Shown.)

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~~ health professional. ~~(4-11-15)()~~

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

05. **General Education Student.** A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). (4-11-15)

06. **Health Services.** Including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-11-15)

07. **Independent Living Services.** Services that increase a juvenile offender's ability to achieve independence in the community. (4-11-15)

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: (4-11-15)

- a. Day passes alone or with family or other, approved individuals; (4-11-15)
- b. Day or overnight home visits; (4-11-15)
- c. Recreational activities not otherwise approved as a part of a group activity; and (4-11-15)
- d. Funeral leave. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-11-15)

02. Policies and Procedures Governing Consequences. The reintegration provider must have written policies and procedures establishing the consequences for juvenile offenders found with contraband. (4-11-15)

03. Clothed Body Searches. (4-11-15)

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. (4-11-15)

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. (4-11-15)

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 conducted with an adult in the room, in addition to the medical health professional, who is of the same gender as the juvenile offender being searched. 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." (4-11-15)()

05. Body Cavity Searches. Body cavity searches of juvenile offenders may only be conducted in a medical facility outside of the residential treatment provider, 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." (4-11-15)()

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. (4-11-15)

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. (4-11-15)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.01 - RULES GOVERNING ADMINISTRATION

DOCKET NO. 08-0201-1502

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 Sections 33-101, 33-105, and 33-116, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by September 11th, 2015.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Person's wishing to participate may contact Tracie Bent at the Office of the State Board of Education, PO Box 83720, Boise, Idaho 83720-0037 or tracie.bent@osbe.idaho.gov, to schedule a meeting or provide written comments. All meeting dates, locations, and teleconference information will be posted on the Board of Education website at www.boardofed.idaho.gov.

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:

Idaho Administrative Code, IDAPA 08.02.01.800 establishes the qualification requirements for eligible trainers and the procedures for school districts and charter schools to request reimbursement for qualified training in compliance with Section 33-320, Idaho Code. Section 33-320, Idaho Code sets out requirements for each school district to have a strategic plan as well as funding to districts to reimburse them for training in strategic planning, administrator evaluations, school finance, and governance and ethics. During the 2015 legislative session the term strategic planning was changed to continuous improvement planning. The Proposed amendment brings the language used in IDAPA 08.02.01.800 into alignment with the language now used in Section 33-320, Idaho Code.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the State Board of Education website once drafted at the following web address: www.boardofed.idaho.gov.

All written comments must be directed to the undersigned and must be delivered on or before September 23rd, 2015, electronic comments must be submitted to tracie.bent@osbe.idaho.gov.

DATED this 7th Day of August, 2015.

Tracie Bent
Chief Planning and Policy Officer
Idaho State Board of Education

650 W State St.
PO Box 83720
Boise, ID 83702-0037
Phone: (208)332-1582, Fax: 334-2632

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1507

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 Sections 33-101, 33-105, and 33-116, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by September 11th, 2015.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Person's wishing to participate may contact Tracie Bent at the Office of the State Board of Education, PO Box 83720, Boise, Idaho 83720-0037 or tracie.bent@osbe.idaho.gov, to schedule a meeting or provide written comments. All meeting dates, locations, and teleconference information will be posted on the Board of Education website at www.boardofed.idaho.gov.

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 proposed amendments address three (3) separate issues that are contained in the same section of Idaho Administrative Code, IDAPA 08.02.03, Section 105 Graduation Requirements. These include the transcription of middle level (school) credits to a student's high school transcript, the Idaho Standards Achieve Test (ISAT) graduation proficiency requirements, and the alternate paths to graduation for those students that do not meet the proficiency requirement to graduate. The amendments would clarify the requirements for middle school credits to be transferred to a student's high school transcript; would amend the graduation proficiency requirements for the ISAT to exempt students who will graduate in 2017 and provide additional specification regarding which students can bank scores earned in grade nine (9); and add additional specificity regarding the alternate paths to graduation that are developed by the school districts and submitted to the State Board of Education.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the State Board of Education website once drafted at the following web address: www.boardofed.idaho.gov.

All written comments must be directed to the undersigned and must be delivered on or before September 23rd, 2015, electronic comments must be submitted to tracie.bent@osbe.idaho.gov.

DATED this 7th Day of August, 2015.

Tracie Bent
Chief Planning and Policy Officer
Idaho State Board of Education

650 W State St.
PO Box 83720
Boise, ID 83702-0037
Phone: (208)332-1582, Fax: 334-2632

IDAPA 09 - DEPARTMENT OF LABOR
09.01.06 - RULES OF THE APPEALS BUREAU
DOCKET NO. 09-0106-1501
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 16, 2015.

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 will allow the Department to send notices of hearing to interested parties by mail or by electronic transmission.

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 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7 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 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 23, 2015.

DATED this 20th Day of July, 2015.

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. 09-0106-1501
(Only Those Sections With Amendments Are Shown.)

026. CONDUCT OF HEARING.

Upon request for appeal, a hearing shall be set and written notice of the time and place of hearing shall be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date.

~~(4-2-08)~~()

01. Telephone Hearings. Hearings will be held by telephone unless, in the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner shall consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-19-99)

02. Continuance. The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may order the dismissal of an appeal for good cause, such as abandonment of the appeal. (3-19-99)

03. Rehearing. An application for rehearing shall be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-19-99)

04. No Appearance Hearings. If no party appears to present additional evidence, a decision may then be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which have been provided to the parties with the notice of hearing. (4-11-06)

05. Exhibits and Recordings. The exhibits and recordings from a hearing may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (4-2-08)

06. Subpoenas. After determining that a subpoena of a witness or records is necessary and reasonable, the appeals examiner shall issue the subpoena, which may be served by mail or in person. (3-19-99)

07. Failure to Respond to Subpoena. If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing the available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-19-99)

08. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, shall be entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case shall a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses shall also be entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses shall be paid from the Employment Security Administration fund. Under no circumstances shall interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (4-5-00)

09. Undecided Issues. When it is apparent that there is no prior ruling on an issue which must be decided under the Act, the appeals examiner may hear and decide the issue. (3-19-99)

10. Type of Hearing. The proceeding before an appeals examiner will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

11. Role of Appeals Examiner. The appeals examiner will function as a fact finder and not solely as a

judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

12. Order of Witnesses. The appeals examiner will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Therefore, as a general rule, the party who bears the burden of proof will be called to testify first. The appeals examiner will exercise reasonable discretion in directing the order, which must be flexible and dependent upon the particular circumstances of each case and which party has the most information. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

13. Evidence. The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-11-06)

14. Disruptive Individuals. The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, he will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-2-08)

15. Challenge of General Knowledge. If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them either at the time of the hearing or prior to or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

16. Closing Arguments. Closing arguments including response in an appeals hearing will be limited to a total of five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1501

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, 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 72-1333, Idaho Code.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by September 16, 2015.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at <http://labor.idaho.gov>.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency's website at <http://labor.idaho.gov>.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Persons wishing to participate in the negotiated rulemaking may do any of the following:

1. Attend a scheduled negotiated rulemaking meeting and participate in the negotiation process;
2. Attend through a teleconference;
3. Provide oral or written recommendations, or both, at a scheduled negotiated rulemaking meeting; and/or
4. Submit written recommendations and comments to the address below.

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

This rule will increase the maximum period of time a claimant can be job attached from 12 weeks to 16 weeks.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Joshua McKenna (208) 332-3570 ext. 3919. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency web site at <http://labor.idaho.gov>.

All written comments must be directed to the undersigned and must be delivered on or before September 16, 2015.

DATED this 17th Day of August, 2015.

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

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-1501

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 54-1208, 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 16, 2015.

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 changes clarify procedures such as retired and expired license reinstatement requirements and updates the reexamination requirements for those failing a professional engineering or professional land surveying examination.

This brings the rule in alignment with the law.

The rule change modified the examination requirements for students or graduates taking the Fundamentals of Engineering or Fundamentals of Surveying Examinations by allowing students to take the examinations without first applying to the board. They were automatically assigned to the examinations beginning July 1, 2015.

The rule change will display the board's requirement that land surveyors applying for licensure must have a minimum of two (2) years of boundary land surveying experience.

Fees are clarified or removed. No new fees are added.

Obsolete language is removed or updated and minor grammar errors are corrected.

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

There is no fee associated with this rule change. There are some fees that are removed and clarified by the rule change.

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 impact to the General Fund by this rule change. There is an estimated annual decrease of \$2,400 to the dedicated fund of the board.

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 3, 2015 Idaho Administrative Bulletin, [Vol. 15-6, 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:

There are no materials incorporated by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith Simila, (208) 373-7210.

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 23, 2015.

DATED this 25th Day of August, 2015.

Keith Simila, P.E.
Executive Director
1510 Watertower St.
Meridian, Idaho 83642
Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: keith.simila@ipels.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 10-0101-1501
(Only Those Sections With Amendments Are Shown.)

011. FEES.

01. Applications and Renewals. All fees shall be set by the Board in the following categories and shall in no event be more than the amount specified in Sections 54-1213, 54-1214, 54-1216, 54-1219 and 54-1223, Idaho Code. Fees are not refundable. (4-5-00)

a. Licensure as a professional engineer or professional land surveyor by examination. (5-8-09)

b. ~~Certification as an engineer intern or land surveyor intern by examination~~ Reinstatement of a retired or expired license. (5-8-09)()

c. Certification for a business entity applying for a certificate of authorization to practice or offer to practice engineering or land surveying. (3-15-02)

~~d. Applications for reexamination in professional engineering, professional land surveying, engineer intern or land surveyor intern.~~ (5-8-09)

ed. Renewals for professional engineers, retired professional engineers, professional land surveyors, retired professional land surveyors, engineer interns, land surveyor interns, and business entities. (5-8-09)()

fe. Licensure for professional engineers or professional land surveyors by comity. (5-8-09)

02. Late or Denied Renewals. Failure on the part of any licensee or business entity to renew their license or certificate of authorization prior to their expiration shall not deprive such persons or business entity of the right of renewal, but the fees to be paid for renewal after their expiration shall be increased as prescribed in Section 54-1216, Idaho Code. (3-29-10)

~~**03. Rec examinations.** Separate fees will be assessed for each examination and such fees shall accompany all applications for examination for professional engineers, professional land surveyors, engineer interns, and land surveyor interns.~~ (5-8-09)

043. Schedule of Fees. The schedule of fees as determined by the Board shall be furnished to applicants with application forms. (7-1-93)

012. REISSUANCE OF CERTIFICATES.

A new certificate of licensure or authorization, to replace any certificate lost, destroyed or mutilated, may be issued upon written ~~certification of the loss~~ request and payment of fee of ten dollars (\$10). (5-8-09)()

013. PUBLICATIONS.

01. Annual Report. An annual report shall be submitted to the governor, the contents of which shall comply with the provisions of Section 54-1210, Idaho Code. (7-1-93)

02. Roster. A roster of professional engineers, professional land surveyors, engineer interns, land surveyor interns, and engineering and land surveying business entities in good standing and licensees and certificate holders in the retired status as provided in these rules shall be maintained in an electronic format available to the public. Those licensees who choose to place their license in retired status shall be listed as retired in the roster. (5-8-09)()

~~**03. Retired Status.** Those licensees who are retiring from practice may be listed in the retired section of the Roster. The biennial fee for being thus listed shall be established by the Board. Such listing does not permit a licensee to engage in the practice of engineering or land surveying. The fee for reinstatement to active practice shall be as required for delayed renewals in Section 54-1216, Idaho Code. (3-29-12)~~

03. News Bulletins and Online Information. News bulletins shall be published at least two (2) times each year. The news bulletins and other news postings may be made available online to all licensees and certificate holders for the purpose of sharing information on board activities and actions. ()

(BREAK IN CONTINUITY OF SECTIONS)

016. APPLICATION FOR LICENSURE OR CERTIFICATION.

01. Forms. Application forms for licensure as a professional engineer, or professional land surveyor, certification as an engineer intern, land surveyor intern or certificates of authorization to practice or offer to practice engineering or land surveying by a business entity may be obtained from the office of the Executive Director of the Board of Professional Engineers and Professional Land Surveyors. (5-8-09)

02. Completion of Application. Applications shall be made on such forms as may be prescribed by the Board. All forms, references, transcripts and other written materials shall be in English pursuant to Section 72-121, Idaho Code. An application that is not fully completed by the applicant need not be considered or acted upon by the Board. The application by a business entity for a certificate of authorization to practice or offer to practice engineering or land surveying must set forth its address, and name and address of the individual, or individuals, duly licensed to practice engineering or land surveying in this state, who will be in responsible charge of engineering or land surveying services offered or rendered by the business entity in this state. (4-11-15)

03. Dates of Submittal and Experience Cutoff Date. Examinations may be given in various formats and different submittal dates apply depending on the examination format. For examinations administered once or twice a year in the Spring and Fall, there is an examination assignment cutoff date that varies depending on the actual date of the examination. ~~For examinations administered once or twice a year in the Spring and Fall, receipt of the applications after October 1 for the Spring exam or after July 1 for the Fall exam, may not provide sufficient time for required credentials to arrive at the Board office and be reviewed by the staff and/or Board prior to the exam assignment cutoff date. If this occurs, the applicant will be assigned to a later examination if all requirements are met.~~ ()

a. For examinations administered in a computer-based format during testing windows, there is no deadline for submittal of the application and the applicant, if assigned to the exam, will be allowed to test during the current testing window, if open on the date of the letter notifying of assignment, or during the next two (2) available testing windows. Failure to test during these periods will void the assignment. ()

b. For examinations administered continuously in a computer-based format, there is no deadline for submittal of the application and the applicant, if assigned to the exam, will be allowed to test during a nine (9) month period beginning on the date of the letter notifying of assignment. Failure to test during this period will void the assignment. ()

c. In order for the Board to be able to verify experience, only experience up to the date of submittal of the application will be considered as valid. Experience anticipated between the date of the application submittal and the date of the examination or issuance of license or certificate will not be considered. ~~For students, the application filing date for~~ ()

d. ~~Applications for certification as engineering or surveying interns are submitted after passing the Fundamentals of Engineering and or the Fundamentals of Surveying examination may be extended at the discretion of the Board and providing evidence of graduation with educational credentials required by Subsection 017.02 of this chapter.~~ (3-29-12)()

04. Residency Requirement. Except for military personnel stationed in the state of Idaho on military orders, and except for persons employed full-time in the state of Idaho, only residents of the state of Idaho and students enrolled at an Idaho university or college may qualify for assignment to **professional** examinations for initial ~~certification or~~ licensure **or certification as an intern**. The board will accept as proof of Idaho residency a valid Idaho issued driver's license, a utility bill issued within the last sixty (60) days with an Idaho address in the name of the applicant, a statement from a financial institution issued within the last sixty (60) days to the applicant at an Idaho address, proof of current voter registration in Idaho, or current Idaho vehicle registration in the name of the applicant. The board will accept as proof of full-time employment in the state of Idaho an affidavit from the Idaho employer stating employment status. The Board will accept a valid student identification card as proof of enrollment at an Idaho university or college. (4-1-13)()

05. Confidentiality of References. All information received from references named by the applicant shall be held in confidence by the Board except as provided by Section 9-342, Idaho Code. Neither members of the Board nor relatives of the applicant by blood or marriage shall be named or accepted as references. (5-8-09)

06. Minimum Standards -- References. An applicant may not be admitted to the examination until satisfactory replies have been received from a minimum of five (5) of his references for professional engineers or land surveyors. It shall be the responsibility of each applicant to furnish references with the forms prescribed by the Board. (3-29-12)

07. Minimum Boundary Survey Experience. ~~The board may require a minimum of two (2) years boundary survey experience as a condition of professional land surveyor licensure.~~ ()

017. EXAMINATIONS.

01. Special or Oral Examination. Examinations for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern will be held on dates and at times and places to be determined by the Board. Special oral or written examinations may be given by the Board as necessary. (3-29-10)

02. Eligibility for Examinations, Educational Requirements. The application for licensure as a professional engineer ~~or professional land surveyor or certification as an engineer intern or land surveyor intern,~~ together with ~~the~~ **a passing score on the** written **ethics questionnaire or Idaho specific land surveying** examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before being assigned to any **professional** examination. (3-29-10)()

a. In regard to educational requirements, the Board will consider as unconditionally approved only those engineering programs that are accredited either by the Engineering Accreditation Commission (EAC) of ABET, Inc., or ~~graduates of those~~ engineering programs **that are** accredited by official organizations signatory to the "Washington Accord." Non-EAC/ABET accredited engineering programs, related science programs, and engineering

technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. (4-11-15)()

b. An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for ~~assignment to the examination for~~ certification as an Engineer Intern or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer: (3-29-12)()

i. Thirty-two (32) college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in ~~calculus and differential equations~~ **differential and integral calculus** are required. Additional courses may include **differential equations**, linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include **at least two (2) courses. These courses must be in general chemistry, and general calculus-based general physics, with a minimum of a two (2) semester (or equivalent) sequence in one or the other or general biological sciences; the two (2) courses may not be in the same area.** Additional basic sciences courses may include ~~life sciences (biology)~~, earth sciences (geology, ecology), ~~and advanced biology~~, advanced chemistry, ~~or and advanced~~ physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. (3-29-12)()

ii. Sixteen (16) college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics (**micro and macro**), professional ethics, social responsibility. ~~No more than six (6) credit hours of languages other than English or other than the applicant's native language are acceptable for credit. Examples of other general education courses deemed acceptable include management (such as organizational behavior), accounting, written and oral communications, business, and law. No more than six (6) credit hours may come from courses in management, accounting, business, or law. Courses in engineering economics, engineering management, systems engineering/ analysis, production, and industrial engineering/management will not be counted. Language courses in the applicant's native language are not acceptable for credit; no more than six (6) credit hours of foreign language courses are acceptable for credit. English and foreign Native language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not.~~ (3-29-12)()

iii. Forty-eight (48) college credit hours of engineering science and/or engineering design **courses**. Courses **in engineering science** shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. Graduate level engineering courses ~~can~~ **may** be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. (3-29-12)()

iv. ~~Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing.~~ The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to ~~ensure~~ that the above requirements are met. (7-1-93)()

v. ~~Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering.~~ (7-1-93)

c. ~~Beginning July 1, 2010,~~ **In regard to educational requirements, the Board will consider as**

unconditionally approved only those surveying programs that are accredited either by the Engineering Accreditation Commission (EAC), the Applied Science Accreditation Commission (ASAC) or the Engineering Technology Accreditation Commission (ETAC) of ABET, Inc. ~~a~~An applicant who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for ~~assignment to the examination for~~ certification as a Land Surveyor Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: ~~(5-8-09)~~ ()

- i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)
- ii. Three (3) credits in Route Surveying; (3-30-07)
- iii. Three (3) credits in Public Land Surveying; (3-30-07)
- iv. Three (3) credits in Surveying Software Applications; (3-30-07)
- v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)
- vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)
- vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)
- viii. Three (3) credits in Geodesy; and (3-30-07)
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

d. The Board may require an independent evaluation of the engineering education of an applicant who has a non-EAC/ABET accredited engineering degree or a non-engineering degree. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant to ensure that the applicant has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-11-15)

03. Excused Non-Attendance at Exam. In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

04. Two Examinations for Engineering Licensure. The complete examining procedure for licensure as a professional engineer normally consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer intern certification, and the second is the Principles and Practice of Engineering for professional engineer licensure. The examination shall be a duration as determined by the Board. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering program. A certificate as an Engineer Intern will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. (3-29-10)

05. Fundamentals of Engineering. The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants' education. (5-8-09)

06. Principles and Practice of Engineering -- Disciplines. The Principles and Practice of Engineering

examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of, or utilize other state examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)()

07. Two Examinations for Land Surveying Licensure. The complete examining procedure for licensure as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Surveying examination for land surveyor intern certification, and the second is the Principles and Practice of Surveying for professional land surveyor licensure. The examination shall be a duration as determined by the Board. Having passed the Fundamentals of Surveying examination, applicants will be required to take the Principles and Practice of Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Surveying examination may consist of separate modules, each of which must be passed. (3-29-10)

08. Oral or Unassembled Examinations. An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

09. Special Examinations. A special examination, written or oral or both, may be required in certain instances where the applicant is seeking licensure through comity or reciprocity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or licensure in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (5-8-09)

10. Grading. Each land surveyor intern, engineer intern and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire examination or modules as determined by the Board, before being awarded certification or licensure. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each module of the examination. (3-29-10)

11. Use of NCEES Examinations. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineer intern, professional land surveyors, and land surveyor intern may be used by the Board. The examination for the field of structural engineering Idaho specific professional land surveyor shall be the examination as determined by the Board. (3-29-10)()

12. Review of Examination by Examinee. Due to security concerns about the examinations, examinees shall not be allowed to review their examinations. Examinees who fail an examination will be provided a diagnostic analysis of their performance on the examination if such an analysis is available to the Board. (3-20-04)

13. Proctoring of Examinations. Unless otherwise approved, the Board will not proctor an examination for another jurisdiction except State-specific examinations, nor will they request another jurisdiction to proctor an examination for an Idaho applicant. (5-8-09)

018. REEXAMINATIONS.

01. Allowing Reexamination Upon First Failure. An applicant failing any portion of an a professional examination on the first attempt, and having applied for requested reexamination as permitted by law, may at the discretion of the Board, be required to take only the portion of shall be reassigned to the examination for which a failing grade was received. (3-29-10)()

~~02. *Application for Allowing Reexamination upon Two or More Failures.* An applicant who has failed ~~any~~ a professional examination ~~twice or more~~ may be assigned by the Board to reexamination upon written request and ~~payment of fees~~ evidence of having met the requirements set forth in Section 54-1214, Idaho Code.~~

~~(3-29-10)~~(____)

~~03. *Failure of Reexamination.* An applicant who fails on reexamination, must present evidence of having met the requirements set forth in Section 54-1214, Idaho Code in order to be reassigned to an examination.~~

~~(5-8-09)~~

019. LICENSEES OR CERTIFICATE HOLDERS OF OTHER STATES, BOARDS, AND COUNTRIES.

01. Interstate Licensure Evaluation. Each application for an Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, possessions or territories or the District of Columbia, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law related to experience, examination, and education. A minimum of four (4) years of progressive experience after graduation with a bachelor of science degree is required for licensure. Individuals who have passed the National Council of Examiners for Engineering and Surveying (NCEES) examinations for professional engineering or professional land surveying shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor provided that land surveyor applicants also pass the Idaho specific professional land surveying examination. Prescriptive education requirements are as follows: (4-11-15)

a. Graduates from programs accredited by the Engineering Accreditation Commission of the ABET, Inc., (EAC/ABET), or graduates of university engineering programs accredited by official organizations in countries signatory to the Washington Accord, or graduates of engineering programs with coursework evaluated by the board as being substantially equivalent to EAC/ABET degrees, shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. (4-11-15)

b. The Board may require an independent evaluation of the engineering education of an applicant who has a non-EAC/ABET accredited four (4) year bachelor degree. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant to ensure that they have completed the coursework requirements of Subsection 019.01.c. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is none pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (4-11-15)

c. An applicant who was originally licensed in another jurisdiction after June 30, 1996 and who has completed a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code: (4-11-15)

i. Thirty-two (32) college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in ~~calculus and differential equations~~ differential and integral calculus are required. Additional courses may include differential equations, linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include at least two (2) courses. These courses must be in general chemistry, and general calculus-based general physics, with a minimum of a two (2) semester (or equivalent) sequence in one or the other or general biological sciences; the two (2) courses may not be in the same area. Additional basic sciences courses may include ~~life sciences (biology)~~, earth sciences (geology, ecology), advanced biology, and advanced chemistry, or and advanced physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. (3-29-12)(____)

ii. Sixteen (16) college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics (micro and macro), professional ethics, social responsibility. ~~No more than six (6) credit hours of languages other than English or other than the applicant's native language are acceptable for credit.~~ Examples of other general education courses deemed acceptable include management (such as organizational behavior), accounting, written and oral communications, business, and law. No more than six (6) credit hours may come from courses in management, accounting, business, or law. Courses in engineering economics, engineering management, systems engineering/ analysis, production, and industrial engineering/management will not be counted. Language courses in the applicant's native language are not acceptable for credit; no more than six (6) credit hours of foreign language courses are acceptable for credit. ~~English and foreign~~ Native language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not. (3-29-12)()

iii. Forty-eight (48) college credit hours of engineering science and/or engineering design courses. Courses in engineering science shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. Graduate level engineering courses ~~can~~ may be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. (3-29-12)()

d. In regard to educational requirements, the Board will consider as unconditionally approved only those surveying programs that are accredited either by the Engineering Accreditation Commission (EAC), the Applied Science Accreditation Commission (ASAC) or the Engineering Technology Accreditation Commission (ETAC) of ABET, Inc. An applicant ~~who was originally licensed in another jurisdiction after June 30, 2010~~ who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: (3-30-07)()

- i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)
- ii. Three (3) credits in Route Surveying; (3-30-07)
- iii. Three (3) credits in Public Land Surveying; (3-30-07)
- iv. Three (3) credits in Surveying Software Applications; (3-30-07)
- v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)
- vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)
- vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)
- viii. Three (3) credits in Geodesy; and (3-30-07)
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

02. International Engineering Licensure Evaluation - Countries or Jurisdictions with Board Approved Licensure Process. The board may determine the professional engineering licensure process in other countries or jurisdictions within other countries is substantially equivalent to that required 54-1219 Idaho Code. As such, the board may waive prescriptive education and examination requirements if the applicant possesses a professional engineer license credential, attains a minimum of eight (8) years of experience after licensure, provided

the applicant has no criminal or outstanding disciplinary action in any country or jurisdiction, and is in good standing with the licensing board within that country or jurisdiction. A bona fide licensing process in another country must include requirements of experience, education, testing, a code of professional responsibility, regulation of licensees including the ability take disciplinary action and the willingness, availability, and capacity of a foreign board to release information to the Idaho board in English. (4-11-15)

03. International Engineering Licensure Evaluation - Countries or Jurisdictions without a Board Approved Licensure Process. Each application for an Idaho professional engineer license submitted by an applicant who is licensed as a professional engineer in one (1) or more foreign countries or jurisdictions within a country, shall be considered by the board on its merits, and the application evaluated for substantial compliance with the requirements of Idaho law with respect to experience, examination, and education. A minimum of four (4) years of progressive experience after graduation is required for licensure. The board will require two (2) years of experience working in the United States or two (2) years of experience working on projects requiring the knowledge and use of codes and standards similar to those utilized in the United States where the experience is validated by a professional engineer licensed in the United States. The board may postpone acting on or deny an application for a license by comity if disciplinary or criminal action related to the applicant's practice has been taken or is pending in any country or jurisdiction. Applicants must have passed a professional engineering examination administered by NCEES. Applicants who meet the residency requirements of 54-1212, Idaho Code, may be assigned to an examination in Idaho only after four (4) years of experience after graduation from a program that meets the education requirements of the board. Prescriptive education requirements are as follows: (4-11-15)

a. Graduates of engineering university programs accredited by official organizations in countries signatory to the Washington Accord or graduates of engineering university programs accredited by EAC/ABET or evaluated by the board as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. (4-11-15)

b. The board may require an independent credentials evaluation of the engineering education of an applicant who was educated outside the United States whose university engineering program is not accredited by an official organization in countries signatory to the Washington Accord or has a non-EAC/ABET accredited engineering degree. Such evaluation shall be done through NCEES or another organization approved by the board and shall be done at the expense of the applicant. (4-11-15)

c. The board may require an independent credentials evaluation of the education for an applicant who has completed a four (4) year bachelor degree program outside the United States in engineering technology, or in a related science degree program other than engineering and must demonstrate completion of the requirements of Subsection 019.01.c. before the Board will consider the applicant to possess the knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. Such evaluation shall be done through NCEES or another organization approved by the board and shall be done at the expense of the applicant. (4-11-15)

04. Waiver of Prescriptive Engineering Licensure Evaluation for Unique International Expertise. The board may waive the prescriptive licensure evaluation requirements of 019.03 for international applicants who, in the board's opinion, are qualified by reason of education and experience and offer unique technical expertise, provided the licensee meets the requirements of 54-1219 Idaho Code. (4-11-15)

05. Denials or Special Examinations. An application from a licensee of another state, possession or territory, District of Columbia, or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. (4-11-15)

06. Business Entity Requirements. No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized to practice professional engineering or professional land surveying, or both, in one (1) or more states, possessions or territories, District of Columbia, or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly licensed to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (4-11-15)

020. ~~(RESERVED)~~ RETIRED AND EXPIRED LICENSES.

01. Reinstatement -- Disciplinary. Licensees who choose to convert their license to retired status as part of a disciplinary action, or in lieu of discipline, or in lieu of compliance with continuing professional development requirements, may be reinstated upon written request. The board will consider the reinstatement request at a hearing or may waive the hearing for minor violations. ()

02. Reinstatement -- Nondisciplinary. Licensees who chose to convert their license to retired status not as part of a disciplinary action or who want to reinstate an expired license may request reinstatement in writing. Reinstatement may require a hearing by the board. ()

03. Continuing Professional Development. Licensees requesting reinstatement must demonstrate compliance with the continuing professional development requirements described in IDAPA 10.01.04, "Rules of Continuing Professional Development," as a condition of reinstatement. ()

04. Practice Not Permitted. Retired or expired status does not permit a licensee or certificate holder to engage in the practice of professional engineering or professional land surveying. ()

05. Designation. Licensees who chose retired status shall represent themselves with the title of Professional Engineer Retired or Professional Land Surveyor Retired or similar designation. ()

06. Fee for Renewal. The fee for renewing a retired license shall be as established by the Board. ()

07. Fee for Reinstatement of Retired License. The fee for reinstatement of a retired license to active practice shall be as required for renewals in Section 54-1216, Idaho Code. ()

08. Fee for Reinstatement of Expired License. The fee for reinstatement of an expired license or certificate to active practice shall be as required for delayed renewals in Section 54-1216, Idaho Code. ()

09. Eligibility. Unless otherwise approved by the Board, only unexpired licensees are eligible to convert to retired status. ()

**IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.04 - RULES OF CONTINUING PROFESSIONAL DEVELOPMENT

DOCKET NO. 10-0104-1501

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 54-1208, 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 16, 2015.

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 amendments will clarify the continuing professional development requirements in plain English for licensees who want to reinstate a retired or expired license. The existing citation is difficult to understand. The rule change clarifies the intent of the board.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee associated with this rule change.

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 state general fund or the agency 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 June 3, 2015 Idaho Administrative Bulletin, [Vol. 15-6, page 41](#).

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:

Materials incorporated by reference include the latest version of the National Council of Examiners for Engineering and Surveying Model Rule 240.30 as found at https://cdn.ncees.org/wp-content/uploads/2012/11/Model_Rules_2014.pdf. This reference includes the national standard that licensees may elect to use in lieu of the standard adopted by rule in Idaho. Licensees are required to comply with continuing professional development as a condition of licensure renewal. The purpose for adopting this reference and national standard is to make it easier for individuals holding licenses in multiple states to comply with one standard instead of keeping track of each state standard for complying with continuing professional development.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith Simila, (208) 373-7210.

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 23, 2015.

DATED this 23rd Day of June, 2015.

Keith Simila, P.E. - Executive Director
1510 Watertower St.
Meridian, Idaho 83642

Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: keith.simila@ipels.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 10-0104-1501
(Only Those Sections With Amendments Are Shown.)

009. EXEMPTIONS.

A Licensee may be exempt from the continuing professional development requirements for one (1) of the following reasons: (7-1-99)

01. First Renewal Period. New Licensees by way of examination or comity shall be exempt from compliance with these rules during the time between issuance of the license and the due date of their first renewal following the issuance of the license. (5-8-09)

02. Active Duty in the Armed Forces. A Licensee serving on active duty in the armed forces of the United States, or a civilian deployed with the military, and temporarily assigned duty at a location other than their normal home station for a period of time exceeding one hundred twenty (120) consecutive days in a renewal period or the two (2) calendar year period closest to the renewal biennium shall be exempt from obtaining the professional development hours required during that renewal period or the two (2) calendar year period closest to the renewal biennium. (3-29-12)

03. Extenuating Circumstances. A Licensee experiencing physical disability, serious illness, or other extenuating circumstances accepted by the board. (7-1-99)

04. Retired ~~and Receiving No Remuneration~~. A Licensee who has chosen ~~and qualified for the~~ "Retired" status ~~and who further certifies that they are no longer receiving any remuneration from providing professional engineering or professional land surveying services~~ shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or professional land surveying, professional development hours must be earned before returning to active practice. ~~for each biennium or the two (2) calendar year period closest to the renewal biennium exempted not to exceed the requirement for two (2) bienniums or four (4) calendar years~~ Thirty (30) PDH's must be earned for an exempted period less than four (4) years prior to the reinstatement request date. The thirty (30) PDH's earned must be earned within the previous two (2) years of the reinstatement request date. Sixty (60) PDH's must be earned for exempted periods of four (4) years or more prior to the reinstatement request date. The sixty (60) PDH's must be earned within the previous four (4) years of the reinstatement request date. All PDH's earned must comply with the requirements of this chapter. (5-8-09)()

05. Expired License. A Licensee who has chosen to allow his license to expire shall be exempt from the professional development hours required. In the event such a person elects to ~~reactivate~~ reinstate the license, professional development hours must be earned and documented before reinstating the license ~~for each biennium or two (2) calendar years exempted not to exceed the requirement for two (2) bienniums or four (4) calendar years.~~ The requirements for PDH's are the same as shown for retired licensees in Subsection 009.04. (5-8-09)()

~~**06. Renewal Period Following Adoption of These Rules as They are Amended to Include Professional Engineers.** All professional engineers shall be exempt from compliance with these rules during the time between the effective date of this subsection and the due date of their first renewal following the effective date of this subsection.~~ (5-8-09)

07. Licensees Residing Outside the United States of America. Licensees employed and residing outside the United States may delay the time required for fulfilling the continuing professional development requirements for a maximum of two (2) biennia or four (4) calendar years until the end of the six (6) month period beginning upon their return to the United States. This subsection shall not apply to permanent non-residents of the United States. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

011. USE OF NCEES MODEL CPC STANDARD.

Licensees have the option of complying with the requirements of this chapter, or may choose to comply with the National Council of Examiners for Engineering and Surveying (NCEES) Continuing Professional Competency (CPC) renewal standard as identified in the latest version of the NCEES Model Rule 240.30. This standard is found at https://cdn.ncees.org/wp-content/uploads/2012/11/Model_Rules_2014.pdf. ()

~~0142.~~ -- 998. (RESERVED)

**IDAPA 11 - IDAHO STATE POLICE
ALCOHOL BEVERAGE CONTROL BUREAU**

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-1401

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 23-901, 23-392, 23-1330 and 23-1408, 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 16, 2015.

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:

Provide a definition for the term "Actual Use" as it pertains to an alcohol license and establishes criteria which define the minimum standards for placing a newly issued or transferred license into use for purposes of clarification and compliance.

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 October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, page 183](#).

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 Capt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or abc@isp.idaho.gov and reference Docket Number 11-0501-1401.

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 23, 2015.

DATED this 5th Day of August, 2015.

Colonel Ralph W. Powell
Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
TEL: (208) 884-7003
FAX: (208) 884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0501-1401
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. Licensee. Any person who has received a license from the Director under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. (7-1-93)

02. Licensed Premises. Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee's application for a license constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. All licenses must be prominently displayed in a suitable premises and remain in actual use by the licensee and available for legitimate sales of alcoholic beverages by the drink. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (3-6-07)

a. Actual Use. A liquor-by-the-drink license is in actual use when all of the following requirements are satisfied: ()

i. The license must be prominently displayed in a premise that is suitable for carrying on the business of selling liquor-by-the-drink. ()

ii. Except as provided in Section 23-908(4), Idaho Code, the business using the license must be open to the public with liquor-by-the-drink available for sale and consumption therein for at least twenty (20) hours per week, and the hours of sale must occur during the times specified in Section 23-927, Idaho Code. ()

iii. The business must make at least twenty (20) sales of liquor-by-the-drink per week. ()

03. New Licenses. For purposes of Section 23-908(4), Idaho Code, a "new license" is one that has become available as an additional license within a city's limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months is satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (3-6-07)

04. Multipurpose Arena. (4-4-13)

a. For purposes of Section 23-944(3), Idaho Code, a Multipurpose Arena is a: (4-4-13)

i. Publicly or privately owned or operated arena, coliseum, stadium, or other facility where sporting events, concerts, live entertainment, community events, and other functions are presented for a ticketed price of admission or one whose premises are leased for private events such as receptions; (4-4-13)

ii. Facility that is licensed to sell liquor by the drink at retail for consumption upon the premises; and (4-4-13)

iii. Facility that has been endorsed by the director. (4-4-13)

b. A Multipurpose Arena facility must apply annually for an endorsement on its alcohol beverage license. (4-4-13)

c. To receive a Multipurpose Arena endorsement under this Section will require the facility to have food available including, but not limited to, hamburgers, sandwiches, salads, or other snack food. The director may also restrict the type of events at a Multipurpose Arena facility at which beer, wine, and liquor by the drink may be

served. The director will also consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a Multipurpose Arena facility before the director will endorse the license. (4-4-13)

d. A licensee that applies for a Multipurpose Arena endorsement must submit with the application an operating/security plan to the director and the local law enforcement agency for review and approval. Once approved, the plan remains in effect until the licensee requests a change or the director determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan. The plan must be submitted in a format designated by the director and must contain all of the following elements: (4-4-13)

i. How the Multipurpose Arena facility will prevent the sale and service of alcohol to persons under twenty-one (21) years of age and those who appear to be intoxicated; (4-4-13)

ii. The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served; (4-4-13)

iii. Training provided to staff who serve, regulate, or supervise the service of alcohol; (4-4-13)

iv. The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one (1) transaction; (4-4-13)

v. A list of event type/categories to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event; and (4-4-13)

vi. Diagrams and designation of alcohol service areas for each type of event category with identified restrictions of minors. (4-4-13)

e. Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the director and local law enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the director and local law enforcement at least twenty-four (24) hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. (4-4-13)

f. To prevent persons who are under twenty-one (21) years of age or who appear intoxicated from gaining access to alcohol, the director may require that an operating plan include additional mandatory requirements if it is determined that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one (21) years of age or who are apparently intoxicated from obtaining alcohol. (4-4-13)

g. If premises, licensed as a Multipurpose Arena, subsequently ceases to meet the qualifications of a Multipurpose Arena, the restrictions contained in Section 23-943, Idaho Code, shall apply and the posting of signs as provided for in Section 23-945, Idaho Code, shall be required. The licensee shall advise the director, by mail, that his premises no longer constitute a Multipurpose Arena, so that the license may be modified accordingly. (4-4-13)

05. Partition. A partition, as used in Section 23-944 Idaho Code, is defined as a structure separating the place from the remainder of the premises. Access through the structure to the place will be controlled to prevent minors from entering the place. The structure must be: (3-6-07)

a. Permanently fixed from the premises ceiling to the premises floor. (3-6-07)

b. Made or constructed of solid material such as glass, wood, metal or a combination of those products. (3-6-07)

c. Designed to prevent an alcoholic beverage from being passed over, under or through the structure. (3-6-07)

d. All partitions must be approved by the Director. (3-6-07)

06. Place. For the purposes of Section 23-943, Idaho Code, "Place" as defined by Section 23-942(b), for a one (1) room restaurant without a barrier or partition, refers to the immediate bar area wherein there is seating alongside a counter or barrier that encloses bar supplies and equipment that are kept, and where alcoholic beverages are mixed, poured, drawn or served for consumption. (3-6-07)

07. Restaurant. The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premises consumption. The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following: (3-6-07)

a. An established menu identifying the individually priced meals for consumption; (3-20-04)

b. Food service and preparation occurs on the premises by establishment employees; (3-20-04)

c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (3-20-04)

d. The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishments consumable purchases are derived from purchases of food and non-alcoholic beverages. (3-20-04)

08. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license is deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, is not a transfer. (3-6-07)

**IDAPA 15 - OFFICE OF THE GOVERNOR
MILITARY DIVISION - BUREAU OF HOMELAND SECURITY**

**15.06.03 - PUBLIC SAFETY COMMUNICATIONS SYSTEMS INSTALLATION
AND MAINTENANCE FEE RULES**

DOCKET NO. 15-0603-1501

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 46-804, 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 16, 2015.

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 is inaccurate due to organizational changes within the Idaho Military Division. The Public Safety Communications Branch is no longer tied to the Bureau of Homeland Security. Contact information and Records Custodian information are being updated. This rulemaking updates information provided in the rule to accurately reflect the new organizational structure.

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 the proposed change to the rules is to reflect actual reporting changes made at the Idaho Military division and are 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Richard Turner at (208) 422-5741.

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 23, 2015.

DATED this 11th Day of August, 2015.

Richard Turner
Executive Officer
Idaho Military Division
700 S. Stratford Dr., Bldg. 600
Meridian, ID 83642
Phone: (208) 422-5741
Fax: (208) 288-2605

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0603-1501
(Only Those Sections With Amendments Are Shown.)

IDAPA 15
TITLE 06
CHAPTER 03

MILITARY DIVISION - ~~BUREAU OF HOMELAND SECURITY~~ **PUBLIC SAFETY COMMUNICATIONS**

15.06.03 - PUBLIC SAFETY COMMUNICATIONS SYSTEMS INSTALLATION
AND MAINTENANCE FEE RULES

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE, OFFICE HOURS, MAILING ADDRESS, TELEPHONE AND FACSIMILE NUMBERS,
AND WEBSITE ADDRESS (RULE 5).

01. Address. The main office of the Idaho Military Division, ~~Bureau of Homeland Security~~, is located at 700 South Stratford Drive, Building 600, Meridian, Idaho 83642. ~~(3-20-14)~~()

02. Office Hours. Office hours are weekdays, 8:00 a.m. to 4:30 p.m., excluding holidays. (3-27-13)

03. Telephone. The telephone number is (208) 288-4000. ~~The twenty-four (24) hour emergency notification number is (800) 632-8000 or (208) 846-7610.~~ The facsimile number is (208) 288-2605. ~~(3-20-14)~~()

~~**04. Website.** The website address is <http://www.bhs.idaho.gov/>.~~ ~~(3-20-14)~~

(BREAK IN CONTINUITY OF SECTIONS)

007. COMMUNICATION WITH MILITARY DIVISION, ~~BUREAU OF HOMELAND SECURITY~~
****PUBLIC SAFETY COMMUNICATIONS** (RULE 7).**

01. Records Custodian. The Director of the Military Division, ~~Bureau of Homeland Security~~, is the custodian of all records and files maintained in connection with this chapter. ~~(3-20-14)~~()

02. Filing. All written communications and documents that are intended to be part of an official record pertaining to this chapter must be filed with the records custodian. (3-20-14)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS
(THE IDAHO FOOD CODE)**

DOCKET NO. 16-0219-1501

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 39-3505, and 56-1005, Idaho Code.

MEETING SCHEDULE: Public hearings on the proposed rulemaking will be held at the following locations. All times listed are local time:

Tuesday, September 8, 2015 3:00 pm & 5:00 pm	Wednesday, September 9, 2015 3:00 pm & 5:00 pm	Thursday, September 10, 2015 1:00 pm & 3:00 pm
Panhandle Health Dist. Office Conference Room 322 Marion Sandpoint, ID 83864	Panhandle Health Dist. Office Shoshone Room 8500 N. Atlas Drive Hayden, ID 83885	Public Health - Idaho North Central Dist. Office Conference Room 333 E. Palouse River Drive Moscow, ID 83843
Friday, September 11, 2015 1:00 pm & 3:00 pm	Monday, September 14, 2015 3:00 pm	Tuesday, September 15, 2015 1:00 pm & 7:00 pm
Public Health - Idaho North Central District Large Conference Room 215 10th Street Lewiston, ID 83501	Southeastern Idaho Public Health Conference Rooms 1 & 2 1910 Alvin Ricken Drive Pocatello, ID 83201	Central District Health Dept. Syringa Room 707 N. Armstrong Place Boise, ID 83704
Tuesday, September 15, 2015 10:00 am & 3:00 pm	Tuesday, September 15, 2015 2:00 pm	Tuesday, September 15, 2015 3:00 pm
Southwest District Health Office Community Room 13307 Miami Lane Caldwell, ID 83607	South Central Public Health District Katz B Conference Room 1020 Washington St. N. Twin Falls ID 83301	Eastern Idaho Public Health South Conference Room 1250 Hollipark Drive Idaho Falls, ID 83401

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

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

These proposed rules update the current Idaho Food Code to better reflect industry practices and current food safety standards. This proposed rule incorporates, by reference, the 2013 FDA Model Food Code. Also included in these proposed rules is specific language that clarifies the status of “cottage food” operations in Idaho.

Based on comments that have been received during the negotiated rulemaking meetings, the proposed updates to the Idaho Food Code have been modified and include the following:

- 1) Clarification of definitions that have caused confusion;
- 2) Clarification of “cottage food operations” and a list of specific foods considered “cottage foods products;” and
- 3) Clarification of necessary requirements for producers of “acidified foods.”

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:

This rulemaking has no fiscal impact to state general funds or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking published in the April 1, 2015, Idaho Administrative Bulletin, [Volume 15-4, pages 33 - 35](#), and May 6, 2015, Idaho Administrative Bulletin, [Volume 15-5, pages 57 and 58](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, documents have been incorporated by reference into these rules to give them the force and effect of law. The document is “Food Code, 2013 Recommendations of the United States Public Health Service Food and Drug Administration,” Publication PB2013-110462. The document currently incorporated in these rules, and is being updated from the 2001 edition to the 2013 edition.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patrick Guzzle at (208) 334-5936.

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 23, 2015.

DATED this 13th Day of August, 2015.

Tamara Prisock, DHW
Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500/ Fax: (208) 334-6558
Email: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0219-1501
(Only Those Sections With Amendments Are Shown.)

001. TITLE, SCOPE AND APPLICABILITY.

01. Title. The title of this chapter is IDAPA 16.02.19, “Food Safety and Sanitation Standards for Food Establishments,” and may also be known as “The Idaho Food Code.” (4-6-05)

02. Scope. The purpose of these rules is to establish standards for the provision of safe, unadulterated and honestly presented food for consumption by the public. These rules provide requirements for licensing,

inspections, review of plans, employee restriction, and license suspensions for food establishments and food processing plants. Also included are definitions and set standards for management, personnel, food operations, equipment and facilities. (4-6-05)

03. These Rules Apply to Food Establishments. Food establishments as defined in Section 39-1602, Idaho Code must follow these rules. Those facilities include but are not limited to the following: (4-6-05)

a. Restaurants, catering facilities, taverns, kiosks, vending facilities, commissaries, cafeterias, mobile food facilities, temporary food facilities; and (4-6-05)

b. Schools, senior centers, hospitals, residential care and treatment facilities, nursing homes, correctional facilities, camps, food banks, and church facilities; and (4-6-05)

c. Retail markets, meat, fish, delicatessen, bakery and supermarkets, convenience stores, health food stores, and neighborhood markets; and (4-6-05)

d. Food, water and beverage processing and bottling facilities that manufacture, process and distribute food, water and beverages within the state of Idaho, and are not inspected for food safety by a federal agency. (4-6-05)

04. These Rules Do Not Apply to These Establishments. These rules do not apply to the following establishments as exempted in Idaho Code. (4-6-05)

a. Agricultural markets as exempted in Section 39-1602, Idaho Code. (4-6-05)

b. Bed-and-breakfast operations that prepare and offer food for breakfast only to guests. The number of guest beds must not exceed ten (10) beds as defined in Section 39-1602, Idaho Code. (4-6-05)

c. Day care facilities regulated by Sections 39-1101 through 39-1119, Idaho Code. (4-6-05)

d. Licensed outfitters and guides regulated by Sections 36-2101 through 36-2119, Idaho Code. (4-6-05)

e. Low-risk food establishments, as exempted in Section 39-1602, Idaho Code, which offer only ~~non-potentially hazardous~~ non-time/temperature control for safety (non-TCS) foods. (4-6-05)()

f. Non-profit charitable, fraternal, or benevolent organizations that do not prepare or serve food on a regular basis as exempted in Section 39-1602, Idaho Code. Food is not considered to be served on a regular basis if it is not served for more than five (5) consecutive days on no more than three (3) occasions per year for foods which are ~~not potentially hazardous~~ non-time/temperature control for safety (non-TCS). For all other food, it must not be served more than one (1) meal per week. (4-6-05)()

g. Private homes where food is prepared or served for family consumption or receives catered or home-delivered food as exempted by Section 39-1602, Idaho Code. (4-6-05)

h. Cottage food operations, when the consumer is informed and must be provided contact information for the cottage food operations as follows: ()

i. By a clearly legible label on the product packaging; or a clearly visible placard at the sales or service location that also states: ()

ii. The food was prepared in a home kitchen that is not subject to regulation and inspection by the regulatory authority; and ()

iii. The food may contain allergens. ()

05. How to Use This Chapter of Rules. The rules in this chapter are modifications, additions or

deletions made to the federal publication incorporated by reference in Section 004 of these rules. In order to follow these rules the publication is required. Changes to those standards are listed in this chapter of rules by listing which section of the publication is being modified at the beginning of each section of rule. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The Department is adopting by reference the “Food Code, 2001³ Recommendations of the United States Public Health Service Food and Drug Administration,” *published by National Technical Information Service*, Publication ~~PB2002-100819~~ [PB2013-110462](#). A certified copy of this publication may be reviewed at the main office of the Department of Health and Welfare. It is also available online at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2001/default.htm> <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>. This publication is being adopted with modifications and additions as follows: (4-6-05)()

01. Chapter 1, Purpose and Definitions. Additions and modifications have been made to this chapter. See Sections 100 - 199 of these rules. (4-6-05)

02. Chapter 2, Management and Personnel. Modifications have been made to this chapter. See Sections 200 - 299 of these rules. (4-6-05)

03. Chapter 3, Food. Modifications have been made to this chapter. See Sections 300-399 of these rules. (4-6-05)

04. Chapter 4, Equipment, Utensils, and Linens. This chapter has been adopted with no modifications. (4-6-05)

05. Chapter 5, Water, Plumbing and Waste. This chapter has been adopted with no modifications. (4-6-05)

06. Chapter 6, Physical Facilities. ~~Modifications have been made to~~ ~~this chapter~~ ~~has been adopted~~ ~~with no modifications.~~ [See Sections 600-699 of these rules.](#) (4-6-05)()

07. Chapter 7, Poisonous or Toxic Materials. Modifications have been made in this chapter. See Sections 700 - 799 of these rules. (4-6-05)

08. Chapter 8, Compliance and Enforcement. Modifications have been made in this chapter. See Sections 800-899 of these rules. (4-6-05)

09. Annexes 1 Through 7 Are Excluded. These sections have not been adopted. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any disclosure of information obtained by the Department is subject to the restrictions in Title 74, Chapter 1, Idaho Code. Restrictions contained in Section 39-610, Idaho Code, and the Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, “Use and Disclosure of Department Records,” must also be followed. (4-6-05)

01. Contested Hearing and Appeal Records. All contested case hearings are open to the public, unless ordered closed at the discretion of the hearing officer based on compelling circumstances. A party to a hearing must maintain confidentiality of discussions that warrant closing the hearing to the public. (4-6-05)

02. Inspection Report. A completed inspection report is a public document and is available for public

disclosure to any person who requests the report as provided in Idaho's Public Records Law, Title 74, Chapter 1, Idaho Code. (4-6-05)

03. Medical Records. Medical information given to the Department or regulatory authority will be confidential and must follow IDAPA 16.05.01, "Use And Disclosure of Department Records." (4-6-05)

04. Plans and Specifications. Plans and specifications submitted to the regulatory authority as required in Chapter 8 of the 20~~01~~¹³ Food Code referenced in Section 004 of these rules, must be treated as confidential or trade secret information under Section 74-107, Idaho Code. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

100. PURPOSES AND DEFINITIONS.

Sections 100 through 199 of these rules will be used for modifications and additions to Chapter 1 of the 20~~01~~¹³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

101. -- 109. (RESERVED)

110. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

The definitions defined in this section are modifications or additions to the definitions ~~given~~ and terms provided in the 20~~01~~¹³ Food Code. (4-6-05)()

01. Agricultural Market. ~~Any fixed or mobile retail food establishment engaged in the sale of raw or fresh fruits, vegetables and nuts in the shell. It may also include the sale of factory sealed non-potentially hazardous foods~~ Any venue where a fixed or mobile retail food establishment can engage in the sale of raw or fresh fruits, vegetables, and nuts in the shell. It may also include the sale of factory sealed non-time/temperature control for safety foods (non-TCS). (4-6-05)()

02. Board. The State of Idaho Board of Health and Welfare as established in Section 56-1005, Idaho Code. (4-6-05)

03. Commissary. A commissary is a place where food containers or supplies are stored, prepared, or packaged for transit, sale, or service at other locations. ()

034. Consent Order. A consent order is an enforceable agreement between the regulatory authority and the license holder to correct violations that caused the actions taken by the regulatory authority. (4-6-05)

05. Core Item. Modifications to Section 1-201.10(B) by amending the term "core item" to mean the same as "non-critical item." ()

06. Cottage Food Operation. A cottage food operation is when a person or business prepares or produces cottage food products in the home kitchen of that person's primary residence or other designated kitchen or location. ()

07. Cottage Food Product. Cottage food products are non-time/temperature control for safety (non-TCS) foods that are sold directly to a consumer. Examples of cottage foods may include but are not limited to: baked goods, fruit jams and jellies, fruit pies, breads, cakes, pastries and cookies, candies and confections, dried fruits, dry herbs, seasonings and mixtures, cereals, trail mixes and granola, nuts, vinegar, popcorn and popcorn balls, and cotton candy. ()

08. Critical Item. A provision of this code that if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. A critical item includes items with a quantifiable measure to show control of hazards such as but not limited to, cooking, reheating, cooling, and hand washing. Critical item means the same as "priority item." Critical item is an item that is denoted with a superscript (P). ()

~~049~~. **Department.** The Idaho Department of Health and Welfare as established in Section 56-1002, Idaho Code. (4-6-05)

~~0510~~. **Director.** The Director of the Idaho Department of Health and Welfare as established in Section 56-1003, Idaho Code. (4-6-05)

~~0611~~. **Embargo.** An action taken by the regulatory authority that places a food product or equipment used in food production on hold until a determination is made on the product's safety. (4-6-05)

~~0712~~. **Enforcement Inspection.** An inspection conducted by the regulatory authority when compliance with these rules by a food establishment is lacking and violations remain uncorrected after the first follow-up inspection to a routine inspection. (4-6-05)

~~0813~~. **Food Establishment.** Modifications to Section 1-201.10(36) ~~by deleting Section 1-201.10(36)(c)(iii)~~ amends the definition of "food establishment" as follows:- (4-6-05)()

a. Delete Subparagraph 3(c) of the term "food establishment" in the 2013 Food Code; ()

b. Add Subparagraph 3(h) to the term "food establishment" to clarify that a cottage food operation is not a food establishment. ()

~~0914~~. **Food Processing Plant.** Modification to Section 1-201.10(37) ~~by deleting Section 1-201.10(37)(b)~~ amends the definition of "food processing plant" by deleting Subparagraph 2 of the term "food processing plant" in the 2013 Food Code. (4-6-05)()

~~105~~. **High-Risk Food Establishment.** A high-risk food establishment does the following operations: (4-6-05)

a. Extensive handling of raw ingredients; (4-6-05)

b. Preparation processes that include the cooking, cooling and reheating of ~~potentially hazardous~~ time/temperature control for safety (TCS) foods; or (4-6-05)()

c. A variety of processes requiring hot and cold holding of ~~potentially hazardous~~ time/temperature control for safety (TCS) foods. (4-6-05)()

~~116~~. **Intermittent Food Establishment.** An intermittent food establishment is ~~one~~ a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers time/temperature control for safety (TCS) foods to the general public. Examples of a recurring event may be a farmers' or community market, or a holiday market. An intermittent food establishment does not include the vendor of farm fresh ungraded eggs at a recurring event (4-2-08)()

111. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.

The definitions defined in this section are modifications or additions to the definitions ~~given~~ and terms provided in the 20~~013~~ Food Code. (4-6-05)()

~~01~~. **License.** The term "license" is used in these rules the same as the term "permit" is used in the 20~~013~~ Food Code. (4-6-05)()

~~02~~. **License Holder.** The term "license holder" is used in these rules the same as the term "permit holder" is used in the 20~~013~~ Food Code. (4-6-05)()

~~03~~. **Low-Risk Food Establishment.** A low-risk food establishment provides factory-sealed pre-packaged ~~non-potentially hazardous~~ non-time/temperature control for safety (non-TCS) foods. The establishment may have limited preparation of ~~non-potentially hazardous~~ non-time/temperature control for safety (non-TCS) foods only. (4-6-05)()

- 04. Medium-Risk Food Establishment.** A medium-risk food establishment includes the following: (4-6-05)
- a. A limited menu of one (1) or two (2) items; or (4-6-05)
 - b. Pre-packaged raw ingredients cooked or prepared to order; or (4-6-05)
 - c. Raw ingredients requiring minimal assembly; or (4-6-05)
 - d. Most products are cooked or prepared and served immediately; or (4-6-05)
 - e. Hot and cold holding of ~~potentially hazardous~~ time/temperature control for safety (TCS) foods is restricted to single meal service. (~~4-6-05~~)()

05. Mobile Food Establishment. A mobile food establishment is a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft, or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations. ()

06. Non-Critical Item. A non-critical item is a provision of this Code that is not designated as a critical item or potentially-critical item. A non-critical item includes items that usually relate to general sanitation, operation controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance. Non-critical item means the same as CORE ITEM. ()

07. Potentially-Critical Item. A potentially-critical item is a provision in this Code whose application supports, facilitates, or enables one (1) or more critical items. Potentially critical item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. Potentially-critical item means the same as priority foundation item. A potentially-critical item is an item that is denoted in this code with a superscript (Pf). ()

08. Priority Item. Modification to Section 1-201.10(B) by amending the term “priority item” to read priority item means the same as critical item. ()

09. Priority Foundation Item. Modification to Section 1-201.10(B) by amending the term “priority foundation item” to read priority foundation item means the same as potentially-critical item. ()

105. Regulatory Authority. The Department or its designee is the regulatory authority authorized to enforce compliance of these rules. (4-6-05)

a. The Department is responsible for preparing the rules, rule amendments, standards, policy statements, operational procedures, program assessments and guidelines. (4-6-05)

b. The seven (7) Public Health Districts and the ~~Bureau of Facility Standards~~ Division of Licensing and Certification have been designated by the Director as the regulatory authority for the purpose of issuing licenses, collecting fees, conducting inspections, reviewing plans, determining compliance with the rules, investigating complaints and illnesses, examining food, embargoing food and enforcing these rules. (~~4-6-05~~)()

~~0611.~~ **Risk Control Plan.** Is a document describing the specific actions to be taken by the license holder to address and correct a continuing hazard or risk within the food establishment. (4-6-05)

112. -- 199. (RESERVED)

200. MANAGEMENT AND PERSONNEL.

Sections 200 through 299 of these rules will be used for modifications and additions to Chapter 2 of the 2001¹³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

210. DEMONSTRATION OF KNOWLEDGE.

Modification to Section 2-102.11. The person in charge of a food establishment may demonstrate knowledge on the risks of foodborne illness or health hazards by one (1) of the following. (4-6-05)

01. No Critical Violations. Complying with the 2001¹³ Food Code by not having any critical violations at the time of inspection; or (4-6-05)()

~~**02. Certification.** Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or (4-6-05)~~

~~**03. Time of Inspection Interview.** Responding correctly to the inspector's questions as they relate to the specific food operations as listed in Section 2-102.11(C) of the 2001 Food Code as incorporated in Section 004 of these rules; or (4-6-05)~~

~~**04. Approved Courses.** Completion of the Idaho Food Safety and Sanitation Course, or an equivalent course designed to meet the same training as the Idaho Food Safety and Sanitation Course. (4-6-05)~~

03. Certified Food Protection Manager. Modification to Section 2-102.12(A). Beginning July 1, 2018, at least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service must be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program. ()

~~211.—219. (RESERVED)~~

220. EMPLOYEE HEALTH.

~~**01. Reporting of Norovirus.** Addition to Section 2-201.11. The addition of Norovirus to illnesses required to be reported. (4-2-08)~~

~~**a.** A person diagnosed or ill with Norovirus within the past forty-eight (48) hours is required to report the illness to the person in charge. (4-2-08)~~

~~**b.** A food employee, who lives in the same household and has knowledge of a person who is diagnosed with Norovirus, is required to report that information to the person in charge. (4-2-08)~~

~~**02. Exclusion and Restrictions.** Addition to Section 2-201.12. In addition, the person in charge of a food establishment must: (4-2-08)~~

~~**a.** Notify the regulatory authority to obtain guidance on proper actions needed to protect the public if there is reason to suspect that any employee has a disease that is communicable through food as listed in IDAPA 16.02.10, "Idaho Reportable Diseases"; (4-2-08)~~

~~**b.** Exclude a food employee diagnosed with an infection from Norovirus when symptomatic; (4-2-08)~~

~~**c.** Restrict a food employee diagnosed with an infection from Norovirus when asymptomatic; and (4-2-08)~~

~~**d.** Exclude a food employee diagnosed with an infection from Norovirus whether symptomatic or asymptomatic when serving a highly susceptible population. (4-2-08)~~

~~03. **Removal of Exclusion and Restrictions.** Addition to Section 2-201.13. In addition, the person in charge may remove an employee diagnosed with Norovirus from restriction or exclusion when one (1) of the following conditions is met:~~ (4-2-08)

- ~~a. Written medical documentation is provided from a licensed medical practitioner;~~ (4-2-08)
- ~~b. Forty-eight (48) hours have passed since the employee became asymptomatic; or~~ (4-2-08)
- ~~c. Employee did not develop symptoms and more than forty-eight (48) hours have passed since the employee was diagnosed with Norovirus.~~ (4-2-08)

~~221. -- 299. (RESERVED)~~

300. FOOD.

Sections 300 through 399 of these rules will be used for modifications and additions to Chapter 3 of the 2001¹³ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

~~326. -- 349. (RESERVED)~~

~~**350. TEMPERATURE REQUIREMENTS.**~~

~~Modifications are being made to the temperature guidelines in the following sections of the 2001 Food Code.~~

(4-6-05)

~~01. **Specifications for Receiving Potentially Hazardous Food.** Modification to Section 3-202.11(D). Food that is cooked to a temperature and for a time specified under Sections 3-401.11 through 3-401.13 and received hot, must be at a temperature of 57°C (135°F) or above.~~ (4-6-05)

~~02. **Preventing Contamination from In-Use Utensils, Between Use Storage.** Modification to Section 3-304.12(F). In a container of water, if the water is maintained at a temperature of at least 57°C (135°F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).~~ (4-6-05)

~~03. **Plant Food Cooking for Hot Holding.** Modification to Section 3-401.13. Fruits and vegetables that are cooked for hot holding must be cooked to a temperature of 57°C (135°F).~~ (4-6-05)

~~04. **Reheating for Hot Holding Ready to Eat Food.** Modification to Section 3-403.11(C). Food taken from a commercially processed hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction of the plant, must be heated to a temperature of at least 57°C (135°F) for hot holding.~~ (4-6-05)

~~05. **Cooling Cooked Potentially Hazardous Food.** Modification to Section 3-501.14(A). Cooked potentially hazardous food must be cooled:~~ (4-6-05)

- ~~a. Within two (2) hours from 57°C (135°F) to 21°C (70°F); and~~ (4-6-05)
- ~~b. Within six (6) hours from 57°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Section 3-501.16(A)(2)(b) provided the food is cooled from 57°C (135°F) to 21°C (70°F) within the first two (2) hours.~~ (4-6-05)

~~06. **Potentially Hazardous Food, Hot and Cold Holding.** Modification to Section 3-501.16(A)(1). Potentially hazardous food must be maintained at 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified under Section 3-401.11(B) or reheated as specified in Section 3-403.11(E) may be held at a temperature of 54°C (130°F).~~ (4-6-05)

~~351. VARIANCE REQUIREMENTS FOR FOOD ESTABLISHMENTS.
Modifications to Section 3-502.11. Sections 3-502.11(E) and (F), are not adopted.~~

(4-6-05)

~~352.~~ 354. (RESERVED)

355. FOOD PROCESSING PLANTS.

Food processing plants, establishments, canning factories or operations must meet the requirements in Chapters 1 through 8 of the 2013 Food Code, and Subsections 355.01 through 355.07 of these rules. (4-6-05)()

01. Thermal Processing of Low-Acid Foods. Low-acid food products processed using thermal methods for canning must meet the requirements of 21 CFR 113. (4-6-05)

02. Processing of Acidified Foods. Acidified food products must meet the requirements of 21 CFR 114. ()

03. Bottled Water Processing. Bottled drinking water processed in Idaho must be from a licensed processing facility that meets the requirements of 21 CFR 129. Bottled drinking water must also meet the quality and monitoring requirements in 21 CFR 165. (4-6-05)

04. Approval of Process Methods. A variance by the regulatory authority must be approved and granted for specialized processing methods for products listed in Section 3-502.11. (4-6-05)

05. Labels. Proposed labels must be submitted to the regulatory authority for review and approval before printing. (4-6-05)

06. Testing. The license holder is responsible for chemical, microbiological or extraneous material testing procedures to identify failures or food contamination of food products being processed or manufactured by the license holder. (4-6-05)

07. Quality Assurance Program. The license holder or his designated person must develop and submit to the regulatory authority for review and approval a quality assurance program or HACCP plan which covers the food processing operation. The program must include the following: (4-6-05)

- a. An organization chart identifying the person responsible for quality control operations; (4-6-05)
- b. A process flow diagram outlining the processing steps from the receipt of the raw materials to the production and packaging of the finished product(s) or group of related products; (4-6-05)
- c. A list of specific points in the process which are critical control points that must have scheduled monitoring; (4-6-05)
- d. Product codes that establish and identify the production date and batch; (4-6-05)
- e. A manual covering sanitary maintenance of the facility and hygienic practices to be followed by the employees; and (4-6-05)
- f. A records system allowing for review and evaluation of all operations including the quality assurance program results. These records must be kept for a period of time that exceeds the shelf life of the product by six (6) months or for two (2) years, whichever is less. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHYSICAL FACILITIES.

Sections 600 through 699 of these rules will be used for modifications and additions to Chapter 6 of the 2013 Food Code as incorporated in Section 004 of these rules. (4-6-05)()

601. -- 619. (RESERVED)

620. PRIVATE HOMES AND LIVING OR SLEEPING QUARTERS, USE PROHIBITION.

Modifications to Section 6-202.111. ~~4~~ Except for cottage food operations, a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations. Residential care or assisted living facilities designed to be a homelike environment, are exempted from Section 6-202.111. (4-6-05)()

621. -- 699. (RESERVED)

700. POISONOUS OR TOXIC MATERIALS.

Sections 700 through 799 of these rules will be used for modifications and additions to Chapter 7 of the 2001~~3~~ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

800. COMPLIANCE AND ENFORCEMENT.

Sections 800 through 899 of these rules will be used for modifications and additions to Chapter 8 of the 2001~~3~~ Food Code as incorporated in Section 004 of these rules. (4-6-05)()

801. -- 829. (RESERVED)

830. APPLICATION FOR A LICENSE.

01. To Apply for a Food Establishment License. To apply for an Idaho food establishment license, the application and fee is submitted to the "regulatory authority" as defined in Section 111 of these rules. (4-6-05)()

02. Food License Expiration. The license for an Idaho food establishment expires on December 31st of each year. (4-6-05)

03. Renewal of License. A renewal application and a license fee must be submitted to the regulatory authority by December 1st of each year for the next calendar year starting January 1st. (4-6-05)

04. Summary Suspension of License. A license may be immediately suspended under Section 831 of these rules. Reinstatement of a license after a summary suspension does not require a new application or fee unless the license is revoked. (4-6-05)

05. Revocation of License. When corrections have been made to a food establishment whose license has been revoked under Section 860 of these rules, a new application and fee must be submitted to the regulatory authority. (4-6-05)

06. License is Non-Transferable. A license may not be transferred when ownership changes according to Section 8-304.20, of the 2001~~3~~ Food Code. The new owner must apply for his own license. (4-6-05)()

831. SUMMARY SUSPENSION OF LICENSE.

The regulatory authority may summarily suspend a license to operate a food establishment when it determines an imminent health hazard exists. (4-6-05)

01. Reasons a Summary Suspension May Be Issued. When a food establishment does not follow the principles of food safety, or a foodborne illness is found, or an environmental health hazard exists and public safety cannot be assured by the continued operation of the food establishment, a summary suspension may be issued. The following are some reasons the regulatory authority may determine a summary suspension is necessary: (4-6-05)

- a. Inspection of the food establishment shows uncorrected critical violations; (4-6-05)
- b. Examination of food shows the food is unsafe; (4-6-05)
- c. Review of records shows that proper steps for food safety have not been met; (4-6-05)
- d. An employee working with food is suspected of having a disease that is communicable through food; or (4-6-05)
- e. An imminent health hazard exists. (4-6-05)

02. Prior Notification Is not Required for a Summary Suspension. Upon providing a written notice of summary suspension to the license holder or person in charge, the regulatory authority may suspend a food establishment's license without prior warning, notice of hearing, or hearing. (4-6-05)

03. Written Notice of Summary Suspension. The regulatory authority must give the license holder or person in charge a written notice when suspending a license. The notice must include the following: (4-6-05)

- a. The specific reasons or violations the summary suspension is issued for with reference to the specific section of the 20~~0~~¹3 Food Code which is in violation; (~~4-6-05~~)()
- b. A statement notifying the food establishment its license is suspended and all food operations are to cease immediately; (4-6-05)
- c. The name and address of the regulatory authority representative to whom a written request for re-inspection can be made and who can certify the reasons for the suspension have been eliminated; (4-6-05)
- d. A statement notifying the food establishment of its right to an informal hearing with the regulatory authority upon submission of a written request within fifteen (15) days of receiving the summary suspension notice; and (4-6-05)
- e. A statement informing the food establishment that proceedings for revocation of its license will be initiated by the regulatory authority, if violations are not corrected. (4-6-05)
- f. The right to appeal to the Department as provided in Section 861 of these rules. (4-6-05)

04. Length of Summary Suspension. The suspension will remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority during a re-inspection. (4-6-05)

05. Re-Inspection of Food Establishment. The regulatory authority will conduct a re-inspection of the food establishment within two (2) working days of receiving a written request stating the condition for the suspension no longer exists. (4-6-05)

06. Reinstatement of License. The regulatory authority will immediately reinstate the suspended license if the re-inspection determines the public health hazard no longer exists. The regulatory authority will provide a written notice of reinstatement to the license holder or person in charge. (4-6-05)

832. -- 839. (RESERVED)

840. INSPECTIONS AND CORRECTION OF VIOLATIONS.
Modification to Section 8-401.10. (4-6-05)

01. Inspection Interval Section 8-401.10(A). Except as specified in Section 8-401.10(C), the regulatory authority must inspect a food establishment at least once a year. (4-6-05)

02. Section 8-401.10(B). This section has not been adopted. (4-6-05)
03. Section 8-401.10(C). This section is adopted as published. (4-6-05)
04. Section 8-405.11. This section is adopted with the following modifications: ()
- a. Delete Section 8-405.11(B)(1); and ()
- b. Amend Section 8-405-11(B)(2) to ten (10) calendar days after the inspection for the permit holder to correct critical or potentially-critical items or HACCP plan deviations. ()

841. INSPECTION SCORES.

The regulatory authority must provide the license holder an inspection report with a total score indicating the number of critical item violations and the number of repeat critical violations added together. Repeat violations are those observed during the last inspection. The inspection report will also score the total number of ~~non-critical~~ potentially-critical violations and non-critical violations and the number of repeat ~~non-critical~~ potentially-critical violations and non-critical violations. These scores will be used to determine if a follow-up inspection or a written report of correction is needed to verify corrections have been made. (4-6-05)()

01. **Medium-Risk Food Establishment.** If the critical violations exceed three(3), or the ~~non-critical~~ potentially-critical violations exceed six (6), or non-critical violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (4-6-05)()

02. **High-Risk Food Establishment.** If the critical violations exceed five (5), or the ~~non-critical~~ potentially-critical violations exceed eight (8), or non-critical violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (4-6-05)()

03. **Written Violation Correction Report.** A written violation correction report by the license holder may be provided to the regulatory authority if the total inspection score of the food establishment does not exceed those listed in Section 845 of these rules. The report must be mailed within five (5) days of the correction date identified on the inspection report. (4-6-05)

842. -- 844. (RESERVED)

845. VERIFICATION AND DOCUMENTATION OF CORRECTION.

In addition to Section 8-405.20 of the 2001~~3~~ Food Code, the on-site follow-up inspection may not be required for verification of correction if the regulatory authority chooses to accept a written report of correction from the license holder. (4-6-05)()

01. **Written Report of Correction.** The regulatory authority may choose to accept a written report of correction from the license holder stating that specific violations have been corrected. The license holder must submit this report to the regulatory authority within five (5) days after the correction date identified on the inspection report. (4-6-05)

a. Medium-risk food establishment. If the critical violations do not exceed three (3), or the ~~non-critical~~ potentially-critical violations do not exceed six (6), or the non-critical violations do not exceed six (6), a follow-up inspection is not required for verification of correction. (4-6-05)()

b. High-risk food establishment. If the critical violations do not exceed five (5), or the ~~non-critical~~ potentially-critical violations do not exceed eight (8), or the non-critical violations do not exceed eight (8), a follow-up inspection is not required for verification of correction. (4-6-05)()

02. **Risk Control Plan.** The regulatory authority may require the development of a risk control plan as verification of correction. The risk control plan must provide documentation on how the license holder will obtain long term correction of critical violations that are repeated violations, including how control will be monitored and who will be responsible. (4-6-05)

846. -- 849. (RESERVED)

850. ENFORCEMENT INSPECTIONS.

01. **Follow-Up Inspection.** If a follow-up inspection reveals that critical, potentially-critical, or non-critical violations identified on a previous inspection have not been corrected or still exist, an enforcement inspection may be made. (4-6-05)()

02. **Written Notice.** The license holder will receive written notice on the inspection form of the specific date for an enforcement inspection. This date must be within fifteen (15) days of the current or follow-up inspection. (4-6-05)

03. **Enforcement Inspections on Consent Order.** When a compliance conference results in a consent order and includes a compliance schedule to correct violations without further regulatory action, all inspections by the regulatory authority to satisfy the compliance schedule will be considered enforcement inspections until the next annual inspection. (4-6-05)

04. **Regulatory Action.** If the violations have not been corrected by the date of the enforcement inspection, regulatory action will be initiated to revoke the license issued to the food establishment. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

860. REVOCATION OF LICENSE.

The regulatory authority may revoke the license issued to a food establishment when the license holder fails to comply with these rules or the operation of the food establishment is a hazard to public health. (4-6-05)

01. **Reasons a License May Be Revoked.** (4-6-05)

a. The license holder violates any term or condition in Section 8-304.11 of the 2013 Food Code. (4-6-05)()

b. Access to the facility is denied or obstructed by an employee, agent, contractor or other representative during the performance of the regulatory authority's duties. It is not necessary for the regulatory authority to seek an inspection order to gain access as permitted in Section 8-402.40 of the 2013 Food Code, before proceeding with revocation. (4-6-05)()

c. A public health hazard or critical violation remains uncorrected after being identified by the regulatory authority and an enforcement inspection confirms the violation or hazard still exists. See Section 850 of these rules on enforcement inspections. (4-6-05)

d. A non-critical violation remains uncorrected after being identified by the regulatory authority and an enforcement inspection confirms the violation still exists. See Section 845 of these rules on verification and documentation of correction. (4-6-05)

e. Failure to comply with any consent order issued after a compliance conference. See Section 861 of these rules on compliance conference. (4-6-05)

f. Failure to comply with a regulatory authority's summary suspension order. See Section 831 of these rules on summary suspension of a license. (4-6-05)

g. Failure to comply with an embargo order. See Section 851 of these rules on adulterated or misbranded food. (4-6-05)

h. Failure to comply with a regulatory authority order issued when an employee is suspected of having a communicable disease. See Section 220 of these rules Chapter 2 of the 2013 Food Code on employee health.

(4-6-05)()

02. Notice to Revoke a License. The regulatory authority must notify the license holder of the food establishment in writing of the intended revocation of the license. See Section 861 of these rules for appeal process. The notice must include ~~the~~ Subsections 860.02.a. through 860.02.c. of ~~these~~ this rules: (4-6-05)()

a. The specific reasons and sections of the Idaho Food Code which are in violation and the cause for the revocation; and (4-6-05)

b. The right of the license holder to request in writing a compliance conference with the regulatory authority within fifteen (15) days of the notice; and (4-6-05)

c. The right of the license holder to appeal in writing to the Department of Health and Welfare. See Subsection 861.02 of these rules. (4-6-05)

d. The following is sufficient notification of the license holder's appeal rights: "You have the right to request in writing a compliance conference with (name and address of designated health district official) within fifteen (15) days of the receipt of this notice. You may also appeal the revocation of your license to the Director of the Department of Health and Welfare by filing a written appeal with the Department as provided in IDAPA 16.05.03, "Rules Governing Contested Case Proceeding and Declaratory Rulings," within fifteen (15) days of the receipt of this notice, or if a timely request is made for a compliance conference and the matter is not resolved by a consent order, within five (5) working days following the conclusion of the compliance conference." (4-6-05)

03. Effective Date of Revocation. The revocation will be effective fifteen (15) days following the date of service of notice to the license holder, unless an appeal is filed or a timely request for a compliance conference is made. If a compliance conference is requested and the matter is not resolved by a consent order, the revocation will be effective five (5) working days following the end of the conference, unless an appeal is filed with the Director of the Department of Health and Welfare within that time. See Section 861 of these rules for compliance conference, consent order and appeal process. (4-6-05)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-1501

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 39-3505, 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 16, 2015.

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

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

These rules are being amended to update the rules for 2015 legislation passed to provide an exception in rule for the Dept. of Veteran's Affairs Medical Foster Homes. The Department is also updating certification requirements for best practices, training requirements, and clarification of these rules as follows:

- 1) Add an exception for the Veterans Affairs Medical Foster Homes;
- 2) Update the criminal history and background checks to be CFH specific;
- 3) Amend definitions to current terms and language;
- 4) Update and revise certification requirements to best practice for care and supervision, food and nutritional services, and training requirements;
- 5) Update requirements for waiver, investigations, and enforcement actions; and
- 6) Update resident rights policy requirements.

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

Fee increases for the Certified Family Home program are being promulgated under a separate Docket 16-0319-1502, publishing in this Bulletin.

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 CFH program is a self-sustaining program and the Department's anticipated fee receipts for SFY2017 is \$828,000. The on-site survey inspection of new applicants anticipated fee receipts is \$39,900. The medication awareness training for caregivers anticipated fee receipts is \$13,680.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015, Idaho Administrative Bulletin, [Volume 15-5, page 59](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Vasterling at (208) 239-6263.

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 23, 2015.

DATED this 17th Day of August, 2015.

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 DOCKET NO. 16-0319-1501
(Only Those Sections With Amendments Are Shown.)

001. TITLE, SCOPE, AND EXCEPTIONS.

01. Title. These rules are cited as IDAPA 16.03.19, “Rules Governing Certified Family Homes.” (4-11-06)

02. Scope. These rules set the minimum standards and administrative requirements for any home that is paid to care for an adult living in the home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs assistance with activities of daily living. (4-11-06)

03. Exceptions to These Rules. These rules do not apply to the following: (4-11-06)

a. Any home that provides only housing, meals, transportation, housekeeping or recreational and social activities. (4-11-06)

b. Any health facility defined by Title 39, Chapter 13, Idaho Code. (4-11-06)

c. Any residential care or assisted living facility defined by Title 39, Chapter 33, Idaho Code. (4-11-06)

d. Any arrangement for care in a relative's home that is not compensated through a federal or state program. (4-11-06)

e. Any home approved by the Department of Veterans Affairs as a “medical foster home” described in 38 CFR Part 17 and Section 39-3502, Idaho Code. Homes that provide care to both veterans and nonveterans, are not exempt from these rules. ()

04. State Certification to Supersede Local Regulation. These rules will supersede any program of any political subdivision of the state which certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (4-11-06)

02. Mailing Address. ()

a. The mailing address ~~for of~~ the ~~business office is~~ Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho, 83720-0036. (4-11-06)()

b. The mailing address of the Division of Licensing and Certification, P. O. Box 83720, Boise, Idaho, 83720-0009. ()

03. Street Address. ()

a. The ~~business office street address~~ of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho, 83702. (4-11-06)()

b. The street address of the Licensing and Certification Division is located at 3232 Elder Street, Boise, Idaho 83705. ()

04. Telephone. ()

a. The Idaho Department of Health and Welfare telephone number ~~for the business office~~ is (208) 334-5500. (4-11-06)()

b. The Licensing and Certification Division telephone number is (208) 364-1959. ()

c. Region 1 - CFH Coeur d'Alene office telephone number is (208) 665-8841. ()

d. Region 2 - CFH Lewiston office telephone number is (208) 799-4431. ()

e. Region 3 - CFH Caldwell office telephone number is (208) 455-7129 or 455-7160. ()

f. Region 4 - CFH Boise office telephone number is (208) 334-0831 or 334-6944. ()

g. Region 5 - CFH Twin Falls office telephone number is (208) 732-1517. ()

h. Region 6 - CFH Pocatello office telephone number is (208) 239-6261 or 239-6273. ()

i. Region 7 - Idaho Falls office telephone number is (208) 528-5720 or 528-5726. ()

05. Internet Websites. ()

a. The Department Internet website is www.healthandwelfare.idaho.gov. (4-11-06)()

b. The Certified Family Home Internet website is www.cfh.dhw.idaho.gov. ()

(BREAK IN CONTINUITY OF SECTIONS)

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

01. **Compliance with Department Criminal History Check.** The provider and all adults living in the home are required to comply with IDAPA 16.05.06, "Criminal History and Background Checks." The criminal history and background check must be specific to the Certified Family Home Program. The resident is exempt from criminal history check requirements. (4-11-06)()

02. **When Certification Can Be Granted.** The provider must have a completed criminal history check, including clearance, prior to certification. Any other adult living in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Criminal History

and Background Checks.” (4-11-06)

03. New Adults in the Home After Certification Is Granted. A new adult who plans to live in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, “Criminal History and Background Checks,” before moving into the home. Any adult who is a visitor in the home and leaves within thirty (30) days, is not required to have a criminal history check but must not have unsupervised contact with the resident. (4-11-06)

04. Minor Child Turns Eighteen. A minor child turning eighteen (18) and living in the home must complete a self-declaration form, must be fingerprinted, and must not have disclosed any designated crimes listed in IDAPA 16.05.06, “Criminal History and Background Checks,” within thirty (30) days following the month of his eighteenth birthday. (4-11-06)

05. Substitute Caregiver. A substitute caregiver must complete a self-declaration form, be fingerprinted, and must not have disclosed any designated crimes listed in IDAPA 16.05.06, “Criminal History and Background Checks,” prior to any unsupervised contact with the resident. The criminal history and background check must be specific to the Certified Family Home Program. (4-11-06)()

06. Additional Criminal Convictions. Once criminal history clearances have been received, the provider must immediately report to the Department any additional criminal convictions for himself, any other adult living in the home or a substitute caregiver. (4-11-06)

07. Notice of Pending Investigations or Charges. Once criminal history clearances have been received, the provider must immediately report to the Department when he, any other adult living in the home, or a substitute caregiver is charged with or under investigation for abuse, neglect or exploitation of any vulnerable adult or child, criminal charges, or when an adult protection or child protection complaint is substantiated. (4-11-06)

010. DEFINITIONS.

01. Abuse. A nonaccidental act of sexual, physical or mental mistreatment or injury of the resident through the action or inaction of another individual. (4-11-06)

02. Activities of Daily Living. The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, managing money, mobility, and associated tasks. (4-11-06)

03. Adult. A person who has attained the age of eighteen (18) years. (4-11-06)

04. Alternate Caregiver. A certified family home provider approved by the Department to care for a resident ~~from~~ in another certified family home for up to thirty (30) consecutive days when the original provider is temporarily absent or unable to care for the resident. (4-11-06)()

05. Assessment. The conclusions reached using uniform criteria developed by the Department and relevant councils for determining a person's need for care and services. (4-11-06)()

06. Certificate. A permit issued by the Department to operate a certified family home. (4-11-06)

07. Certified Family Home (CFH). A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside ~~on~~ in their own home and require help with activities of daily living, protection and security, and need encouragement toward independence. (4-11-06)()

08. Certified Family Home Care Provider. The adult member owner or primary renter of the certified family home living in the home who is responsible for providing care to the resident. The certified family home care provider is referred to as “the provider” in this chapter of rules. (4-11-06)()

09. Chemical Restraint. The use of any medication that results or is intended to result in the modification of behavior. (4-11-06)

10. Criminal Offense. Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2 (o), and 18 U.S.C. Sections 1001 through 1027. (4-11-06)

11. Department. The Idaho Department of Health and Welfare. (4-11-06)

12. Director. The Director of the Idaho Department of Health and Welfare or his designee. (4-11-06)

13. Exploitation. The misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage. (4-11-06)

14. Health Care Professional. An individual licensed to provide health care within his respective discipline and scope of practice. ()

~~145.~~ **Immediate Jeopardy.** An immediate or substantial danger to a resident. (4-11-06)

~~156.~~ **Incidental Supervision.** Supervision provided by an individual adult approved by the provider to supervise the resident, not to exceed four (4) hours per week. (~~4-11-06~~)()

~~167.~~ **Level of Care.** A categorical assessment of the resident's functional ability and the degree of care required in the areas of activities of daily living, supervision, response to emergency situation, mobility, medications and behavior management. (4-11-06)

~~178.~~ **Neglect.** The failure to provide food, clothing, shelter or medical care to sustain the life and health of a resident. (4-11-06)

~~189.~~ **Negotiated Service Agreement.** The agreement between the resident and or his representative, if applicable, and the home based on the assessment, physician's health care professional's orders, if any, admission records, if any, and desires of the resident, that outlines services to be provided and the obligations of the home and the resident. (~~4-11-06~~)()

~~1920.~~ **Owner.** Any recognized legal entity, governmental unit, or person having legal ownership of the certified family home as a business operation. (4-11-06)

~~201.~~ **Plan of Service.** The generic term used in these rules to refer to the Negotiated Service Agreement, Personal Care Plan, Plan of Care, Individual Support Plan or any other comprehensive service plan. (4-11-06)

~~212.~~ **PRN.** A medication or treatment ordered by a medical health care professional to an individual allowing the medication or treatment to be given as needed. (~~4-11-06~~)()

~~223.~~ **Relative.** A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. (4-11-06)

~~234.~~ **Resident.** An adult who lives in a Certified Family Home and requires supervision and one (1) or more of the following services: protection, assistance with decision-making and activities of daily living, or direction toward self-care skills. (4-11-06)

~~245.~~ **Substitute Caregiver.** An individual adult approved by the provider to provide care services, and supervision to the resident in the provider's certified family home for up to thirty (30) consecutive days. (~~4-11-06~~)()

011. -- 099. (RESERVED)

100. CERTIFICATION REQUIREMENTS.

Certification is required in order to operate a certified family home in the State of Idaho. The Department will issue a certificate to a home when all certification requirements are met. (4-11-06)

01. Certificate Issued in the Name of Provider. The certificate is issued in the name of the provider applying for certification, and only to the address of the home stated in the application. A new certificate is required if the provider or the location of the certified family home changes. (4-11-06)

02. Accessibility to the Home. The home, physical premises, and all records required under these rules, must be accessible at all times to the Department for the purposes of inspection, with or without prior notification. (4-11-06)

03. Number of Residents in the Home. A certified family home cannot be certified for more than two (2) residents. An exception may be granted by the Department as described in Section 140 of these rules. ~~(4-11-06)~~()

04. Certification Limitations. (4-11-06)

a. A certified family home cannot be certified if it also provides room or board to any person who is not a resident as defined by these rules or a family member. A waiver may be granted by the Department when the individual receiving room or board is the spouse of the resident and does not require certified family home care or any higher level of care; ~~(4-11-06)~~()

b. A certified family home cannot be certified as a certified family home and a child foster home at the same time. ~~(4-11-06)~~()

c. A certified family home provider may not be the guardian of any resident unless the guardian provider is a parent, child, sibling, or grandparent of the resident. ~~(4-7-11)~~()

d. A certified family home provider may not be absent from the certified family home for more than thirty (30) consecutive days if they have an admitted resident. ()

05. Certification Study Required. Following receipt of an acceptable application and other required documents, the Department will begin a certification study within thirty (30) days. The certification study, along with the application and other required material, will serve as the basis for issuing or denying a certificate. The study will include the following: ~~(4-11-06)~~()

a. A review of all material submitted; (4-11-06)

b. A scheduled home inspection; (4-11-06)

c. An interview with the proposed provider; (4-11-06)

d. An interview with provider's family, if necessary; (4-11-06)

e. A review of the number, age, and sex of children or other adults in the home to evaluate the appropriateness of a placement to meet the needs of the resident; (4-11-06)

f. A medical or psychological examination of the provider or family members, if the Department determines it is necessary; and (4-11-06)

g. Other information necessary to verify that the home is in compliance with these rules. (4-11-06)

06. Provider Training Requirements. As a condition of initial certification, all providers must receive training in the following areas: (4-11-06)

a. Resident rights; (4-11-06)

b. Certification in first aid and adult Cardio-Pulmonary Resuscitation (CPR) which must be kept current and must include hands-on skills training; ~~(4-11-06)~~()

- c. Emergency procedures; (4-11-06)
- d. Fire safety, fire extinguishers, and smoke alarms; (4-11-06)
- e. Completion of an approved medication assistance course as follows: ()
 - i. “Assistance with Medications” course; ~~and~~ available through an Idaho Professional Technical Education Program; or ~~(4-11-06)~~()
 - ii. “Basic Medication Awareness for Certified Family Homes” course through the Department; and ()
- f. Complaint investigations and inspection procedures. (4-11-06)

07. Effect of Previous Revocation or Denial of Certificate or License. The Department is not required to consider the application of any applicant who has had a health care certificate or license denied or revoked until five (5) years have elapsed from the date of denial or revocation according to Section 39-3525, Idaho Code. (4-11-06)

101. APPLICATION FOR CERTIFICATION.

The applicant must apply for certification on forms provided by the Department, pay the application fee, and provide information required by the Department. (3-21-12)

01. Completed and Signed Application. A completed application form signed by the applicant. (4-11-06)

02. Statement to Comply. A written statement that the applicant has thoroughly read and reviewed this chapter and is prepared to comply with all of its provisions. (4-11-06)

03. Criminal History and Background Clearance. Satisfactory evidence that the applicant and all adults living in the home are of reputable and responsible character, including a criminal history clearance as provided in Section 009 of these rules. (4-11-06)

04. Statement Disclosing Revocation or Disciplinary Actions. A written statement that discloses any revocation or other disciplinary action taken or in the process of being taken against the applicant as a care provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. An application will: ~~(4-11-06)~~()

a. Not be reviewed by the Department when an applicant has had a certificate or license denied or revoked within the previous five (5) years; or ()

b. Be reviewed by the Department after five (5) years have elapsed from the date the certificate or license was denied or revoked. ()

05. Electrical Inspection. A current statement from a licensed electrician or the local/state electrical inspector that all wiring in the home complies with applicable local code. (4-11-06)

06. Environmental Sanitation Inspection. If the home is not on a municipal water supply or sewage disposal system, a current statement is needed from the local environmental health agency that the water supply and sewage disposal system meet the legal standards. If the local environmental health agency cannot provide this information, the home must obtain a statement to that effect. In addition, the applicant must provide a signed statement that the water supply and sewage disposal system are in good working order. (4-11-06)

07. Proof of Insurance. Proof of homeowner's or renter's insurance on the home and the resident's belongings. For continued certification, insurance must be kept current. (4-11-06)

08. List of Individuals Living in the Home. A list of all individuals living in the home at the time of

application and their relationship to the applicant. (4-11-06)

09. Payment of Application Fee. Payment of the application fee required in Section 109 of these rules. (3-21-12)

10. Other Information as Requested. Other information that may be requested by the Department for the proper administration and enforcement of the provisions of this chapter. (4-11-06)

11. Termination of Application Process. Failure of the applicant to cooperate with the Department in the application process will result in the termination of the application process. Failure to cooperate means that the information described in ~~Section 101 of these~~ this section of rules is not provided in a timely manner, or not provided ~~in~~ on the form requested by the Department, or both. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

110. ISSUANCE OF CERTIFICATE.

01. Certificate. A certificate is valid for no more than twelve (12) months from the date of approval. The certificate will expire at the end of the stated period unless it is continued in effect by the Department as provided in Subsection 110.03.c. of ~~these~~ this rules. (4-11-06)()

a. The initial certificate requires a home inspection by the Department. (4-11-06)

b. The certificate is valid only for the location and person named in the application and is not transferable or assignable; (4-11-06)

c. The certificate must be available at the home on request. (4-11-06)

02. Provisional Certificate. A provisional certificate may be issued to a home that is not in substantial compliance with these rules if the deficiencies do not adversely affect the health or safety of the resident. (4-11-06)

a. Provisional certificates may be issued for up to six (6) months and are contingent on an approved plan to correct all deficiencies prior to expiration of the provisional certificate. (4-11-06)

b. A provisional certificate may be replaced with a certificate when the Department has revisited the home prior to the expiration of the provisional certificate and has determined that the home qualifies for a certificate. (4-11-06)

c. A home will not be issued more than one (1) provisional certificate in any twelve (12) month period. (4-11-06)

03. Renewal of Certificate. To renew the certificate, the provider must submit a written request on a form provided by the Department. The completed renewal application form and any required documentation must be returned to the Department at least thirty (30) days prior to the expiration of the existing certificate. (4-11-06)

a. A home inspection is required the year after the initial home certification study and at least every twenty-four (24) months thereafter. (4-11-06)

b. If the Department determines a home inspection is not required to renew the certificate, the provider must submit the renewal application and copies of the following documentation to renew the certificate: (4-11-06)

i. Current first aid and adult CPR cards; (4-11-06)()

ii. Furnace, well, ~~and~~ and fireplace inspection reports, ~~as~~ and septic inspection or pumping receipts, if

- applicable; (4-11-06)()
- iii. Annual fire extinguisher inspection reports or sales receipts for fire extinguishers less than twelve (12) months old. Fire extinguishers must at least five (5) pounds, or larger, dry chemical multipurpose 2A:10-B:C rated ABC type; (4-11-06)()
 - iv. Fire log of smoke detector checks, fire extinguisher checks, and fire drill and evacuation summaries; (4-11-06)
 - v. Training logs; (4-11-06)
 - vi. List of individuals currently living in the home and individuals who moved in and out of the home during the year; (4-11-06)
 - vii. Proof of home ownership or lease agreement; ()
 - viii. Proof of home owner's or renter's insurance; (4-11-06)
 - ix. Request for waiver or renewal of waiver and that meets the requirements in Section 120 of these rules; and (4-11-06)()
 - x. Other information as requested by the Department. (4-11-06)
- c. The existing certificate, unless suspended or revoked, remains valid until the Department has acted on the application renewal when the renewal application and supporting documentation is filed in a timely manner. (4-11-06)

04. Change of Ownership Certification Requirements. Certificates are not transferable from one (1) individual to another or from one (1) location to another. The home must be recertified using the same procedure as a new home that has never been certified when a change of ownership, lease, or location occurs. (4-11-06)()

05. Change of Location Requirements. Certificates are not transferable from one (1) location to another. The Department must be notified a minimum of thirty (30) days prior to a change in location. When a change of location occurs, the new location must be inspected by the Department prior to occupancy. ()

056. Denial of Certificate. The Department may deny the issuance of a certificate when conditions exist that endanger the health, safety, or welfare of any resident or when the home is not in substantial compliance with these rules. Additional causes for denial of a certificate include the following: (4-11-06)

- a. The applicant or provider has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (4-11-06)
- b. The applicant or provider has been convicted of fraud, gross negligence, abuse, assault, battery or exploitation; (4-11-06)
- c. The applicant has been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or similar minor offense; (4-11-06)
- d. The applicant or provider has been denied or has had revoked any health facility, residential care or assisted living facility license, or certified family home certificate; (4-11-06)
- e. The applicant or provider has been convicted of found to be operating a health facility, residential care or assisted living facility, or certified family home without a license or certificate; (4-11-06)()
- f. A court has ordered that the applicant or provider must not operate a health facility, residential care or assisted living facility, or certified family home; (4-11-06)

g. The applicant or provider is listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; or (4-11-06)

h. The applicant or provider is directly under the control or influence of any person who is described in Subsections 110.056.a. through 110.056.g. of these rules. (4-11-06)()

067. Revocation of Certificate. The Department may revoke any certificate when conditions exist which endanger the health, safety, or welfare of any resident, or when the home is not in substantial compliance with these rules as described in Section 913 of these rules. (4-11-06)

078. Procedure for Appeal of Denial or Revocation of a Certificate. (4-11-06)

a. Immediately upon denial of any application for a certificate, or revocation of a certificate, the Department will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. (4-11-06)

b. The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)

089. Family Home Operating Without a Certificate. A person found to be operating a family home without first obtaining a certificate may be referred for criminal prosecution. Upon discovery of a family home operating without a certificate, the Department will refer residents to the appropriate placement or adult protective services agency if: (4-11-06)

a. There is an immediate threat to any resident's health and safety; or (4-11-06)

b. The home does not cooperate with the Department to apply for certification, meet certification standards and obtain a valid certificate. (4-11-06)

111. CLOSURE OF CERTIFIED FAMILY HOME.
The provider must notify the Department in writing when choosing to voluntarily close the certified family home. This must include the planned closure date and the discharge plan for current residents. ()

112. -- 114. (RESERVED)

115. REQUIRED ONGOING TRAINING.
All providers must document a minimum of eight (8) hours per year of ongoing, relevant training in the provision of supervision, services, and care specific to resident needs. ()

01. Classroom Training. The training must consist of at least four (4) hours of classroom training. The remaining four (4) hours may be independent study or classroom training. Up to Two (2) hours of classroom training for ongoing first aid or adult CPR will count toward the eight (8) hour requirement. Adult CPR must include hands on skills training. ()

02. Initial Provider Training. The initial provider training required in Subsection 100.06 of these rules will count toward the first year's eight (8) hour training requirement. (4-11-06)()

03. Specificity of Training. All training hours in excess of ongoing first aid or adult CPR must be specific to the residents' condition and diagnosis. ()

04. Training for Additional Beds. When a home has an exception for three (3) or four (4) beds, training hours are increased for each additional resident as required in Section 140.04 of these rules. ()

116. -- 119. (RESERVED)

120. WAIVERS.
The Department may grant waivers. The decision to grant a waiver in one (1) home is not a precedent or applicable to

any other home. (4-11-06)

01. Written Request. A written request for a waiver must be submitted to the Department. The request must include the following: (4-11-06)

a. Reference to the section of the rules for which the waiver is requested; (4-11-06)

b. Reasons that show good cause why the waiver should be granted, including any extenuating circumstances and any compensating factors or conditions that may have bearing on the waiver, ~~such as additional floor space or additional staffing;~~ (4-11-06)()

c. Written documentation that assures resident health and safety will not be jeopardized if the waiver is granted. (4-11-06)

02. Waiver Expiration. ()

a. A temporary waiver may be granted for a period of no more than twelve (12) months. ()

b. A permanent waiver of a specific standard may be granted at the discretion of the Department. Good cause must be shown for such a waiver of the standard and must not endanger the health or safety of any resident. (4-11-06)()

03. Waiver Renewal. If the provider ~~wishes~~ chooses to renew a temporary waiver, ~~he~~ the provider must submit a written request to the Department. The appropriateness of renewing a waiver will be determined by the Department. (4-11-06)()

04. Waiver Not Transferable. A waiver granted under ~~Section 120~~ this rule is not transferable to any other provider, address, or resident. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

140. EXCEPTION TO THE TWO RESIDENT LIMIT.

01. Application for Exception. A home may apply to the Department for an exception to the two (2) resident limit to care for three (3) or four (4) residents. (4-11-06)

02. Criteria for Determination. The Department will determine if safe and appropriate care can be provided based on resident needs. The Department will consider, at a minimum, the following factors in making its determination: (4-11-06)

a. Each current or prospective resident's physical, mental and behavioral status and history; (4-11-06)

b. The household composition including the number of adults, children and other family members requiring care from the provider; (4-11-06)

c. The training, education, and experience of the provider to meet each resident's needs; (4-11-06)

d. Potential barriers that might limit resident safe access to and exit from the rooms in the home; (4-11-06)

e. The number and qualifications of caregivers in the home; (4-11-06)

f. The desires of the prospective and current residents; (4-11-06)

g. The individual and collective hours of care needed by the residents; (4-11-06)

h. The physical layout of the home and the square footage available to meet the needs of all persons living in the home; and (4-11-06)

i. If an exception to the two (2) resident limit would result in two (2) or more residents who require nursing facility level of care living in the home, then the application must also include the information required in Section 130 of these rules. (4-11-06)

03. Other Employment. Providers of three (3) or four (4) bed homes must not have other gainful employment unless: (4-11-06)

a. The total direct care time for all residents, as reflected by the plan of service and assessments, does not exceed eight (8) hours per day; (4-11-06)

b. The provider is immediately available to meet resident needs as they arise; and (4-11-06)

c. Each resident is supervised at all times unless the assessment or plan of service indicates the resident may be left unattended for designated periods of time. (4-11-06)

04. Additional Training. Providers of three (3) or four (4) bed homes must obtain additional training to meet the needs of the residents as determined necessary by the Department. For each additional resident, the provider must obtain four (4) more hours of required training described in Section 115 of these rules. ~~(4-11-06)~~ ()

05. Exception Nontransferable. An exception to care for more than two (2) residents will not be transferable to another provider, address, or resident. (4-11-06)

06. Reassessment of Exception. An exception to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: (4-11-06)

a. Each time a new admission is considered; or (4-11-06)

b. When there is a significant change in any of the factors specified in Subsection 140.02 of these rules. (4-11-06)

07. Annual Home Inspection. A home with an exception to care for more than two (2) residents must have a home inspection at least annually. (4-11-06)

08. Shared Sleeping Rooms. In addition to the requirements in Section 700 of these rules, no more than two (2) residents will be housed in any multi-bed sleeping room. (4-11-06)

09. Emergency Placement. The certified family home provider may not accept an emergency placement without prior approval of the CFH program. If an emergency placement request occurs after normal business hours and the provider cannot reach the CFH program for prior approval, the provider may make a conditional placement subject to Department approval. The provider must notify the CFH program the next business day of such placement and request Department approval of the placement. The Department may at its discretion deny emergency placements made without prior approval. ()

141. -- 149. (RESERVED)

150. INSPECTIONS OF HOMES.

The Department will inspect certified family homes at least every twenty-four (24) months, beginning with the first month of the most recent certification. Inspections may occur more frequently as the Department deems necessary. The Department may consider the results of previous inspections, history of compliance with rules, and complaints to determine the frequency of inspections. (4-11-06)

01. Notice of Inspection. All inspections *and investigations*, except for the initial certification study, may be made unannounced and without prior notice. ~~(4-11-06)~~ ()

02. Inspection by Department or Its Agent. The Department may use the services of any legally qualified person or organization, either public or private, to examine and inspect any home requesting certification. (4-11-06)()

03. Access by Inspector. An inspector must have full access and authority to examine quality of care and services delivery, resident records, records including any records or documents pertaining to any financial transactions between residents and the home, resident accounts, physical premises, including the condition of the home, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with these rules and standards. (4-11-06)

a. An inspector has the authority to interview the provider, any adults living in the home, the resident and the resident's family, substitute caregivers, persons who provide incidental supervision, and any other person who is familiar with the home or its operation. Interviews with residents will be confidential and conducted privately unless otherwise specified by the resident. (4-11-06)()

b. The inspector has full authority to inspect the entire home, accompanied by the provider, substitute caregiver, or any other adult living in the home, including personal living quarters of family members living in the home, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on the operation of the certified family home. (4-11-06)()

~~**04. Written Report.** Following any investigation or inspection, the Department will provide a written report to the provider of the home within thirty (30) days. The report will include the findings of the investigation or inspection. (4-11-06)~~

~~**054. Plan of Correction.** If When deficiencies are identified during the investigation or inspection, the home will be is sent a statement of deficiencies by the Department which requires an approved plan of correction. (4-11-06)()~~

~~**a.** Depending on the severity of the deficiency, the home may be given up to fourteen (14) calendar days to develop a written plan of correction and to return the plan of correction to the Department for approval. (4-11-06)()~~

~~**b.** An acceptable plan of correction must include how the deficiency was corrected or how it will be corrected, what steps have been taken to assure that the deficiency does not recur, and acceptable time frames for correction of the deficiency. (4-11-06)~~

~~**c.** Follow-up inspections may be conducted to determine whether corrections to deficiencies are being made according to time frames established in the approved plan of correction. (4-11-06)()~~

~~**d.** The Department may provide consulting services to a home, upon request, to assist in identifying and correcting deficiencies and upgrading the quality of care. (4-11-06)~~

151. -- 159. (RESERVED)

160. COMPLAINT PROCEDURE.

Any person who believes that any rule has been violated by a certified family home may file a complaint with the Department at the address listed described in Section 005 of these rules ~~or at the Department's Regional Office.~~ (4-11-06)()

01. Investigation. The Department will investigate any complaint alleging a violation of these rules. Investigations may be made unannounced and without prior notice. Any complaint involving the abuse, neglect, or exploitation of an adult must also be referred to adult protective services in accordance with the Adult Abuse, Neglect, and Exploitation Act, Section 39-5303, Idaho Code. (4-11-06)()

02. Investigation Method. The nature of the complaint will determine the method used to investigate the complaint. On-site investigations at the home may be unannounced. (4-11-06)

03. **Written Report.** Following any investigation, the Department will provide a written report to the provider of the home within thirty (30) days. The report will include the findings of the investigation. ()

034. **Statement of Deficiencies.** If violations of these rules are identified, depending on the severity, the Department may send the home a statement of deficiencies. The home must ~~prepare~~ complete and sign a plan of correction as described in Subsection 150.05 of these rules, and return it to the Department within the time frame designated by the Department. (4-11-06)()

045. **Public Disclosure.** Information received by the Department through filed reports, inspection, or as otherwise authorized under the law, must not be disclosed publicly in such a manner as to identify individual residents except in a proceeding involving a question of certification. (4-11-06)

056. **List of Deficiencies.** A current list of deficiencies including plans of correction will be available to the public upon request in the individual homes or by written request to the Department. (4-11-06)

161. -- 169. (RESERVED)

170. ELEMENTS OF CARE.

As a condition of certification, the certified family home must provide ~~each of the following to the resident without additional charge.~~ adequate care to meet each resident's needs described in his plan of service and admission agreement. This includes room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment and protection of resident rights. The resident can not be charged an additional amount for the following: (4-11-06)()

01. Supervision. Ensure ~~A~~appropriate, adequate supervision for twenty-four (24) hours each day unless the resident's plan of service provides for alone time. (4-11-06)()

02. Daily Activities and Recreation. Daily activities, recreational activities, maintenance of self-help skills, assistance with activities of daily living and provisions for trips to social functions, special diets, and arrangements for payments. (4-11-06)

03. Medical. Arrangements for medical and dental services and monitoring of medications. If the resident is unable to give medical consent, the provider will give the name and contact information of the person holding guardianship or power of attorney for health care to any health care provider upon request. (4-11-06)

04. Furnishings and Equipment. Linens, towels, wash cloths, a reasonable supply of soap, shampoo, toilet paper, sanitary napkins or tampons, first aid supplies, shaving supplies, laundering of clothing and linens, housekeeping service, maintenance, and basic television in common areas. In addition, the following will apply: (4-11-06)()

a. Resident living rooms must contain reading lamps, tables, and comfortable chairs or sofas; (4-11-06)

b. The resident must be provided with his own bed which must be at least thirty-six (36) inches wide, substantially constructed, and in good repair. Roll-away type beds, cots, folding beds, or double bunks must not be used. The bed must be provided with box springs which are in good repair, a clean and comfortable mattress which is standard for the bed, and a pillow; (4-11-06)()

c. The resident sleeping room must be equipped with a chair and dresser, substantially constructed and in good repair; (4-11-06)

d. On request, each sleeping room must be equipped with a lockable storage cabinet for personal items for each resident, in addition to the required storage in resident sleeping rooms; (4-11-06)

e. Adequate and satisfactory equipment and supplies must be provided to serve the residents. The amount and kind will vary according to the size of the home and type of resident; and (4-11-06)

f. A monitoring or communication system must be provided when necessary due to the size or design of the home. (4-11-06)

~~g.~~ Resident linens must include two (2) sheets, a pillow case, and a minimum of one (1) blanket and a bedspread. Bed linens must be changed regularly, or when soiled. ()

~~h.~~ Provider must ensure that resident's clothing is washed regularly or when soiled. ()

~~05.~~ ~~Plan of Service. Development and implementation of the plan of service for private-pay residents and implementation of the plan of service for state-funded residents.~~ (4-11-06)

~~065.~~ **Activity Supplies.** Activity supplies in reasonable amounts, that reflect the interests of the resident. (4-11-06)

~~076.~~ **Transportation.** Arrangement of transportation in reasonable amounts to community, recreational and religious activities within twenty-five (25) miles of the home. The home must also arrange for emergency transportation. (4-11-06)

171. -- 174. (RESERVED)

175. ROOM, UTILITIES AND MEALS.

The certified family home must provide room, utilities and three (3) daily nutritious meals to the resident. The monthly charge for room, utilities and a minimum of three (3) daily nutritional meals or a diet prescribed by a health care professional must be established in the resident's admission agreement. (4-11-06)()

176. -- 199. (RESERVED)

200. RESIDENT RIGHTS POLICY.

Each certified family home ~~will develop~~ must have and implement a written resident rights policy ~~which will~~ that protects and promotes the rights of each resident and addresses each of the resident rights described in this rule. The resident rights policy must be reviewed and acknowledged annually by the provider and a resident or resident's guardian or conservator. The annual acknowledgement must be signed and dated by the provider and the resident or the resident's guardian or conservator and be kept in the resident's records according to Section 270 of these rules. The written description of legal rights must include a description of the protection of personal funds and a statement that a resident or resident's representative may file a complaint with the Department ~~at the address~~ described in Section 005 of these rules, ~~or local Regional Office~~ regarding resident abuse and neglect and misappropriation of resident's property, or other resident rights violated in the home. Resident rights include the following: (4-11-06)()

01. Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits and meetings of family and resident groups, including: (4-11-06)

~~a.~~ The right to privacy in regards to social media. No information or pictures pertaining to the resident may be posted to a social media site without written consent by the resident or the residents guardian, if applicable; ()

~~b.~~ The right to send and receive mail, either regular or electronically, unopened; and (4-11-06)()

~~b.c.~~ If the resident is married, privacy for visits by his spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the ~~attending physician~~ health care professional. (4-11-06)()

02. Humane Care. Each resident has the right to humane care and a humane environment, including the following: (4-11-06)

- a. The right to a diet which is consistent with any religious or health-related restrictions; (4-11-06)
- b. The right to refuse a restricted diet; and (4-11-06)
- c. The right to a safe and sanitary living environment. (4-11-06)
- 03. Respectful Treatment.** Each resident has the right to be treated with dignity and respect, including: (4-11-06)
- a. The right to be treated in a courteous manner by the provider; (4-11-06)
- b. The right to receive a response from the home to any request of the resident within a reasonable time; (4-11-06)
- c. The resident has the right to choose to receive or not receive routine care of a personal nature from a qualified provider of the opposite sex; ()
- ed. Freedom from discrimination as protected by law to include, race, gender, marital status, religious affiliation, age, and sexual orientation; ~~and~~ (4-11-06)()
- ~~de.~~ Freedom from intimidation, manipulation, coercion, and exploitation; (4-11-06)()
- ef. The right to wear his own clean clothing; and (4-11-06)()
- ~~fg.~~ The right to determine his own dress and hair style; (4-11-06)
- 04. Basic Needs Allowance.** Residents whose care is paid for by public assistance must retain, for their personal use, the difference between their total income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," Section 513. (4-11-06)
- 05. Resident Funds.** Residents have the right to manage their personal funds. A home must not ~~require a resident to deposit his personal funds with the home~~ deposit or transfer any resident's basic needs allowance into the certified family home provider's account. (4-11-06)()
- 06. Access to Resident.** Each certified family home must permit immediate access to any resident by any representative of the Department, by the state Ombudsman for the elderly or his designees, by an adult protection investigator or by the resident's personal ~~physician~~ health care professional. Each home must also permit the following: (4-11-06)()
- a. Immediate access to a resident by immediate family or other relatives, subject to the resident's right to deny or withdraw consent at any time; (4-11-06)
- b. Immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time; (4-11-06)
- c. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and (4-11-06)()
- d. A resident's health care professional must have reasonable access to that resident's records and medications or treatments. ()
- 07. Freedom From Harm.** The resident has the right to be free from physical, mental, or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline. (4-11-06)
- a. A certified family home provider who has reasonable cause to believe that a vulnerable adult is

being or has been abused, neglected, or exploited must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. (4-11-06)()

b. The certified family home provider must report within four (4) hours to the appropriate law enforcement agency when there is reasonable cause to believe that abuse, neglect, ~~misappropriation of resident's property~~, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult resident according to Sections 39-5303 and 39-5310, Idaho Code. (4-11-06)()

c. The certified family home provider must immediately notify the appropriate law enforcement agency when there is reasonable cause to believe there has been misappropriation of resident's property according to Section 39-5310, Idaho Code. ()

08. Health Services. The resident has the right to control his health-related services, including: (4-11-06)

a. The right to retain the services of his own personal ~~physician~~ health care professionals and dentist; (4-11-06)()

b. The right to select the pharmacy or pharmacist of his choice; (4-11-06)

c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; (4-11-06)

d. The right to participate in the formulation of his plan of service. (4-11-06)

09. Grievance. The resident has the right to voice or file a grievance with respect to care that is ~~or~~ fails to be furnished, without discrimination or reprisal for voicing the grievance. ~~and~~ The resident has the right to prompt efforts by the home to resolve grievances the resident may have, including those with respect to the behavior of other residents. The provider must provide a written response to the resident or guardian as to how the grievance was resolved and include this response in the resident's records according to Section 270 of these rules. (4-11-06)()

10. Advance Notice. The resident must receive written advance notice at least fifteen (15) calendar days prior to his non-emergency transfer or discharge unless he is transferred or discharged only for medical reasons, or for his welfare or the welfare of other residents, or for nonpayment for his stay. The written advance notice can be up to thirty (30) days if agreed to in the admission agreement. (4-11-06)

11. Other Rights. In addition to the rights outlined in Subsections 200.01 through 200.10 of these rules, the resident has the following rights: (4-11-06)

a. The resident has the right to refuse to perform services for the home; (4-11-06)

b. The resident must have access to his personal records and must have the right to confidentiality of personal and clinical records; (4-11-06)

c. The resident has the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others; (4-11-06)

d. The resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the home; (4-11-06)

e. The resident has the right to examine, upon reasonable request, the results of the most recent inspection of the home conducted by the Department with respect to the home and any plan of correction in effect with respect to the home; (4-11-06)

f. The resident has ~~a~~ the right to review a list of other certified family homes that may be available to meet his needs in case of transfer; (4-11-06)()

~~g.~~ *The resident has the right not to be required to receive routine care of a personal nature from a member of the opposite sex;* (4-11-06)

~~h.g.~~ The resident has the right to be informed, in writing, regarding the formulation of advance directives *as described in Title 39, Chapter 45, Idaho Code;* and (4-11-06)()

~~h.~~ The resident must have any other right established by law. (4-11-06)

201. NOTICE OF LEGAL RIGHTS.

The certified family home ~~will~~ must inform the resident, verbally and in writing, at the time of admission to the home and annually thereafter, of his legal rights during the stay at the home. The resident or his guardian, or both, must receive a copy of the resident legal rights. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

260. ADMISSIONS.

The Certified Family Home program must approve all resident placements prior to admission of the resident in a certified family home. A certified family home can not admit or retain any resident requiring a level of services or type of services which the home does not have the time, training, or appropriate skills to provide adequate care for each resident in the home. ()

01. Prior Approval Required. The certified family home provider must contact the regional CFH program nearest his location as listed in Section 005 of these rules. In order to obtain approval for placement of a resident in the certified family home, the following must be provided: ()

a. Name of proposed resident; ()

b. The proposed resident's date of expected discharge or admittance to the certified family home; ()

c. The proposed resident's current assessment, completed within the last six (6) months; ()

d. The proposed resident's current medication list; ()

e. The proposed resident health care professional's approval for admittance into a certified family home; and ()

f. An emergency contact phone number for the proposed resident. ()

02. Notification. The CFH program may notify the certified family home provider verbally or in writing on a case-by-case basis. When verbally notified, the CFH program will provide a follow-up written communication, stating whether the proposed resident is approved or denied admittance into the certified family home. ()

~~03.~~ **Admission Agreement.** At the time of admission to a certified family home, the provider and the resident or guardian, if applicable, must enter into an admission agreement. The agreement will be in writing and must be signed by both parties. The agreement must, in itself or by reference to the resident's plan of ~~care~~ service, include at least the following: (4-11-06)()

a. Whether or not the resident will assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis; (4-11-06)

~~b.~~ *Whether or not the resident has ongoing ability to safeguard himself against personal harm, injury or accident. The certified family home must have a plan in place for steps it will take if the resident is not able to*

- ~~carry out his own self-preservation.~~ (4-11-06)
- ~~eb.~~ Whether or not the provider will accept responsibility for the resident's funds; (4-11-06)
- ~~ec.~~ How a partial month's refund will be managed; (4-11-06)
- ~~ed.~~ Responsibility for valuables belonging to the resident and provision for the return of a resident's valuables should the resident leave the home; (4-11-06)
- ~~f.~~ ~~Amount of liability coverage provided by the homeowner's or renter's insurance policy.~~ (4-11-06)
- ~~ge.~~ Fifteen (15) calendar days' written notice or up to thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party; (4-11-06)
- ~~h.~~ ~~Conditions under which emergency transfers will be made.~~ (4-11-06)
- ~~if.~~ Signed permission to transfer pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home; (4-11-06)
- ~~ig.~~ Responsibility to obtain consent for medical procedures including the name, address, phone of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions. (4-11-06)
- ~~ik.~~ ~~Resident responsibilities as appropriate.~~ (4-11-06)
- ~~ih.~~ Amount the home will charge for room, utilities, and three (3) daily nutritional meals; ~~and~~ (4-11-06)()
- ~~i.~~ Advance notice to the resident for changes to his charges for room, utilities, and food as described in Section 175 of these rules; and ()
- ~~mj.~~ ~~Other information as needed~~ Additional conditions as agreed upon by both parties. (4-11-06)()
- 024. Termination of Admission Agreement.** The admission agreement must not be terminated except under the following conditions: (4-11-06)
- a.** By written notification by either party giving the other party fifteen (15) calendar days' written notice or as agreed to in the Admission Agreement but not to exceed thirty (30) days; (4-11-06)
- b.** The resident's mental or physical condition deteriorates to a level ~~requiring evaluation or services of care~~ that cannot be provided in a certified family home; (4-11-06)()
- c.** Nonpayment of the resident's bill; (4-11-06)
- d.** Emergency conditions requiring a resident to transfer out of the home without fifteen (15) calendar days' written notice to protect the resident or others ~~residents~~ living in the certified family home from harm; and (4-11-06)()
- e.** Other written conditions as mutually established between the resident, guardian or conservator, if applicable. and the provider at the time of admission. (4-11-06)()
- 05. Discharge Procedure.** The provider must notify the Department of a resident's change of living situation. It is the provider's responsibility to ensure, document, and return to the resident, his guardian, or family member, at time of resident discharge or death the following items: ()
- a.** All financial documents and information. Convey the resident's funds with a final accounting of those funds to the entity administering the resident's finances within thirty (30) days; ()

b. All prescribed, over-the-counter and supplemental medications to match the current medication list. Upon the death of the resident, all medications must be disposed of and documented according to Section 400 of these rules; ()

c. All belongings to match his current belongings inventory list; and ()

d. All types of identification and medical cards. ()

261. -- 269. (RESERVED)

270. RESIDENT RECORDS.

01. **Admission Records.** Records required for admission to a home must be maintained and updated and must be kept confidential. Their availability without the consent of the resident or guardian, if applicable, subject to IDAPA 16.05.01, "Use and Disclosure of Department Records," is limited to the home, professional consultants, the resident's physician health care professional and representatives of the Department. All entries must be kept current, recorded legibly in ink, dated, signed, and must include: (4-11-06)()

a. Name; (4-11-06)

b. Permanent address if other than the home; (4-11-06)

c. Marital status and sex; (4-11-06)

d. Birth place and date of birth; (4-11-06)

~~a#~~ e. The current name, address, and telephone number of guardian, conservator, power of attorney, and individuals identified by the resident who should be contacted in the event of an emergency or death of the resident; (4-11-06)()

f. Personal ~~physician and dentist~~ health care professionals; (4-11-06)()

g. Admission date and name of person who completed admission form; (4-11-06)

h. Results of a current history and physical performed by a ~~licensed physician or nurse practitioner~~ health care professional within six (6) months prior to admission; (4-11-06)()

~~i.~~ *For private-pay residents, the history and physical should include a description of the resident's needs for personal assistance and supervision, and indicate that the resident is appropriate for placement in a home;* (4-11-06)

ji. A list of medications, treatments, and special diets, if any, prescribed for the resident and signed and dated by the ~~physician~~ health care professional; (4-11-06)()

~~kj.~~ Religious affiliation if resident chooses to disclose; (4-11-06)

~~l.~~ *Interested relatives and friends other than those outlined in Subsection 270.01.e. of these rules, to include names, addresses, and telephone numbers of family members, legal guardian or conservator, or significant others, or all;* (4-11-06)

~~mk.~~ Social information, obtained by the home from the resident, family, service coordinator, legal guardian or conservator, or other knowledgeable individuals. The information must include the resident's social history, hobbies, and interests; (4-11-06)

nl. Written admission agreement which is signed and dated by the provider and the resident, his legal guardian or his conservator; (4-11-06)

- ~~om.~~ A signed copy of the resident's rights as specified in Section 200 of these rules, or documentation that the resident, his legal guardian, or his conservator has read and understands his rights as a resident of the home; (4-11-06)
- ~~pn.~~ A copy of the resident's most current uniform needs assessment for the certified family home; (4-11-06)
- ~~qo.~~ A copy of the signed and dated admission current plan of service ~~that contains all elements of a plan of service between the resident, his legal guardian, or his conservator and the home;~~ (4-11-06)()
- ~~pd.~~ A ~~#~~ current inventory of the resident's belongings. The resident, or resident's guardian or conservator, if applicable, can inventory any item he chooses; Photographic evidence is accepted in place of an inventory form. This inventory may be updated at any time at the request of the resident, the resident's guardian or conservator, but must be updated at least annually; and (4-11-06)()
- ~~s.~~ Information about any specific health problems of the resident which may be useful in a medical emergency; and (4-11-06)
- ~~t.~~ Any other health related, emergency, or pertinent information which the resident requests the home to keep on record. (4-11-06)
- q. A copy of legal authority paperwork to include guardianship, conservatorship, or power of attorney, if applicable. ()
- 02. Ongoing Resident Records.** Records must be kept current, including: (4-11-06)
- ~~a.~~ Admission information required in Subsection 270.01 of these rules; (4-11-06)
- ~~ba.~~ A current list of medications, diet, and treatments prescribed for the resident which is signed and dated by the physician health care professional giving the order. Current orders may be a copy of the signed ~~doctor's~~ order from the pharmacy; (4-11-06)()
- ~~e.~~ Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. All PRN medication must be documented with the reason for taking the medication; (4-11-06)
- b. Daily medication documentation, when the provider assists the resident with his medications; ()
- ~~dc.~~ Any incident or accident occurring while the resident is living in the home; (4-11-06)
- ~~ed.~~ Notes from the licensed nurse, home health, physical therapy, and other service providers, documenting the services provided at each visit; (4-11-06)
- ~~fe.~~ Documentation of significant changes in the residents' physical, mental status, or both and the home's response; and (4-11-06)()
- ~~gf.~~ If appropriate, the resident's financial accounting records; (4-11-06)
- ~~hg.~~ The resident's uniform needs assessment, to include the admission assessment and all assessments for the past year, for certified family home care; (4-11-06)
- ~~ih.~~ Signed and dated plan of service, to include the admission plan of service and all service agreements for the past year between the resident, his legal guardian, or his conservator and the home; (4-11-06)
- ~~ji.~~ Contact name, address, phone number of individuals or agencies providing paid supports; and

(4-11-06)()

~~k.~~ Signed copies of all care plans that are prepared by all outside service providers; and (4-11-06)

~~j.~~ An inventory of resident's belongings. The resident can inventory any item he chooses. The inventory can be updated at any time but must be updated annually. (4-11-06)

03. Maintenance of Resident Records. All records of services delivered by the provider must be maintained in the certified family home for at least five (5) years from the date of service. (4-11-06)()

271. -- 274. (RESERVED)

275. RESIDENT FUNDS AND FINANCIAL RECORDS.

01. Resident Funds Policy. If a resident's funds are turned over to the provider for any purpose other than payment for services allowed under these rules, or if the provider or his relative acts as resident payee, the home is deemed to be handling the resident's funds. Each certified family home must ~~develop~~ have and implement a policy and procedure outlining how the resident's funds will be managed. This policy and procedure must include the following: (4-11-06)()

a. Statement of whether the certified family home will or will not manage resident funds; (4-11-06)()

b. ~~If~~ When the certified family home manages resident funds and the resident leaves the home under any circumstances, the home can only retain room and board funds prorated to the last day of the fifteen (15) calendar day notice period, or thirty (30) calendar day notice period as specified in the admission agreement, or upon moving from the home, whichever is later. All remaining funds must follow the resident, and resident funds must only be used for resident expenses until a new payee is appointed. (4-11-06)()

02. Managing Resident Funds. A certified family home that manages resident funds must: (4-11-06)()

a. Establish a separate account at a financial institution for each resident. Provide accounting documentation including financial statements, receipts, and ledgers for all financial transactions for each resident's separate account. There can be no commingling of resident funds with the certified family home funds. Borrowing between resident accounts is prohibited. The certified family home provider can not borrow funds from the resident; (4-11-06)()

b. Notify the resident that funds are available for his use; (4-11-06)

c. Bill Charge each resident ~~for his certified family home care charges~~ a consistent amount on a monthly basis from his funds for room, utilities, and food, described in Section 175 of these rules; (4-11-06)()

~~Document on a monthly or on a weekly basis any~~ Provide accounting documentation including financial statements, receipts, and ledgers for all financial transactions ~~in excess of five dollars (\$5) between the resident and the home~~ for the resident's basic needs allowance and any other funds of the resident. A separate transaction record must be maintained for each resident; (4-11-06)()

e. Restore funds to the resident if the certified family home cannot produce proper accounting records of resident's funds or property, including receipts for purchases made using the resident's personal funds. Restitution of the funds to the resident is a condition for continued ~~operation~~ certification of the home; (4-11-06)()

f. Not require the resident to purchase goods or services from ~~or for~~ the certified family home ~~other than those designated in the admission agreement;~~ (4-11-06)()

g. Provide access to the resident's funds to the resident, his legal guardian, or conservator ~~or another person of the resident's choice;~~ (4-11-06)()

h. On the death of a private-pay resident, convey the resident's funds with a final accounting of those funds to the individual administering the resident's estate; within thirty (30) days; (4-11-06)

i. On the death of a client of the Department, convey the resident's funds with a final accounting of those funds, to the Department within thirty (30) days. (4-11-06)

276. -- 299. (RESERVED)

300. SHORT-TERM CARE AND SUPERVISION.

When the provider is temporarily unable to provide care or supervision to the resident, he may designate another adult to provide care and supervision, or only supervision ~~only~~ to the resident. The provider must assure that this short-term arrangement meets the needs of the resident and protects the resident from harm. (4-11-06)()

01. Alternate Caregiver. An alternate caregiver must be a certified family home provider. An alternate caregiver provides care and supervision in his certified family home to a resident from another certified family home ~~according to the resident's original plan of service and admission agreement.~~ ()

a. The Department must approve an alternate caregiver short-term resident placements prior to the placement. ()

b. The provider is responsible to provide or arrange for resident-specific training for the alternate caregiver. Alternate care can be provided for up to thirty (30) consecutive days. (4-11-06)()

c. An alternate caregiver must not exceed the number of resident beds for which the alternate caregiver is certified. ()

d. An alternate caregiver must comply with Section 140 of these rules, when the short-term admission results in the home exceeding the two (2) bed limit. ()

02. Substitute Caregiver. A substitute caregiver must be an adult approved by the provider to provide care, services, and supervision to the resident in the provider's certified family home. The provider is responsible to provide or arrange for resident-specific training for the substitute caregiver. Substitute care can be provided for up to thirty (30) consecutive days. In addition, ~~the substitute caregiver must have~~ the provider must maintain documentation of the following requirements for all substitute caregivers: (4-11-06)()

a. ~~Current~~ Current certification in first aid and adult Cardio-Pulmonary Resuscitation (CPR) which must be kept current. Online-only certification is not acceptable; (4-11-06)()

b. A criminal history check specific to the certified family home program as provided in Section 009 of these rules; and (4-11-06)()

c. ~~Completed~~ Successful completion of the "Assistance with Medications" course or the "Basic Medication Awareness for Certified Family Homes." as provided in Section 400 of these rules, ~~if they will assist the resident with medications.~~ (4-11-06)()

03. Incidental Supervision. An individual adult providing incidental supervision must be approved by the provider to only supervise the resident. Incidental supervision must not include resident care. Incidental supervision may be provided for up to four (4) hours per week. (4-11-06)()

301. -- 399. (RESERVED)

400. MEDICATION STANDARDS AND REQUIREMENTS.

01. Medication Policy. The certified family home provider must ~~develop~~ maintain and implement written medication policies and procedures that outline in detail how the home will assure appropriate handling and safeguarding of medications. This documentation must be maintained in the home. (4-11-06)()

02. Handling of Safeguarding Resident's Medication. (4-11-06)()

a. The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed registered nurse or other health care professional, and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. ~~Each medication must be packaged separately unless in a Mediset, blister pack, or similar system.~~ (4-11-06)()

~~b. Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the resident's record. Medisets filled and labeled by a pharmacist or licensed nurse may serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use may also serve as written evidence of an order from the physician or other practitioner of the healing arts.~~ (4-11-06)

eb. The certified family home is responsible to safeguard the resident's medications. Prescription medications must be locked at all times, unless the medication requires refrigeration. (4-11-06)()

~~d. Medications that are no longer used by the resident must not be retained by the certified family home for longer than thirty (30) calendar days.~~ (4-11-06)

c. The storage unit container must be clean and contain only one (1) resident's medication. No more than one (1) resident's medication can be out of its assigned storage unit at one (1) time. ()

03. Self-Administration of Medication. ()

a. If the resident is responsible for administering his own medication without assistance, a written approval stating that the resident is capable of self-administration must be obtained from the resident's primary ~~physician or other practitioner of the healing arts~~ health care professional. The resident's record must also include documentation that ~~a licensed nurse or other qualified professional~~ the resident has been evaluated ~~the resident's~~ by a health care professional and has the ability to self-administer medication and ~~has found~~ that the resident: (4-11-06)()

~~i.~~ Understands the purpose of the medication; (4-11-06)

~~bii.~~ Knows the appropriate dosage and times to take the medication; (4-11-06)

~~ciii.~~ Understands expected effects, adverse reactions or side effects, and action to take in an emergency; (4-11-06)
and

~~d.iv.~~ Is able to take the medication without assistance; and (4-11-06)()

b. The resident is responsible for safeguarding his own medication. ()

04. Assistance with Medications. The certified family home must provide assistance with medications to residents who need assistance; ~~however, o~~ Only a licensed registered nurse or other licensed health care professional may administer medications. Prior to assisting residents with medication, the following conditions must be in place: (4-11-06)()

a. ~~Each person assisting with resident medications~~ A provider or substitute caregiver must be an adult who has successfully completed and one (1) of the following: (4-11-06)()

i. ~~The~~ "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing other; or ()

ii. ~~The~~ Department's approved training. Family members previously exempted from this requirement must complete this course before July 1, 2006 "Basic Medication Awareness for Certified Family Homes".

(4-11-06)()

b. The resident's health condition is stable; (4-11-06)

~~e. The resident's health status does not require nursing assessment before receiving the medication nor nursing assessment of the therapeutic or side effects after the medication is taken;~~ (4-11-06)

~~dc. The medication is in the original pharmacy dispensed container with proper label and directions or in an original over-the-counter container or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy dispensed container. All prescription medications must be kept in the original container that is labeled for the specific resident and must be given as prescribed. Over-the-counter medications must be kept in the original container and be given as directed;~~ (4-11-06)()

~~ed. Written and oral instructions from the licensed physician or other practitioner of the healing arts, pharmacist, or nurse information regarding the resident's current prescriptions concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person must be maintained in the resident's records; and~~ (4-11-06)()

~~e. The provider must ensure that medication is only taken by the resident for whom it was prescribed.~~ ()

~~f. Written instructions are in place that outline required documentation of medication assistance, and whom to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; and~~ (4-11-06)

~~g. Procedures for disposal/destruction of medications must be documented and consistent with procedures outlined in the "Assistance with Medications" course.~~ (4-11-06)

05. Medication Documentation. The provider must use a medication form to document prescribed and over-the-counter medications and supplements for each resident. The provider must document any medication refused by or not taken by the resident with the reason for omission. All PRN medication must be documented with the reason for taking the medication. ()

a. The provider is required to document who to contact if any medication is not taken, an overdose occurs, or an actual or potential side effect is observed. The provider must ensure that written instructions are in place for substitute caregivers to follow. ()

b. The provider must ensure that a medication authorization document including over-the-counter medications for each resident signed by his primary health care professional is on file. The documentation must indicate whether the resident is capable of self-administering medications. ()

~~**056. Administration of Medications.** Only a licensed registered nurse or other licensed health care professionals working within the scope of their his license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." Some services are of such a technical nature that they must always be performed by, or under the supervision of, a licensed nurse or other licensed health professional. These services are outlined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Section 490.~~ (4-11-06)()

06. Written Record of Medication Disposal. Medications that are expired or discontinued by the resident's health care professional must not be retained by the certified family home for longer than thirty (30) calendar days. Disposal or destruction of medications must be documented and consistent with training provided in the assistance with medication in Subsection 400.04 of this rule. A written record of all disposed of drugs prescription medications must be maintained in the home and will must include: (4-11-06)()

a. A description of the drug, including The name of the medication, and the amount; (4-11-06)()

- b. The name of the resident for whom the medication was prescribed; (4-11-06)()
- c. The reason for disposal; (4-11-06)
- d. The method of disposal; and (4-11-06)
- e. Signatures of ~~responsible home personnel~~ the provider and an adult witness ~~or the resident's family other than the resident;~~ and (4-11-06)()
- f. The certified family home must acquire and maintain a written order of discontinuation of prescription medications from the resident's health care professional. ()

401. -- 499. (RESERVED)

500. ENVIRONMENTAL SANITATION STANDARDS.

The certified family home is responsible for disease prevention and maintenance of sanitary conditions. (4-11-06)()

- 01. **Water Supply.** The water supply for the certified family home must be adequate, safe, and sanitary. (4-11-06)()
 - a. The home provider must verify that the home uses a public or municipal water supply or a Department-approved private water supply; (4-11-06)()
 - b. If water is from a private supply, water samples must be submitted to an private accredited laboratory ~~or the District Public Health Laboratory for~~ and pass a bacteriological examination at least annually or more frequently if deemed necessary by the Department. Copies of the laboratory reports must be kept on file at the home; and (4-11-06)()
 - c. There must be ~~enough~~ adequate water pressure to meet ~~the~~ sanitary requirements at all times. (4-11-06)()
- 02. **Sewage Disposal.** The sewage disposal system must be in good working order. ~~All sewage and liquid wastes must be discharged, collected, treated, and disposed of in a manner approved by the Department.~~ (4-11-06)()
- 03. **Nonmunicipal Sewage Disposal.** For certified family homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every five (5) years thereafter the home must provide proof that the septic tank has been pumped or that pumping was not necessary. ~~In addition, at the time of initial certification:~~ (4-7-11)
 - ~~a.~~ The Department may require ~~the~~ home must to obtain a statement from the local health district indicating that the sewage disposal system meets local requirements. When required, ~~the~~ statement must be kept on file at the home; ~~or.~~ (4-11-06)()
 - ~~b.~~ If the local health district does not issue these statements, the home must obtain a statement to that effect from the health district. The statement must be kept on file at the home. (4-11-06)
- 04. **Garbage and Refuse Disposal.** Garbage and refuse disposal must be provided by the certified family home. (4-11-06)()
 - a. Garbage containers outside the home used for storage of garbage and refuse must be constructed of durable, nonabsorbent materials and must not leak or absorb liquids. Containers must be provided with tight-fitting lids. (4-11-06)
 - b. Garbage containers must be maintained in good repair. Sufficient containers must be available to hold all garbage and refuse which accumulates between periods of removal from the premises. Storage areas must be

kept clean and sanitary. (4-11-06)

05. Insect and Rodent Control. The certified family home must be maintained free from infestations of insects, rodents and other pests. Chemicals (pesticides) used in the control program must be selected, stored, and used safely. (4-11-06)()

a. The chemical must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer; (4-11-06)

b. The home must take the necessary precautions to protect residents from obtaining toxic chemicals. (4-11-06)

06. Yard. The yard surrounding the certified family home must be safe and maintained. (4-11-06)()

07. Linen-Laundry Facilities and Services. A washing machine and dryer must be provided available for the proper and sanitary washing of linen and other washable goods. (4-11-06)()

08. Housekeeping and Maintenance. Sufficient housekeeping and maintenance must be provided to maintain the interior and exterior of the certified family home in a clean, safe, and orderly manner. (4-11-06)()

a. A Resident sleeping rooms must be thoroughly cleaned including the bed, bedding, and furnishings, walls, and floors. Resident sleeping rooms must be cleaned on a regular basis and before it is being occupied by a new resident; and (4-11-06)()

b. Deodorizers must not be used to cover odors caused by poor housekeeping or unsanitary conditions. (4-11-06)

c. Household cleaners must be stored safely. The home must take necessary precautions to protect residents from obtaining toxic chemicals. ()

501. -- 599. (RESERVED)

600. FIRE AND LIFE SAFETY STANDARDS.

Each ~~C~~certified family homes must meet all applicable requirements of local and state codes concerning fire and life safety. (4-11-06)()

01. General Requirements. General requirements for the fire and life safety standards for a certified family home are: (4-11-06)

a. The home must be structurally sound and equipped and maintained to assure the safety of residents; and (4-11-06)

b. When natural or man-made hazards are present, suitable fences, guards, and railings must be provided to protect the residents according to their need for supervision as documented in the plan of service; and (4-11-06)

c. The premises exterior and interior of the certified family home must be kept free from the accumulation of weeds, trash, and rubbish. (4-11-06)()

02. Fire and Life Safety Requirements. (4-11-06)

a. Smoke detectors must be installed in sleeping rooms, hallways, and on each level of the home, ~~and as recommended by the local fire district.~~ (4-11-06)()

b. Carbon Monoxide (CO) alarms must be installed as recommended in any certified family home with a fuel-burning appliance, fireplace, or an attached garage. A combination CO/smoke alarm is allowed. ()

~~bc.~~ Any locks installed on exit doors must be easily opened from the inside without the use of keys or any special knowledge; (4-11-06)

~~ed.~~ Electric Portable heating devices ~~of any kind are prohibited;~~ may be used when they are maintained in good working condition and the following exists: (4-11-06)()

~~i.~~ Heating elements of such heaters do not exceed two hundred twelve degrees Fahrenheit (212°F); ()

~~ii.~~ Heater safety labels must remain on the heater; ()

~~iii.~~ Heaters must have tip-over protection; and ()

~~iv.~~ Heaters must be operated a safe distance away from combustibles, furnishing, and bedding according to manufacturer's recommendations. ()

~~d.~~ Homes that use fuel fired stoves must provide adequate railings or other approved protection designed to prevent residents from coming into contact with the stove surfaces; (4-11-06)

e. Each resident's sleeping room ~~will~~ must have a window that can be easily opened from the inside. The window sill height must not be more than forty-four (44) inches above the finished floor. Window openings must be at least twenty-two (22) inches in width and height. The window must not open into a window well that cannot be exited; (4-11-06)()

f. Flammable or highly combustible materials must ~~not be stored in the home~~ be stored safely. The home must take necessary precautions to protect residents from obtaining flammable materials; (4-11-06)()

g. Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; (4-11-06)

h. Portable fire extinguishers must be mounted on each level in the natural path of escape throughout the home according to the configuration of the home. Location of fire extinguishers is subject to Department approval. All extinguishers must be at least five (5) pound dry chemical multipurpose 2A:10-B:C rated ABC type and; (4-11-06)()

i. Electrical installations and equipment must comply with the applicable local and state electrical codes; (4-11-06)

j. ~~Solid f~~Fuel-fired heating devices must be approved by the local building/heating/venting/air conditioning board. Openings in all ~~solid~~ fuel-fired heating devices must have a door constructed of heat-tempered glass or other approved material; (4-11-06)()

k. Exits must be free from obstruction; (4-11-06)

l. ~~Doorways in the p~~Path of travel to an exit and all exit doorways must be at least twenty-eight (28) inches wide; (4-11-06)()

m. The door into each bathroom must unlock from the outside in case of an emergency. (4-11-06)

03. **Smoking.** Smoking is a fire hazard. The certified family home may choose to allow or not allow smoking. If the home chooses to allow smoking it must reduce the risk of fire by: (4-11-06)()

a. ~~Prohibit~~ing smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; (4-11-06)()

b. ~~Prohibit~~ing residents from smoking in bed; and (4-11-06)()

c. Prohibit~~ing~~ unsupervised smoking by residents ~~unless unsupervised smoking is allowed in the plan of service.~~ (4-11-06)()

04. Emergency Preparedness. Each certified family home ~~will~~ **must** develop and implement an emergency preparedness plan ~~for emergencies including evacuation of the home~~ to follow in the event of fire, explosion, flood, earthquake, high wind, or other emergency. ()

a. Written procedures must outline the steps to be taken in the event of an emergency including who is to respond, each person's responsibilities, where and how residents are to be evacuated, and notification of emergency agencies. The emergency plan must be reviewed with residents at admission and at least ~~every six (6) months quarterly~~ thereafter. ~~This review must be documented in each resident's individual file.~~ (4-11-06)()

b. An emergency preparedness plan must include a floor plan that includes: ()

i. The location of all exits including windows; ()

ii. Smoke and CO alarm placements; ()

iii. Fire extinguisher placements; ()

iv. Path of travel to exit the home; and ()

v. Meeting location for residents and provider or substitute caregiver; ()

05. Fire Drills. ~~Each certified family Hh~~omes must conduct and document fire drills ~~at least quarterly monthly.~~ ~~Residents who are physically unable to exit unassisted are exempt from physical participation in the drill if the provider has an effective evacuation plan for such residents and discusses the plan with the resident at the time of the drill.~~ (4-11-06)()

a. The certified family home provider must demonstrate the ability to evacuate all residents within three (3) minutes to a point of safety outside of the certified family home. ()

i. Each resident who is permanently or temporarily unable to participate in a drill or who fails to evacuate within three (3) minutes must have a bedroom located at the ground level. ()

ii. Each resident who is unable to participate in a drill will be permitted to be excused from up to two (2) drills within one (1) twelve (12) month period, provided that the two (2) excused drills are not consecutive.()

b. The certified family home provider must document fire drills including: ()

i. The date and time of the drill; ()

ii. The length of time to evacuate all persons from the home; ()

iii. The name of each caregiver who participated; ()

iv. The name of each resident and whether the resident participated in the drill; and ()

v. Whether the resident required assistance evacuating from the home. ()

06. Report of Fire. A separate report on each fire incident occurring within the certified family home must be submitted to the Department within thirty (30) calendar days of ~~the~~ each occurrence. The report must include date of incident, origin, extent of damage, how the fire was extinguished, and injuries, if any. (4-11-06)()

07. Maintenance of Equipment. The certified family home ~~will~~ **must** assure that all equipment is properly maintained. (4-11-06)()

a. The smoke and carbon monoxide detectors must be tested at least monthly and a written record of the test results maintained on file; (4-11-06)()

b. Batteries in smoke and carbon monoxide detectors must be changed at least two (2) times per year or according to manufacturer's instructions and documentation maintained on file. ()

~~b.c.~~ Portable fire extinguishers must be serviced annually by an outside servicing agency. Fire extinguishers purchased in the last twelve (12) months are exempt from annual service if the home has a dated receipt on file. All portable fire extinguishers must be examined at least ~~quarterly~~ monthly by a knowledgeable family member to determine that; (4-11-06)()

i. The extinguisher is in its designated location; (4-11-06)

ii. Seals or tamper indicators are not broken or the extinguisher safety pin is in place; (4-11-06)()

iii. The extinguisher has not been physically damaged; (4-11-06)

iv. The extinguisher does not have any obvious defects; ~~and~~ (4-11-06)()

v. Chemicals have not settled and hardened; ()

vi. Delivery of the chemical is not obstructed; and ()

~~vii. Inspecting tags on each extinguisher show at least~~ Documentation of the initials of the person making the ~~quarterly~~ monthly examinations and the date of the examinations must be maintained on file. (4-11-06)()

c. Fuel-fired heating systems must be inspected for safe operation, serviced, and approved at least annually by person(s) in the business of servicing these systems. The inspection records must be maintained on file ~~in the home.~~ (4-11-06)()

601. -- 699. (RESERVED)

700. HOME CONSTRUCTION AND PHYSICAL HOME STANDARDS.

01. **General Requirements.** Any residence used as certified family home must be suitable for that use. Certified family homes must only be located in buildings intended for residential use. (4-11-06)

a. Remodeling or additions to homes must be consistent with residential use of the property and must conform to local building standards including obtaining building permits as required by the local jurisdiction. ~~Remodeling that is not consistent with the general practice of the neighborhood is not permitted. Examples may include converting garages to bedrooms or constructing large buildings which overwhelm the lot.~~ (4-11-06)()

b. All homes are subject to Department approval. (4-11-06)

02. **Walls and Floors.** Walls and floors must withstand frequent cleaning. Walls in sleeping rooms must extend from floor to ceiling. (4-11-06)

03. **Telephone.** There must be ~~a~~ landline at least one (1) telephone that is enhanced 911 compliant in the certified family home ~~that is accessible to all residents at all times. The resident must have adequate privacy while using the telephone.~~ The telephone must; ()

a. Be immediately available in case of an emergency; ()

b. Have dependable service coverage; ()

c. Be functioning and operational at all times; ()

~~d.~~ Have each resident's emergency contact numbers ~~must be posted near the telephone~~ accessible and on file; and (4-11-06)()

~~e.~~ Be accessible to the resident ~~must have at any time with unlimited access and~~ adequate privacy while using the telephone. (4-11-06)()

04. Toilet Facilities and Bathrooms. Each certified family home must have functioning facilities and contain: (4-11-06)()

a. At least one (1) flush toilet, one (1) tub or shower, and one (1) lavatory sink with a mirror; (4-11-06)()

b. Toilet facilities and bathrooms must be separated from all rooms by solid walls or partitions; (4-11-06)()

c. All toilet facilities and bathrooms must have either a window that is easily opened or forced ventilation to the outside; (4-11-06)

d. Tubs, showers, and lavatories sinks must be connected to hot and cold running water; and (4-11-06)()

e. Access to resident toilet facilities and bathrooms must not require a resident to pass through another sleeping room to reach the toilet or bath. (4-11-06)

05. Accessibility for Residents with Physical and Sensory Impairments. A certified family home choosing to provide services to residents who have difficulty with mobility or who have sensory impairments must assure: ()

a. The physical environment of the residence meets the needs of the each resident and to: ()

i. Maximizes independent mobility; and ()

ii. Use of appliances, bathroom facilities, and living areas. ()

b. The certified family home must provide necessary accommodations as described below according to the each individual resident's needs that complies with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) that includes: (4-11-06)()

~~ai.~~ ~~Ramps that complies with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) 4.8;~~ (4-11-06)()

~~bii.~~ Bathrooms and doorways large enough to allow easy passage of a wheelchair and that comply with the ADAAG 4.13; (4-11-06)()

~~ciii.~~ Toilet facilities that comply with the ADAAG 4.16 and 4.23; (4-11-06)()

~~dii.~~ Sinks that comply with the ADAAG 4.24; (4-11-06)()

~~eiv.~~ Grab bars in resident toilet facilities and bathrooms that comply with the ADAAG 4.26; (4-11-06)()

~~fvi.~~ Bathtubs and shower stalls that comply with ADAAG 4.20 and 4.21; (4-11-06)()

~~gvii.~~ Non-retractable faucet handles that comply with the ADAAG 4.19 and 4.27. No self-closing valves are not allowed; (4-11-06)()

~~h~~viii. Suitable handrails on both sides of all stairways leading into and out of the home ~~that comply with the ADAAG 4.9.4; and~~ (4-11-06)()

ix. Smoke and carbon monoxide detectors that meet sensory impairment needs of each resident. ()

06. **Storage Areas.** Adequate storage must be provided in addition to the required storage in resident sleeping rooms. (4-11-06)

07. **Lighting.** Adequate lighting must be provided in all resident sleeping rooms and any other rooms accessed by the resident. (4-11-06)

08. **Ventilation.** The certified family home must be well ventilated and the provider must take precautions to prevent offensive odors. (4-11-06)()

09. **Heating.** The temperature in the certified family home must be maintained at seventy degrees Fahrenheit (70°F) or more during waking hours when residents are at home and sixty-five degrees Fahrenheit (65°F) or more during sleeping hours or as defined in the plan of service. Wood stoves must not be the primary source of heat and the thermostat for the primary source of heat must be remotely located away from the wood stove. (4-11-06)

10. **Plumbing.** All plumbing in the home must ~~comply with local and state codes~~ be functional and in good working order. All plumbing fixtures must be easily cleanable and maintained in good repair. (4-11-06)()

11. **Resident Sleeping Rooms.** A resident's sleeping room must not be a room commonly used for anything other than bedroom purposes. Bedrooms must have floors, ceilings, and walls that are finished to the same degree as the rest of the home. The sleeping room must meet all other requirements of these rules. (4-11-06)()

~~a. The resident's sleeping room must not be in an attic, stairway, hall, or any room commonly used for other than bedroom purposes. The resident's sleeping rooms may be in a basement only if the following conditions are met:~~ (4-11-06)

~~i. The window must not open into a window well that cannot be exited. All other fire and life safety requirements for windows must be met;~~ (4-11-06)

~~ii. The basement must have floors, ceilings, and walls which are finished to the same degree as the rest of the home. The sleeping room must meet all other requirements of these rules; and~~ (4-11-06)

~~iii. The resident must be assessed through the plan of service to be capable of evacuating from the basement without assistance in an emergency.~~ (4-11-06)

~~b~~a. Walls must run from floor to ceiling and doors must be solid; (4-11-06)

~~e~~b. The resident must not occupy the same bedroom as the provider. The resident must not occupy the same bedroom as the provider's family unless the resident is also a family member; (4-11-06)

~~d~~c. Ceiling heights in sleeping rooms must be at least seven feet six inches (7'6"); (4-11-06)

~~e~~d. Sleeping rooms must have a ~~closets equipped with doors~~. Closet space shared by two (2) residents, must have a substantial divider separating each resident's space. Free-standing closets must be deducted from the square footage in the sleeping room; ~~and~~ (4-11-06)()

~~f~~e. Sleeping rooms must have at least one-hundred (100) square feet of floor space in a one (1) person sleeping room and at least one-hundred and sixty (160) square feet of floor space in a two (2) person sleeping room; ~~and~~ (4-11-06)()

f. The resident must be able to self-evacuate before he can be approved to sleep in or be assigned a bedroom located above or below the ground floor. ()

701. MANUFACTURED HOMES AND MODULAR BUILDINGS.

01. Use of Manufactured Homes and Modular Buildings. Idaho Division of Building Safety (~~B~~DBS) approved modular buildings or U.S. Department of Housing and Urban Development (HUD) approved buildings may be approved for use as a certified family home when the home meets the following requirements. (4-7-11)()

a. The manufactured or modular home meets the requirements of HUD or ~~B~~DBS requirements in accordance with state and federal regulations as of the date of manufacture. (4-7-11)()

b. The manufactured or modular home meets the adopted standards and requirements of the local jurisdiction in which the home is located. (4-7-11)()

c. Recreational vehicles, commercial coaches, unregulated or unapproved modifications or additions to approved manufactured housing or modular buildings; and manufactured housing constructed prior to June 15, 1976, are prohibited for use as a certified family home *without DHW assessment and approval*. (4-7-11)()

02. Previously Certified. A manufactured home approved for use as a certified family home before July 1, 2001, may continue to be certified when evaluated on a case-by-case basis. (4-7-11)

702. -- 709. (RESERVED)

710. SITE REQUIREMENTS FOR CERTIFIED FAMILY HOMES.

In addition to the requirements of Section 700 of these rules, certified family homes must comply with the following site requirements. (4-11-06)

01. Fire District. The certified family home must be in a lawfully constituted fire district. (4-11-06)()

02. Accessible Road. The certified family home must be served by an all-weather road kept open to motor vehicles at all times of the year. (4-11-06)()

03. Emergency Medical Services. The certified family home must be accessible to emergency medical services within thirty (30) minutes driving time; and (4-11-06)()

04. Accessible to Services. The certified family home must be accessible within thirty (30) minutes driving time to necessary social, medical, and rehabilitation services. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

901. ENFORCEMENT PROCESS.

~~If~~ When the Department finds that a certified family home does not or did not meet a rule governing certified family homes, it may impose a remedy, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (4-11-06)()

01. Recommendation of Remedy. In determining which remedy to recommend, the Department will consider the certified family home's compliance history, change of ownership, the number of deficiencies, scope, and severity of the deficiencies. Subject to these considerations, the Department may impose any of the following remedies: (4-11-06)()

a. Ban on all admissions, see Section 910 of these rules; (4-11-06)

b. Ban on admissions of residents with certain specific diagnosis, see Section 911 of these rules; (4-11-06)()

- c. Summarily suspend the certificate and transfer residents, see Section 912 of these rules; (4-11-06)
- d. Issue a provisional certificate, see Subsection 110.02 of these rules; or (4-11-06)
- e. Revoke the home's certificate, see Section 913 of these rules. (4-11-06)

02. Notice of Enforcement Remedy. The Department will give the home written notice of an enforcement remedy by certified mail or by personal service. (4-11-06)

902. FAILURE TO COMPLY.

The Department may ~~institute an action to~~ revoke the certified family home's certificate when the Department determines ~~the home is out of compliance.~~ any of the following exists: (4-11-06)()

01. Out of Compliance. A certified family home has not complied with a program requirement within thirty (30) days of the date the home is found out of compliance with that requirement. (4-11-06)()

02. Lack of Progress. A certified family home has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted the home's plan of correction. (4-11-06)()

903. REPEATED NONCOMPLIANCE.

When the Department makes a determination of repeated noncompliance with respect to a home, the Department may impose any of the enforcement remedies listed in Sections 910 through 913~~5~~ of these rules. The Department will monitor the home on an as-needed basis, until the home has demonstrated that it is in compliance with all program requirements governing certified family homes and that it will remain in compliance. (4-11-06)()

904. -- 909. (RESERVED)

910. ENFORCEMENT REMEDY OF BAN ON ALL ADMISSIONS.

All admissions to the certified family home are banned pending satisfactory correction of all deficiencies. Bans will remain in effect until the Department determines that the home has achieved full compliance with all program requirements, or until a substitute remedy is imposed. (4-11-06)()

911. ENFORCEMENT REMEDY OF BAN ON ADMISSIONS OF RESIDENT WITH SPECIFIC DIAGNOSIS.

~~The Department may ban a~~ admission of any resident with a specific diagnosis ~~is banned~~. A ban may be imposed for all prospective residents both state and private, and will prevent the home from admitting the kinds of residents for whom it has shown an inability to provide adequate care described in Section 170 of these rules. (4-11-06)()

912. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENT.

The Department may summarily suspend a certified family home's certificate and transfer the resident when convinced by a preponderance of the evidence that the resident's health and safety are in immediate jeopardy. (4-11-06)()

913. ENFORCEMENT REMEDY OF REVOCATION OF CERTIFICATE.

01. Revocation of the Home's Certificate. The Department may institute a revocation action when persuaded by a preponderance of the evidence that the certified family home is not in substantial compliance with this chapter. (4-11-06)()

02. ~~Causes~~ Reasons for Revocation of the Certificate. The Department may revoke any certificate ~~to~~ include for any of the following ~~causes~~ reasons: (4-11-06)()

a. The certificate holder has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (4-11-06)

b. The home is not in substantial compliance with these rules; (4-11-06)

- c.** When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; (4-11-06)
- d.** Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the home. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (4-11-06)
- e.** The provider has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a home; (4-11-06)
- f.** The provider has violated any of the conditions of a provisional certificate; (4-11-06)
- g.** The home has one (1) or more core issues. A core issue is a deficiency that endangers the health, safety, or welfare of any resident; (4-11-06)
- h.** An accumulation of minor violations that, when taken as a whole, would constitute a major deficiency; (~~4-11-06~~)()
- i.** Repeat violations of any requirement of these rules or of the Idaho Code; (4-11-06)
- j.** The certified family home lacks the ability to properly provide adequate care for the type of residents residing at the home, as required by these rules or as directed by the Department; (~~4-11-06~~)()
- k.** The certified family home is not in substantial compliance with the provisions for services, resident rights or admissions; (~~4-11-06~~)()
- l.** Certificate holder refuses to allow the Department or Protection and Advocacy agencies immediate and full access to the certified family home environment, home records, or the residents; (~~3-21-12~~)()
- m.** Any condition exists in the certified family home which endangers the health or safety of any resident; or (~~3-21-12~~)()
- n.** The certified family home provider fails to pay the certification fee as specified in Subsection 109.02 of these rules. The certification fee is considered delinquent if not paid within thirty (30) days of due date on the invoice. (~~3-21-12~~)()

914. (RESERVED)

915. TRANSFER OF RESIDENT.

The Department may require transfer of a resident from a certified family home to an alternative placement ~~on~~ for any of the following ~~grounds~~: reasons in Subsections 915.01 through 915.03 of this rule. (~~4-11-06~~)()

01. Violation of Rules. As a result of a violation of a provision of these rules or standards, the home is unable or unwilling to provide an adequate level of meals, lodging, personal assistance, or supervision of a resident. (4-11-06)

02. Violation of Resident's Rights. A violation of a resident's rights provided in Section 39-3516, Idaho Code, or Section 200 of these rules. (4-11-06)

03. Immediate Jeopardy. A violation of a provision of this chapter or applicable rules or standards that results in conditions that present an immediate jeopardy to a resident. (~~4-11-06~~)()

916. -- 949. (RESERVED)

950. RIGHT TO SELL.

Nothing contained in these rules limits the right of any certified family home owner to sell, lease, mortgage, or close any home in accordance with all applicable laws. (~~4-11-06~~)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-1502 (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 39-3505, 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 16, 2015.

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 CFH program is a self-sustaining licensing and certification program. These rules are being amended to update and increase fees to cover the cost of administering the certified family homes program. The updates include:

- 1) The one-time application fee to become a CFH provider is being increased by \$25;
- 2) The monthly certification fee for the CFH providers is being increased by \$5 per month; and
- 3) A "Basic Medication Awareness" training course provided by the Department is being added for \$60.

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

Fee increases are being made in this rulemaking in order to maintain this self-sustaining program for Certified Family Homes. The one-time application fee is being increased to \$175, the monthly certification fee is being increased to \$30, and a medication assistance training provided by the Department is being added for \$60.

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 CFH program is meant to be a self-sustaining program. The increases to the fees is to cover costs of certification for CFH providers. The annual certification cost is increasing from \$300 to \$360 per year for an approximate total of \$828,000 for SFY 2017. New CFH applicants which includes site survey inspection fee is increased to \$175 per application for an approximate total of \$39,900. Medication Awareness training is being offered for \$60 per new CFH providers for an approximate total of \$13,680.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015, Idaho Administrative Bulletin, [Volume 15-5, page 59](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Vasterling at (208) 239-6263.

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 23, 2015.

DATED this 17th Day of August, 2015.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone; (208) 334-6558 fax
E-mail: dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 16-0319-1502
(Only Those Sections With Amendments Are Shown.)**

109. APPLICATION AND CERTIFICATION FEES FOR CERTIFIED FAMILY HOMES.

01. Application Fee Amount. An applicant to become a certified family home provider is required to pay to the Department at the time of application a one-time non-refundable application fee of one hundred ~~fifty~~ seventy-five (~~\$150~~75) dollars. ~~(3-21-12)~~()

02. Certification Fees. A certified family home provider is required to pay to the Department a certification fee of ~~twenty-five~~ thirty (~~\$25~~30) dollars per month. This amount will be billed to the provider quarterly, and is due and payable within thirty (30) days of date of the invoice. Failure of the provider to pay certification fees when due may cause the Department to take enforcement action described in Section 913 of these rules. ~~(3-21-12)~~()

03. Basic Medication Awareness Course Fee. A “Basic Medication Awareness for Certified Family Homes” course is provided by the Department at a cost of sixty dollars (\$60). This course is approved to meet the medication assistance requirement in Section 100 of these rules. A certified family home provider may elect to take the Department’s course, in place of the “Assistance with Medications” course available through the Idaho Professional Technical Education Program. The fee for the Department’s “Basic Medication Awareness for Certified Family Homes” course must be paid at the time the provider or substitute caregiver takes the course. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1501

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 Law 113-183 (the Preventing Sex Trafficking and Strengthening Families Act); 42 U.S.C. 673(a)(1)(B)(ii), and 42 U.S.C. 673(a)(3).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

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

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

This rulemaking is needed to align this chapter of rules with federal requirements for guardianships and adoption assistance programs, as well as relative notification for foster care.

Specifically, these rule changes:

- 1) Clarify the requirements regarding adoption assistance and notification to relatives of children who are placed in foster care; and
- 2) Allow the transfer of relative guardianship assistance benefits to a child's new guardian upon the death or incapacitation of the child's guardian.

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:

This rulemaking has no fiscal impact to the state general fund, or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules are being amended to align with federal requirements and so are nonnegotiable.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Stephanie Miller at (208) 334-5697 or email at MillerS2@dhw.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 23, 2015.

DATED this 7th Day of August, 2015.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0601-1501
(Only Those Sections With Amendments Are Shown.)

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.

For the purposes of these rules, the following terms are used: (5-8-09)

01. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind, or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

02. Safety Assessment. A process and standardized tool for contact between a family services worker and a family to objectively determine if safety threats, or immediate service needs exist that require further Child and Family Services response. (4-7-11)

03. Safety Plan. Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

04. Sibling. One of two (2) or more persons who shares the same biological or adoptive mother or father, or both. Siblings may be full-siblings or half-siblings. Siblings include those children who would be considered a sibling if not for the disruption in parental rights due to termination of parental rights or the death of a parent. ()

045. State-Funded Guardianship Assistance. Benefits described in Subsection 702.04 and Section 704 of these rules provided to a legal guardian for the support of a child who meets the eligibility criteria. (4-7-11)

056. TAFI. Temporary Assistance to Families in Idaho. (3-18-99)

067. Title IV-E. Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

078. Title IV-E Foster Care. Child care provided in lieu of parental care in a foster home, children's agency, or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (5-8-09)

089. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs." (3-18-99)

109. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

101. Tribal Court. A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

142. Unmarried Parents' Services. Services aimed at achieving or maintaining self-reliance or self-support for unmarried parents. These services include counseling for any unmarried parents who need such service in relation to their plans for their children and arranging for and paying for prenatal and confinement care for the well-being of the parent and infant. Services for unmarried parents are provided in accordance with Section 56-204A, Idaho Code. (5-8-09)

123. Voluntary Services Agreement. A written and executed agreement between the Department and parents or legal guardians regarding the goal, areas of concern, desired results, and task responsibility, including payment. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

702. CONDITIONS FOR GUARDIANSHIP ASSISTANCE.

The following conditions must be met for a child to be eligible for federally-funded or state-funded guardianship assistance. (4-7-11)

01. Assessment of Suitability. The Department or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study. (4-7-11)

02. Eligibility for Guardianship Assistance. The Department will determine eligibility for guardianship assistance for each child placed in the legal custody of the Department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally-funded subsidy. Should the child be found ineligible for a federally-funded subsidy, the child will then be considered for a state-funded subsidy. (4-7-11)

03. Guardianship and Foster Care Licensure. To receive guardianship assistance, a potential legal guardian must apply for and receive a foster care license. (4-7-11)

04. Guardianship Assistance Agreements and Payments. The Department and the prospective legal guardian must enter into a written agreement prior to the finalization of the guardianship. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate a child would receive if living in family foster care in Idaho. Eligibility for guardianship assistance is based on the child's needs. No means test may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. The Department will provide the prospective legal guardian with a copy of the agreement. All Guardianship Assistance Agreements must contain the following: (4-7-11)

a. The amount and manner in which the guardianship assistance payment will be provided to the prospective legal guardian; (4-7-11)

b. The manner in which the payment may be adjusted periodically in consultation with the legal guardian, based on the circumstances of the legal guardian and the needs of the child; (4-7-11)

c. Any additional services and assistance for which the child and legal guardian will be eligible under the agreement; (4-7-11)

d. The procedure by which the legal guardian may apply for additional services; (4-7-11)

e. A statement that the agreement will remain in effect without regard to the state of residency of the legal guardian; (4-7-11)

f. The procedure by which the Department will make a mandatory annual evaluation of the need for continued assistance and the amount of the assistance; and (4-7-11)

g. Guardianship assistance payments are prospective only. There will be no retroactive benefits or payments. (4-7-11)

h. In Title IV-E Relative Guardianship Assistance Agreements, the prospective relative guardian may identify a successor legal guardian to be appointed guardianship of the child due to the death or incapacitation of the relative legal guardian. ()

05. Termination of Guardianship Assistance. Federally-funded or state-funded guardianship assistance benefits and cash payments are automatically terminated when: (4-7-11)

a. A court terminates the legal guardianship or removes the legal guardian; (4-7-11)

- b.** The child no longer resides in the home of the legal guardian, and the legal guardian no longer provides financial support for the child; (4-7-11)
- c.** The child has reached the age of eighteen (18) years, regardless of the child's educational status or physical or developmental delays; or (4-7-11)
- d.** The child marries, dies, or enters the military. (4-7-11)
- e.** Title IV-E relative guardianship assistance benefits do not end upon the death or incapacitation of the relative legal guardian if the relative legal guardian identified a successor legal guardian in the child's Title IV-E Relative Guardianship Assistance Agreement and the successor legal guardian assumes legal responsibility for the child. ()

06. Administrative Review for Guardianship Assistance. The prospective legal guardian has twenty-eight (28) days from the date of the Department's notification of the guardianship assistance determination, to request an administrative review. The determination will be reviewed by the FACS Division Administrator, and a decision will be rendered to either affirm, reverse, or modify, the decision. The Department will notify the individual, by mail, of the FACS Division Administrator's decision, of his right to appeal, and procedures for filing an appeal according to requirements in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-7-11)

703. FEDERALLY-FUNDED GUARDIANSHIP ASSISTANCE ELIGIBILITY, REQUIREMENTS, AND BENEFITS.

In addition to Section 702 of these rules, the following requirements and benefits are applicable to a federally-funded guardianship assistance for an eligible child and a relative guardian. (4-7-11)

- 01. Eligibility.** A child is eligible for a federally-funded guardianship if the Department determines the child meets the following: (4-7-11)

 - a.** Is fourteen (14) years of age, or older, sometime during the consecutive six- (6) month residence with the prospective relative legal guardian as specified in Subsection 703.01.c. of this rule; (4-7-11)
 - b.** Has been removed from his or her home pursuant to a voluntary placement agreement, or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; (4-7-11)
 - c.** Being returned home or adopted are not appropriate permanency options for the child; (4-7-11)
 - d.** Has been eligible for Title IV-E foster care maintenance payments during at least six (6) consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as meeting the licensure requirements as a foster family home. While it is not required that Title IV-E foster care maintenance payments have been paid on behalf of the child during the six-month timeframe, it is required the child meet all Title IV-E foster care maintenance payment eligibility criteria in the home of the fully licensed or approved relative foster parent for a consecutive six- (6) month period to be eligible for Title IV-E guardianship assistance payment with that prospective relative legal guardian; (4-7-11)
 - e.** Has been consulted regarding the legal guardianship arrangement; and (4-7-11)
 - f.** Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child. (4-7-11)
 - g.** When a successor legal guardian has been named in the child's most recent Title IV-E Relative Guardianship Assistance Agreement, the child remains eligible for guardianship assistance benefits upon the death or incapacitation of the relative legal guardian with any cash assistance paid to the successor legal guardian. ()

02. Siblings of an Eligible Child. (4-7-11)

- a.** The Department may make guardianship assistance payments in accordance with a guardianship

assistance agreement on behalf of each sibling of an eligible child, under the age of eighteen (18), who is placed with the same relative under the same legal guardianship arrangement if the Department and the relative legal guardian agree that the placement is appropriate. (4-7-11)

b. Nonrecurring expenses associated with obtaining legal guardianship of the eligible child's siblings are available to the extent the total cost does not exceed two thousand dollars (\$2,000). (4-7-11)

c. The agency is not required to place siblings with the relative legal guardian of the child at the same time with the eligible child for the siblings to qualify for a cash payment. (4-7-11)

d. A sibling of the eligible child does not have to meet the eligibility criteria for the relative legal guardian to receive a guardianship assistance payment or for the relative legal guardian to receive nonrecurring expenses. (4-7-11)

03. Medicaid. A child who is eligible for federally-funded relative guardianship assistance is eligible for Title XIX Medicaid in the state where the child resides. (4-7-11)

04. Case Plan Requirements. A child who is eligible for federally-funded relative guardianship assistance must have a case plan that includes: (4-7-11)

a. How the child meets the eligibility requirements; (4-7-11)

b. Steps the agency has taken to determine that return to the home or adoption is not appropriate; (4-7-11)

c. The efforts the agency has made to discuss adoption with the child's relative foster parent and the reason why adoption is not an option; (4-7-11)

d. The efforts the agency has made to discuss the legal guardianship and the guardianship assistance with the child's parent or parents, or the reason the efforts were not made; (4-7-11)

e. The reason why a permanent placement with a prospective relative legal guardian and receipt of a guardianship assistance payment is in the child's best interests; and (4-7-11)

f. If the child is not placed with siblings, a statement as to why the child is separated from his siblings. (4-7-11)

05. Criminal History and Background Checks. To be eligible for a federally-funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance, according to the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary. (4-7-11)

06. Nonrecurring Expenses. The Department will reimburse the cost, up to two thousand dollars (\$2,000), of nonrecurring expenses associated with obtaining a federally-funded legal guardianship for an eligible child. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

911. ADOPTION ASSISTANCE PROGRAM AGREEMENT.

A written agreement must be negotiated and fully executed between the Department and adopting family prior to the finalization of adoption and implementation of benefits. (5-8-09)

01. Agreement Specifications. The agreement specifies the following: (5-8-09)

- a. The type and amount of assistance to be provided; (5-8-09)
- b. That there will be an annual review of each agreement by the Department to evaluate the need for continued subsidy and the amount of the subsidy; (5-8-09)
- c. That the agreed upon type and amount of assistance may be adjusted only with the concurrence of the adoptive parent(s) based upon changes in the needs of the child or changes in the circumstances of the adoptive family; (5-8-09)
- ~~d. That assistance is subject to the continuing availability of funds; and (5-8-09)~~
- ~~ed.~~ That the adoptive parent(s) are required to inform the Department of any circumstances which would make them ineligible for adoption assistance payments, or eligible for adoption assistance payments in a different amount. (5-8-09)

02. Termination of Adoption Assistance. Adoption assistance will be terminated if the adoptive parent(s) no longer have legal responsibility for the child as a result of termination of parental rights, the child is no longer receiving any financial support from the parents, or the child has reached the age of eighteen (18) years regardless of the child's educational status. (4-11-06)

03. Adoption Assistance Follows the Child. If the adoptive parents are located in a state other than Idaho, or move out of Idaho with the child, the adoption assistance payments initiated by Idaho will continue for the child. If the child is IV-E or state-funded adoption assistance eligible, referral for Medicaid or other state medical insurance and social service benefits will be forwarded to the new state of residence through the Interstate Compact on Adoption and Medical Assistance. Non IV-E eligible children receiving a state adoption subsidy, may not be eligible for Medicaid in a state other than Idaho. (5-3-03)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-1501

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 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code, and Public Law 113-183 (the Preventing Sex Trafficking and Strengthening Families Act).

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 16, 2015.

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

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

This rulemaking is being done to align this chapter of rules with federal requirements regarding foster care and the application of the “reasonable and prudent parent standard.”

In this rulemaking:

- 1) The term “reasonable and prudent parent standard” is being defined for the purpose of the Department’s child welfare program. The definition is required in accordance with Public Law 113-183 and the proposed definition utilizes wording acceptable to the federal Department of Health and Human Services.
- 2) Public Law 113-183 requires child care institutions providing foster care to have the presence of at least one on-site official who, with respect to any child placed at the child care institution, is designated to be the caregiver who is authorized to apply the reasonable and prudent parent standard.

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:

This rulemaking has no fiscal impact to the state general fund, or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules are being amended to align with federal requirements and so are nonnegotiable. Failure to make these rule changes will result in loss of funding.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sabrina Brown at (208) 334-5648 or email at BrownS5@dhw.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 23, 2015.

DATED this 7th Day of August, 2015.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0602-1501
(Only Those Sections With Amendments Are Shown.)

457. REASONABLE AND PRUDENT PARENT STANDARD.

A caregiver must follow the reasonable and prudent parent standard. ()

01. Reasonable and Prudent Parent Standard Defined. The reasonable and prudent parent standard means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver must use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, or social activities. ()

a. “Caregiver” means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed. ()

b. “Age or developmentally appropriate” means: ()

i. Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and ()

ii. In the case of specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child. ()

02. Training. Each caregiver will complete training to include knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child, and applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one (1) or more days, and involving the signing of permission slips and arranging transportation for the child to and from extracurricular enrichment and social activities. ()

~~457~~8. -- 469. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

583. REASONABLE AND PRUDENT PARENT STANDARD FOR AN ORGANIZATION PROVIDING SERVICES TO CHILDREN PLACED BY THE DEPARTMENT.

An organization providing services to children placed by the Department’s Child and Family Service Program must designate at least one (1) on-site official who is authorized to apply the reasonable and prudent parent standard as described in Section 457 of these rules. ()

~~583~~4. -- 599. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.01 - BEHAVIORAL HEALTH SLIDING FEE SCHEDULES

DOCKET NO. 16-0701-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 3, and Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, 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 16, 2015.

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 Department is integrating behavioral health services to better match current practices for children's mental health, adult mental health, and substance use disorders services. These rules amendments combine the fee schedules into one table, remove obsolete language and tables, and update references for behavioral health services to rates set in Department contracts.

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:

This rulemaking has no fiscal impact to the state general fund, or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rule changes are needed to update and align this chapter with other Department rules and contracts which makes these rules nonnegotiable.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trenea Clark at (208) 334-6611.

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 23, 2015.

DATED this 7th Day of August, 2015.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0701-1501
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

Under Sections 16-2433, 19-2524, ~~20-520(i)~~, 20-511A, and 39-3137, Idaho Code, the Director is authorized to promulgate, adopt, and enforce rules for the charging of fees for services provided by mental health and substance use disorders providers. Under Section 39-309, Idaho Code, the Board of Health and Welfare is authorized to promulgate, adopt, and enforce rules for the charging of fees for services provided by mental health and substance use disorders providers. (4-9-09)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEB SITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (4-9-09)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-9-09)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-9-09)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-9-09)

05. Internet Web Site. The Department's internet website at <http://www.healthandwelfare.idaho.gov>. (4-9-09)

06. Substance Use Disorders Services Website. The Substance Use Disorders Services internet website at <http://www.substanceabuse.idaho.gov>. ()

07. Mental Health Services Website. The Mental Health Services internet website at <http://www.mentalhealth.idaho.gov>. ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purposes of this chapter, the following definitions apply. (4-9-09)

01. Ability to Pay. The financial capacity that is available to pay for the program services after allowable deductions in relation to gross income and family size exclusive of any liability of third party payor sources. (4-9-09)

02. Adjusted Gross Income. Total family annual income less allowable annual deductions. (4-9-09)

03. Adult. An individual 18 years of age or older. (4-9-09)

- 04. Adult Mental Health Program.** A program administered by the Idaho Department of Health and Welfare to serve seriously mentally ill and severely and persistently mentally ill adults. (4-9-09)()
- 05. Allowable Annual Deductions.** In determining the family's ability to pay for behavioral health services, the following are allowable annual deductions: (4-9-09)
- a. Court-ordered obligations; (4-9-09)
 - b. Dependent support; (4-9-09)
 - c. Child care payments necessary for parental employment; (4-9-09)
 - d. Medical expenses. (4-9-09)
 - e. Transportation; (4-9-09)
 - f. Extraordinary rehabilitative expenses; and (4-9-09)
 - g. State and federal tax payments, including FICA taxes. (4-9-09)
- 06. Behavioral Health Services.** Services offered by the Department to improve behavioral mental health issues or alcohol and substance use disorders issues. (4-9-09)()
- 07. Child.** An individual who is under the age of eighteen (18) years. (4-9-09)
- 08. Children's Mental Health Program.** A program as defined in IDAPA 16.07.37, "Children's Mental Health Services," administered by the Idaho Department of Health and Welfare. (4-9-09)
- ~~**09. Client.** The recipient of services. The term "client" is synonymous with the terms: patient, participant, resident, consumer, or recipient of treatment. (4-9-09)~~
- ~~**109. Court-Ordered Obligations.** Financial payments which have been ordered by a court of law. (4-9-09)~~
- ~~**110. Court-Ordered Recipient.** A person receiving behavioral health services under Sections 19-2524, 20-520(i), and 20-511A, Idaho Code. (4-9-09)~~
- ~~**121. Department.** The Idaho Department of Health and Welfare. (4-9-09)~~
- ~~**132. Dependent Support.** An individual that is dependent on his family's income for over fifty percent (50%) of his financial support. (4-9-09)~~
- ~~**143. Extraordinary Rehabilitative Expenses.** Those payments incurred as a result of the disability needs of the person receiving services. They include annual costs for items including, but not limited to, wheelchairs, adaptive equipment, medication, treatment, or therapy which were not included in the medical payments deduction and the annual estimate of the cost of services received. (4-9-09)~~
- ~~**154. Family.** A family is an adult, or married adults, or adult(s) with children, living in a common residence. (4-9-09)~~
- ~~**165. Family Household.** Persons in a family related by blood, marriage, or adoption. Adult siblings who are not claimed as dependents and individuals receiving Supplemental Security Income (SSI) or Supplemental Security Disability Income (SSDI) are excluded from consideration as a member of the household for income and counting purposes. Income from minor siblings is excluded from household income. The term "family household" is synonymous with the term "family unit." (3-29-10)~~
- ~~**176. Federal Poverty Guidelines.** Guidelines issued annually by the Federal Department of Health and~~

Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found online at <http://aspe.hhs.gov/poverty>. (4-9-09)

187. Management Service Contractor (MSC). An independent contractor with whom the Department contracts to manage a statewide network of Department-approved facilities and programs to deliver substance use disorders treatment and recovery support services. (7-1-13)

198. Parent. The person who, by birth or through adoption, is legally responsible for a child. (4-9-09)

209. Recipient. The person receiving services. The term “recipient” is synonymous with the terms: “patient,” “participant,” “resident,” “consumer,” or “client.” (4-9-09)

240. Sliding Fee Scale. A scale used to determine an individual’s financial obligation for services based on Federal Poverty Guidelines and the number of persons in the family household. (4-9-09)

221. Substance Use Disorders Program. A program administered by the Idaho Department of Health and Welfare to serve adolescents and adults with alcohol or substance use disorders. (4-9-09)

232. Third-Party Payor. A payor other than a person receiving services or a responsible party who is legally liable for all or part of the person’s care. (4-9-09)()

(BREAK IN CONTINUITY OF SECTIONS)

300. SLIDING FEE SCHEDULE FOR CHILDREN’S MENTAL HEALTH, ~~AND~~ ADULT MENTAL HEALTH, ~~AND~~ SUBSTANCE USE DISORDERS SERVICES.

Following is the sliding fee schedule for children’s mental health, ~~and~~ adult mental health, and substance use disorders services:

TABLE 300 - SLIDING FEE SCHEDULE FOR CHILDREN’S MENTAL HEALTH, AND ADULT MENTAL HEALTH, AND SUBSTANCE USE DISORDERS SERVICES.	
Percent Federal of Poverty Guidelines	Percentage of Cost Sharing Responsibility of a Parent, or Adult Client <u>Services Recipient</u>
0% - 99%	0%
100%-109%	5%
110%-119%	10%
120%-129%	15%
130%-139%	20%
140%-149%	25%
150%-159%	30%
160%-169%	35%
170%-179%	40%
180%-189%	45%
190%-199%	50%
200% - 209%	55%

TABLE 300 - SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH, AND ADULT MENTAL HEALTH, AND SUBSTANCE USE DISORDERS SERVICES.	
Percent Federal of Poverty Guidelines	Percentage of Cost Sharing Responsibility of a Parent, or Adult Client Services Recipient
210% - 219%	60%
220% - 229%	65%
230% - 239%	70%
240% - 249%	75%
250% - 259%	80%
260% - 269%	85%
270% - 279%	90%
280% - 289%	95%
290% - and above	100%

(4-9-09)()

301. -- 399. (RESERVED)

400. CALCULATING INCOME TO APPLY THE SLIDING FEE SCHEDULE FOR CHILDREN'S MENTAL HEALTH AND ADULT MENTAL HEALTH SERVICES.

The fee determination process includes consideration of the following subsections in this rule. ()

01. Application And Fee Determination Form. Prior to the delivery of behavioral health services, an application for services and a "Fee Determination" form must be completed ~~by~~. ()

a. ~~A~~ child's parent(s) must complete the application and fee determination form when requesting Children's Mental Health services ~~and by~~. ()

b. ~~An adult~~s requesting Adult Mental Health services must complete the application and fee determination form. ~~The fee determination process includes the following considerations:~~ (4-9-09)()

02. Ability to Pay. Financial obligations are based upon the number of persons in the family household and the adjusted gross income of those persons as determined using the following: (4-9-09)

a. An ability to pay determination will be made at the time of the voluntary request for services or as soon as possible, thereafter. (4-9-09)

b. Redetermination of ability to pay will be made at least annually or upon request ~~of the parent(s)~~ or at any time changes occur in family size, income, or allowable deductions. (4-9-09)()

c. In determining the family's ability to pay for services, the Department will deduct annualized amounts for the following: (4-9-09)

i. Court-ordered obligations; (4-9-09)

ii. Dependent support; (4-9-09)

iii. Child care expenses necessary for parental employment; (4-9-09)

- iv. Medical expenses; (4-9-09)
- v. Transportation; (4-9-09)
- vi. Extraordinary rehabilitative expenses; and (4-9-09)
- vii. State and federal tax payments, including FICA taxes. (4-9-09)

023. Required Information. Information regarding third-party payors and other resources, including Medicaid or private insurance, must be identified and developed in order to fully determine the child’s parent(s) or adult ~~client’s~~ individual’s ability to pay and to maximize reimbursement for the cost of services provided. It is the responsibility of the parents, legal guardian, or adult ~~client~~ individual to obtain and provide information not available at the time of the initial financial interview whenever that information becomes available. (4-9-09)()

034. Time of Payment. Payment for services will be due upon delivery of services unless other arrangements are made. (4-9-09)

045. Financial Obligation. A financial obligation for each service not covered by third party liable resources or payments, including private insurance and Medicaid, will be established in accordance with Section 300 and Subsection 400.01 of these rules but in no case will the amount owed exceed the cost of the service. In no case will the annual financial obligation exceed five percent (5%) of adjusted gross income of the family household. (4-9-09)

056. Fees Established By the Department. The maximum hourly fees or flat fees charged for *Children’s Mental Health services and Adult Mental Behavioral* Health services are established by the Department of Health and Welfare. ~~The fees for services based on Medicaid reimbursement rates may vary according to Medicaid inflationary increases. Fees will be reviewed and adjusted as the Medicaid rates change. Current information regarding services and fee charges can be obtained from regional Children’s Mental Health and Adult Mental Health offices.~~ (4-9-09)()

a. ~~The fees for Children’s Mental Health Services and Adult Mental Health Services are based on the cost for services set in Department contracts with service providers. Current information regarding services and fee charges can be obtained from regional Children’s Mental Health and Adult Mental Health offices specified online as described in Section 005 of these rules.~~ ()

b. ~~The fees for Substance Use Disorders Services are based on the cost for services set in Department contracts with the Management Services Contractor. Current information regarding services and fee charges can be obtained from the Department office described in Section 005 of these rules.~~ ()

~~401—499. (RESERVED)~~

~~**500. SLIDING FEE SCHEDULE FOR ALCOHOL AND SUBSTANCE USE DISORDERS TREATMENT SERVICES.**~~

~~Adult clients above two hundred percent (200%) of federal poverty guidelines are not eligible for services. Following is the sliding fee schedule for adolescent and adult alcohol and substance use disorders treatment services:~~

TABLE 500—SLIDING FEE SCHEDULE FOR ALCOHOL AND SUBSTANCE USE DISORDERS TREATMENT SERVICES	
Percent of Federal Poverty Guidelines	Percentage of Cost Sharing Responsibility of a Parent, Guardian, or Adult Service Recipient
0%—99% or a Medicaid Client	0%
100%—109%	5%

TABLE 500—SLIDING FEE SCHEDULE FOR ALCOHOL AND SUBSTANCE USE DISORDERS TREATMENT SERVICES	
Percent of Federal Poverty Guidelines	Percentage of Cost Sharing Responsibility of a Parent, Guardian, or Adult Service Recipient
110%—119%	10%
120%—129%	15%
130%—139%	20%
140%—149%	25%
150%—159%	30%
160%—169%	35%
170%—179%	40%
180%—189%	45%
190%—199%	50%
200%	55%

~~(4-9-09)~~

~~501.—599. (RESERVED)~~

~~600. CALCULATING INCOME TO APPLY THE SLIDING FEE SCHEDULE FOR ALCOHOL AND SUBSTANCE DISORDERS SERVICES.~~

- ~~01. Ability to Pay. Charges are based upon the number of dependents and family income. (4-9-09)~~
- ~~a. An ability to pay determination will be made at the time of the voluntary request for services or as soon as possible. (4-9-09)~~
- ~~b. Redetermination of ability to pay will be made at least annually or upon request demonstrating that a substantial material change of circumstances has occurred in family size, income, or allowable deductions. (4-9-09)~~
- ~~e. In determining an individual's ability to pay for services, the Department will deduct annualized amounts for: (4-9-09)~~
 - ~~i. Court ordered obligations; (4-9-09)~~
 - ~~ii. Dependent support; (4-9-09)~~
 - ~~iii. Child care payments necessary for employment; (4-9-09)~~
 - ~~iv. Medical expenses; (4-9-09)~~
 - ~~v. Transportation; (4-9-09)~~
 - ~~vi. Extraordinary rehabilitative expenses; and (4-9-09)~~
 - ~~vii. State and federal tax payments, including FICA. (4-9-09)~~

~~d. Information regarding third-party payors and other resources including Medicaid, or private insurance must be identified and developed in order to fully determine the individual's ability to pay and to maximize reimbursement for the cost of services provided. (4-9-09)~~

~~e. It is the responsibility of the individual requesting alcohol or substance use disorder services to obtain and provide information not available at the time of the initial financial interview whenever that information becomes available. (4-9-09)~~

~~02. **Time of Payment.** Payment for services is due thirty (30) days from the date of the billing, unless other arrangements are made. (4-9-09)~~

~~03. **Charges.** Using the sliding fee scale in Section 500 of this rule, an amount will be charged based on family size, resources, income, assets, and allowable deductions, exclusive of third-party liable sources. In no case will the amount charged exceed the costs of the services. (4-9-09)~~

~~04. **Established Fee.** The maximum hourly fees or flat fees charged for alcohol or substance use disorder services are established by the Department of Health and Welfare. The fees for services are based on the cost for services as set forth in the Department contract with the Management Services Contractor. Current information regarding services and fee charges can be obtained from the Department office as specified in Section 005 of these rules. (7-1-13)~~

~~6401. -- 999. (RESERVED)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.10 - BEHAVIORAL HEALTH DEVELOPMENT GRANTS

DOCKET NO. 16-0710-1501 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 3, 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 16, 2015.

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 is being repealed in its entirety. With the passage of legislation to create regional behavioral health boards and community crisis centers the Department is developing a behavioral health system of care that eliminates the need for the Behavioral Health Development Grants.

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:

Funds appropriated for Behavioral Health Development Grants in 2009 have been disbursed and no additional funds have been appropriated for this program in the past five years. There is no anticipated fiscal impact to the state general fund, or any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this chapter of rule for Behavioral Health Development Grants is being repealed due to no funding for these grants making the rulemaking nonnegotiable.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at (208) 334-6611.

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 23, 2015.

DATED this 7th Day of August, 2015.

Tamara Prisock, DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

IDAPA 16.07.10 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.15 - BEHAVIORAL HEALTH PROGRAMS

DOCKET NO. 16-0715-1501 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 3, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

ORIGINATING LOCATION -- LIVE MEETING
Thursday, September 17, 2015
10:00 a.m. (MDT) / 9:00 a.m. (PDT) and
2:00 p.m. (MDT) / 1:00 p.m. (PDT)

Idaho Department of Health & Welfare -- Central Office
Conf. Room 3A (3rd Floor)
450 West State Street
Boise, ID 83702

VIDEO CONFERENCING

Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814	Region II Office - Lewiston 1st Floor Conference Room 1118 “F” Street Lewiston, ID 83501	Region III Office - Caldwell Owyhee Conference Room (Rm 226) 3402 Franklin Road Caldwell, ID 83605
Region IV Office - Boise Room 131 1720 Westgate Drive, Suite A Boise, ID 83704	Region V Office - Twin Falls Room 116 823 Harrison Twin Falls, ID 83301	Region VI Office - Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201
Region VII Office - Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402	State Hospital South - Blackfoot Admin. Bldg., Classroom A09 700 E. Alice Street Blackfoot, ID 83221	State Hospital North Administration Conf. Rm. 234 300 Hospital Drive Orofino, ID 83544

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 is a new chapter of rule being written to meet the needs of the Department in developing a behavioral health system of care.

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

These rules have a flat fee structure of \$100 per each behavioral health program location. This fee replaces fees that are currently being charged under IDAPA 16.07.20, “Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs,” which is being repealed in this same Bulletin under Docket 16-0720-1501.

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:

The fiscal impact for this rule change is anticipated to be cost-neutral for state general funds and all other funds. Currently, the Department collects a fee from alcohol and substance use disorders treatment and recovery support facilities that is \$100 per facility for treatment and \$50 per facility for recovery support services. The new fee structure will be a flat fee of \$100 for each behavioral health program location.

It is difficult to estimate the number of providers who will choose to voluntarily be approved by the state. It is anticipated that the expected increase in fee receipts for those seeking approval of behavioral health programs will offset any cost increases for the administration of these programs.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted under the current chapter that this new chapter will replace.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trenea Clark at (208) 334-6611.

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 23, 2015.

DATED this 12th Day of August, 2015.

Tamara Prisock, DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

Phone: (208) 334-5500
Fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR FEE DOCKET NO. 16-0715-1501

**IDAPA 16
TITLE 07
CHAPTER 15**

16.07.15 - BEHAVIORAL HEALTH PROGRAMS

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department of Health and Welfare, as the State Behavioral Health Authority, the oversight of the state of Idaho's behavioral health services. Under Title 39, Chapter 31, Idaho Code, the Department is authorized to promulgate and enforce rules to carry out the purposes and intent of the Regional Behavioral Health Services Act. Under Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009 Idaho Code, the Director of the Department is authorized to adopt and enforce rules to supervise and administer a mental health program and services dealing with the problems of alcoholism including the care and rehabilitation of persons suffering from alcoholism. Under Title 39, Chapter 3, Idaho Code, the Board of Health and Welfare is authorized to adopt and enforce rules that set standards for the approval of substance use disorders agencies in the state of Idaho.

()

001. TITLE, SCOPE, AND PURPOSE.

- 01. Title.** The title of these rules is IDAPA 16.07.15, “Behavioral Health Programs.” ()
- 02. Scope.** These rules set minimum standards for approved behavioral health programs in Idaho. ()
- 03. Purpose.** The purpose of these rules is to: ()
- a.** Establish requirements for the approval, denial, suspension, or revocation of certificates of approval for approved behavioral health programs in Idaho; ()
- b.** Set fees for the Department’s approval process of applications and on-site reviews for behavioral health programs in Idaho; and ()
- c.** Establish requirements for the health, safety, and environment of care for behavioral health programs in Idaho. ()
- 002. WRITTEN INTERPRETATIONS.**
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of these rules, or to the documentation of compliance with these rules. These documents are available for public inspection as described in Sections 005 and 006 of these rules. ()
- 003. ADMINISTRATIVE APPEALS.**
Administrative appeals are governed by provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” ()
- 004. INCORPORATION BY REFERENCE.**
No documents are incorporated by reference as provided by Section 67-5229(a), Idaho Code. ()
- 005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.**
- 01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()
- 02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()
- 03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83702. ()
- 04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()
- 05. Internet Website.** The Department's internet website is <http://www.healthandwelfare.idaho.gov>. ()
- 06. Substance Use Disorders Services Website.** The Substance Use Disorders Services internet website is <http://www.substanceabuse.idaho.gov>. ()
- 07. Mental Health Services Website.** The Mental Health Services internet website is <http://www.mentalhealth.idaho.gov>. ()
- 006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.**
- 01. Public Records.** The use or disclosure of Department records must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records.” Unless otherwise exempted by state or federal law, all public records in the custody of the Department are subject to disclosure. ()

02. Public Availability of Licensure or Deficiencies. In compliance with Section 74-106(9), Idaho Code, and IDAPA 16.05.01.100.02, "Use and Disclosure of Department Records," records relating to behavioral health programs will be released to the public upon written request if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission, or position. These records will otherwise be provided in redacted form as required by law or rule. ()

007. -- 008. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. All owners, operators, employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide direct care or services, or whose position requires regular contact with participants, must comply with the provisions of IDAPA 16.05.06, "Criminal History and Background Checks." ()

02. Availability to Work. An individual, listed in Subsection 009.01 of this rule, is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application. ()

a. An individual is allowed to work or have access to participants only under supervision until the criminal history and background check is completed. ()

b. An individual, who does not receive a criminal history and background check clearance or a waiver granted under the provisions in these rules, may not provide direct care or services, or serve in a position that requires regular contact with participants. ()

03. Waiver of Criminal History and Background Check Denial. An individual who receives an unconditional denial or a denial after an exemption review by the Department's Criminal History Unit, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with participants. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. ()

04. No Waiver for Certain Designated Crimes. No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: ()

a. Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ()

b. Incest, as defined in Section 18-6602, Idaho Code; ()

c. Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ()

d. Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; ()

e. Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ()

f. Rape, as defined in Section 18-6101, Idaho Code; ()

g. Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ()

h. Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ()

- i. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ()
- j. Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ()
- k. Any felony punishable by death or life imprisonment; or ()
- l. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. ()

05. Administrative Review. An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews for waivers of CHC denials described in Subsections 009.03 and 009.04 of this rule. ()

06. Written Request for Administrative Review and Waiver. A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within thirty (30) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The thirty (30) day period for submitting a request for a waiver may be extended by the Department for good cause. ()

07. Scheduling of Administrative Review. Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. ()

08. Factors Considered During Administrative Review. During the administrative review, the following factors may be considered: ()

- a. The severity or nature of the crimes or other findings; ()
- b. The period of time since the incidents occurred; ()
- c. The number and pattern of incidents being reviewed; ()
- d. Circumstances surrounding the incidents that would help determine the risk of repetition; ()
- e. The relationship between the incidents and the position sought; ()
- f. Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation. ()
- g. A pardon that was granted by the Governor or the President; ()
- h. The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and ()
- i. Any other factor deemed relevant to the review. ()

09. Administrative Review Decision. A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review. ()

10. Decision to Grant Waiver. The Department's decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under these rules is not a criminal history and background check clearance. A waiver is only applicable to the specified individual on the waiver and for behavioral

health services and programs governed under these rules. The waiver does not apply to other Department programs that require a clearance for a Department criminal history and background check. ()

11. Revocation of Waiver. At any time, the Department may revoke a waiver at its discretion for circumstances that it identifies as a risk to participants' health and safety. ()

12. Waiver Decisions Are Not Subject to Review or Appeal. The decision or actions of the Department concerning a waiver are not subject to review or appeal, administratively, or otherwise. ()

13. Employer Responsibilities. A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer. ()

010. DEFINITIONS.

For the purposes of these rules, the following terms are used. ()

01. Behavioral Health Program. A behavioral health program refers to an organization offering mental health or substance use disorders treatment services which includes the organization's facilities, management, staffing patterns, treatment, and related activities. ()

02. Certificate of Approval. A certificate issued by the Department to a behavioral health program which the Department deems to be in compliance with these rules. ()

03. Critical Incident. An event that caused, or could have caused physical or emotional distress to staff, visitors, or the participants of the program. ()

04. Department. The Idaho Department of Health and Welfare, or its designee. ()

05. Director. The Director of the Department of Health and Welfare, or designee. ()

06. Good Cause. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. ()

07. Participant. An individual seeking or receiving behavioral health program treatment services. The term "participant" is synonymous with the terms "patient," "resident," "consumer," "client," or "recipient of treatment." ()

08. Variance. The means of complying with the intent and purpose of a behavioral health program rule in a manner acceptable to the Department other than that specifically prescribed in the rule. ()

09. Waiver. The means to allow an individual who is unable to pass a Department criminal history background check to provide services in an approved behavioral health program. Waivers are only for a specified individual for the sole purpose of providing behavioral health services. ()

011. -- 049. (RESERVED)

050. VARIANCE FOR BEHAVIORAL HEALTH PROGRAM.

The Department may grant a variance from compliance with a specific behavioral health program requirement when the variance will not violate an existing state or federal law or jeopardize health, safety, or welfare of individuals. ()

01. Written Request. A behavioral health program must submit a written request to the Department for a variance. The request must include the following: ()

- a. Reference the section of the rules for which the variance is requested; and ()
- b. Good cause for such a variance and how the health, welfare, or safety of participants will not be jeopardized if a variance is granted. ()

02. Decision to Grant a Variance. The decision by the Department to grant a variance does not set a precedent for subsequent behavioral health program requests nor will it be given any effect in any other proceeding. ()

03. Revocation of Variance. The Department may revoke a variance at any time when circumstances identify a risk to participants' health or safety. ()

051. -- 074. (RESERVED)

075. SUBSTANCE USE DISORDERS SERVICES.

An approved behavioral health program providing substance use disorder services must comply with all requirements in IDAPA 16.07.17, "Substance Use Disorders Services," and the requirements and minimum standards required in these rules. ()

076. -- 099. (RESERVED)

100. CERTIFICATE OF APPROVAL.

Under the standards and requirements in these rules, the Department may approve behavioral health programs that provide outpatient mental health services or programs that provide substance use disorders services, or both. Each approved behavioral health program must meet the standards and requirements of these rules in order to obtain and maintain a Department certificate of approval. ()

01. List of Approved Behavioral Health Programs. The Department will maintain a list of approved behavioral health programs. The issuance of a certificate of approval from the Department does not guarantee adequacy of individual care, treatment, personal safety, fire safety, or the well-being of any participant, employee, contractor, volunteer, or occupant of the program. The provider of a behavioral health program with a certificate of approval is responsible to ensure the adequacy and quality of care being provided to its participants. ()

02. Approved Behavioral Health Programs with Multiple Locations. A behavioral health program may have more than one (1) location in which it provides services. ()

a. Each location of the behavioral health program must comply with the requirements and minimum standards in these rules in order to operate, manage, conduct, or maintain, directly or indirectly, an approved behavioral health program. ()

b. When a behavioral health program applies for certificates of approval for multiple locations, denial of a certificate of approval at a specific location will not affect the other behavioral health program's location applications that have not been denied. ()

101. -- 109. (RESERVED)

110. INITIAL APPLICATION FOR CERTIFICATE OF APPROVAL.

Each behavioral health program must apply to the Department for a certificate of approval. ()

01. Obtain and Complete Application. Initial application forms for a behavioral health program may be obtained upon written request or online at the Department of Health and Welfare as identified in Section 005 of these rules. The applicant must provide a completed application to the Department prior to receiving a certificate of approval for a behavioral health program. ()

02. Signed Application. Each applicant must sign and provide a completed application and site form for each location. ()

03. Application Fee. A non-refundable application fee of one hundred dollars (\$100) for each behavioral health program location must be included with the application. ()

04. Certificate of Assumed Business Name. A copy of the “Certificate of Assumed Business Name” obtained from the Idaho Secretary of State must be included with the behavioral health program’s application. ()

05. Certificates or Permits. A copy of each current and valid certificate or permit must be included as appropriate: ()

a. Certificate of Occupancy from the local building authority for each location; ()

b. Certificate of fire inspection conducted by the State fire marshal or local authority for each location; and ()

06. Proof of Insurance. Each behavioral health program must maintain minimum insurance policy to cover both professional liability and commercial general liability. Behavioral Health Programs are responsible for maintaining additional insurance coverage as appropriate for the various services, funding sources, interventions, and populations served. ()

07. Agreement for Site Inspection. A signed agreement for each behavioral health program site inspection location as determined by the Department. ()

08. Other Information Requested. Other information that may be requested by the Department for the proper administration and enforcement of these rules. ()

111. -- 119. (RESERVED)

120. RENEWAL OF CERTIFICATE OF APPROVAL.

Each approved behavioral health program must apply for renewal of the program to the Department at least ninety (90) calendar days prior to the expiration date on the current certificate of approval. ()

01. Obtain and Complete Renewal Application Form. A completed and signed renewal application form must be submitted to the Department. Application for renewal forms are available upon written request or online at the Department of Health and Welfare as identified in Section 005 of these rules. ()

02. Renewal Application Fee. A non-refundable renewal application fee of one hundred dollars (\$100) for each behavioral health program location being renewed must be included with each renewal application. ()

03. Proof of Insurance. Each behavioral health program must maintain minimum insurance policy to cover both professional liability and commercial general liability. Behavioral Health Programs are responsible for maintaining additional insurance coverage as appropriate for the various services, funding sources, interventions, and populations served. ()

04. Changes to Behavioral Health Programs. The behavioral health program must disclose any changes to the program that have occurred during the current certification period. ()

05. Other Information Requested. Other information that may be requested by the Department for the proper administration and enforcement of these rules. ()

121. -- 129. (RESERVED)

130. FAILURE TO COMPLETE APPLICATION PROCESS.

Failure of the applicant to cooperate with the Department or complete the application process within six (6) months of the original date of application will result in a denial of the application. If the application is denied, the applicant is barred from submitting, seeking, or obtaining another application for a certificate of approval for a period of one (1) year from the date of the original application. ()

131. -- 139. (RESERVED)

140. BEHAVIORAL HEALTH PROGRAM -- DEEMING.

01. National Accreditation. The Department will deem a nationally accredited behavioral health program to be in compliance with the minimum standards and rule requirements in these rules. ()

02. Tribal Programs. The Department will deem Indian Health Services programs and may deem other tribal facilities that provide behavioral health services as a state approved behavioral health program. ()

03. Proof of Accreditation. The applicant must submit a copy of accreditation results and reports regarding accreditation from the accrediting agency with their application. ()

04. Additional and Supplemental Information. To address requirements for a state-approved behavioral health program, the Department may require an applicant to provide additional or supplemental information not covered under the national accreditation or certification requirements. Additional documents may include: ()

a. An organizational chart with verification that staff meet minimum certification standards; ()

b. Satisfactory evidence that a criminal history and background check clearance, or waiver, has been issued by the Department for each individual required in Section 009 of these rules to have a criminal history check or whose position requires regular contact with participants. ()

141. -- 149. (RESERVED)

150. DEPARTMENT REVIEW OF APPLICATION FOR APPROVAL OR RENEWAL.

A behavioral health program must submit a completed application and supporting documentation as required by the Department in Sections 110 and 120 of these rules. Upon receipt of the completed application for approval or renewal of a behavioral health program, the Department will review the application to determine if the program meets the minimum standards and requirements of these rules to be an approved behavioral health program. ()

151. TYPE OF APPROVALS ISSUED.

Each behavioral health program and location application will be reviewed by the Department and notification of the results will be provided to the applicant in writing, sixty (60) business days after the Department's receipt of a completed application. Results of application reviews are provided in Subsection 151.01 through 151.03 of this rule. ()

01. Approved Program. When the Department determines that the program meets the requirements of these rules, the behavioral health program is issued a certificate of approval. ()

02. Provisionally Approved Program. When the Department determines that the program may meet the requirements of these rules, the program may be given: ()

a. A provisional approval for a certain period of time to correct any issue; or ()

b. An on-site review may be scheduled for final determination. The Department will make reasonable efforts to schedule an on-site inspection within thirty (30) business days of its initial determination. ()

03. Denial of Program. When the Department determines that the program does not meet the requirements of these rules, the applicant will be notified of the denial, and the application returned with written recommendations for correction and completion of the recommendations. ()

152. ON-SITE REVIEW.

Each behavioral health program must be in compliance with these rules and is subject to on-site review by the Department to obtain and maintain an approved behavioral health program. ()

01. Department Inspection. The applicant or behavioral health program must allow the Department to inspect the program or locations at: ()

a. Any reasonable time necessary to determine compliance with these rules; and ()

b. Prior notice to the applicant or behavioral health program is not required, when the Department receives or has concerns regarding complaints, non-compliance, or health and safety issues. ()

02. Compliance with Confidentiality Requirements. The applicant or behavioral health program must be in compliance with federal and state confidentiality requirements, and provide for review of the following: ()

a. Program policies and procedures; ()

b. Personnel records; ()

c. Clinical records; ()

d. Facility accessibility; ()

e. The program's internal quality assurance plan and process that demonstrates how the program evaluates program effectiveness and individual participant satisfaction; and ()

f. Any other documents required by the Department in order to make an appropriate determination, including any information that may have changed since the time the application or renewal was submitted. ()

153. CERTIFICATE OF APPROVAL DURATION.

A behavioral health program certificate of approval is effective for three (3) years from the date the Department issues the Certificate of Approval. The behavioral health program and each of its locations' Certificate of Approval are subject to the program maintaining compliance with these rules. ()

154. CHANGE IN LOCATION.

A behavioral health program must notify the Department in writing a minimum of thirty (30) calendar days prior to any change in location and must submit required documentation for approval of the new location. The new location is subject to an on-site review as determined by the Department. ()

155. CHANGE OF PROGRAM NAME.

A behavioral health program must notify the Department in writing a minimum of thirty (30) calendar days prior to a change in name of program or business. A copy of the "Certificate of Assumed Business Name," must be included. ()

156. -- 199. (RESERVED)

200. DENIAL OF CERTIFICATE OF APPROVAL OR RENEWAL.

The Department may deny a Certificate of Approval or Renewal application when the Department determines that a behavioral health program is out of compliance with these rules for any of the following reasons. ()

01. Reasons for Denial. The owner, applicant, or administrator; ()

a. Has violated any conditions of a certificate of approval; ()

b. Has been found guilty of fraud, deceit, misrepresentation, or dishonesty associated with the operation of a program, regardless of the population the program serves or the services the agency provides; ()

c. Has willfully misrepresented or omitted material information on the application or other documents pertaining to obtaining or renewing any certificate of approval. ()

02. Act or Omission Adversely Affecting the Welfare of Any Participant, Employee, Contractor, or Volunteer. Any act or omission adversely affecting the welfare of any participant, employee, contractor, or volunteer that is being permitted, aided, performed, or abetted by the facility, applicant, owner, administrator. Such acts or omissions may include: neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation of children or vulnerable adults. ()

201. REVOCATION OR SUSPENSION OF CERTIFICATE OF APPROVAL.

01. Immediate Suspension or Revocation. The Department may, without prior notice, suspend or revoke a certificate of approval when the Department determines conditions exist that endanger the health or safety of any participant, employee, contractor, or volunteer. ()

02. Suspension or Revocation With Notice. The Department may suspend or revoke a certificate of approval by giving written notice fifteen (15) business days prior to the effective date when the Department determines: ()

- a. The program is not in compliance with these rules and minimum standards; ()
- b. The owner, applicant, or administrator: ()
 - i. Without good cause, fails to furnish any data, statistics, records, or information requested by the Department, or files fraudulent returns thereof; ()
 - ii. Has been found guilty of fraud, deceit, misrepresentation, or dishonesty associated with the operation of a program, regardless of the population the program serves or the services the agency provides; ()
 - iii. Has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a program approval; or ()
- c. Any act adversely affecting the welfare of participants is being permitted, aided, performed, or abetted such as: neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation. ()

202. WRITTEN NOTICE OF DENIAL, SUSPENSION, OR REVOCATION.

01. Written Notice of Denial, Suspension, or Revocation. With the exception of endangerment to an individual's health or safety under Section 201, the Department will, within fifteen (15) business days of making its decision, notify the applicant or the owner's designated representative, in writing, by certified mail, return receipt requested, of its determination, in the event an application or certificate of approval is denied, suspended, or revoked. The written notice must include the following: ()

- a. The applicant's or owner's name and identifying information; ()
- b. A statement of the decision; ()
- c. A concise statement of the reasons for the decision; and ()
- d. The process for pursuing an administrative appeal. ()

02. Effect of Previous Denial or Revocation. ()

- a. The Department will not accept or consider an application for a certificate of approval from any applicant, owner, administrator, related person, or entity who has had a certificate of approval denied until after two (2) years have elapsed from the date of the denial. ()
- b. The Department will not accept or consider an application for a certificate of approval from any

applicant, owner, administrator, related person, or entity who has had a certificate of approval revoked until after five (5) years have elapsed from the date of the revocation. ()

203. CUMULATIVE ENFORCEMENT POWERS.

When the Department determines that a behavioral health program does not meet these rules and minimum standards, it may take any of the enforcement actions described in these rules or impose any remedy, independently or in conjunction, with any others authorized by law or these rules. ()

204. -- 299. (RESERVED)

300. PROGRAM ADMINISTRATION REQUIREMENTS.

01. Ownership. Each behavioral health program must maintain documentation of the program's governing body, including a description of membership and authorities, and documentation of the programs: ()

- a. Articles, certificate of incorporation, and bylaws, when the owner is a corporation; ()
- b. Partnership agreement when the owner is a partnership; or ()
- c. Sole proprietorship if one (1) person is the owner. ()

02. Organizational Chart. Each behavioral health program must maintain a current organizational chart that clearly delineates staff positions, lines of authority, and supervision. ()

03. Administrator. Each behavioral health program must have provisions for an administrator who is responsible for the day-to-day operation of the program. ()

04. Authority and Responsibilities of the Administrator. Each behavioral health program's administrative policies must state the administrator's responsibilities in assisting with the overall operation of the program. Responsibilities of the administrator include the following: ()

- a. Ensure administrative, personnel, and clinical policies and procedures are adhered to and kept current to be in compliance with these rules; ()
- b. Ensure all persons providing clinical services are licensed, credentialed, or certified for their scope of practice; ()
- c. Overall direction and responsibility for the individuals, program, facility, and fiscal management; ()
- d. Overall direction and responsibility for supervision of staff; ()
- e. The selection and training of a capable staff member who can assume responsibility for management of the program in the administrator's absence; and ()
- f. Comply with or maintain a management information system that allows for the efficient retrieval of data needed to measure the program's performance. ()

05. Notification of Change in Ownership. A certificate of approval is not automatically transferable when ownership or control is changed. The administrator must inform the Department in writing within ten (10) business days of any such change. The Department may continue the certificate of approval provisionally until it can determine the status of the program under the new ownership or control. ()

06. Notification of Program Closure. ()

a. A program must notify the Department in writing within thirty (30) business days prior to an anticipated closure of any of its program locations. ()

- b. The notification of closure must include: ()
 - i. Location of closure; ()
 - ii. Location(s) of where participants records will be maintained; ()
 - iii. Explanation of the closure; and ()
 - iv. Procedures for participant transition and continuation of care. ()

301. -- 309. (RESERVED)

310. DESCRIPTION OF SERVICES.

Each behavioral health program must prepare a written description of services that meets the requirements of this rule. ()

- 01. Content of Description of Services.** The written description must contain: ()
 - a. Description of services provided; ()
 - b. Participant population served; ()
 - c. Hours and days of operation; and ()
 - d. Summary of assessment, intake, and admission process. ()

02. Distribution of Descriptions of Services. The written description of services must be made known and available to all program staff and to the administrator. ()

311. -- 319. (RESERVED)

320. ADMISSION POLICIES AND PROCEDURES.

Each behavioral health program must have written policies and procedures governing the program's admission process. These polices must be available to participants, their families, and to the general public. ()

- 01. Participant Admission.** Each program's admissions policies must: ()
 - a. Align with the program's scope of care and make reasonable accommodations to provide participants with appropriate access. ()
 - b. At the time of initial contact with a participant, pre-screening for admissions must be completed. This includes identification of potential barriers to entrance of care and removal of those barriers when possible. ()
 - c. Notify and inform participants of the reasons for ineligibility, provide referrals or other information necessary to help link participants to a program that can meet the needs identified in the participant's pre-screening. ()
 - d. Provide the appeal process available and documented to address situations in which a participant does not agree with the admission determination made by the program. The process may include internal or external reviews, and involve a neutral party. ()

- 02. Entrance to Care.** Each program must have documented protocols for entrance to care that include: ()
 - a. Protocols for the screening process that: ()

- i. Ensure that each participant is engaged in care as soon as possible following initial contact and screening; ()
 - ii. Ensure the screening instrument is designed to identify emergent needs, crisis situations, and dangerous substance abuse with protocols in place for staff members to respond according to each situation revealed during a screening; ()
 - iii. Ensure screening documentation protocol includes basic demographic information about the prospective participant, participant's strengths, needs, preferences, goals, eligibility decision, and basis for the decision and include referrals, if provided; and ()
 - iv. Ensure policies are in place that require staff members administering the screening instrument to be appropriately trained. ()
- b.** Protocols for the implementation of a waiting list that: ()
- i. Ensure prospective participants are screened and evaluated for appropriateness to services offered prior to placement on a waiting list; and ()
 - ii. Offer a referral process for an individual pre-screened and ineligible, and facilitate referrals when needed. ()
- 03. Orientation.** Each program must have procedures that: ()
- a.** Provide orientation to each participant as soon as possible upon beginning care, considering the participant's presenting state and what services are being accessed. ()
 - b.** Document attendance of each participant to orientation. ()
 - c.** Educate each participant on: participants' rights and responsibilities, grievance and appeal procedures, how participant may provide feedback, confidentiality, consent to treatment, expectations of participants, discharge criteria, handling of potential risk to participant, after-hours services accessibility, follow-up procedures, financial obligations and funding sources available, health and safety policies, facility layout, assessment, process of treatment, and names of staff members. ()
 - d.** Ensure that both written and verbal information provided during orientation is delivered in such a way that is understandable by each participant. ()

321. -- 329. (RESERVED)

330. QUALITY ASSURANCE.

Each behavioral health program must have an internal quality assurance plan and written process to evaluate and improve administrative practices and clinical services. ()

- 01. Quality Assurance Plan.** Each program must have a quality assurance plan that: ()
 - a.** Addresses clinical supervision and training of staff. ()
 - b.** Monitors compliance with these rules. ()
 - c.** Establishes a process for reviewing and updating written policies and procedures. ()
 - d.** Continuously improves the quality of care in the following: ()
 - i. Cultural Competency; ()

- ii. Use of evidence-based and promising practices; and ()
- iii. Response to critical incident, complaints, and grievances. ()

02. Method of Evaluation. Each program's written process must describe how administrative practices and clinical services will be evaluated. ()

03. Review Schedule. Each program's written process must include the frequency that administrative practices and clinical services will be evaluated. ()

04. Procedure to Address Deficiencies. Each program's written process must describe how deficiencies in administrative practices or clinical services, identified during an evaluation process, will be improved to meet the program's standards of quality. ()

331. -- 339. (RESERVED)

340. ASSESSMENT.

Each behavioral health program must have a written procedure for an assessment process that determines the individual participant needs. ()

01. Assessment Required. A qualified behavioral health professional must develop a written assessment for each participant. ()

02. Content of Assessment. The assessment must evaluate the participant's current and past behavioral, social, medical, and treatment needs as well as the participant's strengths, needs, abilities, preferences, and goals. ()

341. INDIVIDUALIZED SERVICE PLANS.

01. Individualized Service Plan Required. Each participant must have an individualized service plan. The development of the service plan must be a collaborative process involving the participant and other support and service systems. ()

02. Service Plan Based on Assessment. The service plan must be based on the findings of the participant's assessment. ()

03. Development and Implementation of the Service Plan. The responsibility for the development and implementation of the service plan will be assigned to a qualified behavioral health professional. ()

04. Content of the Service Plan. Each participant's individualized service plan must include the following: ()

- a. Services deemed clinically necessary to meet the participant's behavioral health needs; ()
- b. Referrals for needed services not provided by the program; ()
- c. Goals that are based on the participant's unique strengths, abilities, preferences, and needs; ()
- d. Specific objectives that relate to the goals written in simple, measurable, attainable, realistic terms with expected achievement dates; ()
- e. Identified level of care or interventions that describe the kinds of services and service frequency; ()
- f. Criteria to be met for discharge from service; ()
- g. A plan for services to be provided after discharge; and ()

- h. Documentation of who participated in the development of the individualized service plan. ()

342. -- 349. (RESERVED)

350. CRISIS INTERVENTION AND RESPONSE.

01. Requirement for Written Procedures. Each behavioral health program must have written procedures that address interventions and responses to behavioral health crisis situations. ()

02. Content of Written Procedures. The written procedures must include: ()

a. Guidance for staff members on how to effectively intervene and respond to a wide range of crisis situations; ()

b. Program definition of “crisis” as it applies to the services provided and population served; ()

c. Program scope as it relates to the ability to intervene or respond to crises; ()

d. Actions to be taken if the program is not prepared or qualified to handle certain crisis situations; and ()

e. Protocol for managing crises during and outside of business hours. ()

351. -- 359. (RESERVED)

360. PARTICIPANT RECORDS.

01. Participant Record Required. Each behavioral health program must maintain a participant record on each participant. All entries into the participant’s record must be signed and dated. ()

02. Content of Participant Record. The participant record must describe the participant’s situation at the time of admission and include the services provided, all progress notes, and the participant’s status at the time of discharge. At a minimum the record must contain: ()

a. The participant’s name, address, contact information, date of birth, gender, marital status, race or ethnic origin, next of kin or person to contact, educational level, type and place of employment, date of initial contact or admission to the program, source of any referral, legal status including relevant legal documents, name of personal physician, record of any known drug reactions or allergies, and other identifying data as indicated; ()

b. Any staffing notes pertaining to the participant; ()

c. Any medical records obtained regarding the participant; ()

d. Any assessments; and ()

e. The initial and updated service plans. ()

03. Maintenance of Participant Records. Each program must develop written policies and procedures governing the maintenance, compilation, storage, dissemination, and accessibility of participant records. ()

04. Retention and Destruction of Participant Records. Each program must develop written policies and procedures governing the retention and destruction of participant records. ()

361. -- 369. (RESERVED)

370. PARTICIPANT RIGHTS.

Each behavioral health program must have a written statement of individual participant rights. The program must ensure and protect the fundamental human, civil, constitutional, and statutory rights of each participant. ()

01. Content of Participant's Rights. The written participant rights statement must, at a minimum, address the following rights: ()

a. The right to impartial access to treatment and services, regardless of race, creed, color, religion, gender, national origin, age, or disability. ()

b. The right to a humane treatment environment that ensures protection from harm, and provides privacy to as great a degree as possible with regard to personal needs, and promotes respect and dignity for each individual. ()

c. The right to communication in a language and format understandable to the participant. ()

d. The right to be free from mental, physical, sexual and verbal abuse, neglect, and exploitation. ()

e. The right to receive services within the least restrictive environment possible. ()

f. The right to an individualized service plan, based on assessment of current needs. ()

g. The right to actively participate in planning for treatment and recovery support services. ()

h. The right to have access to information contained in one's record, unless access to particular identified items of information is specifically restricted for that individual participant for clear treatment reasons in the participant's treatment plan. ()

i. The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual's consent. ()

j. The right to refuse to take medication unless a court of law has determined the participant lacks capacity to make decisions about medications and is an imminent danger to self or others. ()

k. The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others. ()

l. The right to refuse to participate in any research project without compromising access to program services. ()

m. The right to exercise rights without reprisal in any form, including the ability to continue services with uncompromised access. ()

n. The right to have the opportunity to consult with independent specialists or legal counsel, at one's own expense. ()

o. The right to be informed in advance of the reason for discontinuance of service provision, and to be involved in planning for the consequences of that event. ()

p. The right to receive an explanation of the reasons for denial of service. ()

02. Participant Understands Rights and Expectations. Each program's policies must ensure that: ()

a. Materials describing a participant's rights and expectations are presented to each participant in a manner that he can understand; ()

b. Information is provided in a manner that is understandable to each participant who has challenges with vision, speech, hearing, or cognition. ()

c. There is a protocol for facilitating situations when a participant is not able to give informed consent for treatment services. Facilitation may include assisting the participant to access family members, attorneys, or other supports. ()

03. Participant Grievances and Complaints. Each program's grievance and complaint policies must: ()

a. Establish practices to respond to a participant grievances, complaints, or appeals. Practices must include an established response process, levels of review, and expectations for written notification of actions to address the concerns; ()

b. Ensure a participant who registers a grievance, complaint, or appeal is not subjected to retaliation; ()

c. Respond to participant grievances, complaints, or appeal in a timely manner, and ensure the participant is informed as to the process time frames and expected date for decisions; ()

d. Provide each participant with information as to the grievance process and with access to any grievance or complaint forms. The program is responsible for ensuring that each participant understands the forms and procedures for registering a grievance, complaint, or appeal; and ()

e. Retain documentation on formal grievances, complaints, or appeals. Information from these procedures is used to inform practice and improve services. ()

371. -- 379. (RESERVED)

380. ADMINISTRATION OF MEDICATIONS.

01. Behavioral Health Program That Administers Medications. Each behavioral health program that administers medications must have policies and procedures that include the following: ()

a. Receiving of medications; ()

b. Storage of medications; and ()

c. Medications administration system to be used. ()

02. Registration With the Idaho Board of Pharmacy. Each program that dispenses medication must have appropriate registration with the Idaho Board of Pharmacy in accordance with IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," and maintain current documentation of such registration. ()

381. -- 389. (RESERVED)

390. PERSONNEL POLICIES AND PROCEDURES.

Each behavioral health program must have and adhere to personnel policies and procedures that meet the minimum requirements in this rule. ()

01. Required Personnel Policies and Procedures. Personnel policies and procedures must be developed, implemented, and maintained to promote the objectives of the program and provide for a sufficient number of qualified clinical and support staff to render the services of the program and provide quality care during all hours of operation. ()

a. The personnel policies and procedures must establish the requirement for CPR training and basic

first aid training. A minimum of one (1) CPR and First Aid trained staff must be on-site during business hours. ()

b. The personnel policies must include procedures for orientation to the program and training on all program policies and procedures for staff, trainees, student interns, volunteers, and contractors, if applicable. ()

02. Hiring Practices. Hiring practices must be specified in the written policies and procedures and must be consistent with the needs of the program and its services. ()

03. Equal Employment Opportunity. No behavioral health program approved under these rules will discriminate on the basis of race, creed, color, religion, age, gender, national origin, veteran status, or disability, except in those instances where bona fide occupational qualifications exist. ()

04. Content of Personnel Record for Each Staff Member. A personnel record must be kept on each staff member and must contain the following items: ()

a. Application for employment including a record of the employee's education or training and work experience. This may be supplemented by a resume; ()

b. Primary source documentation of qualifications; ()

c. Performance appraisals or contract compliance evaluation; ()

d. Disciplinary actions; and ()

e. Verification of a Department criminal history and background check clearance, or a waiver issued by the Department as described in Section 009 of these rules. ()

05. Volunteers. In programs where volunteers are utilized the objectives, scope, training, and orientation of the volunteer services must be clearly stated in writing. ()

06. Trainees and Student Interns. In programs where trainees or student interns, or both, are utilized the supervision, scope, training, and orientation of trainees and student interns must be clearly stated in writing. ()

391. STAFFING AND SUPERVISION.

01. Ensuring Adequate Staff. Each behavioral health program must ensure that there are an adequate number of staff to: ()

a. Meet service needs of program participants; ()

b. Meet professional staff-to-participant ratios at a level that meets best practice standards for each service being provided; ()

c. Address the safety needs of program staff and participants; and ()

d. Meet organizational performance expectations and needs. ()

02. Staff Supervision. Each program must ensure that: ()

a. Staff have access to regularly scheduled supervision with program supervisors. ()

b. Supervision process for staff members practice only within the scope of their credentials. ()

03. Clinical Supervision. Each program must provide for regular and ongoing supervision of clinical activities. The program must establish a written supervisory protocol that addresses: ()

- a. Management and oversight of the provision of professional services offered by the program; and ()
- b. Supervision centered on the evaluation and improvement of clinician skills, knowledge, and attitudes. ()

392. -- 394. (RESERVED)

395. INFECTION CONTROL.

Each behavioral health program must have infection control policies and procedures consistent with recognized standards that control and prevent infections for both staff and participants. ()

01. Written Policies and Procedures for Infection Control. Each program must have written policies and procedures pertaining to the operation of an infection control program. ()

- a. Effective measures must be developed to prevent, identify, and control infections. ()
- b. A process for implementing procedures to control the spread or eliminate the cause(s) of the infection must be described in the policies and procedures. ()
- c. All new employees must be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program. ()
- d. There must be documentation that on-going in-service education in infection prevention and control is provided to all employees. ()
- e. There must be documentation that the policies and procedures are reviewed at least annually and revised as necessary. ()

02. Universal Precautions. Universal precautions must be used in the care of participants to prevent transmission of infectious disease according to the "Centers for Disease Control and Prevention (CDC) guidelines." ()

396. -- 399. (RESERVED)

400. ENVIRONMENT REQUIREMENTS.

Each behavioral health program location must have appropriate space, equipment, and fixtures to meet the needs of participants and ensure a safe environment for staff, participants, and visitors. ()

01. Fixtures and Equipment. Fixtures and equipment designated for each service must be constructed or modified in a manner that provides pleasant and functional areas that are accessible to all participants regardless of their disabilities. ()

02. Office Space. Private space must be provided for personal consultation and counseling as well as family and group counseling sessions. ()

03. Safety, Fire, Health, and Sanitation Requirements. Space, equipment, and facilities utilized by the program must meet federal, state, and local requirements for safety, fire prevention, health, and sanitation. ()

04. Procedure for Accessibility for Persons with Mobility and Sensory Impairments. The program must have a written policy and procedure for compliance with ADA requirements for participants with mobility or sensory impairments. ()

05. Smoking. Because smoking has been acknowledged to be a potential fire hazard, continuous efforts must be made to reduce such hazards in the facility. Written regulations governing the use of smoking materials must be adopted, conspicuously posted, and made known to all program participants, staff members, and the public. Nothing in this section requires that smoking be permitted by programs whose admission policies prohibit

smoking. ()

a. Designated areas must be assigned for participant, staff, and public smoking, when smoking is allowed. ()

b. Tobacco products must not be used by children, adolescents, staff, volunteers, or visitors in any building used to house children or adolescents, or in the presence of children or adolescents, or in vehicles used to transport children or adolescents. ()

401. -- 409. (RESERVED)

410. EMERGENCY PREPAREDNESS.

Each behavioral health program must establish and maintain an Emergency Preparedness plan designed to manage the consequence of natural disasters or other emergencies. ()

01. Emergency Preparedness Plan. Program staff must be provided with training on the emergency preparedness plan including: ()

a. Where and how participants are to be evacuated; and ()

b. Notification of emergency agencies. ()

02. Evacuation Drills. The program conducts evacuation drills on a regular basis. A record of drills must be maintained which includes the date and time of the drill, response of the personnel and participants, problems encountered, and recommendations for improvements. ()

411. MEDICAL EMERGENCY SERVICES.

01. Medical Emergency Services Plan. Each behavioral health program must have a written plan describing the manner in which medical emergency services will be accessed. ()

02. Safety Devices and Practices. ()

a. Locations that do not have emergency medical resources must have first aid kits. ()

b. All staff must be familiar with the locations, contents, and use of the first aid kits. ()

412. CRITICAL INCIDENT PREPAREDNESS.

Each behavioral health program must develop and implement policies and procedures that discuss prevention, reporting, documentation, and managing critical incidents. ()

413. -- 419. (RESERVED)

420. FACILITY REQUIREMENTS.

Each behavioral health program must ensure that each location is structurally sound, maintained, and equipped to ensure the safety of staff, participants, and visitors. ()

01. Buildings. Buildings on the premises of each behavioral health program location in which services are delivered must be in compliance with the requirements of the local, state, and federal codes concerning access, construction, and fire and life safety that are applicable. ()

02. Grounds. Each behavioral health program's grounds must be maintained in a manner that is designed to provide a safe environment for staff, participants, and visitors. ()

421. -- 999. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.17 - ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES

DOCKET NO. 16-0717-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 3, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

ORIGINATING LOCATION -- LIVE MEETING
Thursday, September 17, 2015
10:00 a.m. (MDT) / 9:00 a.m. (PDT) and
2:00 p.m. (MDT) / 1:00 p.m. (PDT)

Idaho Department of Health & Welfare -- Central Office
Conf. Room 3A (3rd Floor)
450 West State Street
Boise, ID 83702

VIDEO CONFERENCING

Region I Office – Coeur d’Alene Main Conference Room 2195 Ironwood Court Coeur d’Alene, ID 83814	Region II Office - Lewiston 1st Floor Conference Room 1118 “F” Street Lewiston, ID 83501	Region III Office - Caldwell Owyhee Conference Room (Rm 226) 3402 Franklin Road Caldwell, ID 83605
Region IV Office - Boise Room 131 1720 Westgate Drive, Suite A Boise, ID 83704	Region V Office - Twin Falls Room 116 823 Harrison Twin Falls, ID 83301	Region VI Office - Pocatello Room 225 421 Memorial Drive Pocatello, ID 83201
Region VII Office - Idaho Falls Conference Room 240 150 Shoup Ave. Idaho Falls, ID 83402	State Hospital South - Blackfoot Admin. Bldg., Classroom A09 700 E. Alice Street Blackfoot, ID 83221	State Hospital North Administration Conf. Rm. 234 300 Hospital Drive Orofino, ID 83544

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 Department is moving towards an integrated Behavioral Health Program that includes mental health and alcohol and substance use disorders treatment and recovery support services and programs. Changes are being made to this chapter to include adding services and programs from the IDAPA 16.07.20, “Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs,” chapter that is being repealed in this Bulletin under Docket 16-0720-1501.

Substance use disorders recovery services and treatment programs and requirements have been added into this chapter that include: case management, alcohol and drug screening, child care, transportation, life skills, staffed safe and sober housing for adolescents and staffed safe and sober housing for adults.

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 funds or 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 6, 2015, Idaho Administrative Bulletin, **Vol.15-5, pages 62-63** under Docket No. 16-0720-1501. The Department held three meetings around the state and also allowed participants to conference call into the meetings.

INCORPORATION BY REFERENCE: The following documents have been incorporated by reference into these rules:

American Society of Addiction Medicine (ASAM), Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, updated from 2nd Edition, to 3rd Edition, 2013. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, updated from 4th Edition to 5th Edition. Guidelines for the Accreditation of Opioid Treatment Programs (OTP) have been added.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at (208) 334-6611.

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 23, 2015.

DATED this 7th Day of August, 2015.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0717-1501
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department and the Board of Health and Welfare, the responsibility ~~to ensure that clinically necessary alcohol and~~ to establish and enforce rules for a comprehensive and coordinated program for the treatment of substance use disorders. ~~services are available throughout the state of Idaho to individuals who meet certain eligibility criteria under the Alcoholism and Intoxication Treatment Act.~~ This authority is found in the Alcoholism and Intoxication Treatment Act, Title 39, Chapter 3, and Section 56-1003, Idaho Code. Under Section 39-311, Idaho Code, the Board of Health and Welfare is authorized to promulgate rules to carry out

~~the purpose and intent of the Alcoholism and Intoxication Treatment Act. Under Section 39-304, Idaho Code, the Department is authorized to establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons, and drug addicts to carry out the purposes and intent of the Alcoholism and Intoxication Treatment Act. Section 56-1003, Idaho Code authorizes the Director of the Department to administer services dealing with the problem of alcoholism and the rehabilitation of persons suffering from alcoholism.~~ (5-8-09)()

001. TITLE, ~~AND~~ SCOPE, ~~AND~~ PURPOSE.

01. Title. The title of these rules is, IDAPA 16.07.17, “~~Alcohol and~~ Substance Use Disorders Services.” (5-8-09)()

02. Scope. This chapter ~~defines the scope of voluntary~~ sets the standards for providing substance use disorders services administered under the Department’s Division of Behavioral Health, ~~and describes the eligibility criteria, application requirements, individualized service plan requirements, selection of providers, and appeal process under these rules. This chapter is not intended to and does not establish an entitlement for or to receive adult or adolescent alcohol or substance use disorder services, nor is it intended to be applicable to individuals ordered by the court to receive alcohol or substance use disorder services.~~ (7-1-13)()

03. Purpose. The purpose of these rules is to: ()

a. Provide participant eligibility criteria, application requirements, and appeals process for services administered under the Department’s Division of Behavioral Health; and ()

b. Establish requirements for quality of substance use disorders treatment, care, and services provided by behavioral health and recovery support services programs. ()

002. WRITTEN INTERPRETATIONS.

~~There are no written interpretations for these rules. In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules.~~ (5-8-09)()

003. ADMINISTRATIVE APPEALS.

01. Appeal of Denial Based on Eligibility ~~Criteria~~ Requirements. Administrative appeals from a denial of ~~alcohol and~~ substance use disorder services based on eligibility ~~criteria and priority population requirements~~ are governed by the provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (5-8-09)()

02. Appeal of Decision Based on Clinical Judgement. ~~All~~ Decisions involving clinical judgment, including the category of services, the particular provider of services, or the duration of services, are reserved to ~~the~~ Department, and are not subject to appeal, administratively or otherwise, in accordance with *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (Idaho 1999). (5-8-09)()

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: (5-8-09)

01. ASAM ~~PPC-2R~~. American Society of Addiction Medicine (ASAM) ~~Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition – Revised (ASAM PPC-2R)~~ Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, Third Edition, 2013. A copy of this manual is available by mail at the American Society of Addiction Medicine, 4601 North Park Ave., Suite 101, Chevy Chase, MD 20815; by telephone and fax, (301) 656-3920 and (301) 656-3815 (fax); or on the internet at <http://www.asam.org>. (5-8-09)()

02. DSM-~~IV-TR~~5. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth~~ Fifth Edition, ~~Text Revision~~ (DSM-~~IV-TR~~5) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, ~~1400 K Street, N.W.~~

~~Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 150 West State Street, Boise, Idaho, 83702~~ [1000 Wilson Boulevard, Suite 1825, Arlington VA 22209-3901](http://1000.WilsonBoulevard.Suite1825.ArlingtonVA.22209-3901).
(5-8-09)()

03. Guidelines for the Accreditation of Opioid Treatment Programs (OTP). Substance Abuse and Mental Health Services Administration, Office of Pharmacological and Alternative Therapies. Attention: OTP Certification Program, Room 2-1086, 1 Choke Cherry Road, Rockville, MD 20857; or on the internet at <http://www.dpt.samhsa.gov/regulations/certification.aspx> for an overview of certification regulations, and <http://www.dpt.samhsa.gov/pdf/OTPAccredGuidelines-2007.pdf> for specific guidelines dated July 20, 2007. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEB SITE.

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. (5-8-09)

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. (5-8-09)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (5-8-09)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (5-8-09)

05. Internet Web Site. The Department's internet website at <http://www.healthandwelfare.idaho.gov>. (5-8-09)

06. Substance Use Disorders Services Website. The Substance Use Disorders Services Internet website at <http://www.substanceabuse.idaho.gov>. ()

(BREAK IN CONTINUITY OF SECTIONS)

007. -- ~~008~~. (RESERVED)

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

~~**01. Compliance With Department Criminal History and Background Check.** All owners, operators, employees, transfers, reinstated former employees, student interns, contractors, and volunteers who provide direct care or services, or whose position requires regular contact with clients, must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." (7-1-14)~~

~~**02. Availability to Work or Provide Service.** An individual listed in Subsection 009.01 of these rules is available to work on a provisional basis at the discretion of the employer or agency once the individual has submitted his criminal history and background check application, it has been signed and notarized, reviewed by the employer or agency, and no disqualifying crimes or relevant records are disclosed on the application. An individual must be fingerprinted within twenty-one (21) days of submitting his criminal history and background check application. (7-1-14)~~

~~**a.** An individual is allowed to work or have access to clients only under supervision until the criminal history and background check is completed. (7-1-14)~~

~~**b.** An individual, who does not receive a criminal history and background check clearance or a waiver granted under the provisions in this chapter, may not provide direct care or services, or serve in a position that requires regular contact with clients in an alcohol and substance use disorders treatment and recovery support~~

~~services program. (7-1-14)~~

~~03. **Waiver of Criminal History and Background Check Denial.** An individual who receives a conditional or unconditional denial for a criminal history and background check, may apply for a waiver to provide direct care or services, or serve in a position that requires regular contact with clients in an alcohol and substance use disorders treatment and recovery support services program. A waiver may be granted on a case-by-case basis upon administrative review by the Department of any underlying facts and circumstances in each individual case. A waiver will not be granted for crimes listed in Subsection 009.04 of this rule. (7-1-14)~~

~~04. **No Waiver for Certain Designated Crimes.** No waiver will be granted by the Department for any of the following designated crimes or substantially conforming foreign criminal violations: (7-1-14)~~

~~a. **Forcible sexual penetration by use of a foreign object,** as defined in Section 18-6608, Idaho Code; (7-1-14)~~

~~b. **Incest,** as defined in Section 18-6602, Idaho Code; (7-1-14)~~

~~c. **Lewd conduct with a minor,** as defined in Section 18-1508, Idaho Code; (7-1-14)~~

~~d. **Murder in any degree or assault with intent to commit murder,** as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (7-1-14)~~

~~e. **Possession of sexually exploitative material,** as defined in Section 18-1507A, Idaho Code; (7-1-14)~~

~~f. **Rape,** as defined in Section 18-6101, Idaho Code; (7-1-14)~~

~~g. **Sale or barter of a child,** as defined in Section 18-1511, Idaho Code; (7-1-14)~~

~~h. **Sexual abuse or exploitation of a child,** as defined in Sections 18-1506 and 18-1507, Idaho Code; (7-1-14)~~

~~i. **Enticing of children,** as defined in Sections 18-1509 and 18-1509A, Idaho Code; (7-1-14)~~

~~j. **Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute,** as defined in Sections 18-5609 and 18-5611, Idaho Code; (7-1-14)~~

~~k. **Any felony punishable by death or life imprisonment; or (7-1-14)**~~

~~l. **Attempt, conspiracy, accessory after the fact, or aiding and abetting,** as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (7-1-14)~~

~~05. **Administrative Review.** An administrative review for a waiver may consist of a review of documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review deemed necessary by the Department. The Department may appoint a subcommittee to conduct administrative reviews provided for under Subsections 009.03 through 009.12 of this rule. (7-1-14)~~

~~06. **Written Request for Administrative Review and Waiver.** A written request for a waiver must be sent to the Administrative Procedures Section, 450 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0026 within fourteen (14) calendar days from the date of the issuance of a denial from the Department's Criminal History Unit. The fourteen (14) day period for submitting a request for a waiver may be extended by the Department for good cause. (7-1-14)~~

~~07. **Scheduling of Administrative Review.** Upon receipt of a written request for a waiver, the Department will determine the type of administrative review to be held, and conduct the review within thirty (30) business days from the date of receipt. When an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date. (7-1-14)~~

~~08. **Factors Considered During Administrative Review.** During the administrative review, the following factors may be considered:~~ (7-1-14)

- ~~a. The severity or nature of the crimes or other findings;~~ (7-1-14)
- ~~b. The period of time since the incidents occurred;~~ (7-1-14)
- ~~c. The number and pattern of incidents being reviewed;~~ (7-1-14)
- ~~d. Circumstances surrounding the incidents that would help determine the risk of repetition;~~ (7-1-14)
- ~~e. The relationship between the incidents and the position sought;~~ (7-1-14)
- ~~f. Activities since the incidents, such as continuous employment, education, participation in treatment, completion of a problem-solving court or other formal offender rehabilitation, payment of restitution, or any other factors that may be evidence of rehabilitation.~~ (7-1-14)
- ~~g. A pardon that was granted by the Governor or the President;~~ (7-1-14)
- ~~h. The falsification or omission of information on the self declaration form and other supplemental forms submitted; and~~ (7-1-14)
- ~~i. Any other factor deemed relevant to the review.~~ (7-1-14)

~~09. **Administrative Review Decision.** A notice of decision will be issued by the Department within fifteen (15) business days of completion of the administrative review.~~ (7-1-14)

~~10. **Decision to Grant Waiver.** The Department's decision to grant a waiver does not set a precedent for subsequent requests by an individual for a waiver. A waiver granted under this chapter is not a criminal history and background check clearance, and is only applicable to services and programs governed under this chapter. It does not apply to other Department programs requiring clearance of a criminal history and background check.~~ (7-1-14)

~~11. **Revocation of Waiver.** The Department may chose to revoke a waiver at its discretion for circumstances that it identifies as a risk to client health and safety, at any time.~~ (7-1-14)

~~12. **Waiver Decisions Are Not Subject to Review or Appeal.** The decision or actions of the Department concerning a waiver is not subject to review or appeal, administratively or otherwise.~~ (7-1-14)

~~13. **Employer Responsibilities.** A waiver granted by the Department is not a determination of suitability for employment. The employer is responsible for reviewing the results of a criminal history and background check even when a clearance is issued or a waiver is granted. Making a determination as to the ability or risk of the individual to provide direct care services or to serve in a position that requires regular contact with children and vulnerable adults is the responsibility of the employer.~~ (7-1-14)

010. DEFINITIONS - A THROUGH F.

For the purposes of these rules, the following terms are used as defined below: (5-8-09)

01. **Adolescent.** An individual ~~between the ages of fourteen (14) and~~ under the age of eighteen (18) ~~years.~~ (5-8-09) ()

02. **Adult.** An individual eighteen (18) years or older. (5-8-09)

03. **Applicant.** An adult or adolescent individual who is seeking alcohol or substance use disorders services through the Department who has completed or had completed on his behalf an application for alcohol or substance use disorder services. (5-8-09)

04. **ASAM ~~PPC-2R~~.** Refers to the ~~second~~ third edition ~~revised,~~ manual of the patient placement criteria

for the treatment of substance-related disorders, published by the American Society of Addiction Medicine.

(5-8-09)()

~~05. **Assessment and Referral Services.** A substance use disorders program provides these services in order to treat, provide services, or refer individuals. An assessment is designed to gather and analyze information regarding a client's current substance use disorder behavioral, social, medical, and treatment history. The purpose of the assessment is to provide sufficient information for problem identification and, if appropriate, substance use disorder related treatment or referral.~~ (7-1-13)

~~06. **Child.** An individual under the age of fourteen (14) years.~~ (7-1-13)

~~07. **Client.** A person receiving treatment for an alcohol or substance use disorder. The term "client" is synonymous with the terms: patient, resident, consumer, or recipient of treatment.~~ (5-8-09)

~~05. **Clinical Assessment.** The gathering of historical and current clinical information through a clinical interview and from other available resources to identify an individual's strengths, weaknesses, problems, needs, and determine priorities so that a service plan can be developed.~~ ()

~~086. **Clinical Judgment.** Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes ~~and alcohol~~ and substance use disorders service needs.~~ (5-8-09)()

~~097. **Clinical Necessity.** ~~Alcohol or s~~Substance use disorder services are deemed clinically necessary when the Department, in the exercise of clinical judgment, would recommend services to an applicant for the purpose of evaluating, diagnosing, or treating ~~alcohol or~~ substance use disorders that are:~~ (5-8-09)()

~~a. Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for treating the applicant's ~~alcohol or~~ substance use disorder; and~~ (5-8-09)()

~~b. Not primarily for the convenience of the applicant or service provider and not more costly than an alternative service or sequence of services and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's ~~alcohol or~~ substance use disorder.~~ (5-8-09)()

~~10. **Clinical Team.** A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians and any other individual deemed appropriate and necessary to ensure that the assessment and subsequent treatment is comprehensive and meets the needs of the proposed client.~~ (5-8-09)

~~11. **Clinically Managed Low Intensity Residential Treatment.** Is a program that offers at least five (5) hours per week of outpatient or intensive outpatient treatment services along with a structured recovery environment, staffed twenty-four (24) hours per day, which provides sufficient stability to prevent or minimize relapse or continued use. This level of care is also known as a Halfway House.~~ (5-8-09)

~~12. **Clinically Managed Medium Intensity Residential Treatment.** Frequently referred to as residential care, programs provide a structured, twenty-four (24) hour intensive residential program for clients who require treatment services in a highly structured setting. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence. Community reintegration of residents in this level of care requires case management activities directed toward networking clients into community based recovery support services such as housing, vocational services or transportation assistance so that the client is able to attend mutual/self-help meetings or vocational activities after discharge.~~ (5-8-09)

~~13. **Comprehensive Assessment.** Those procedures by which a substance use disorder clinician evaluates an individual's strengths, weaknesses, problems, needs, and determines priorities so that a service plan can be developed.~~ (7-1-13)

~~14. **Contracted Intermediary.** A third party contractor of the Department who handles direct~~

~~contracting with network providers for treatment services to include network management, claims payment, data gathering per Federal and State requirements and census management. (5-8-09)~~

~~1508. Department. The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department its designee. (5-8-09)()~~

~~16. Early Intervention Services. Services that are designed to explore and address problems or risk factors that appear to be related to substance use. (7-1-13)~~

~~17. Emergency. An emergency exists if an adult or adolescent individual is gravely disabled due to mental illness or substance abuse or dependence or there is a substantial risk that physical harm will be inflicted by the proposed client. (5-8-09)~~

~~a. Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or (5-8-09)~~

~~b. Upon another person as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm. (5-8-09)~~

~~09. Eligibility Screening. The collection of data, analysis, and review, which the Department uses to screen and determine whether an applicant is eligible for adult or adolescent substance use disorder services available through the Department. ()~~

~~180. Federal Poverty Guidelines. Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: <http://aspe.hhs.gov/poverty/>. (5-8-09)~~

011. DEFINITIONS - G THROUGH Z.

For the purposes of these rules, the following terms are used as defined below: (7-1-14)

~~01. Good Cause. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. (7-1-14)~~

~~02. Gravely Disabled. An adult or adolescent who, as a result of mental illness or substance abuse or dependence, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, or essential medical care, or shelter or safety. (5-8-09)~~

~~01. Idaho Board of Alcohol/Drug Counselor Certification, Inc. (IBADCC). A board affiliated with the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC). The IBADCC is the certifying entity that oversees credentialing of Idaho Student of Addiction Studies (ISAS), Certified Alcohol/Drug Counselors (CADC), Advanced Certified Alcohol/Drug Counselors (ACADC), Certified Clinical Supervisors (CCS), and Certified Prevention Specialists (CPS) in the state of Idaho. The IBADCC may be contacted at: PO Box 1548, Meridian, ID 83680; phone (208) 468-8802; Fax: (208) 466-7693; e-mail: IBADCC@ibadcc.org; <http://ibadcc.org/>. ()~~

~~02. Idaho Student of Addiction Studies (ISAS). An entry-level certification for substance use disorder treatment granted by the Idaho Board of Alcohol/Drug Counselor Certification. ()~~

~~03. Individualized Service Plan. A written action plan based on an intake eligibility screening and full clinical assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (7-1-13)()~~

~~04. Intake Eligibility Screening. The collection of data, analysis, and review, which the Department, or its designee, uses to screen and determine whether an applicant is eligible for adult or adolescent alcohol or substance use disorder services available through the Department. (5-8-09)~~

~~054.~~ **Intensive Outpatient Services.** ~~An organized service delivered by addiction professionals or addiction credentialed clinicians, which provides a planned regimen of treatment~~ Educational classes and individual or group counseling consisting of regularly scheduled sessions within a structured program, for a minimum of nine (9) hours of treatment per week for adults and six (6) hours of treatment per week for adolescents. ~~(5-8-09)()~~

~~06.~~ **Medically Monitored Detoxification.** ~~Means medically supervised twenty-four (24) hour care for patients who require hospitalization for treatment of acute alcohol intoxication or withdrawal, from one (1) or more other substances of abuse, and other medical conditions which together warrant treatment in this type of setting. Length of stay varies depending on the severity of the disease and withdrawal symptoms.~~ ~~(7-1-13)~~

~~07.~~ **Medically Monitored Inpatient Treatment.** ~~Medically supervised twenty-four (24) hour care for patients requiring hospitalization and treatment services. Medically monitored inpatient treatment provides treatment services and access to full range of services offered by the hospital.~~ ~~(7-1-13)~~

05. Medication Assisted Treatment (MAT). MAT is the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders. ~~()~~

086. Network Treatment Provider. A treatment provider who has facility approval through the Department and is contracted with the Department's Management Service Contractor. A list of network providers can be found at the Department's website given in Section 005 of these rules. The list is also available by calling these telephone numbers: 1 (800) 922-3406; or dialing 211. ~~(5-8-09)()~~

07. Northwest Indian Alcohol/Drug Specialist Certification Board. A board that represents the Native American Chemical Dependency programs in the state of Washington, Oregon, and Idaho and offers certification for chemical dependency counselors. Information regarding certification standards may be obtained at the website at <http://www.nwiadcb.com/NWIADCB/index.html>. ~~()~~

~~098.~~ **Opioid Replacement Outpatient Services Treatment Program.** This service program is specifically offered to a client participant who has opioids as his substance use disorder. Services are offered under the guidelines of a federally accredited program. ~~(7-1-13)()~~

~~109.~~ **Outpatient Services.** ~~An organized non-residential service, delivered in a variety of settings, in which addiction treatment personnel provide professionally directed evaluation and treatment for alcohol and substance use disorders.~~ Educational classes and individual or group counseling consisting of regularly scheduled sessions within a structured program for up to eight (8) hours of treatment per week for adults and five (5) hours of treatment per week for adolescents. ~~(5-8-09)()~~

~~110.~~ **Priority Population.** Priority populations are populations who receive services ahead of other persons and are determined yearly by the Department based on federal regulations. A current list of the priority population is available from the Department. ~~(7-1-13)()~~

~~121.~~ **Recovery Support Services.** Non clinical services designed to initiate, support, and enhance recovery. These services may include: safe and sober housing that is staffed; transportation; child care; family education; life skills education; marriage education; drug testing; peer to peer mentoring; and case management. ~~(5-8-09)()~~

~~13.~~ **Residential Social Detoxification.** ~~Means a medically supported twenty-four (24) hour, social rehabilitation residential program which provides physical care, education, and counseling as appropriate for the client's health and safety during his process of physical withdrawal from acute alcohol intoxication or withdrawal, or from one or more other substances of abuse. Social detoxification provides access into care and treatment of alcohol or substance use disorders through monitored withdrawal, evaluation of present or potential alcohol or substance dependency and other physical ailments, and intervention into the progression of the disease through timely utilization of resources. Length of stay in a social detoxification program varies from three (3) to seven (7) days depending on the severity of the disease and withdrawal symptoms.~~ ~~(5-8-09)~~

~~14.~~ **Sliding Fee Scale.** ~~A scale used to determine an individual's cost for services based on Federal~~

Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)

~~15. **Substance Dependence.** Substance dependence is marked by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues to use alcohol or other drugs despite significant related problems. The cluster of symptoms can include: tolerance; withdrawal or use of a substance in larger amounts or over a longer period of time than intended; persistent desire or unsuccessful efforts to cut down or control substance use; a great deal of time spent in activities related to obtaining or using substances or to recover from their effects; relinquishing important social, occupational or recreational activities because of substance use; and continuing alcohol or drug use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been cause or exacerbated by such use as defined in the DSM-IV-TR.~~ (5-8-09)

12. **Residential Treatment Services.** A planned and structured regimen of treatment provided in a 24-hour residential setting. Residential programs serve individuals who, because of function limitations need safe and stable living environments and 24-hour care. ()

~~163. **Substance-Related Disorders.** Substance-related disorders include disorders related to the taking of alcohol or another addictive drug *of abuse*, to the side effects of a medication, and to toxin exposures. They ~~are~~ divided into two (2) groups: the include Ssubstance Use Disorders, and the Ssubstance-Induced intoxication, substance withdrawal, and substance-induced Disorders as defined in the DSM-IV-TR~~5~~. (5-8-09)()~~

~~174. **Substance Use Disorder.** *Includes Substance Dependence and Substance Abuse, according to the DSM-IV-TR. Substance Use Disorders are one (1) of two (2) subgroups of the broader diagnostic category of Substance-Related Disorders.* A substance use disorder is evidenced by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using a substance despite significant substance-related problems. According to the DSM-5, diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to use of the substance. (5-8-09)()~~

~~18. **Substantial Material Change in Circumstances.** *A substantial and material change in circumstances which renders the Department's decision denying alcohol and substance use disorders services arbitrary and capricious.* (5-8-09)~~

15. **Withdrawal Management.** Services necessary to monitor and manage the process of withdrawing a person from a specific psychoactive substance in a safe and effective manner. ()

012. -- 099. (RESERVED)

PARTICIPANT ELIGIBILITY (Sections 100 - 199)

100. ACCESSING ~~ALCOHOL AND~~ SUBSTANCE USE DISORDERS SERVICES.

~~The Department's A~~adult and adolescent ~~alcohol and~~ substance use disorders services may be accessed by eligible applicants ~~through~~ completing an application for services and ~~request for an intake~~ eligibility screening. (5-8-09)()

101. INTAKE ELIGIBILITY SCREENING AND ~~FULL~~ CLINICAL ASSESSMENT.

01. Intake Eligibility Screening. A screening for eligibility ~~for alcohol and~~ substance use disorders services through the Department is based on ~~meeting priority population and ASAM PPC-2R criteria as incorporated by reference in Section 004~~ the eligibility requirements under Section 102 of these rules. ~~If~~ When an applicant meets ~~this~~ eligibility screening criteria he may be eligible for ~~alcohol and~~ substance use disorders services through the Department. ~~An~~ applicants not meeting ~~this~~ eligibility screening criteria will be referred to other appropriate community services. ~~All~~ Each applicants ~~are~~ is required to complete an Application for ~~Alcohol and~~ Substance Use Disorders Services ~~either over the telephone or in person at a network treatment provider site.~~ ~~If~~ When an applicant refuses to complete the application, the Department reserves the right to discontinue the screening process for eligibility. The ~~intake~~ eligibility screening must be directly related to the applicant's ~~substance dependence or~~ substance-related disorder and level of functioning, and will include: (5-8-09)()

- a. Application for ~~Alcohol or~~ Substance Use Disorders Services, ~~pending document approval~~; (5-8-09)()
- b. Notice of Privacy Practice; ~~and~~ (5-8-09)()
- ~~c.~~ ~~Fee Determination; and~~ (5-8-09)
- ~~d.~~ Authorization for Disclosure. (5-8-09)

02. ~~Full Clinical Assessment.~~ ~~If~~ ~~When~~ the applicant is found eligible for ~~alcohol and a~~ substance use disorders services ~~assessment~~ after completion of the ~~intake~~ eligibility screening, the applicant will ~~either be placed on a waiting list to receive a full clinical assessment or will have an appointment made~~ ~~be authorized~~ to receive a ~~full~~ clinical assessment with a Department's network treatment provider. (5-8-09)()

102. ELIGIBILITY DETERMINATION.

01. ~~Determination of Eligibility for Alcohol and Substance Use Disorders Services.~~ ~~The total number of adults and adolescents who are eligible for alcohol or substance use disorders services through the Department will be established by the Department.~~ The Department may limit or prioritize adult and adolescent ~~alcohol or~~ substance use disorder services, ~~impose income limits~~, define eligibility criteria, and establish the number of persons eligible based upon such factors as court-ordered services, availability of funding, the degree of financial need, the degree of clinical need, or other factors. (7-1-13)()

02. ~~Eligibility Requirements.~~ To be eligible for ~~alcohol and~~ substance use disorders services through a voluntary application to the Department, the applicant must: (5-8-09)()

- a. Be an adult or adolescent with family income at or below two hundred percent (200%) of federal poverty guidelines; (5-8-09)
- b. Be a resident of the state of Idaho; (5-8-09)
- c. Be a member of ~~the a~~ priority population; (5-8-09)()
- d. Meet diagnostic criteria for ~~substance dependence, or~~ a substance-related disorder as described in the DSM-~~IV-TR~~⁵; and (5-8-09)()
- e. Meet specifications in each of the ASAM ~~PPC 2R~~ dimensions required for the recommended level of care. (5-8-09)()

~~03. Admission to Treatment Program Requirements.~~ ~~In order to be admitted into an adult or adolescent alcohol or substance use disorders treatment program, there must be clinical evidence that provides a reasonable expectation that the applicant will benefit from the alcohol or substance use disorder services.~~ (5-8-09)

~~04. Ineligible Conditions.~~ ~~An applicant who has epilepsy, an intellectual disability, dementia, a developmental disability, physical disability, mental illness, or who is aged, is not eligible for alcohol and substance use disorders services, unless, in addition to such condition, they meet primary diagnostic criteria for substance abuse, substance dependence, or a substance related disorder as described in the DSM-IV-TR and the specification in each of the ASAM PPC 2R dimensions required for the recommended level of care.~~ (5-8-09)

103. NOTICE OF CHANGES IN ELIGIBILITY FOR ~~ALCOHOL AND~~ SUBSTANCE USE DISORDERS SERVICES.

The Department may, upon ten (10) days' written notice, reduce, limit, suspend, or terminate eligibility for ~~alcohol or~~ substance use disorders services. (5-8-09)()

104. NOTICE OF DECISION ON ELIGIBILITY.

01. Notification of Eligibility Determination. Within two (2) business days of ~~a~~ receiving a completed ~~intake~~ eligibility screening ~~and risk or~~ assessment ~~for outpatient services, and one (1) business day for social detoxification and residential treatment services; or both~~, the Department, ~~or its contracted intermediary~~, will notify the applicant or the applicant's designated representative ~~in writing~~ of its eligibility determination. When the applicant is not eligible for services through the Department, the applicant or the applicant's designated representative will be notified in writing. The written notice will include: (5-8-09)()

- a. The applicant's name and identifying information; (5-8-09)
- b. A statement of the decision; (5-8-09)
- c. A concise statement of the reasons for the decision; and (5-8-09)
- d. The process for pursuing an administrative appeal regarding eligibility determinations. (5-8-09)

02. Right to Accept or Reject ~~Alcohol and~~ Substance Use Disorders Services. ~~If~~ When the Department, ~~or its contracted intermediary~~, determines that an applicant is eligible for ~~alcohol and~~ substance use disorders services through the Department, an individual has the right to accept or reject ~~alcohol and~~ substance use disorders services offered by the Department, unless imposed by law or court order. (5-8-09)()

03. Reapplication for ~~Alcohol and~~ Substance Use Disorders Services. If the Department determines that an applicant is not eligible for ~~alcohol and~~ substance use disorders services through the Department, the applicant may reapply ~~after six (6) months or~~ at any time upon a showing of a ~~substantial material~~ change in circumstances. ~~Also, if the individual screened is found not to meet admission criteria, but is in need of other types of services, the Department, or its contracted intermediary, will refer the individual to an agency or department which provides the appropriate services needed.~~ (5-8-09)()

1065. -- 1419. (RESERVED)

120. FINANCIAL RESPONSIBILITY FOR SUBSTANCE USE DISORDERS SERVICES.

An individual receiving substance use disorders services through the Department is responsible for paying for the services received. The financial responsibility for each service is based on the individual's ability to pay as determined in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." ()

121. -- 149. (RESERVED)

150. SELECTION OF SERVICE PROVIDERS.

A participant who is eligible for substance use disorders services administered by the Department can choose a substance use disorders service provider from the approved list of Network Treatment Providers for services needed. Treatment services must be within the recommended level of care according to ASAM based on the individual's needs identified in the assessment and resulting individualized service plan. A participant within the criminal justice system may have a limited number of providers from which to choose. ()

151. -- 199. (RESERVED)

200. INDIVIDUALIZED SERVICE PLAN, SELECTION OF SERVICE PROVIDERS AND AVAILABLE TREATMENT SERVICES.

~~The Department's contracted provider will prepare for every client an individualized service plan that addresses the alcohol or substance disorders health affects on the client's major life areas. The service plan will be based on a comprehensive assessment.~~ (7-1-13)

~~**01. Individualized Service Plan.** The responsibility for development and implementation of the plan will be assigned to a qualified staff member. A service plan will be developed within seventy two (72) hours following admission to an inpatient or residential facility and within thirty (30) days of the completion or receipt of a state-approved assessment in an outpatient setting. The individualized service plan will include the following: (7-1-13)~~

- ~~a. The services deemed clinically necessary to facilitate the client's alcohol and substance use~~

- ~~disorders recovery;~~ (7-1-13)
- ~~b. Referrals for needed services not provided by the program, including referrals for recovery support services;~~ (7-1-13)
- ~~e. Goals to achieve a recovery-oriented lifestyle;~~ (7-1-13)
- ~~d. Objectives that relate to the goals, written in measurable terms, with targeted expected achievement dates;~~ (7-1-13)
- ~~e. Service Frequency;~~ (7-1-13)
- ~~f. Criteria to be met for discharge from services;~~ (7-1-13)
- ~~g. A plan for services to be provided after discharge;~~ (7-1-13)
- ~~h. A plan for including the family or other social supports; and~~ (7-1-13)
- ~~i. Service plan goals and objectives that reflect the service needs identified on the assessment.~~ (7-1-13)
- ~~02. Selection of Providers. The client can choose from among the array of substance use disorders treatment providers approved to provide services. The services must be within the recommended level of care according to ASAM PPC-2R and based on needs identified in the comprehensive assessment and resultant individualized service plan. The client does not have the option of choosing his treatment provider if he is within the criminal justice system and specific providers have been identified for the client.~~ (7-1-13)
- ~~03. Treatment Services Available. Available alcohol or substance use disorders treatment services, as defined in Section 010 of these rules, include:~~ (5-8-09)
- ~~a. Assessment and Referral services;~~ (7-1-13)
- ~~b. Residential social detoxification;~~ (7-1-13)
- ~~e. Medically monitored inpatient treatment;~~ (7-1-13)
- ~~d. Medically monitored detoxification;~~ (7-1-13)
- ~~e. Clinically managed medium-intensity residential treatment;~~ (7-1-13)
- ~~f. Clinically managed low-intensity residential treatment;~~ (5-8-09)
- ~~g. Level I—Outpatient, and Level II.I Intensive Outpatient;~~ (7-1-13)
- ~~h. Opioid treatment program;~~ (7-1-13)
- ~~i. Recovery support services; and~~ (7-1-13)
- ~~j. Early intervention services.~~ (7-1-13)
- ~~04. Treatment Services Not Available. Alcohol or substance use disorder treatment services, do not include:~~ (5-8-09)
- ~~a. Experimental or investigational procedures;~~ (5-8-09)
- ~~b. Technologies and related services;~~ (5-8-09)

- ~~e. Electroconvulsive therapy; (5-8-09)~~
- ~~d. Treatment or services for epilepsy, an intellectual disability, dementia, a developmental disability, physical disability, aged or the infirm; or (5-8-09)~~
- ~~e. Any other services which are primarily recreational or diversional in nature. (5-8-09)~~

~~201. — 299. (RESERVED)~~

~~300. **CHARGES FOR ALCOHOL AND SUBSTANCE USE DISORDERS SERVICES.**~~

~~Individuals receiving alcohol and substance use disorders services through the Department are responsible for paying for the services provided. Individuals must complete a "Fee Determination Form," in writing or by telephone, prior to the delivery of alcohol and substance use disorders services. The amount charged for each service will be in accordance with the individual's ability to pay as determined in: IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules," Section 500. (5-8-09)~~

SUBSTANCE USE DISORDER SERVICES
(Sections 200 - 600)

200. QUALIFIED SUBSTANCE USE DISORDERS PROFESSIONAL PERSONNEL REQUIRED.

Each behavioral health program providing substance use disorders services must employ the number and variety of staff needed to provide the services and treatments offered by the program as a multidisciplinary team. The program must employ at least one (1) qualified substance use disorders professional for each behavioral health program location. ()

01. Qualified Substance Use Disorders Professional. A qualified substance use disorders professional includes individuals with the following qualifications: ()

- a. Idaho Board of Alcohol/Drug Counselor Certification - Certified Alcohol/Drug Counselor; ()
- b. Idaho Board of Alcohol/Drug Counselor Certification - Advanced Certified Alcohol/Drug Counselor; ()
- c. Northwest Indian Alcohol/Drug Specialist Certification - Counselor II or Counselor III; ()
- d. National Board for Certified Counselors (NBCC) - Master Addictions Counselor (MAC); ()
- e. "Licensed Clinical Social Worker" (LCSW) or a "Licensed Masters Social Worker" (LMSW) licensed under Title 54, Chapter 32, Idaho Code; ()
- f. "Marriage and Family Therapist" or "Associate Marriage and Family Therapist," licensed under Title 54, Chapter 34, Idaho Code; ()
- g. "Nurse Practitioner" licensed under Title 54, Chapter 14, Idaho Code; ()
- h. "Clinical Nurse Specialist" licensed under Title 54, Chapter 14, Idaho Code; ()
- i. "Physician Assistant" licensed under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants"; ()
- j. "Licensed Professional Counselor" (LPC) or a "Licensed Clinical Professional Counselor" (LCPC) licensed under Title 54, Chapter 34, Idaho Code; ()
- k. "Psychologist," or a "Psychologist Extender" licensed under Title 54, Chapter 23, Idaho Code; ()

l. “Physician” licensed under Title 54, Chapter 18, Idaho Code; and ()

m. “Professional Nurse” RN licensed under Title 54, Chapter 14, Idaho Code. ()

02. **Qualified Substance Use Disorders Professional Prior to May 1, 2010.** When an individual was recognized by the Department as a qualified professional in a substance use disorders services program prior to May 1, 2010, and met the requirements at that time, he will continue to be recognized by the Department as a qualified substance use disorders professional. ()

201. -- 209. (RESERVED)

210. QUALIFIED SUBSTANCE USE DISORDERS PROFESSIONAL TRAINEE.

Each qualified substance use disorders professional trainee practicing in the provision of substance use disorders services must meet the requirements in these rules. ()

01. **Informed of Qualified Substance Use Disorders Professional Trainee Providing Treatment.** All behavioral health program staff, participants, their families, or guardians must be informed when a qualified substance use disorders professional trainee is providing treatment services to participants. ()

02. **Work Qualifications for Qualified Substance Use Disorders Professional Trainee.** A qualified substance use disorders professional trainee must meet one (1) of the following qualification to begin work: ()

a. Idaho Student in Addiction Studies (ISAS) certification; ()

b. Formal documentation as a Northwest Indian Alcohol/Drug Specialist Counselor I; or ()

c. Formal documentation of current enrollment in a program for qualifications in Section 200 of these rules. ()

03 **Continue as Qualified Substance Use Disorders Professional Trainee.** An individual who has completed a program listed in Section 200 of these rules and is awaiting licensure can continue as a qualified substance use disorders professional trainee at the same agency for a period of six (6) months from the date of program completion. ()

211. -- 299. (RESERVED)

300. SERVICES FOR ADOLESCENTS.

Behavioral health programs providing substance use disorders treatment to adolescents must comply with the following requirements: ()

01. **Separate Services From Adults.** Each program providing adolescent program services must provide the services separate from adult program services. The program must ensure the separation of adolescent participants from adult participants except as required in Subsections 300.03 and 300.04 of this rule. ()

02. **Residential Care as an Alternative to Parental Care.** Any program that provides care, control, supervision, or maintenance of adolescents for twenty-four (24) hours per day as an alternative to parental care must meet the following criteria: ()

a. Be licensed under the “Child Care Licensing Act,” Title 39, Chapter 12, Idaho Code, according to IDAPA 16.06.02, “Rules Governing Standards for Child Care Licensing”; or ()

b. Be certified by the Department of Juvenile Corrections according to IDAPA 05.01.02, “Rules and Standards for Secure Juvenile Detention Centers.” ()

03. **Continued Care of an Eighteen-Year-Old.** An adolescent who turns the age of eighteen (18), and is receiving outpatient or intensive outpatient treatment in a state-approved behavioral health program, may remain in the program under continued care described in Subsection 300.03 of this rule. The individual may remain in the

program for: ()

a. Up to ninety (90) days after his eighteenth birthday; or ()

b. Until the close of the current school year for an individual attending school. ()

04. Documentation Requirements for Continued Care. Prior to accepting an individual into continued care, the program must assure and document the following: ()

a. A signed voluntary agreement to remain in the program or a copy of a court order authorizing continued placement after the individual's eighteenth birthday. ()

b. Clinical staffing for appropriateness of continued care with clinical documentation; ()

c. Verification the individual in continued care was in the care of the program prior to his eighteenth birthday. ()

d. Verification that the individual needs to remain in continued care in order to complete treatment, education, or other similar needs. ()

05. Licensed Hospital Facilities. Facilities licensed as hospitals under Title 39, Chapter 13, Idaho Code, are exempt from the requirements in Subsections 300.01 through 300.04 of this rule. ()

301. -- 349. (RESERVED)

350. RECOVERY SUPPORT SERVICES.

Each program must meet the minimum requirements in these rules to provide recovery support services for the following services. ()

01. Case Management. ()

02. Alcohol and Drug Screening. ()

03. Child Care. ()

04. Transportation. ()

05. Life Skills. ()

06. Staffed Safe and Sober Housing for Adolescents. ()

07. Staffed Safe and Sober Housing for Adults. ()

351. -- 354. (RESERVED)

355. CASE MANAGEMENT SERVICES.

Each program providing case management services must comply with the requirements in this rule. ()

01. No Duplication of Services. Case management services must not duplicate services currently provided under another program. ()

02. Based on Assessment. Case management services must be based on an assessment of participant's needs. ()

03. Required Service Plan. Case management services must be included on the participant's service plan. ()

356. -- 359. (RESERVED)

360. ALCOHOL AND DRUG SCREENING.

Each program providing alcohol and drug screenings must comply with the requirements in this rule. ()

01. Drug Testing Policies and Procedures. The program must have policies and procedures regarding the collection, handling, testing, and reporting of drug-testing specimens. Policies and procedures must include elements contributing to the reliability and validity of the screening and testing process. ()

a. Direct observation of specimen collection; ()

b. Verification temperature and measurement of creatinine levels in urine samples to determine the extent of water loading; ()

c. Specific, detailed, written procedures regarding all aspects of specimen collection, specimen evaluation, and result reporting; ()

d. A documented chain of custody for each specimen collected; ()

e. Quality control and quality assurance procedures for ensuring the integrity of the process; and ()

f. Procedures for verifying accuracy when drug test results are contested. ()

02. Release of Results. The program must have a policy and procedures for releasing the results of an alcohol and drug screening. ()

03. On-site Testing. A program performing on-site testing must use alcohol and drug screening tests approved by the U.S. Food and Drug Administration. ()

04. Laboratory Used for Testing. Each laboratory used for lab-based confirmation or lab-based testing must meet the requirements in and be approved under IDAPA 16.02.06, "Rules Governing Quality Assurance for Idaho Clinical Laboratories." ()

361. -- 364. (RESERVED)

365. CHILD CARE SERVICES.

Each program providing child care services must comply with the requirements in this rule. ()

01. Documentation of Child Care. A program must maintain documentation of current daycare license or written documentation that child care is provided while parent is on-site. ()

02. Policies and Procedures for Child Care Services. The program must have policies and procedures that ensure the well-being and safety of children receiving child care services. ()

366. -- 369. (RESERVED)

370. TRANSPORTATION SERVICES.

Each program providing transportation services must comply with the requirements in this rule. ()

01. Documentation of Driver's License. A program that provides transportation to participants must maintain documentation of a valid driver's license for each individual who provides the service. ()

02. Transportation Vehicles and Drivers. A program must adhere to all state and federal laws, rules, and regulations applicable to drivers and types of vehicles used. ()

03. Insurance Liability Coverage. A behavioral health provider must carry at least the minimum

insurance coverage required by Idaho law for each vehicle used. When the program permits an employee to transport participants in an employee's personal vehicle, the program must ensure that insurance coverage is carried to cover those services. ()

04. Direct Routes. A program must provide transportation by the most direct route practical. ()

05. Safety of Participants. A program must ensure the safety and well-being of all participants transported. This includes maintaining and operating vehicles in a manner that ensures protection of the health and safety of each participant transported. The program must meet the following requirements: ()

a. Prohibit the driver from using a cell phone while transporting a participant; ()

b. Prohibit smoking in the vehicle; ()

c. All vehicles must be equipped with a first aid kit and fire extinguisher; ()

d. All vehicles must be equipped with appropriate safety restraints; and ()

e. All vehicles must be in good working order. ()

06. Driver Must be Eighteen. The driver of a motor vehicle who transports program participants must be at least eighteen (18) years of age. ()

371. -- 374. (RESERVED)

375. LIFE SKILLS SERVICES.

Each program that provides life skills services must comply with the requirements in this rule. ()

01. Personal and Family Life Skills. A program for life skills services must be non-clinical and designed to enhance personal and family skills for each participant's needs. Life skills services for work and home, reduce marriage and family conflict, and develop attitudes and capabilities that support the adoption of healthy, recovery-oriented behaviors and healthy re-engagement with the community for the participant. ()

02. Individual and Group Activities. A program providing life skills services may be provided on an individual basis or in a group setting and can include activities that are culturally, spiritually, or gender-specific. ()

03. No Duplication of Services. Life skills services provided by a program must not duplicate services currently provided under another program. ()

376. -- 379. (RESERVED)

380. STAFFED SAFE AND SOBER HOUSING FOR ADOLESCENTS.

Each program that provides staffed safe and sober housing for adolescents must comply with the requirements in this rule. ()

01. Licensed. A program providing staffed safe and sober housing services for adolescents must be licensed as a Children's Residential Care Facility under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ()

02. Policies and Procedures. A program providing safe and sober housing for adolescents must have written policies and procedures that establish house rules and requirements and include procedures for monitoring participant compliance and consequences for violating house rules and requirements. ()

03. Safe and Sober Recovery Skills. Safe and sober housing services are directed toward applying recovery skills, preventing relapse, improving social functioning and ability for self-care, promoting personal responsibility, developing a social network supportive of recovery, and reintegrating the each adolescent into the

worlds of school, work, family life, and preparing for independent living. ()

381. -- 384. (RESERVED)

385. STAFFED SAFE AND SOBER HOUSING SERVICES FOR ADULTS.

Each program that provides staffed safe and sober housing for adults must comply with the requirements in this rule. ()

01. Policies and Procedures. A program providing safe and sober housing must have written policies and procedures that establish house rules and requirements and include procedures for monitoring participant compliance and consequences for violating house rules and requirements. ()

02. Staff Required. A staff person must be available to residents twenty-four (24) hours per day, seven (7) days a week, and conduct daily site visits: At a minimum, staff must include: ()

a. A house manager who is on-site at a minimum of twenty (20) hours a week; or ()

b. A housing coordinator who is off-site, but monitors house activities on a daily basis. ()

03. Certified Home Inspection. Each staffed safe and sober housing for adults program must have a certified home inspection for each location. There must be documentation that any major health and safety issues identified in the certified home inspection are corrected. ()

04. Safety Inspection. Each staffed safe and sober housing location must be inspected weekly by staff to determine if hazards or potential safety issues exist. A record of the inspection must be maintained that includes the date and time of the inspection, problems encountered, and recommendation for improvement. ()

386. -- 389. (RESERVED)

390. THERAPEUTIC ENVIRONMENT OF RESIDENTIAL TREATMENT.

Each program providing twenty-four (24) hours per day residential treatment must provide a therapeutic environment that enhances the participants positive self-image, preserves their human dignity, and meets the minimum standards in these rules. ()

01. Living Conditions. A residential treatment program must meet the following requirements regarding each participant's therapeutic environment: ()

a. Each participant must be allowed to wear his own clothing. If clothing is provided by the program, it must be appropriate and not demeaning. ()

b. Each participant must be allowed to keep and display personal belongings, and to add personal touches to the decoration of own room. ()

c. A residential treatment program must have policies and procedures for storage, availability, and use of personal possessions, personal hygiene items, and other belongings. ()

d. The residential treatment program must have ample closet and drawer space for the storage of personal property and property provided for each participant's use. ()

02. Resident Sleeping Rooms. A residential treatment program must assure that: ()

a. Resident sleeping rooms are not in attics, stairs, halls, or any other room commonly used for other than bedroom purposes; ()

b. Sufficient window space must be provided for natural light and ventilation. Emergency egress or rescue windows must comply with the state-adopted Uniform Building Code. This code is available from the International Code Council, 4051 West Fossmoor Rd. Country Club Hills, IL 60478-5795, phone:1-888-422-7233

and online at <http://www.iccsafe.org>: ()

c. Square footage requirements for resident sleeping rooms must provide at least seventy (70) square feet, exclusive of closet space, in a single occupancy room. In a multiple occupancy room, there must be at least forty-five (45) square feet per occupant, exclusive of closet space. Existing multiple occupancy sleeping rooms may be approved relative to square feet per occupant until the room is remodeled or the building is extensively remodeled. ()

d. Window screens must be provided on operable windows: ()

e. Doorways to sleeping areas must be provided with doors in order to provide privacy; and ()

f. Separate bedrooms and bathrooms must be provided for men and women. ()

03. Contributions of Therapeutic Environment. The environment of the residential treatment program must contribute to the development of therapeutic relationships in the following ways: ()

a. Areas must be available for a full range of social activities for all participants, from two (2) person conversations to group activities: ()

b. Furniture and furnishings must be comfortable and maintained in clean condition and good repair;
and ()

c. All equipment and appliances must be maintained in good operating order. ()

391. -- 394. (RESERVED)

395. RESIDENTIAL WITHDRAWAL MANAGEMENT SERVICES.

Each program providing substance use disorders residential withdrawal management services must comply with the requirements in this rule. ()

01. Residential Withdrawal Management Services. ()

a. Residential withdrawal management programs must provide living accommodations in a structured environment for individuals who require twenty-four (24) hour per day, seven (7) days a week, supervised withdrawal management services. ()

b. Withdrawal management services must be available continuously twenty-four (24) hours per day, seven (7) days per week. ()

c. Each withdrawal management program must have clear written policies and procedures for the withdrawal management of participants. The policies and procedures must be reviewed and approved by a medical consultant with specific knowledge of best practices for withdrawal management. ()

d. The level of monitoring of each participant or the physical restrictions of the environment must be adequate to prevent a participant from causing serious harm to self or others. ()

e. Each withdrawal management program must have provisions for any emergency care required. ()

f. Each withdrawal management program must have written policies and procedures for the transfer of participants from one (1) withdrawal management program to another, when necessary. ()

g. Each withdrawal management program must have written policies and procedures for dealing with a participant who leaves against professional advice. ()

02. Residential Withdrawal Management Staffing. Each withdrawal management program must

have twenty-four (24) hour per day, seven (7) days a week, trained personnel staff coverage. ()

a. A minimum staff to participant ratio of one (1) trained staff to six (6) participants must be maintained twenty-four (24) hours per day, seven (7) days a week. ()

b. Each staff member responsible for direct care during withdrawal management must have completed CPR training, a basic first-aid training course, and additional training specific to withdrawal management prior to being charged with the responsibility of supervising participants. ()

03. **Transfer to an Outside Program From Residential Withdrawal Management.** The residential treatment program must have policies and procedures established for transferring a participant to another program. ()

396. -- 399. (RESERVED)

400. RESIDENTIAL TREATMENT SERVICES FOR ADOLESCENTS.

A behavioral health program providing adolescent residential treatment for substance use disorders must comply with the requirements in this rule. ()

01. Licensed for Adolescent Residential Treatment. Each residential treatment program must be licensed as a Children's Residential Care Facility under IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." ()

02. Admission Criteria for Adolescent Residential Treatment. A behavioral health program providing adolescent residential treatment for substance use disorders must only admit adolescents with a primary substance use disorder diagnosis. ()

03. Focus of Adolescent Residential Treatment Services. Adolescent residential treatment services for substance use disorders must focus primarily on substance use disorders diagnosed problems. Care must include hours specific to substance use disorders treatment provided by clinical staff, including planned and structured education, individual and group counseling, family counseling, and motivational counseling. An adolescent residential treatment program must provide: ()

a. Individual and group counseling sessions; ()

b. Family treatment services; and ()

c. Substance use disorders education sessions; ()

04. Staff Training in Adolescent Residential. Annual staff training must include: ()

a. Cultural sensitivity and diversity; ()

b. Behavior management; and ()

c. Adolescent development issues appropriate to the population served. ()

05. Residential Care Provided to Adolescents and Adults. A behavioral health program providing residential treatment services to adolescents and adults must ensure the separation of adolescent participants from adult participants. This includes not sharing the same wing, or the same floor for recreation, living, sleeping, and restroom facilities. Adolescents must not dine with adult residents. Adolescents must not share treatment groups, recreation, counseling sessions, educational programs, or treatment programs with adults except under continued care in compliance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," and Subsections 300.03 and 300.04 of these rules. ()

06. After Care Plan for Adolescent in Residential. An adolescent's residential care facility that provides substance use disorders treatment must develop a written plan of after care services for each adolescent that

includes procedures for reintegrating the adolescent into the family and community as appropriate, and outpatient and other continued care services recommended. ()

401. -- 404. (RESERVED)

405. RESIDENTIAL TREATMENT SERVICES FOR ADULTS.

A behavioral health program providing adult residential treatment for substance use disorders must comply with the requirements in this section. ()

01. Residential Treatment Services for Adults. ()

a. A residential treatment program provides living accommodations in a structured environment for adults who require twenty-four (24) hour per day, seven (7) days a week, supervision. ()

b. Services must include assessment, treatment, and referral components. ()

c. The residential treatment program must have policies and procedures for medical screening, care of participants requiring minor treatment or first aid, and handling of medical emergencies. These provisions must be approved by the staff and consulting physician. ()

d. The residential treatment program must have written provisions for referral or transfer to a medical facility for any person who requires nursing or medical care. ()

e. Recreational activities must be provided for the participants. ()

02. Staffing Adult Residential. The residential treatment program must have must have qualified staff to maintain appropriate staff to participant ratios. ()

a. The program must have one (1) qualified substance use disorders professional staff member for every ten (10) participants. ()

b. The program must have other staff sufficient to meet the ratio of one (1) staff person to twelve (12) participants continuously, twenty-four (24) hours per day. ()

03. Residential Care Provided to Adolescents and Adults. A behavioral health program providing residential care to adolescents and adults must ensure the separation of adolescent participants from adult participants. Adults and adolescents can not share the same wing, or the same floor for recreation, living, sleeping, and restroom facilities. Adolescents must not dine with adult residents. Adolescents must not share treatment groups, recreation, counseling sessions, educational programs, or treatment programs with adults unless there is a documented therapeutic reason. ()

406. -- 409. (RESERVED)

410. OUTPATIENT TREATMENT SERVICES FOR ADOLESCENTS AND ADULTS.

A behavioral health program providing outpatient or intensive outpatient substance use disorder services must comply with the requirements in this section. ()

01. Treatment Services. ()

a. Counseling services must be provided through the outpatient program on an individual, family, or group basis: ()

b. Services must include educational instruction and written materials on the nature and effects of alcohol and substance use disorders and the recovery process. ()

c. The behavioral health program must provide adjunct services or refer the participant to adjunct services as indicated by participant need. ()

02. Staffing Ratios. The behavioral health program must have qualified staff to maintain appropriate staff to participant ratios as required in Subsections 410.02.a. through 410.02.c. of this rule. ()

a. An outpatient program must employ at a minimum one (1) qualified substance use disorders professional staff person for every fifty (50) participants. ()

b. An intensive outpatient program must employ at a minimum one (1) qualified substance use disorders professional staff person for every thirty (30) participants. ()

c. The maximum caseload for one (1) qualified substance use disorders professional in any outpatient or intensive outpatient program is fifty (50) participants. ()

03. Off-site Treatment Service Delivery Settings. Provision of outpatient or intensive outpatient treatment services outside of an approved behavioral health program location: ()

a. Services must be provided by qualified substance use disorders professional. ()

b. Services must be provided in a setting that is safe and appropriate to the participant and participant's needs. ()

c. Confidentiality according to 42 CFR and HIPAA regulations must be adhered to. ()

d. The need and appropriateness of providing off-site treatment is documented. ()

411. -- 414. (RESERVED)

415. MEDICATION ASSISTED TREATMENT.

01. Medication Assisted Treatment Services. A behavioral health program providing medication assisted treatment for substance use disorders must make counseling and behavioral therapies available in combination with medication assisted treatment services. ()

02. Opioid Treatment Program. An Opioid Treatment Program (OTP) must meet all requirements established under 42 CFR, Section 8.12, Federal Opioid Treatment Standards. These standards are incorporated by reference under Section 004 of these rules including how access the standards. ()

~~304~~16. -- 999. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.07.20 - ALCOHOL AND SUBSTANCE USE DISORDERS TREATMENT
AND RECOVERY SUPPORT SERVICES FACILITIES AND PROGRAMS
DOCKET NO. 16-0720-1501 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 3, and Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, 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 16, 2015.

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. The Department is integrating services to better match current practices for substance use disorders and mental health services. This repealed chapter will be replaced with a new chapter in IDAPA 16.07.15, "Behavioral Health Programs," publishing simultaneously in this Bulletin under Docket Number 16-0715-1501.

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:

This rulemaking has no fiscal impact to the state general fund, or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015, Idaho Administrative Bulletin, [Vol.15-5, pages 62-63](#) under Docket No. 16-0720-1501. The Department held three meetings around the state and also allowed participants to conference call into the meetings.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at (208) 334-6611.

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 23, 2015.

DATED this 7th Day of August, 2015.

Tamara Prisock, DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

IDAPA 16.07.20 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.27 - SELF-FUNDED EMPLOYEE HEALTH CARE PLANS RULE
DOCKET NO. 18-0127-1501
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 41-4020, 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 16, 2015.

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

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

To amend the existing rule to conform to code changes made during 2013, provide additional clarity, and remove some duplicative language unnecessary to the rule that reiterates the code.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 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 or to submit comments 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 attention of the undersigned and must be delivered on or before September 23, 2015.

DATED this 7th Day of August, 2015.

Dean L. Cameron, 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. 18-0127-1501
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. **Title.** This rule shall be cited in full as Idaho Department of Insurance Rule, IDAPA 18.01.27, "Self-Funded ~~Employee~~ Health Care Plans Rule." (4-5-00)()

02. **Scope.** The purpose of this rule is to supplement the provisions of Title 41, Chapter 40, Idaho Code, Self-Funded Health Care Plans by providing: (4-5-00)

- a. Dates of application for registration; (4-5-00)
- b. Requirements for application for registration; (4-5-00)
- c. Rules regarding investigation of applications; (4-5-00)
- d. Definition of terms, required liabilities; and establishment of reserve bases; ~~and~~ (4-5-00)()
- e. Requirements for contribution rates, contracts and services, and records; and ()
- ef. ~~To provide a~~ An effective date. (4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

All terms defined in Title 41, Chapter 40, Idaho Code, that are used in this rule shall have the same meaning as used in that Chapter. (4-5-00)()

01. "All contributions to be paid in advance". As used in Title 41, Chapter 40, Idaho Code, means all contributions are to be paid in advance of the period of time for which the contribution is made. ()

02. "Deposited in and disbursed from a trust fund". As used in Title 41, Chapter 40, Idaho Code, means all contributions based on calculated rates in accordance with Section 028 of this rule shall be deposited into the trust fund and all expenses shall be paid out of the trust fund. ()

011. -- 020. (RESERVED)

021. QUALIFICATION OF PLAN.

In order for a plan to qualify under Title 41, Chapter 40, Idaho Code, the plan's trust must be established by agreement between the employer or employers or a postsecondary education institution and the trustee of the trust, for the sole purpose of providing health care benefits to employees of the employer or employers or to students of the postsecondary educational institution. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

023. ~~APPLICATION FOR REGISTRATION. (RESERVED)~~

~~01. Application. The application must include each of the requirements set out in Section 41-4005,~~

~~Idaho Code. The projected income and disbursement statement referenced in Section 41-4005(2)(d), Idaho Code, must be certified by an actuary meeting the qualifications of Section 41-4005(6), Idaho Code, and accompanied by a description of assumptions used in projecting income and disbursements together with bases used to estimate amounts reserved for claims. (3-30-07)~~

~~02. Trust Agreement. (3-30-07)~~

~~a. The trust agreement must comply with Title 41, Chapter 40, Idaho Code, and, to the extent not in conflict with Title 41, the trust agreement must also comply with Title 68, Idaho Code, and Title 15, Chapter 7, Idaho Code. The trust agreement must contain, at a minimum, the conditions set forth in Section 41-4004, Idaho Code. (3-30-07)~~

~~b. The term irrevocable as used in Section 41-4004(1), Idaho Code, means that the plan sponsor cannot retain the power to alter, amend, revoke or terminate the transfer in trust. The trustee may, pursuant to the terms of the trust agreement, amend the terms of the trust agreement for the purpose of complying with applicable law. (3-30-07)~~

~~03. Biographical Affidavit. The application must be accompanied by a biographical affidavit for each trustee on a form acceptable to the Director. (3-30-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

026. TRUST FUND RESERVES AND SURPLUS.

01. Reserve Requirements. The trust fund of the plan must continuously maintain reserves sufficient, as certified by a qualified actuary as being necessary, to fully fund payment of all benefits in effect at the time a claim thereunder arises. This reserve must adequately provide for all reasonably estimated future claim payments, adjustment expenses, and litigation expenses on claims which have arisen, including claims incurred but not reported, extended benefits and maternity benefits, if any. (7-1-93)()

02. Reserves for Disability Income Benefits. Reserves established for disability income benefits shall be in an amount not less than reserves determined by the Minimum Reserve Standards for Group Health Insurance Contracts set forth in the NAIC's Accounting Practices and Procedures Manual as adopted by the Director unless it can be proven to the satisfaction of the Director that a lower reserve can be actuarially justified. (3-30-07)

03. Certification by Actuary. Reserves must be certified annually by ~~an~~ a qualified actuary. ~~who meets the requirements of Section 41-4005(6), Idaho Code,~~ sSuch certification must be accompanied by a statement describing bases used in reserve determination. The certification shall be in a form acceptable to the Director. (3-30-07)()

04. Insolvent Condition. If determination of surplus reveals a deficiency in surplus, the Director may, in his discretion, allow the plan a period of time not exceeding ninety (90) days to accumulate required surplus. The plan shall be deemed to be insolvent when the plan is either unable to pay its obligations when they are due or its assets are do not sufficient to meet exceed all its liabilities, including required reserves. (3-30-07)()

~~05. Surplus. The trust fund of a self-funded plan shall maintain a surplus equal to thirty percent (30%) of unpaid claim liability of the plan. The total unpaid claim liability to which the thirty percent (30%) is calculated against includes total claims reported and not yet paid, claims incurred but not yet reported, adjustment expenses, litigation expenses, extended benefits and maternity benefits, if any. A newly formed self-insured plan with no prior operating history shall maintain surplus of not less than ten percent (10%) of unpaid claim liability of the plan during the first year and not less than twenty percent (20%) of the unpaid claim liability of the plan during its second year of operation. The unpaid claim liability includes total claims reported and not yet paid, claims incurred but not yet reported, adjustment expenses, litigation expenses, extended benefits and maternity benefits, if any. (3-30-07)~~

~~06. Letter of Credit. To qualify as surplus, the clean, irrevocable, unconditional and "evergreen" letter~~

~~of credit must be issued by a qualified United States financial institution having a branch office in Idaho. Qualified financial institution shall have the same definition as set forth in Section 41-514(3), Idaho Code. (3-30-07)~~

027. BONDING.

01. Certified Copy of Bond. A certified copy of the fidelity bond or equivalent coverage, as required under Section 41-4014(3), Idaho Code, shall be furnished to the Director by the plan. (3-30-07)

02. Scope of Coverage. The fidelity bond or equivalent coverage must cover any person handling fiduciary funds on behalf of the plan including, but not limited to, any signatory on a trust fund or account owned by the plan. ()

023. Cancellation of Bond Requirements. The fidelity bond or equivalent coverage must contain language stating that it is noncancellable except upon not less than thirty (30) days advance notice in writing to the trustee and the Director. A copy of any notice cancelling a bond required under Chapter 40, Title 41, Idaho Code, is to be forwarded to the Director by the surety at the same time it is forwarded to the trustee. (3-30-07)()

04. Third Party Administrator. Any party that provides any one of the following services to the plan must be licensed as a third party administrator in accordance with Title 41, Chapter 9, Idaho Code, and Section 41-4014(4), Idaho Code: ()

a. Directly or indirectly underwrites; ()

b. Collects or handles charges or contributions; or ()

c. Adjusts or settles claims on members or beneficiaries of the plan. ()

028. CONTRIBUTION RATES.

01. Contribution Rate Calculation. Contribution rates shall be calculated at least annually by a qualified actuary. The contribution rate calculations should be broken down and designated as the rate for the employer and the rate per employee, or the rate for the postsecondary educational institution and the rate per student. ()

02. Employer Contributions. Employer contributions shall be based on filed rates, paid in advance on a periodic basis during the period of coverage or at the beginning of the period of coverage. ()

03. Annual Filing of Rates. The required annual filing of rates with the Director shall include the breakdown as required under Subsection 028.01. ()

029. CONTRACTS AND SERVICES.

01. Affiliated Contracts. All contracts for goods or services provided to the plan by any plan sponsor, employer, third party administrator, or other affiliated entity or employee or agent thereof, shall be in writing, setting forth in detail the rights and duties of each party to the writing; regardless of whether compensation, fees, or other consideration is paid or exchanged directly or indirectly. ()

02. Contracts for Services. All contracts for services including, but not limited to, accounting services, legal services, custodial agreements, and agreements for lease, rent, or insurance coverage to be performed or entered into on behalf of the plan shall be directly with the plan as agreed to by the board of trustees and the other party. ()

03. Recordkeeping and Writing. Contracts and agreements valued at greater than five hundred dollars (\$500.00) entered into by the plan, shall be in writing and shall be approved by resolution of the board of trustees, and placed in the minutes and records of the plan. ()

04. Fiduciary Duty. By entering into contracts and agreements, the trustees are not permitted to

transfer or otherwise avoid their statutory fiduciary responsibilities. ()

030. RECORDS.

01. Board Actions. Any and all acts, resolutions, appointments, or delegations, or other decisions of the board of trustees shall be in writing and placed in the minutes and records of the plan. ()

02. Complete Records. The full and accurate records and accounts of the plan include, but are not limited to, minutes of the meetings of the board of trustees that document the acts, resolutions, appointments or delegations of the trustees; any and all correspondence between the board of trustees and contractors; accounting and actuarial records; and any and all records, correspondence, minutes, or statements as required by law or the trust agreement. ()

~~028~~31. ANNUAL STATEMENT.

The trustee shall file an annual statement within ninety (90) days after the close of each fiscal year of the Plan and at such other time as may be determined by the Director. A quarterly statement shall be filed with the Director within sixty (60) days of the end of each quarter in a form acceptable to the Director. (3-30-07)

~~029~~32. SEVERABILITY CLAUSE.

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the applicability of such provision to other persons or circumstances, shall not be affected thereby. (7-1-93)

~~030~~3. -- 999. (RESERVED)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.44 - SCHEDULE OF FEES, LICENSES, AND MISCELLANEOUS CHARGES

DOCKET NO. 18-0144-1501 (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, 41-1006(2), 41-4005(4), 41-4011(4), 41-5806(1)(g), 41-5807(2) and (3), 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 16, 2015.

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 revise language concerning the amount paid by an applicant for licensure as a producer, adjuster and public adjuster for an examination to a third party testing vendor.

The statutory provision for a solicitation permit application and fee (former Idaho Code § 41-2807) was repealed by the Idaho Legislature in 2003, so the reference to a fee in department rule should be removed.

Technical corrections are also made.

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

The proposed rulemaking will:

- Amend 18.01.44.020.03 to clarify that registration of self-funded student health plans is subject to the licensing/renewal \$500 fee just like self-funded employer plans by removing the specific reference to “employee” plans;
- Amend IDAPA 18.01.44.030 to add a licensing/renewal fee for public adjusters of \$80;
- Amend IDAPA 18.01.44.030 to change the provision regarding the cost paid to a third party vendor by an applicant for a producer, public adjuster, or adjuster license to take an examination by eliminating the \$60 fee referenced and provide that the applicant will pay an amount to the vendor as provided for by contract between the department and testing vendor;
- Eliminate fees for solicitation permits in section 18.01.040, as related code sections have been repealed; and
- Make technical corrections in section 18.01.040 to update terminology and include catchall language regarding service of process fees, and eliminate unnecessary language in 18.01.020.04.

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 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, 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 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 23, 2015.

DATED this 7th Day of August, 2015.

Dean L. Cameron, 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. 18-0144-1501
(Only Those Sections With Amendments 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)
- be: **03. Fees of Other Entities.** For the following entities, the amount of the annual continuation fee shall (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 *employee* 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: ~~except for those set forth in Subsection 020.05.g.~~ ~~(7-1-00)~~ ()
- 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)

021. -- 029. (RESERVED)

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 dollars (\$60)~~ a fee set forth by contract between the department and third-party testing vendor, which entire amount is to be paid by the applicant to the vendor and retained by the vendor. ~~(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)

031. -- 039. (RESERVED)

040. MISCELLANEOUS FEES. Miscellaneous fees shall be as follows. (7-1-00)

01. Certified Copy. Certified copy of certificate of authority, license or registration - Fifty dollars (\$50). (7-1-00)

~~**02. Solicitation Permit. Organization and financing of insurer.** (7-1-00)~~

- ~~a.~~ ~~Filing application for solicitation permit -- Nine hundred dollars (\$900).~~ (7-1-00)
- ~~b.~~ ~~Issuance of solicitation permit -- One hundred eighty dollars (\$180).~~ (7-1-00)
- 032.** **Certificate Under Seal.** Director's certificate under seal (except for those under Subsection 040.01 of this rule) - Twenty dollars (\$20). (7-1-00)
- 043.** **Documents Filed.** For each copy of document filed in his office, a reasonable cost as fixed by the director. For rate and form filings not submitted electronically through the national System for Electronic Rate and Form Filing (SERFF) -- Twenty dollars (\$20) for each rate or form filed in excess of ten (10) per calendar year. (4-9-09)
- 054.** **Life Insurance Valuation.** For valuing life insurance, actual cost of valuation but not to exceed one cent (\$.01) for each one thousand dollars (\$1,000) of insurance. (7-1-00)
- 065.** **Insurer Service of Process.** For receiving and forwarding copy of summons or other process served upon the director as process agent of an insurer -- Thirty dollars (\$30). (7-1-00)
- 076.** **Agent Service of Process.** For receiving and forwarding copy of summons or other process served upon the director as process agent of a nonresident ~~agent, broker or consultant~~ producer or other person for which the director is authorized to serve as statutory agent for service of process -- Thirty dollars (\$30). (7-1-00)()
- 087.** **Continuing Education.** Filing continuing education applications for approval and certification of subjects of courses (each application) -- Twenty-five dollars (\$25). (7-1-00)
- 098.** **Small Employer Health Program.** Administrative expenses incurred in implementing and approving Idaho small employer health reinsurance program and plan of operation: (7-1-00)
- a. Initial deposit for program setup, approval and processing - One thousand dollars (\$1,000). (7-1-00)
 - b. Any additional reasonable expenses incurred in establishing and maintaining the program. (7-1-00)
 - c. Annual filings of Board, pursuant to Section 41-4711(12), Idaho Code - Three hundred dollars (\$300). (7-1-00)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.60 - LONG-TERM CARE INSURANCE MINIMUM STANDARDS

DOCKET NO. 18-0160-1501

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, 41-4608, and 56-1305, 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 16, 2015.

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 long-term care rule (IDAPA 18.01.60.017) currently references inflation protection but does not clearly establish a minimum amount applicable to long-term care partnership policies. Qualifying long-term care partnership policies allow consumers who buy them to qualify for Medicaid asset disregard as provided for in Title 56, Chapter 13, Idaho Code. For long-term care partnership policies, the Department has required a minimum 5% compound inflation protection for policyholders less than 61 and 5% simple inflation for those age 61 to 75 or, alternatively, benefit guarantees of not less than the annual change in the Consumer Price Index pursuant to Bulletin 06-07. If and when the proposed rule becomes effective, the Department intends to rescind Bulletin 06-7. The rule will clarify annual inflation protection requirements applicable to long term care partnership policies, but will not require any minimum level of inflation protection. The Department expects that this may promote more purchases of such policies. The rulemaking will also revise how documents are incorporated by using the standard rulemaking format.

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 July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, 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:

No new documents are being incorporated by reference into this rule. Rather, existing documents already incorporated by reference are being set forth more clearly in a renumbered section 004 consistent with rulemaking protocol.

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 23, 2015.

DATED this 7th Day of August, 2015.

Dean L. Cameron, 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. 18-0160-1501
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION OF DOCUMENTS BY REFERENCE.

01. Forms. Documents incorporated by reference may be obtained from the Idaho Department of Insurance website at <http://www.doi.idaho.gov>. ()

02. Documents Incorporated by Reference. This rule incorporates by reference the following documents, appendices, and attachments of the National Association of Insurance Commissioners (NAIC) Long-Term Care Model Regulation 641. The Model Regulation is available from the National Association of Insurance Commissioners, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662 and from the Idaho Department of Insurance. ()

a. Rescission Reporting Form for Long-Term Care, Appendix A. ()

b. Personal Worksheet, Appendix B. ()

c. Things You Should Know Before You Buy Long-Term Care Insurance, Appendix C. ()

d. Suitability Letter, Appendix D. ()

e. Claims Denial Reporting Form, Appendix E. ()

f. Instructions, Appendix F. ()

g. Replacement and Lapse Reporting Form, Appendix G. ()

h. Outline of Coverage. ()

i. Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance, Attachment I. ()

j. Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance, Attachment II. ()

0045. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5pm. Except Saturday, Sunday and legal holidays. (3-30-07)

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (3-30-07)

03. **Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (3-30-07)

04. **Web Site Address.** The department's website is <http://www.doi.idaho.gov>. (3-30-07)

0056. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provision of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (3-30-07)

0067. -- 009. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

012. ~~INCORPORATION OF DOCUMENTS BY REFERENCE. (RESERVED)~~

~~**01. Forms.** An insurer shall use the forms published on the Department of Insurance website at <http://www.doi.idaho.gov> select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18-01-60, "Long Term Care Insurance Minimum Standards," to comply with the disclosure requirements of Subsection 014.10.a. and Subsection 014.10.b., which forms are incorporated herein by this reference. (3-30-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

014. REQUIRED DISCLOSURE PROVISIONS.

01. Renewability. Individual long-term care insurance policies shall contain a renewability provision. (3-30-01)

a. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision shall not apply to policies that do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder. (3-30-01)

b. A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that the premium rates may change. (3-30-01)

02. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement. (4-5-00)

03. Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage. (4-5-00)

04. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations." (4-5-00)

05. Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy

or certificate containing any limitations or conditions for eligibility other than those prohibited in Section 41-4605(4)(b)(i), Idaho Code, shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits." (3-30-07)

06. Disclosure of Tax Consequences. With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. Subsection 014.06 shall not apply to qualified long-term care insurance contracts. (3-30-07)

07. Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified. (4-5-00)

08. Qualified Contracts. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in Section 035 that the policy is intended to be a qualified long-term care insurance contract under Section 7702B (b) of the Internal Revenue Code of 1986, as amended. (3-30-07)

09. Non-Qualified Contracts. A non-qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in Section 035 that the policy is not intended to be a qualified long-term care insurance contract. (3-30-07)

10. Required Disclosure of Rating Practices to Consumers. (3-30-01)

a. Subsection 014.10 shall apply as follows: (3-30-07)

i. Except as provided in Subsection 014.10.a.ii., Subsection 014.10 applies to any long-term care policy or certificate issued in this state on or after July 1, 2001. (3-30-07)

ii. For certificates issued on or after the effective date of this amended rule under a group long-term care insurance policy as defined in Section 41-4603(4)(a), Idaho Code, which policy was in force at the time this amended rule became effective, the provisions of Subsection 014.10 shall apply on the policy anniversary following January 1, 2002. (3-30-07)

b. Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in Subsection 014.10.b. to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all information listed in Subsection 014.10.b. to the applicant no later than at the time of delivery of the policy or certificate. (3-30-07)

i. A statement that the policy may be subject to rate increases in the future; (3-30-01)

ii. An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision; (3-30-01)

iii. The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase; and (3-30-01)

iv. A general explanation for applying premium rate or rate schedule adjustments that shall include, a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and the right to a revised premium rate or rate schedule as provided in Subsection 014.10.b.ii., if

the premium rate or rate schedule is changed. (3-30-07)

c. Information regarding each premium rate increase on this policy form or similar forms over the past ten (10) years for this state or any other state that, at a minimum, identifies: (3-30-01)

i. The policy forms for which premium rates have been increased; (3-30-01)

ii. The calendar years when the form was available for purchase; and (3-30-01)

iii. The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics. (3-30-01)

d. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases. (3-30-01)

e. An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to acquisition. (3-30-01)

f. If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of Subsection 014.10 or the end of a twenty-four (24) month period following the acquisition of the block of policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection 014.10.c. (3-30-07)

g. If the acquiring insurer in Subsection 014.10.f. above files for a subsequent rate increase, even within the twenty-four (24) month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from ~~nonaffiliated~~ insurers referenced in Subsection 014.10.f., the acquiring insurer must make all disclosures required by Subsection 014.10.c., including disclosure of the earlier rate increase referenced in Subsection 014.10.f. ~~(3-30-07)~~ ()

h. An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsections 014.10.b. and 014.10.c. If because of the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate. (3-30-07)

i. An insurer shall use the forms in Appendices B and F to comply with the disclosure requirements of Subsection 014.10.b. and Subsection 014.10.h. ~~The company forms are published on the Department of Insurance website at <http://www.doi.idaho.gov/company/te-attachments.aspx> select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long Term Care Minimum Standards."~~ (3-30-07) ()

j. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least thirty (30) days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection 014.10.b., when the increase is implemented. (3-30-07)

015. PROHIBITION AGAINST POST-CLAIMS UNDERWRITING.

01. Health Conditions. All applications for long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant. (4-5-00)

02. Medication. If an application for long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed. If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be

denied, then the policy or certificate shall not be rescinded for that condition. (4-5-00)

03. Non-Guaranteed Issue. Except for policies or certificates which are guaranteed issue: (4-5-00)

a. The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: *Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy.* (4-5-00)

b. The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: *Caution: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)* (4-5-00)

c. Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following: (4-5-00)

- i. A report of a physical examination; (4-5-00)
- ii. An assessment of functional capacity; (4-5-00)
- iii. An attending physician's statement; or (4-5-00)
- iv. Copies of medical records. (4-5-00)

04. Delivery of Application or Enrollment and Form. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application. (4-5-00)

05. Record of Rescissions. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the insurance director in the format prescribed by the National Association of Insurance Commissioners in Appendix A. ~~The notice required in Subsection 015.05 shall be provided in substantially the following format based on the NAIC Model Regulation. The forms are published on the Department of Insurance website at <http://www.doi.idaho.gov> select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long Term Care Minimum Standards."~~ (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

017. REQUIREMENT TO OFFER INFLATION PROTECTION.

01. Inflation Protection Offer. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following: (4-5-00)

- a.** Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent (5%); (4-5-00)
- b.** Guarantees the insured individual the right to periodically increase benefit levels without providing

evidence of insurability or health status as long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or (4-5-00)

c. Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit. (4-5-00)

d. With respect to inflation protection for a Partnership policy only: (3-30-07)

i. If the policy is sold to an individual who has not attained age sixty-one (61) as of the date of purchase, the policy must provide some level of automatic compound annual inflation protection; ~~(3-30-07)~~()

ii. If the policy is sold to an individual who has attained age sixty-one (61) but has not attained age 76 as of the date of purchase, the policy must provide some level of automatic annual inflation protection; and ~~(3-30-07)~~()

iii. If the policy is sold to an individual who has attained age seventy-six (76) as of the date of purchase, the policy may (but is not required to) provide some level of inflation protection. (3-30-07)

02. Group Offer. Where the policy is issued to a group, the required offer in Subsection 017.01 shall be made to the group policyholder; except, if the policy is issued to a group defined in Section 41-4603(4)(d), Idaho Code, other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder. (3-30-07)

03. Requirements for Life Insurance Policies. The offer in Subsection 017.01 above shall not be required of life insurance policies or riders containing accelerated long-term care benefits. (3-30-07)

04. Outline of Coverage. Insurers shall include the following information in or with the outline of coverage: (4-5-00)

a. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period. (4-5-00)

b. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. (4-5-00)

c. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure. (4-5-00)

05. Continuation of Inflation Protection. Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy. (4-5-00)

06. Premium Disclosures. An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant. (4-5-00)

07. Rejection of Offer. Inflation protection as provided in Subsection 017.01 shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in Subsection 017.07. The rejection may be either in the application or on a separate form. The rejection shall be considered a part of the application and shall state: I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I reject inflation protection (signature line: _____). (3-30-07)

018. REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE.

01. Application Forms. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by Section 41-4603(a), Idaho Code, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement. (3-30-07)

a. Do you have another long-term care insurance policy or certificate in force (including insurance, Fraternal Benefit Societies, Managed Care Organization) or other similar organizations? (4-5-00)

b. Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months? (4-5-00)

i. If so, with which company? (4-5-00)

ii. If that policy lapsed, when did it lapse? (4-5-00)

c. Are you covered by Medicaid? (4-5-00)

d. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)? (4-5-00)

02. Other Policy Disclosures. Producers shall list any other health insurance policies they have sold to the applicant. (3-30-07)

a. List policies sold that are still in force. (4-5-00)

b. List policies sold in the past five (5) years that are no longer in force. (4-5-00)

03. Solicitations Other Than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its producer shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One (1) copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be in a form based on the NAIC Model Regulation- Attachment I, ~~NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG TERM CARE INSURANCE, is published on the Department of Insurance website at http://www.doi.idaho.gov/select_consumer_or_company_services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long-Term Care Minimum Standards."~~ (3-30-07) ()

04. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be in a form based on the NAIC Model Regulation- Attachment II, ~~NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG TERM CARE INSURANCE, is published on the Department of Insurance website at http://www.doi.idaho.gov/select_consumer_or_company_services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long Term Care Minimum Standards."~~ (3-30-07) ()

05. Notice of Replacement. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner. (4-5-00)

06. Life Insurance Policy Replacement. Life insurance policies that accelerate benefits for long-term care shall comply with Section 018 if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of IDAPA 18.01.41, "Replacement of Life Insurance and Annuities." If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements. (3-30-07)

019. REPORTING REQUIREMENTS.

01. Maintenance of Producer Records. Every insurer shall maintain records for each producer of that producer's amount of replacement sales as a percent of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percent of the producer's total annual sales. ~~in the format of Appendix G, which is published on the Department of Insurance website at <http://www.doi.idaho.gov> select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long Term Care Minimum Standards."~~ (3-30-07)()

02. Producers Experiencing Lapses and Replacements. Every insurer shall report annually by June 30 the ten percent (10%) of its producer's with the greatest percentages of lapses and replacements as measured by Subsection 019.01. (3-30-07)

03. Purpose of Reports. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely producer activities regarding the sale of long-term care insurance. (3-30-07)

04. Lapsed Policies. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. (4-5-00)

05. Replacement Policies. Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. (4-5-00)

06. Claims Denied. Every insurer shall report annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied, other than claims denied for failure to meet the waiting period or because of an applicable preexisting condition. ~~See, in the format of Appendix E, which is published on the Department of Insurance website at <http://www.doi.idaho.gov> select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long Term Care Minimum Standards."~~ (3-30-07)()

07. Policies and Reports. For purposes of Section 019, "policy" shall mean only long-term care insurance and "report" means on a statewide basis. (3-30-07)

a. Policy means only long-term care insurance; (4-5-00)

b. Claim means any request for payment of benefits under a policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met; (4-5-00)

c. Denied means the insurer refused to pay a claim for any reason; and (4-5-00)

d. Report means on a statewide basis. (4-5-00)

08. Filing. Reports required under Section 019 shall be filed with the Director. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

027. STANDARDS FOR MARKETING AND PRODUCER TRAINING.

01. General Provisions. Every Insurer, Fraternal Benefit Society, Managed Care Organization or other similar organization marketing long-term care insurance coverage in this state, directly or through its producers, shall: (3-30-07)

a. Establish marketing procedures and producer training requirements to assure that any marketing activities, including any comparison of policies by its producers will be fair and accurate. (3-30-07)

b. Establish marketing procedures to assure excessive insurance is not sold or issued. (4-5-00)

c. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations." (4-5-00)

d. Provide copies of the disclosure forms required in Subsection ~~009~~14.10. (~~3-30-07~~)()

e. Provide an explanation of contingent benefit upon lapse as provided for in Subsection 032.04.b. and if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying period in Subsection 032.04.c. (3-30-07)

f. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required. (4-5-00)

g. Establish auditable procedures for verifying compliance with Subsection 027.01. (3-30-07)

h. At solicitation, provide written notice to the prospective policyholder and certificateholder that Senior Health Insurance Benefits Advisors/SHIBA the program is available and the name, address and telephone number of the program. (3-30-01)

i. For long-term care insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsection 011.01.c. of this chapter. (3-30-07)

02. Prohibited Practices. In addition to the practices prohibited in Chapter 13, Title 41, Idaho Code, Trade Practices and Frauds, the following acts and practices are prohibited: (3-30-01)

a. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy, or to take out a policy of insurance with another insurer. (4-5-00)

b. High Pressure Tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance. (4-5-00)

c. Cold Lead Advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company. (3-30-07)

d. Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy. (4-5-00)

03. Associations. With respect to the obligations set forth in Subsection 027.03, the primary

responsibility of an association, as defined in Section 41-4603(4)(b), Idaho Code, when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(3-30-07)

- a.** The insurer shall file with the insurance department the following material: (4-5-00)

 - i. The policy and certificate; (4-5-00)
 - ii. A corresponding outline of coverage; and (4-5-00)
 - iii. All advertisements to be utilized. (4-5-00)
- b.** The association shall disclose in any long-term care insurance solicitation: (4-5-00)

 - i. The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and (4-5-00)
 - ii. A brief description of the process under which the policies and the insurer issuing the policies were selected. (4-5-00)
- c.** If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members. (4-5-00)
- d.** The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer. (4-5-00)
- e.** The association shall also: (4-5-00)

 - i. At the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates, and update the examination thereafter in the event of material change; (4-5-00)
 - ii. Actively monitor the marketing efforts of the insurer and its producers; and (3-30-07)
 - iii. Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates. (4-5-00)
 - iv. Subsections 027.03.e.i. through 027.03.e.iii. shall not apply to qualified long-term care insurance contracts. (3-30-07)
- f.** No group long-term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in Section 027. (3-30-07)
- g.** The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in Section 027. (3-30-07)
- h.** Failure to comply with the filing and certification requirements of Section 027 constitutes an unfair trade practice in violation of Chapter 13, Title 41, Idaho Code, Trade Practices and Frauds. (3-30-07)

04. Producer Training Requirements. An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer for life and disability (accident and health

insurance) and has completed a one-time training course and ongoing training every twenty-four (24) months thereafter. The training shall meet the requirements set forth in this Subsection 027.04. Such training requirements may be approved as continuing education course under IDAPA 18.01.53, "Continuing Education." (4-2-08)

a. The one-time training course required by this section shall be no less than eight (8) hours. In addition to the one-time training course, an individual who sells, solicits, or negotiates long-term care insurance shall complete the ongoing training required by this Subsection 027.04, which shall be no less than four (4) hours every twenty four (24) months. (4-2-08)

b. The training required under Subsection 027.04.a. shall consist of topics related to long-term care insurance, long-term care services and qualified state long-term care insurance partnership program, including, but not limited to: (3-30-07)

i. State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid; (3-30-07)

ii. Available long-term care services and providers; (3-30-07)

iii. Changes or improvements in long-term care services or providers; (3-30-07)

iv. Alternatives to the purchase of private long-term care insurance; (3-30-07)

v. The effect of inflation on benefits and the importance of inflation protection; and (3-30-07)

vi. Consumer suitability standards and guidelines. (3-30-07)

c. The training required by Subsection 027.04. shall not include any sales or marketing information, materials, or training, other than those required by state and federal law. (3-30-07)

d. Insurers subject to this rule shall obtain verification that a producer receives training required by Subsection 027.04 before a producer is permitted to sell, solicit or negotiate the insurer's long-term care insurance products, maintain records subject to the state's record retention requirements, and make that verification available to the director upon request. An insurer shall maintain records with respect to the training of its producers concerning the distribution of its long-term care Partnership policies that will allow the Department of Insurance to provide assurance to the Division of Medicaid that the producers have received the training as required by Subsection 027.04 and that producers have demonstrated an understanding of the Partnership policies and their relationship to public and private coverage of long term care including Medicaid in this state. These records shall be maintained in accordance with the state's record retention requirements and shall be made available to the director upon request. (3-30-07)

e. The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements of this state. (3-30-07)

028. SUITABILITY.

01. Life Insurance Policies That Accelerate Benefits. Section 028 shall not apply to life insurance policies that accelerate benefits for long-term care. (3-30-07)

02. General Provisions. Every Insurer, Fraternal Benefit Society, Managed Care Organization or other similar organization marketing long-term care insurance (the "issuer") shall: (4-5-00)

a. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant; (4-5-00)

b. Train its producers in the use of its suitability standards; and (3-30-07)

c. Maintain a copy of its suitability standards and make them available for inspection upon request by

the director. (4-5-00)

03. Determination of Standards. To determine whether the applicant meets the standards developed by the issuer; (4-5-00)

a. The producer and issuer shall develop procedures that take the following into consideration: (3-30-07)

i. The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage; (4-5-00)

ii. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and (4-5-00)

iii. The values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement. (4-5-00)

b. The issuer and ~~an~~ producer, if involved, shall make reasonable efforts to obtain the information set out in Subsection 028.03. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in the NAIC Model Regulations in Appendix B, in not less than twelve (12) point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the director. (3-30-07)()

i. Copies of NAIC Model Regulations for Long-Term Care Insurance Minimum Standards Appendixes B, C, and D can be found at the Idaho Department of Insurance website *at <http://www.doi.idaho.gov>; select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long-Term Care Minimum Standards."* (3-30-07)()

c. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses. (4-5-00)

d. The sale or dissemination outside the company or agency by the issuer or producer of information obtained through the personal worksheet in the NAIC Model Regulations, Appendix B is prohibited. (3-30-07)

04. Appropriateness. The issuer shall use the suitability standards it has developed pursuant to Section 028 in determining whether issuing long-term care insurance coverage to an applicant is appropriate. (3-30-07)

05. Use of Standards. Producers shall use the suitability standards developed by the issuer in marketing long-term care insurance. (3-30-07)

06. Disclosure Form. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in the NAIC Model Regulations, Appendix C, in not less than twelve (12) point type. (4-5-00)

07. Rejection and Alternatives. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to the NAIC Model Regulations, Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file. (4-5-00)

08. Reporting. The issuer shall report annually to the director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after

receiving a suitability letter.

(4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

035. STANDARD FORMAT OUTLINE OF COVERAGE.

Section 035 of the rule implements, interprets and makes specific, the provisions of Section 41-4605(7)(a), Idaho Code, in prescribing a standard format and the content of an outline of coverage. (3-30-07)

01. Format. The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring. (4-5-00)

02. Content. The outline of coverage shall contain no material of an advertising nature. (4-5-00)

03. Standard Form. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated. Format for the outline of coverage is published on the Department of Insurance website [at http://www.doi.idaho.gov](http://www.doi.idaho.gov), ~~select consumer or company services link and go to Attachments to Idaho Rule, IDAPA 18.01.60, "Long Term Care Minimum Standards."~~ (3-30-07) ()

IDAPA 22 - BOARD OF MEDICINE

22.01.01 - RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY IN IDAHO

DOCKET NO. 22-0101-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized Pursuant to Sections 54-1806(2), 54-1806(4), (11), 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, 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 16, 2015.

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 change allows international graduates enrolled in Idaho residency programs the opportunity to apply for full licensure after completing two years of residency training with the approval of the director of the Idaho residency program.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because in early 2015 interested parties approached the Board to request this rule change and in a negotiated process with interested parties this rule was drafted and vetted with the interested and participating parties.

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 Anne K. Lawler, Executive Director, (208) 327-7000.

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 23, 2015.

DATED this 28th Day of August, 2015.

Anne K. Lawler, JD, RN
Executive Director
Idaho State Board of Medicine
1755 Westgate Drive, Suite 140
PO Box 83720
Boise, Idaho 83720-0058
Phone (208) 327-7000 / Fax (208) 327-7005

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 22-0101-1501
(Only Those Sections With Amendments Are Shown.)

051. LICENSURE FOR GRADUATES OF INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES AND CANADA.

01. International Medical Graduate. In addition to meeting the requirements of Section 050, graduates of international medical schools located outside of the United States and Canada must submit to the Board: (3-26-08)

a. Original certificate from the ECFMG or original documentation that the applicant has passed the examination either administered or recognized by the ECFMG and passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed the United States Medical Licensing Exam (USMLE). (5-8-09)

b. Original documentation directly from the international medical school that establishes to the satisfaction of the Board that the international medical school meets the standards for medical educational facilities set forth in Subsection 051.02, and that both the scope and content of the applicant's coursework and performance were equivalent to those required of students of medical schools accredited by the LCME; (3-26-08)

c. Original documentation directly from the international medical school that it has not been disapproved or has its authorization, accreditation, certification or approval denied or removed by any state, country or territorial jurisdiction and that to its knowledge no state of the United States or any country or territorial jurisdiction has refused to license its graduates on the grounds that the school fails to meet reasonable standards for medical education facilities; (3-26-08)

d. A complete and original transcript from the international medical school showing successful completion of all the courses taken and grades received and original documentation of successful completion of all clinical coursework; and (3-26-08)

e. Original documentation of successful completion of three (3) years of progressive postgraduate training at one (1) training program accredited for internship, residency, or fellowship training by the ACGME, AOA or the Royal College of Physicians and Surgeons of Canada- provided however, a resident who is attending an Idaho based residency program may be licensed after successful completion of two (2) years of progressive post graduate training, if the following conditions are met: ~~(3-26-08)~~()

i. The resident must have the written approval of the residency program director; ()

ii. The resident must have a signed written contract with the Idaho residency program to complete the entire residency program; ()

iii. The resident must remain in good standing at the Idaho-based residency program; ()

iv. The residency program must notify the Board within thirty (30) days if there is a change in circumstances or affiliation with the program (for example, if the resident resigns or does not demonstrate continued satisfactory clinical progress); and ()

v. The Idaho residency program and the Idaho Board have prescreened the applicant to ensure that the applicant has received an MD or DO degree from an approved school that is eligible for Idaho licensure after graduation. ()

f. ECFMG. The certificate from the ECFMG is not required if the applicant holds a license to practice medicine which was issued prior to 1958 in one (1) of the states of the United States and which was obtained by

written examination. (3-26-08)

02. International Medical School Requirements. (3-26-08)

a. An international medical school, as listed in the World Health Organization Directory of Medical Schools, which issued its first doctor of medicine degree less than fifteen (15) years prior to an application for licensure, must provide documented evidence of degree equivalency acceptable to the Board including, but not limited to: (3-26-08)

i. The doctor of medicine degrees issued must be substantially equivalent to the degrees issued by acceptable medical schools located within the United States or Canada. Equivalency shall be demonstrated, in part, by original documentation of a medical curriculum of not less than thirty-two (32) months, or its equivalent, of full-time classroom instruction and supervised clinical coursework. Such clinical coursework shall be in a hospital or hospitals that, at the time of the applicant's coursework, documented its evaluation of the applicant's performance in writing as a basis for academic credit by the medical school; (3-26-08)

ii. The medical school's admission requirements, including undergraduate academic subject requirements, entrance examination scores, and core curriculum are substantially equivalent to medical schools located within the United States or Canada; (3-26-08)

iii. The medical school has adequate learning facilities, class attendance, medical instruction, and clinical rotations consistent with quality medical education. (3-26-08)

iv. The medical school has not been disapproved or has its authorization, accreditation, certification, licensure, or approval denied or removed by any state, country or territorial jurisdiction; and (3-26-08)

v. The medical school does not issue diplomas, confer degrees or allow graduation based on Internet or on-line courses inconsistent with quality medical education. (3-26-08)

b. An international medical school, as listed in the World Health Organization Directory of Medical Schools, which issued its first doctor of medicine degree more than fifteen (15) years prior to an application for licensure, may, in the Board's discretion, be required to provide original documented evidence of degree equivalency acceptable to the Board. (3-26-08)

IDAPA 22 - BOARD OF MEDICINE
22.01.15 - RULES RELATING TO TELEHEALTH SERVICES
DOCKET NO. 22-0115-1501 (NEW CHAPTER)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-5613 and Section 54-1806(2) Idaho Code.

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

Tuesday, September 15, 2015 - 12:00 P.M. (MDT)

Idaho State Board of Medicine
1755 Westgate Drive, Suite 140
Boise, Idaho 83704

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:

Passage of the Telehealth Access Act provides for the licensing boards to promulgate rules specific for the licensees that they regulate. The rules clarify the obligations of the licensed health care provider in providing telehealth services to Idaho citizens.

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

No fees are assessed by this 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:

Not applicable. This rule is budget neutral and there is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules were drafted in conjunction with the Idaho Telehealth Council, Idaho Medical Association, Idaho Hospital Association, and other interested parties and comments and corrections were incorporated into this 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:

The Idaho Telehealth Access Act, Chapter 56, Title 54, Idaho Code is incorporated by reference into these rules as the guiding statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anne K. Lawler, Executive Director, (208) 327-7000.

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 23, 2015.

DATED this 28th Day of August 2015.

Anne K. Lawler, JD, RN
Executive Director
Idaho Board of Medicine
1755 Westgate Drive, Suite 140
PO Box 83720
Boise, Idaho 83720-0058
Phone (208) 327-7000 / Fax (208) 327-7005

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 22-0115-1501

IDAPA 22
TITLE 01
CHAPTER 15

22.01.15 - RULES RELATING TO TELEHEALTH SERVICES

000. LEGAL AUTHORITY.

Pursuant to Section 54-5713 and Section 54-1806(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules relating to telehealth services. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 22.01.15, "Rules Relating to Telehealth Services." ()

02. Scope. These rules define the scope of practice for telehealth service providers and defines how the patient-provider relationship may be established without face-to-face, in-person contact and places limitations on the prescriptions that can be authorized via telehealth tools. ()

002. WRITTEN INTERPRETATIONS.

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the Board, 1755 Westgate Drive, Suite 140, Box 83720 Boise, Idaho 83720-0058. ()

003. ADMINISTRATIVE APPEAL.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General," and this chapter. ()

004. PUBLIC RECORD ACT COMPLIANCE.

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

005. INCORPORATION BY REFERENCE.

The Idaho Telehealth Access Act, Chapter 57, Title 54, Idaho Code, is incorporated by reference into these rules. ()

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

The central office of the Board shall be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, shall be Idaho State Board of Medicine, Statehouse Mail, Boise, Idaho 83720. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's website is www.bom.idaho.gov. The Board's office hours for filing documents are 8:00 a.m. to 5:00 p.m. MST. ()

007. FILING OF DOCUMENTS -- NUMBER OF COPIES.

All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and one (1) electronic copy of all documents must be filed with the office of the Board. ()

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Medicine. ()

02. Referenced Definitions. The other definitions applicable to these rules are those definitions set forth in the Idaho Telehealth Access Act and in Section 54-5703, Idaho Code. ()

011. IDAHO LICENSE REQUIRED.

Any physician, physician's assistant, respiratory therapist, polysomnographer, dietician, or athletic trainer who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Medicine for their applicable practice. ()

012. PROVIDER-PATIENT RELATIONSHIP.

In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a provider licensed by the Idaho State Board of Medicine who is providing telehealth services shall: ()

01. Verification. Verify the location and identity of the patient; ()

02. Disclose. Disclose to the patient the provider's identity, their current location and telephone number and Idaho license number; ()

03. Consent. Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and ()

04. Provider Selection. Allow the patient an opportunity to select their provider rather than being assigned a provider at random to the extent possible. ()

013. STANDARD OF CARE.

A provider providing telehealth services to patients located in Idaho must comply with the applicable Idaho community standard of care. The provider shall be personally responsible to familiarize themselves with the applicable Idaho community standard of care. If a patient's presenting symptoms and conditions require a physical examination, lab work or imaging studies in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. ()

014. INFORMED CONSENT.

In addition to the requirements of Section 54-5708, Idaho Code, evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and maintained at regular intervals consistent with the community standard of care. Appropriate informed consent should, at a minimum, include the following terms: ()

01. Verification. Identification of the patient, the provider and the provider's credentials; ()

02. Telehealth Determination. Agreement of the patient that the provider will determine whether or not the condition being diagnosed and/or treated is appropriate for telehealth services; ()

03. Security Measures Information. Information on the security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy and notwithstanding such measures; ()

04. Potential Information Loss. Disclosure that information may be lost due to technical failures. ()

015. MEDICAL RECORDS.

As required by Section 54-5711, Idaho Code, any provider providing telehealth services as part of his or her practice shall generate and maintain medical records for each patient. The medical record should include, copies of all patient-related electronic communications, including patient-physician communications, prescriptions, laboratory and test results, evaluations and consultations, relevant information of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with the provision of telehealth services should also be documented in the medical record. The patient record established during the provision of telehealth services must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. ()

016. -- 999. (RESERVED)

IDAPA 34 - SECRETARY OF STATE
34.04.03 - RULES GOVERNING BENEFIT CORPORATIONS
DOCKET NO. 34-0403-1501 (NEW CHAPTER)
NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 6, 2015.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-903(9), Idaho Code.

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

Beginning on July 1, 2015, a new type of corporation becomes effective -- the Benefit Corporation. As with all other business entities, benefit corporations are filed with the Secretary of State. One of the requirements of a benefit corporation is that they file an annual benefit report with the Secretary of State. This rule establishes the requirements for filing the annual benefit report with the Secretary of State.

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

Legislation addressing benefit corporations will be effective in July 2015. The legislation allows the Secretary of State to adopt rules addressing the filing of benefit corporations. The rules must be effective concurrently with the legislation so that benefit corporation applicants will know exactly what is expected of them when filing the requisite reports with the Secretary of State.

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

There is no fee being imposed through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Jeff Harvey at (208) 332-2849.

DATED this 4th Day of August, 2015.

Jeff Harvey
UCC Supervisor
Office of Secretary of State
700 W. Jefferson St., Rm. E205
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208) 334-2847

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 34-0403-1501

IDAPA 34
TITLE 04
CHAPTER 03

SECRETARY OF STATE

34.04.03 - RULES GOVERNING BENEFIT CORPORATIONS

000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the duties of the Office of the Secretary of State. This authority includes rules governing benefit corporations in accordance with Section 30-2013, Idaho Code. (8-6-15)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 34.04.03, "Rules Governing Benefit Corporations," IDAPA 34, Title 04, Chapter 03. (8-6-15)T

02. Scope. These rules shall govern the requirements of benefit corporations to file with the Secretary of State. (8-6-15)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, documents relating to the interpretation of these rules, or to the documentation of compliance with the rules of this chapter, are available for public inspection and copying at the Office of the Secretary of State. (8-6-15)T

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal. (8-6-15)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (8-6-15)T

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

The principal place of business for the Office of the Secretary of State is located at 700 W. Jefferson, Room E205, Boise, Idaho 83720-0080. The Commercial Division is located at 450 N. 4th Street, Boise, Idaho 83720-0080. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except for legal holidays. The mailing address for the office is P. O. Box 83720, Boise, Idaho 83720-0080. The telephone number for the office is (208) 334-2300. The telephone number for business entity inquiries is (208) 334-2301. The facsimile number for the office is (208) 334-2080. The office's website address is <http://www.sos.idaho.gov>. (8-6-15)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated in accordance with the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (8-6-15)T

007. – 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 30-2002, Idaho Code, apply with full force and effect to all provisions and sections of these rules. Where terms used in this rule are not explicitly or completely defined herein, definitions and usage of terms from the Legal Authority in Section 000 of these rules are applicable. (8-6-15)T

01. Annual Benefit Report. A report prepared by the benefit corporation in accordance with the requirements of Section 30-2012, Idaho Code. (8-6-15)T

02. Annual Financial Report. A yearly report of a corporation's financial condition that must be distributed to shareholders under SEC regulations, as governed by the Securities and Exchange Act of 1934. (8-6-15)T

03. Annual Report. A report prepared by a business entity in accordance with Section 30-21-213, Idaho Code. (8-6-15)T

011. -- 099. (RESERVED)

100. ANNUAL BENEFIT REPORT.

In accordance with Section 30-2013(4), Idaho Code, a benefit corporation must file a copy of its annual benefit report with the Secretary of State. (8-6-15)T

01. Benefit Report Only. The Secretary of State will not accept a corporation's annual financial report for filing in lieu of the annual benefit report. If the corporation's annual benefit report is included in its annual financial report, the annual benefit report must be separated from the annual financial report in order to be filed with the Secretary of State. (8-6-15)T

02. Annual Report Filed Separately. The filing of an annual report will not satisfy the requirement of filing an annual benefit report. The annual benefit report required by Section 30-2013(4), Idaho Code, is different from an annual report. Each document shall be filed separately in accordance with its respective governing statutes. (8-6-15)T

101. -- 999. (RESERVED)

IDAPA 34 - SECRETARY OF STATE

34.05.01 - RULES GOVERNING FARM PRODUCTS CENTRAL FILING SYSTEM

DOCKET NO. 34-0501-1501 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 6, 2015.

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 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

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 fees for PML subscriptions were set in 1986. Upon review of the changes in technology and the cost to produce the various PMLs, it became apparent that a fee reduction is in order. To simplify the fee schedule for both the customer and the state, the changes create a flat fee that is lower than all previous fees. Secondly, the changes add County Code 00 -- All Idaho Counties.

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

Adopting the temporary rule will allow the Secretary of State to begin the fee change at the start of the fiscal year. Furthermore, the reduced fees are beneficial to the public.

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

No new fees are being imposed, and there are no fee increases.

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

The fiscal impact of the fee change is less than \$10,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary 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: None.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Harvey at (208) 332-2849.

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 23, 2015.

DATED this 4th Day of August, 2015.

Jeff Harvey
UCC Supervisor
Office of Secretary of State
700 W. Jefferson St., Rm. E205
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208) 334-2847

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF FEE DOCKET NO. 34-0501-1501
(Only those Sections with amendments are shown.)**

200. COLLATERAL INFORMATION CODES.

Codes are used to describe farm product collateral on the Farm Products Financing Statements and amendments, on the master list maintained by the SOS, and on the PMLs distributed to registered buyers, commission merchants, and selling agents. Assignment of farm product codes and PML Groupings, county codes, and farm product unit codes shall be done by the SOS. The SOS will provide a list of the established codes upon request. (3-29-12)

01. PML Groupings and Farm Product Codes. The table of PML Groupings, farm products, and their codes is as follows:

PML No.	PML Grouping	FP Code	FP Name
01	Wheat and Buckwheat	010	Wheat
		011	Buckwheat
02	Feed and Oil Grains	020	Barley
		021	Rye (including Triticale)
		022	Oats
		023	Sorghum Grain
		024	Flaxseed
		025	Safflower
		026	Rape (including Canola)
		027	Field Corn
		028	Millet
03	Hay	030	Hay
04	Ensilage	040	Ensilage

PML No.	PML Grouping	FP Code	FP Name
05	Potatoes	050	Potatoes
06	Sugar Beets	060	Sugar Beets
07	Dry Beans	070	Dry Beans
08	Dry Peas, Lentils and Garbanzos	080	Dry Peas
		081	Lentils
		082	Garbanzos (Chick Peas)
09	Sweet Corn	090	Sweet Corn
10	Onions and Garlic	100	Onions
		101	Onion Seed
		102	Garlic
11	Mint	110	Mint
12	Hops	120	Hops
13	Popcorn & Sunflower Seeds	130	Popcorn
		131	Sunflower Seeds
14	Soybeans	140	Soybeans
15	Rice	150	Rice
16	Seeds	160	Grass for Seed
		161	Alfalfa for Seed
		162	Other Hay Legumes for Seed
		163	Garden Vegetables and Flower Seeds
		164	Seed Potatoes
		165	Row Crops for Seed

PML No.	PML Grouping	FP Code	FP Name
17	Vegetables & Melons	170	Green Peas
		171	Tomatoes
		172	Lettuce
		173	Cucumbers
		174	Broccoli
		175	Cauliflower
		176	Lima Beans
		177	Green Beans
		178	Melons
		179	Carrots
		180	Turnips
		181	Asparagus
		182	Spinach and Collards
		183	Pumpkins and Squash
		184	Radishes
		185	Peppers
		186	Herbs
19	Fruits	190	Apples
		191	Apricots
		192	Cherries
		193	Nectarines
		194	Peaches
		195	Pears
		196	Plums
20	Berries	200	Strawberries
		201	Raspberries
21	Nursery Products	210	Sod
		211	Nursery Stock (Trees and Shrubs)
		212	Christmas Trees
		213	Flowers and Potted Plants

PML No.	PML Grouping	FP Code	FP Name
22	Mushrooms	220	Mushrooms
23	Grapes	230	Grapes
50	Beef Animals	500	Beef Cattle and Calves
		501	Beefalo
		502	Bison
51	Sheep, Wool	510	Sheep and Lambs Goats and Llamas
		511	Wool
		512	Goats
		513	Llamas
52	Hogs	520	Hogs
53	Dairy	530	Dairy Cattle
		531	Milk
54	Equines	540	Horses
		541	Mules
		542	Donkeys and Burros
55	Chickens and Eggs	550	Chickens
		551	Eggs
56	Other Fowl	560	Turkeys
		561	Ducks
		562	Geese
		563	Game Birds
		564	Ostriches, Emus, and Rheas
57	Mink, Rabbits and Fox	570	Mink and Pelts
		571	Rabbits
		572	Fox and Pelts

PML No.	PML Grouping	FP Code	FP Name
58	Apiary Products	580	Bees
		581	Honey
		582	Bees Wax
59	Fish and Other Aquaculture	590	Fish and Other Aquaculture
60	Big Game Animals (Deer and Elk)	600	Big Game Animals (Deer and Elk)
61	Worms	610	Worms
62	Semen	620	Cattle Semen
		621	Horse Semen

(3-29-12)

02. County Codes. The table of county codes is as follows. Unless otherwise indicated, counties are in Idaho.

<u>00</u>	<u>All Idaho Counties</u>						
01	Ada	16	Cassia	31	Lewis	46	Garfield, Wa.
02	Adams	17	Clark	32	Lincoln	47	Pend Orielle, Wa.
03	Bannock	18	Clearwater	33	Madison	48	Spokane, Wa.
04	Bear Lake	19	Custer	34	Minidoka	49	Whitman, Wa.
05	Benewah	20	Elmore	35	Nez Perce	50	Malheur, Or.
06	Bingham	21	Franklin	36	Oneida	51	Elko, Nv.
07	Blaine	22	Fremont	37	Owyhee	52	Box Elder, Ut.
08	Boise	23	Gem	38	Payette	53	Cache, Ut.
09	Bonner	24	Gooding	39	Power	54	Rich, Ut.
10	Bonneville	25	Idaho	40	Shoshone	55	Lincoln, Wy.
11	Boundary	26	Jefferson	41	Teton	56	Teton, Wy
12	Butte	27	Jerome	42	Twin Falls	57	Beaverhead, Mt.
13	Camas	28	Kootenai	43	Valley	58	Lincoln, Mt
14	Canyon	29	Latah	44	Washington	59	Sanders, Mt.
15	Caribou	30	Lemhi	45	Asotin, Wa.	99	Not in Table

(3-29-12)(8-6-15)T

03. Unit Codes. The table for codes for units used to indicate the amount of a FP covered is as follows:

A - acres	G - gallons	T - tons
B - bushels	H - head	V - hives
C - hundred weight	L - pounds	W - lugs
E - cases	N - bins	X - boxes
F - flats	S - sacks	Z - stubs

(3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

303. FEES.

01. Farm Products Financing Statement. Farm Products Financing Statement and changes thereto (UCC-1F, UCC-2F and UCC-3F). (4-7-11)

a. The fee for filing either a UCC-1F or a UCC-3F is provided in IDAPA 34.05.06, “Administrative Rules Governing Lien Filings Under the UCC - Farm Product Liens,” Section 606. (4-7-11)

b. There is no charge for filing a complete termination of a Farm Products Financing Statement. (4-7-11)

02. Registration of Buyers, Commission Merchants, and Selling Agents. (4-7-11)

a. The fee for the annual registration of each buyer, commission merchant, or selling agent is thirty dollars (\$30). (4-7-11)

b. The registration fee must be paid at the time of registration. (7-1-93)

c. There is no fee for filing notice of a registrant’s change of name or address. (7-1-93)

03. Subscription to PMLs by Buyers, Commission Merchants, and Selling Agents. (4-7-11)

a. The fee for subscribing ~~for each to one (1) PML is determined by the size of the PML. For the purpose of computing the fee, each PML Grouping is placed into a fee category based on the highest number of items on the PML during the prior calendar for one (1) year. In December of each year the SOS will publish an index of the PML Groupings in each fee category to be used for the new year. Those fee categories are as follow is:~~

Category	No. of items on PML
X	More than 7500
A	2501—7500
B	1001—2500
C	101—1000
D	26—100
E	0—25

<u>Internet Download (DL)</u>	<u>CD-ROM (CD)</u>	<u>Paper</u>
<u>\$30</u>	<u>\$40</u>	<u>\$200</u>

~~(4-7-11)~~(8-6-15)T

b. ~~The fees for each fee category are as follows:~~ New subscriptions purchased at any time after the beginning of a registration period will be prorated to the current or next fiscal quarter, such that the end of the new subscription coincides with the end of the customer's registration period.

Fee-Category

Configuration of PML	Period	X	A	B	C	D	E
All Counties, - Electronic Media	Quarter	\$25	\$23	\$15	\$13	\$13	\$13
	Annual	\$100	\$90	\$60	\$50	\$50	\$50
All Counties, Paper	Quarter	\$330	\$261	\$95	\$45	\$18	\$13
	Annual	\$1,320	\$1,040	\$380	\$180	\$703	\$50

~~(4-7-11)~~(8-6-15)T

c. The subscription fee must be paid at the time the subscription is made. (4-7-11)

04. Ad Hoc Lists. (7-1-93)

a. The fee for generating an ad hoc list as provided in Section 301 of these rules, is thirty-five dollars (\$35) per hour for programming and analysis and eighty-five dollars (\$85) per hour of computer time required to produce the list. In addition thereto, there is a fee of one dollar (\$1) per printed page of the list so generated. (4-7-11)

b. The fee for the generation of the list must be paid prior to or upon receipt of the list. (7-1-93)

05. Fees for Requests for Information. The fees for requests for information on Farm Products Financing Statements, both written and verbal, and for copies of Farm Products Financing Statements reported on the certificate, are provided in IDAPA 34.05.03, "Rules Governing Requests For Information -- Form UCC-4 -- Fees." (4-7-11)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1501

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 63-105 and 63-3039, 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 16, 2015.

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:

Rule 016 is being promulgated to provide guidance regarding the definition of Idaho gross income and how it is calculated.

Rule 171 is being amended to modify the definition of real property, modify the list of nonqualifying property for the Idaho capital gains deduction and modify the procedure when property is distributed by an S corporation or partnership.

Rule 291 is being amended to provide guidance regarding items allowed as a deduction to owners of an interest in a pass-through entity when the tax is paid by the entity.

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 July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, pages 72-73](#).

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 Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2015.

DATED this 30th Day of July, 2015.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1501
(Only Those Sections With Amendments Are Shown.)

016. IDAHO GROSS INCOME.
Sections 63-3011 and 63-3030, Idaho Code

01. In General. Gross income means all income from whatever source derived, unless specifically excluded by the Internal Revenue Code. ()

02. Gross Income from Pass-Through Entities. Gross income includes an owner's share of a pass-through entity's gross income pursuant to sections 702(c) and 1366(c) of the Internal Revenue Code, and federal Treasury Regulation Section 1.61-13 (citing Part I, Subchapter J, Chapter 1 of the Internal Revenue Code). ()

03. Gross Income from Idaho Sources. Gross income from Idaho sources is that portion of total gross income derived from or related to sources within Idaho. Income derived from or related to sources within Idaho is determined pursuant to this rule and Rules 260 through 286 of these rules. ()

04. Idaho Source Gross Income from a Pass-Through Entity. ()

a. Partnership. The amount of a partner's gross income from Idaho sources is: ()

i. The partner's distributive share of partnership gross income included in the partnership's apportionable income multiplied by the Idaho apportionment factor of the partnership; and ()

ii. The partner's distributive share of gross income allocated to Idaho. ()

b. S Corporation. The amount of a shareholder's gross income from Idaho sources is: ()

i. The shareholder's pro rata share of the S corporation gross income included in the S corporation's apportionable income multiplied by the Idaho apportionment factor of the S corporation; and ()

ii. The shareholder's pro rata share of gross income allocated to Idaho. ()

c. Trust or Estate. The Idaho source portion of the income that constitutes gross income pursuant to federal Treasury Regulation Section 1.61-13 and Part I, Subchapter J, Chapter 1 of the Internal Revenue Code, is the amount of such income that would be Idaho source if received directly by the individual. ()

05. Examples. ()

a. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that transacts business only in Idaho. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is fifty thousand dollars (\$50,000). ()

b. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is twenty-five thousand dollars (\$25,000). ()

c. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent

(50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, none of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed outside of Idaho. ()

d. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed in Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, all of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed in Idaho. ()

e. A nonresident taxpayer's federal adjusted gross income includes three hundred thousand dollars (\$300,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, the first two hundred and fifty thousand dollars (\$250,000) of guaranteed payments are sourced as compensation for services. Since the services were performed outside of Idaho, two hundred and fifty thousand dollars (\$250,000) of the guaranteed payments are not included in the partner's gross income from Idaho sources. However, twenty-five thousand dollars (\$25,000) of the guaranteed payments in excess of two hundred and fifty thousand dollars (\$250,000) are included in the partner's gross income from Idaho sources based on the apportionment factor of the partnership. ()

f. A nonresident taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of nonbusiness gross income passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. If the partnership's nonbusiness income is allocated to Idaho, ten thousand dollars (\$10,000) of the nonbusiness gross income is included in the partner's gross income from Idaho sources. If the partnership's nonbusiness income is allocated to a state other than Idaho, none of the nonbusiness gross income is included in the partner's gross income from Idaho sources. ()

0167. -- 024. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).
Section 63-3022H, Idaho Code.

01. Tangible Personal Property. Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. (4-7-11)

02. Real Property. Idaho real property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. ~~Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. For purposes of the Idaho capital gains deduction, real property does not include intangible property or severable property rights.~~ See Subsection 171.05 of this rule for examples of nonqualifying property. (4-4-13)()

03. Gain from Forfeited Rights and Payments. Gain attributable to a cancellation, lapse, expiration, or other termination of a contract right or obligation does not qualify for the Idaho capital gains deduction. This includes any gain from the lapse of an option or from forfeited earnest money, down payment, or similar payments, related to otherwise qualifying property. (4-7-11)

04. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to

- Section 631(a), Internal Revenue Code. (3-20-97)
- 05. Nonqualifying Property.** Nonqualifying property includes: (4-4-13)
- a.** Real or tangible personal property not having an Idaho situs. (4-4-13)
- b.** Tangible personal property not used by a revenue-producing enterprise. (4-4-13)
- c.** Intangible property. Some examples of intangible property include, but are not limited to: (4-4-13)
- i. Stocks and bonds; (4-4-13)
- ~~ii. Easements and rights of way, including agricultural, forest, historic, or open space easements;~~ (~~4-4-13~~)
- ~~iii. Grazing permits;~~ (~~4-4-13~~)
- ~~iv. Leasehold interests, regardless of term;~~ (~~4-4-13~~)
- ~~v. Options;~~ (~~4-4-13~~)
- ~~vi. Water, mineral, hunting and fishing, renewable energy, and land surface rights;~~ (~~4-4-13~~)
- ~~vii. Conservation easements;~~ (~~4-4-13~~)
- ~~viii. Scenic easements;~~ (~~4-4-13~~)
- ~~ix.~~ Interests in a partnership, LLC, or S corporation. (4-4-13)
- 06. Holding Periods.** (3-20-97)
- a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. (5-8-09)
- b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. (4-4-13)
- c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)
- d.** Examples of nonqualifying property. (7-1-98)
- i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-30-07)
- ii. Assume the same facts as in the example in Subparagraph 171.05.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second

parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (4-7-11)

07. Holding Periods of S Corporation and Partnership Property. (7-1-98)

a. Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period. (5-8-09)

b. Property Distributed by an S Corporation or Partnership. (2-27-12)

i. ~~Liquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership in liquidation of a partnership interest or from an S corporation in liquidation of stock does not include the time the partnership or S corporation held the property. In such cases, the property is received in exchange for the interest in the entity. Since a partnership interest and stock are not qualified property for purposes of the Idaho capital gains deduction, the entity's holding period does not tack on to the holding period of the property received in liquidation.~~ (2-27-12)

ii. ~~Nonliquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership other than in liquidation of a partnership interest or from an S corporation other than in liquidation of stock includes the time the entity held the property.~~ (2-27-12)()

(BREAK IN CONTINUITY OF SECTIONS)

291. TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2014 (RULE 291).

Sections 63-3022L and 63-3026A, Idaho Code.

01. In General. A pass-through entity is responsible for reporting and paying the tax for nonresident individuals or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-4-13)

02. Income Reportable to Idaho. The following items must be included in the computation of Idaho taxable income for an individual: (4-4-13)

a. Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

b. Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

03. Deductions. Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (4-7-11)

a. Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)

b. Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)

c. Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

d. Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

e. Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

f. Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

g. Items Reported as a Pass-Through Deduction. Amounts reported from the pass-through entity to the pass-through owner in their distributive share are allowed as a deduction under Section 63-3022L, Idaho Code, unless otherwise disallowed under this rule. These include but are not limited to: ()

i. Section 179 deduction; ()

ii. Charitable contributions made by the pass-through entity; ()

iii. Investment interest expense; ()

iv. Section 59(e)(2) expenditures (qualified research expenditures); ()

v. Amounts paid for medical insurance; ()

vi. Educational assistance benefits; ()

vii. Payments to a pension or IRA. ()

04. Double Deductions Disallowed. A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1502

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 63-105 and 63-3039, 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 16, 2015.

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:

Rule 075 is being amended to add the tax brackets for calendar year 2015 and remove the information for calendar year 2010 so only five years of historical data is retained in the rule.

Rule 130 is being amended consistent with 2015 HB36 to add the Foreign Service Retirement and Disability System and its offset program to the list of qualified benefits for the Retirement Benefits Deduction. It also adds the offset program of the Civil Service Retirement System to the list of qualified benefits.

Rule 173 is being amended consistent with 2015 HB133 to change who must meet the gross income limitations for the Idaho capital gains deduction when the gain is passed through from an S corporation, partnership, trust, or estate.

Rule 201 is being amended to clarify the procedure for adjustments to a net operating loss.

Rule 252 is being amended to remedy the distortive percentage that occurs when the ratio of Idaho total income is used to allow certain deductions to part-year or nonresidents. The distortive percentage occurs when a part-year or nonresident has a federal NOL carryover that wipes out income for federal purposes.

Rule 263 is being amended to update the amount of guaranteed payments that is sourced as compensation for services per Section 63-3026A(3)(a)(i)(2), Idaho Code.

Rule 771 is being amended to add tax year 2015 and the applicable grocery credit amounts to the table.

Rule 855 is being amended to delete the reference to the election under Section 63-3022L, Idaho Code. The election language was removed from Section 63-3022L, Idaho Code, in 2012.

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 the changes were of a simple nature or complied with statutory changes.

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 Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2015.

DATED this 30th Day of July, 2015.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1502
(Only Those Sections With Amendments Are Shown.)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).
Section 63-3024, Idaho Code.

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~For taxable years beginning in 2010:~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,316	\$0	+	1.6% of taxable income
\$1,316	\$2,632	\$21.06	+	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	+	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	+	5.1% of the amount over \$3,948

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$5,264	\$6,580	\$189.52	+ 6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80	+ 7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39	+ 7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69	+ 7.8% of the amount over \$26,320

~~Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.~~

(1-7-11)

ba. For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,338	\$0	+ 1.6% of taxable income
\$1,338	\$2,676	\$21.41	+ 3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+ 4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+ 5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+ 6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+ 7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+ 7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+ 7.8% of the amount over \$26,760

Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.

(2-27-12)

eb. For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,380	\$0	+ 1.6% of taxable income
\$1,380	\$2,760	\$22.08	+ 3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	+ 4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	+ 5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	+ 6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	+ 7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	+ 7.4% of the amount over \$10,350

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.

(4-4-13)

d.c. For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.

(3-20-14)

d.d. For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,429	\$0	+	1.6% of taxable income
\$1,429	\$2,858	\$22.86	+	3.6% of the amount over \$1,429
\$2,858	\$4,287	\$74.30	+	4.1% of the amount over \$2,858
\$4,287	\$5,716	\$132.89	+	5.1% of the amount over \$4,287
\$5,716	\$7,145	\$205.77	+	6.1% of the amount over \$5,716
\$7,145	\$10,718	\$292.94	+	7.1% of the amount over \$7,145
\$10,718 or more		\$546.59	+	7.4% of the amount over \$10,718

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.

(4-11-15)

e. For taxable years beginning in 2015:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
<u>\$1</u>	<u>\$1.452</u>	<u>\$0</u>	<u>+</u>	<u>1.6% of taxable income</u>
<u>\$1.452</u>	<u>\$2.904</u>	<u>\$23.23</u>	<u>+</u>	<u>3.6% of the amount over \$1,452</u>
<u>\$2.904</u>	<u>\$4.356</u>	<u>\$75.50</u>	<u>+</u>	<u>4.1% of the amount over \$2,904</u>

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$4,356	\$5,808	\$135.03	+	5.1% of the amount over \$4,356
\$5,808	\$7,260	\$209.08	+	6.1% of the amount over \$5,808
\$7,260	\$10,890	\$297.65	+	7.1% of the amount over \$7,260
\$10,890 or more		\$555.38	+	7.4% of the amount over \$10,890
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.				

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(BREAK IN CONTINUITY OF SECTIONS)

130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).

Section 63-3022A, Idaho Code.

01. Qualified Benefits. Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

a. Retirement annuities paid to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System ~~by the United States Government~~, the Foreign Service Retirement and Disability System, or the offset programs of these systems. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System generally do not qualify for the deduction. Retirement annuities received under the Federal Employees Retirement System by a retiree previously covered under the Civil Service Retirement System qualify to the extent the retiree establishes the portion of the annuity attributable to coverage under the Civil Service Retirement System. (4-4-13)()

b. Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid ~~by~~ out of the public employee's retirement system do not qualify for the deduction. (3-20-97)()

c. Retirement benefits paid to a retired Idaho city police officer: (4-4-13)

i. By a city or its agent in regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by a city in this state; or (4-4-13)

ii. In regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by the public employee retirement system of Idaho; or (4-4-13)

iii. By the public employee retirement system of Idaho to a retired police officer in regard to Idaho employment not included in the federal social security retirement system; or (4-4-13)

iv. An unremarried widow or widower of a person described in Subparagraph 130.01.c.i., 130.01.c.ii., or 130.01.c.iii. of this rule. (4-4-13)

d. Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

02. Unremarried Widow or Widower. An unremarried widow or widower of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow or widower. (4-4-13)

a. Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. (4-6-05)

b. Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. (4-6-05)

c. Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. (4-6-05)

03. Married Individuals Filing Separate Returns. Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

04. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income will be published each year in the instructions for preparing Idaho individual income tax returns. (4-4-13)

05. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code, or an individual who qualifies as a person with a "permanent disability" under Section 49-117 (7) (b) (iv), Idaho Code. This includes: (4-4-13)

a. An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or (4-6-05)

b. A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).
Section 63-3022H, Idaho Code.

01. In General. (3-20-97)

a. Qualified property held by an S corporation, partnership, trust, or estate may be eligible for the Idaho capital gains deduction. The deduction is allowed only on the return of an individual shareholder, individual partner, or individual beneficiary. (3-29-10)

b. Partnerships, S corporations, trusts, and estates that pay the tax for an electing individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (3-29-10)

~~02. **Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (3-30-07)~~

~~03. **Multistate Entities.** A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)~~

~~04. **Examples.** (3-20-97)~~

a. XYZ Farms, a multistate partnership, sold three (3) parcels of farmland: one (1) in Idaho purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of six thousand dollars (\$6,000), computed as follows: (\$40,000 Idaho gain X 75% apportionment factor = \$30,000 gain apportioned to Idaho X 1/3 interest = \$10,000 attributable to each partner X 60% = \$6,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or eight thousand dollars (\$8,000). After 2001, the capital gains deduction returns to sixty percent (60%) or six thousand dollars (\$6,000). (3-30-07)

b. Assume the same facts as in Paragraph 173.04.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return. (5-8-09)

c. Assume the same facts as in Paragraph 173.04.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.04.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (5-8-09)

d. Assume the same facts as in Paragraph 173.04.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). (5-8-09)

e. An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.04.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3

interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$40,000 Idaho gain X 1/3 interest X 80% = \$10,667). (5-8-09)

f. Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).
Section 63-3022(c), Idaho Code.

01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

02. Adjustments to Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss will be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations, but will not result in any tax due or refund for the closed taxable years. ~~(3-20-97)~~()

03. Adjustments in Carryback and Carryover Years. (3-20-97)

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year must be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

c. Adjustments may be made even though the year is closed due to the statute of limitations, but will not result in any tax due or refund for the closed taxable years. ~~(3-20-97)~~()

04. Net Operating Loss Carrybacks Application. (3-20-14)

a. The net operating loss carryback allowed for the entire carryback period may not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-7-11)

b. The sum of net operating loss deductions must not exceed the amount of the net operating loss incurred. (3-20-14)

c. Except as provided in Paragraphs 201.04.d. and 201.04.f, a net operating loss is applied as follows: (3-20-14)

i. Net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, are applied to the third preceding taxable year and if not absorbed, the difference is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until

absorbed. (3-20-14)

ii. Net operating losses incurred in taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, are applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (3-20-14)

iii. Net operating losses incurred in taxable years beginning on and after January 1, 2013, are applied to the twenty (20) succeeding taxable years, in order, until absorbed. (3-20-14)

d. For taxable years beginning prior to January 1, 2013, if the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.c. do not apply and the net operating loss carryover is applied as follows: (3-20-14)

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (3-20-14)

e. For taxable years beginning prior to January 1, 2013, if the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback may not result in a refund for the closed taxable year. (3-20-14)

f. For net operating losses incurred in taxable years beginning on and after January 1, 2013, if an amended return carrying back the loss is filed within one (1) year of the end of the taxable year of the net operating loss, the net operating loss is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (3-20-14)

05. Timing and Method of Electing to Forego Carryback For Taxable Years Beginning Before January 1, 2013. (3-20-14)

a. Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (4-7-11)

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

iii. The amount of the net operating loss. (3-20-97)

b. Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss does not constitute an election for Idaho purposes. (4-7-11)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a, it is considered untimely and the net operating loss is applied as provided in Paragraph 201.04.c. (4-7-11)

06. Order in Which Losses Are Applied in a Year. Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

07. Documentation Required When Claiming a Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

08. Conversion of C Corporation to S Corporation. An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation. However, an S corporation subject to Idaho tax on net recognized built-in gains or excess net passive income may deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain and excess net passive income. (4-7-11)

252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).
Section 63-3026A(6), Idaho Code.

01. In General. Deductions allowed in computing adjusted gross income will be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed will be computed as provided in this rule. Each computation in this rule will include the amounts reported for the taxable year unless otherwise indicated. (3-20-14)

02. Deductions Directly Related to Specific Items of Income or Property. If the deduction directly relates to a specific item of income or property, the allowable deduction will be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction will be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: (3-20-14)

a. Penalty on early withdrawal of savings. The allowable deduction will be computed by dividing the interest income of the time savings deposit subject to the penalty included in Idaho income by the total interest income of the time savings deposit included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes. (3-20-14)

b. Certain business expenses of reservists, performing artists, and fee-basis government officials. (3-29-10)

c. Domestic production activities deduction. The allowable deduction will be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. (3-20-14)

d. Jury duty pay remitted to an employer. (3-29-10)

e. Deductible expenses related to income from the rental of personal property engaged in for profit. (3-29-10)

f. Reforestation amortization and expenses. The allowable deduction will be computed by dividing the income from the related timber operations included in Idaho income by the total income from the related timber operations. If there is no income from the related timber operations for the year of the deduction, the allowable deduction will be computed based on the percentage of property in Idaho to total property to which the reforestation amortization and expenses relate. This percentage is multiplied by the reforestation amortization and expense deduction allowed for federal income tax purposes. (3-20-14)

g. Repayment of supplemental unemployment benefits. The allowable deduction will be computed by

dividing the supplemental unemployment benefits included in Idaho income by the total supplemental unemployment benefits reported in federal income. This percentage is multiplied by the repayment deduction allowed for federal purposes. (3-20-14)

h. Attorney fees and court costs. The allowable deduction will be computed by dividing the total income related to the attorney fees and court costs included in Idaho income by the total income from such actions. This percentage is multiplied by the attorney fees and court costs allowed for federal purposes. (3-20-14)

03. Deductions Allowed Based on Qualifying Types of Income. If the deduction is dependent on the taxpayer earning a qualifying type of income, the allowable deduction will be computed by dividing the amount of the qualifying income reported in Idaho income by the total of such qualifying income reported. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. (3-20-14)

a. Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction will be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction allowed for federal purposes. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. (3-20-14)

b. Payments to a Keogh retirement plan, simplified employee pension (SEP) Plan, SIMPLE Plan, self-employment tax, and self-employment health insurance. The allowable deduction will be computed by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. This percentage is multiplied by the self-employment deductions allowed for federal purposes. (3-20-14)

04. Other Deductions. Deductions that do not relate to specific items of income or to the earning of qualifying income will be allowed in the proportion that Idaho total income bears to federal total income ~~computed without the federal net operating loss deduction~~. ~~The federal net operating loss deduction is not included in either the federal total income or the Idaho total income for this calculation.~~ Such deductions include the following: (3-20-14)()

- a.** Alimony payments. (3-29-10)
- b.** Moving expenses. (3-29-10)
- c.** Student loan interest payments. (3-29-10)
- d.** Tuition and fees deduction. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).
Section 63-3026A(3), Idaho Code.

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments Treated As Compensation. (3-20-14)

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. ~~The 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually. The 2014 amount is two hundred fifty thousand dollars (\$250,000).~~ The amount of guaranteed payments that are sourced as compensation for services is as follows:

<u>TAX YEAR</u>	<u>AMOUNT</u>
<u>2015</u>	<u>\$254,000</u>
<u>2014</u>	<u>\$250,000</u>
<u>2013</u>	<u>\$250,000</u>

~~(4-11-15)()~~

05. Distributions. (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

(BREAK IN CONTINUITY OF SECTIONS)

771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).
 Section 63-3024A, Idaho Code.

01. Residents. (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2015</u>	<u>\$100</u>	<u>\$100</u>
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

~~(4-11-15)~~ ()

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

03. Circumstances Causing Ineligibility. A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. Members of the Uniformed Services. A member of the uniformed services who is: (4-7-11)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

c. See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

07. Spouse or Dependents of Members of the Uniformed Services. Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

08. Claiming the Credit. (5-8-09)

a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

b. An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

c. No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

09. Donating the Credit. Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

855. PERMANENT BUILDING FUND TAX (RULE 855).
Sections 63-3082 through 63-3087, Idaho Code.

01. In General. The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

02. Pass-Through Entities. The permanent building fund tax does not apply to a pass-through entity if all the income or loss of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A pass-through entity that has Idaho taxable income or loss must pay the permanent building fund tax. ~~For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule.~~ (3-20-14)()

03. Corporations Included in a Group Return. The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (3-30-07)

04. Inactive or Nameholder Corporations. An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax must pay the permanent building fund tax. (3-20-14)

05. Taxpayers Protected Under Public Law 86-272. The permanent building fund tax does not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. (3-20-14)

06. Entities That Pay the Tax for Individuals Under Section 63-3022L, Idaho Code. When a pass-through entity pays the Idaho income tax on a composite return for an individual shareholder, partner, member, or beneficiary on his share of income from the entity, the entity must pay the permanent building fund tax for each individual filing as part of the composite return. When a pass-through entity pays backup withholding for individuals, the permanent building fund tax will be paid by each individual when they file their return. If an individual has tax paid by more than one (1) entity for a taxable year, each entity is required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has tax paid by multiple entities for a taxable year. (3-20-14)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1504

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 63-105A and 63-802, 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 16, 2015.

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:

Rule 315: Use of Ratio Study to Equalize Boise School District - At termination of a revenue allocation area (raa), the Boise School District needs instructions on how to handle the increment value. The increment value of a terminating raa will be included in the taxable value and if a ratio study indicates that an adjustment should be made, the adjustment will be applied to the actual value including the increment value.

Rule 626: Property Exempt from Taxation - Certain Personal Property - This rule provides guidance to taxpayers and both ISTC appraisers and county assessors on the implementation of HB29. This rule directs the reporting and apportionment procedures of the I.C. 63-602KK (2) personal property exemption for operating properties as provided for in new law (HB29). A cross reference is provided to explain that "taxpayer" is the claimant of the exemption and that I.C. 63-201 defines a "person". This rule is changed so that the operator's statement reports only the personal property items located in Idaho; the tax code area need not be reported. Operating properties that operate in multiple counties are entitled to an exemption equal to the lesser of the amount 1) computed by multiplying the number of counties that the operating property operates in times \$100,000, or 2) the value of personal property reported by the company. The private rail car company size, which is measured by the company's taxable value, determines the apportionment of value and allocation of the tax collected from rail car companies, is determined after deducting the exemption from the Idaho value prior to apportionment. This rule provides that operating property apportionment occurs after subtracting the exemption from the Idaho value. The rule provides notice to operating property companies when their locally assessed property is granted the exemption.

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

No fees or charges have been imposed or increased in this rulemaking.

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

There is no negative 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 July 1, 2015 Idaho Administrative Bulletin, [Volume 15-7, pages 91-92](#).

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 Alan Dornfest, (208) 334-7742, alan.dornfest@tax.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 23, 2015.

DATED this 28th Day of July, 2015.

Alan Dornfest
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State Tax Commission
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1504
(Only Those Sections With Amendments Are Shown.)

315. USE OF RATIO STUDY TO EQUALIZE BOISE SCHOOL DISTRICT (RULE 315).
Sections 63-315, 33-802(6) Idaho Code

01. Procedures for Boise School District Ratio Studies. The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the “Standard on Ratio Studies” referenced in Rule 006 of these rules. The following specific procedures will be used. (4-2-08)

a. Information on property sales, which meet the requirements of arm’s length and market value sales, will be obtained and assembled into samples representing various primary categories, described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, within designations defined in Subsection 315.02 of this rule in the Boise School District. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within the Boise School District between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. (4-2-08)

b. A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. (7-1-98)

c. A statistical analysis is to be conducted for the sales and any appraisals in each property designation described in Subsection 315.02 of this rule in the Boise School District and appropriate measures of central tendency, uniformity, reliability, and normality computed. (4-2-08)

d. With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made. (7-1-98)

e. If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the Boise School District by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used

shall be the weighted mean ratio calculated from the sample for each designation, unless it can be clearly demonstrated that this statistic has been distorted by nonrepresentative ratios. In this case the median may be substituted: (4-2-08)

f. Within the Boise School District, adjusted market value or taxable value for each primary and each applicable secondary category of real, personal and operating property will be summed to produce the total adjusted market value for the Boise School District. The Boise School District taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in the Boise School District. Statewide totals are to be calculated by compiling county totals. (4-2-08)

g. Urban renewal increment values will not be included in the taxable value or the adjusted market value for the Boise School District. Upon receipt of an urban renewal agency's resolution recommending the adoption of an ordinance for termination of a revenue allocation area by December 31 of a given year, the increment value in the immediate prior year will be included in the taxable value and the adjusted market value for the Boise School District. If the resolution is received prior to the first Monday in April, the actual value for the immediate prior year shall be adjusted by adding the increment value. If any ratio study based adjustments are warranted, as provided in this rule, they shall be applied to the actual value including the increment value. If the resolution is received on or after the first Monday in April, but by September 1, a corrected certification of actual and adjusted values shall be provided as soon as practical. (4-2-08)()

h. “Reasonable statistical certainty,” that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean or median ratios. If the appropriate confidence interval includes ninety-five percent (95%) or one hundred five percent (105%), there is not “reasonable statistical certainty” that the property designation is not at market value for assessment purposes. (3-30-01)

i. Primary and secondary categories subject to adjustment following the procedure outlined in this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

Secondary Categories	Primary Categories	Ratio Study Designations
12, 15, 18, or 20	Vacant Residential Land	Residential
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property	Residential
47, 49, or 65	Manufactured Home on Leased Land	Residential
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land	Commercial
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property	Commercial

(3-30-07)

j. For all secondary categories, described in Rule 510, 511, or 512 of these rules but not contained in the list in Paragraph 315.01.i. of this rule, adjusted market value will equal taxable value. (3-30-07)

k. “Appraisal” or “appraised value” refers to any State Tax Commission provided independently conducted property appraisal. (7-1-98)

02. Use of Property Designations. In computing the ratio for the Boise School District, the State Tax Commission will designate property as residential or commercial and shall assign appropriate primary categories, described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, to these designations as shown in Paragraph 315.01.i. of this rule. For the Boise School District, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these

designations into the sum of the taxable values for each primary and secondary category assigned to a designation. Except as provided in Subsection 315.06 of this rule, for the taxable value in any secondary category to be included in said sum, at least one (1) observation (sale or appraisal) from that secondary category must be present in the ratio study. If the ratio for any given designation in the Boise School District indicates that the market value for assessment purposes cannot be determined with reasonable statistical certainty to differ from statutorily required market value, the taxable value shown on the Boise School District abstract(s) required pursuant to Subsection 315.04 of this rule for each of the secondary categories included in that designation shall be the adjusted market value for said designation for said school district. (4-2-08)

03. Assessor to Identify Boise School Districts. Each county assessor will identify for the State Tax Commission which sales submitted for the ratio study are located within the Boise School District. (4-2-08)

04. Abstracts of Value for the Boise School District. Each applicable county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of the Boise School District in that county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value. (4-2-08)

05. Urban Renewal Increment and Exemption to be Subtracted. The taxable value of each primary or secondary category within the Boise School District shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, Idaho Code, and shall not include the value of any property exempt from property tax. (4-11-15)

06. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination. Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one (1) observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (3-30-07)

07. Certification of Values. The values required to be certified to the county clerk by the first Monday in April each year under Section 63-315, Idaho Code, shall be published on the State Tax Commission's web site or provided in an alternate format on request by the first Monday in April each year to satisfy this required certification. (3-30-07)

08. Cross References. The primary categories are described in Subsections 130.02 through 130.06 of these Rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. The requirement to add increment value following dissolution of an urban renewal revenue allocation area is found in Section 33-802(6), Idaho Code. ~~(3-30-07)~~()

(BREAK IN CONTINUITY OF SECTIONS)

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).
Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code

01. Locally Assessed Property - Application Required. (3-20-14)

a. The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. For purposes of reporting personal property, the value is to be based on market value, not book value. (3-20-14)

b. Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, that are exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. (3-20-14)

02. Locally Assessed Property - Taxpayers' Election of Property Location. (3-20-14)

a. Multiple Locations Within A County. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. (3-20-14)

b. Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market value per county. (3-20-14)

03. Centrally Assessed Property - Application Required. (3-20-14)

a. Except for private railcar fleets, the taxpayer may file a list of personal property located in Idaho with the operator's statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsections 626.03.b. and 03.c. of this rule, for such personal property to be considered for the exemption, the operator's statement must include: (4-11-15)(____)

i. A description of the personal property located in Idaho, ~~including any tax code area in which the personal property subject to assessment as situs property is located;~~ (3-20-14)(____)

ii. Cost and depreciated cost of the personal property located in Idaho; (3-20-14)(____)

iii. ~~The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county.~~ (3-20-14)

b. For private railcar fleets subject to assessment by the Commission, the ~~filing of the annual operator's statement shall constitute application for this exemption~~ Idaho taxable value shall be reduced by subtracting the lesser of the Idaho taxable value before the exemption or the product of one hundred thousand dollars (\$100,000) times the number of counties in Idaho in which the fleet operates. ~~The Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county within which the railcar fleet operates.~~ Provided that the remaining taxable value is five hundred thousand dollars (\$500,000) or ~~greater~~ more, this value is to be ~~further~~ apportioned to each taxing district and urban renewal revenue allocation area in accordance with procedures described in Rule 415 of these rules. (4-11-15)(____)

c. After subtraction of the personal property exemption calculated as provided in Subsection 626.03.b. of this rule, for private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), neither the final amount of the exemption nor the taxable value of the fleet shall be subject to apportionment, and the remaining taxable value shall be taxed as provided in Rule 415 of these rules. (4-11-15)(____)

d. When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. If such exemption is entered on the property roll, such notification must be made by the first third Monday in August July. ~~After notice by the Commission of the amount of exemption granted to the centrally assessed property, the assessor may make adjustments to assessed values to be entered on any subsequent or missed property rolls to ensure that the exemption does not exceed \$100,000 (one hundred thousand dollars) for any taxpayer~~ The Commission will then reduce the amount of the exemption otherwise to be granted to the centrally assessed operating property of the company by the exemption value reported by the assessor. The Commission will notify the company of the reduction in exemption by the fourth Monday in July. This reduction will be made before determining the company's Idaho taxable value. No additional exemption pursuant to Section 63-602KK(2), Idaho Code, will be granted for any locally assessed property of operating property companies. (4-11-15)()

~~**04.** **Centrally Assessed Property Taxpayers' Election of Property Location.** Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection 626.03.b. of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment.~~ (3-20-14)

054. **Valuation Assessment Notice.** The valuation assessment notice required by Section 63-308, Idaho Code, must show the taxable market value before granting the exemption provided in Section 63-602KK(2), Idaho Code, the exempt market value pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. After the year of initial eligibility, if the net taxable market value is zero, no valuation assessment notice is required. (4-11-15)

065. **Correction of Personal Property Tax Replacement Amounts.** If subsequent to finalization of the amount of replacement money to be paid to any county, an amount paid on behalf of any taxpayer is disapproved by the county, the county shall so notify the Commission, which shall adjust the payment to the county. The county may begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. (4-11-15)

~~**076.** **Limitation on Eligibility for the Exemption.**~~ (3-20-14)

a. Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. (3-20-14)

b. Personal property exempt in accordance with statutes other than Section 63-602KK, Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. (3-20-14)

c. Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes. (3-20-14)

d. Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption. (3-20-14)

~~**087.** **Special Rules for the Exemption Provided in Section 63-602KK(1), Idaho Code.**~~ (3-20-14)

a. Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. (3-20-14)

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. (3-20-14)

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. (3-20-14)

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application. (3-20-14)

~~098.~~ Limitation on Replacement Money. (3-20-14)

a. In addition to replacement money reductions due to corrections as provided in Subsection 626.06 of this rule, there may be changes and reductions as follow: (4-11-15)

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution. (3-20-14)

ii. If taxing districts or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district. (3-20-14)

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013. (3-20-14)

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 626.~~409~~ of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment. (~~4-11-15~~)()

b. There shall be no adjustment to replacement money if personal property not receiving the exemption found in Section 63-602KK(2), Idaho Code, receives this exemption in the future. (4-11-15)

~~409.~~ Special Provision For Replacement Money For State Authorized Plant Facilities Levy. The amount of replacement money calculated based on any 2013 state authorized plant facilities levy shall be remitted directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund. (4-11-15)

~~410.~~ Special Provision For Exempt Personal Property Within Urban Renewal Revenue Allocation Areas (RAAs). When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. (3-20-14)

~~121.~~ No Reporting of Exempt Value. Beginning in 2014, taxing district values submitted to the Commission as required in Section 63-510, Idaho Code, shall not include or indicate the otherwise taxable value exempt pursuant to Section 63-602KK(2), Idaho Code. (4-11-15)

~~132.~~ Cross Reference. For information on transient personal property, see Rule 313 of these rules. For information on the definition of personal property see Rule 205 of these rules. For information on the definition of a taxpayer, see Rule 627 of these rules. For the purpose of this rule, "taxpayer" means the claimant of the exemption pursuant to section 63-602KK(2), Idaho Code, and must be a person, as that term is defined in Section 63-201, Idaho Code. (~~4-11-15~~)()

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1505

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 16, 2015.

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:

Property Tax Rule 006 is being amended to update the dates of guides and standards referenced in various property tax rules. This rule adopts current editions of manuals used to determine the value of recreational and certain other vehicles and railcars. The amendment also confirms the link to all referenced standards on the IAAO website.

Property Tax Rule 627 is being amended to conform with House Bill 29 (2015) which changed the word "taxpayer" to the word "person."

Property Tax Rule 632 is being amended to conform with Idaho Code section 63-60200 (Oil or Gas Related Wells Exemption) by deleting the requirement to apply for the exemption.

Property Tax Rule 645 is being amended to change the application due date from March 15 to April 15 thereby making the rule conform to Idaho Code Subparagraph 63-602(3)(b).

Property Tax Rule 802 is being amended to add a new provision requiring qualifying new construction which is valued by the Idaho state tax commission to be reported to the county assessor by October 1 and be listed on the immediate next new construction roll.

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 the provisions of these rules are of a simple 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or alan.dornfest@tax.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 23, 2015.

DATED this 29th Day of July, 2015.

Alan Dornfest
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State Tax Commission
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(208) 334-7742
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1505
(Only Those Sections With Amendments Are Shown.)

006. INCORPORATION BY REFERENCE (RULE 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 2013, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 201~~2~~⁵, “Standard on Mass Appraisal of Real Property” published in 2012, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> http://www.iaao.org/wcm/Resources/Publications_access/Technical_Standards/wmc/Resources_Content/Pubs/Technical_Standards.aspx?hkey=93ba7851-659f-4d02-80a2-9a52ef21f995 which was last accessed and verified on June ~~14~~²², 201~~2~~⁵. (3-20-14)()

b. “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 201~~3~~⁵ for the September through December period by the National Appraisal Guides Incorporated. (3-20-14)()

c. “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 201~~3~~⁵ for the September through December period by the National Appraisal Guides Incorporated. (3-20-14)()

d. “Official Railway Equipment Register” published for the last three (3) quarters in 201~~2~~⁵ and the first quarter in 201~~4~~⁶ by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (3-20-14)()

e. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

f. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

g. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for

the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

h. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Surveying Instructions” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. (4-4-13)

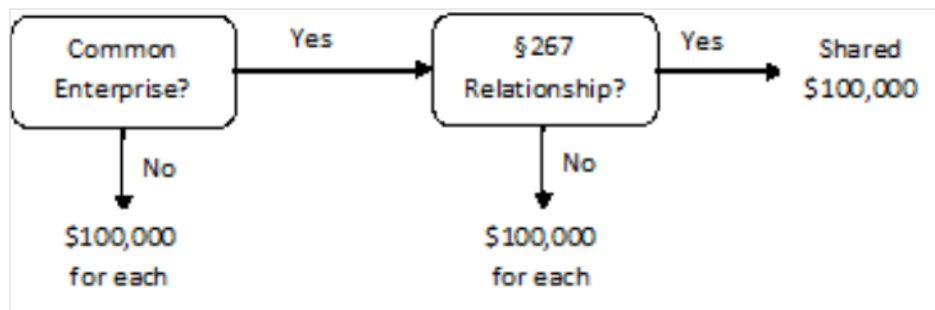
03. Effective Date. The effective date of this rule is January 1, 2016. ()

(BREAK IN CONTINUITY OF SECTIONS)

627. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY -- ~~TAXPAYER~~ OWNERSHIP CLARIFICATION (RULE 627).
Section 63-602KK(2), Idaho Code

01. Idaho Code Section 63-602KK(2) Provides ~~Taxpayers~~ persons With One Exemption in Each Idaho County in Which They Meet the Ownership Rules. Although ~~taxpayers~~ persons are limited to receiving one (1) exemption per county, a ~~taxpayer~~ person owning more than one (1) business within one (1) county may be entitled to more than one (1) exemption within the county. (4-11-15)()

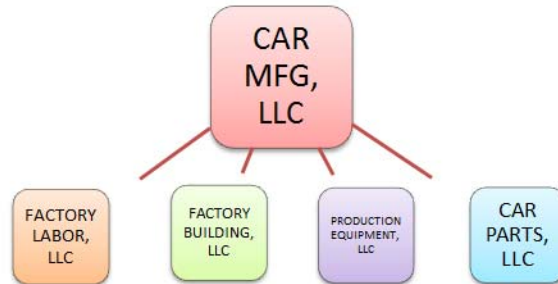
02. Illustration of Common Enterprise and IRC Section 267 Restriction. For purposes of the Idaho Code Section 63-602KK(2) exemption, a ~~taxpayer~~ person includes two (2) or more individuals or organizations using the property in a common enterprise, and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart:



(4-11-15)()

a. First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in a common enterprise. (4-11-15)

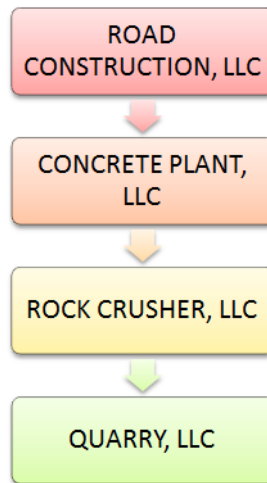
i. Horizontal Commonality is demonstrated by the following chart:



Here, the usual functions involved in a working car manufacturing company are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Car Manufacturing, LLC

(4-11-15)

ii. Vertical Commonality is demonstrated by the following chart:



Here, a business operation is split so that each step in a process is designated to a different LLC. All the steps rely on the one below in order to produce the final product, or process.

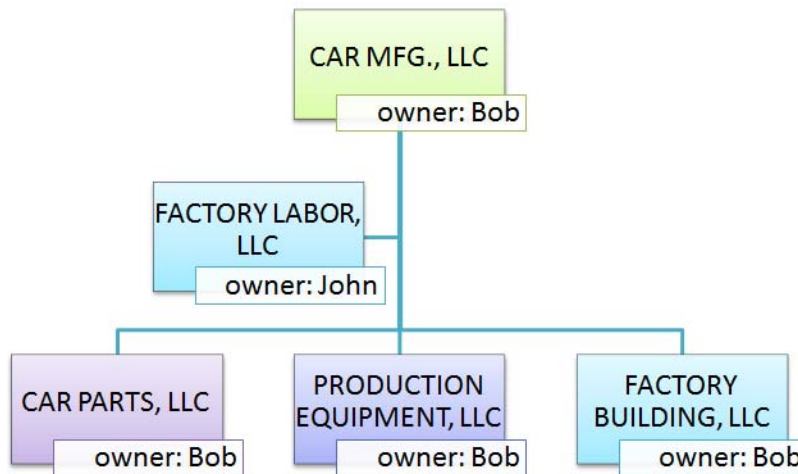
(4-11-15)

b. Second, an analysis would be made to determine whether the ownership between the entities is within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, and the businesses are in a common enterprise, then the entities or individuals would be considered one (1) ~~taxpayer~~ person for purposes of this exemption. (4-11-15)()

c. Ownership alone does not determine whether entities are considered one (1) ~~taxpayer~~ person for purposes of this exemption. Two (2) businesses can have identical ownership, and each receive the exemption, providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions, providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code. (4-11-15)()

d. The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: (4-11-15)

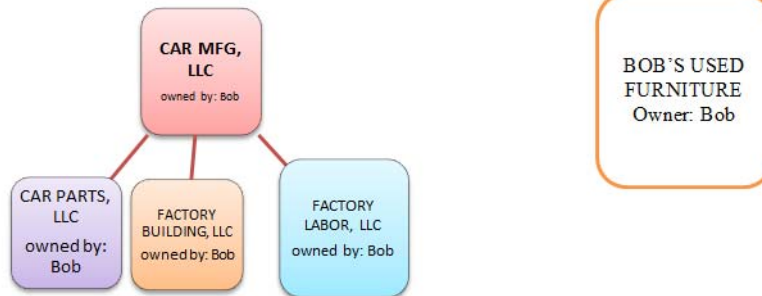
i. Example 1. This is an example of a common enterprise, that is entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code.



So long as Bob and John are not related in a manner identified in IRC 267, two (2) exemptions exist. One (1) for Factory Labor, LLC. The other for all of Bob's businesses, because they are in a common enterprise and are all owned by him.

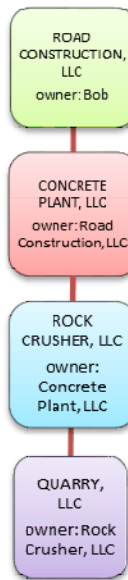
(4-11-15)

ii. Example 2. This is an example of the same owner with multiple businesses not all united in a common enterprise. Bob's car businesses are common enterprises, and therefore entitled to only one (1) exemption for all the car businesses. Bob's used furniture business is not involved with Bob's car businesses, so Bob is entitled to an additional exemption related to his used car business.



(4-11-15)

iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because a common enterprise exists and all the businesses are constructively owned in a manner identified in IRC 267.

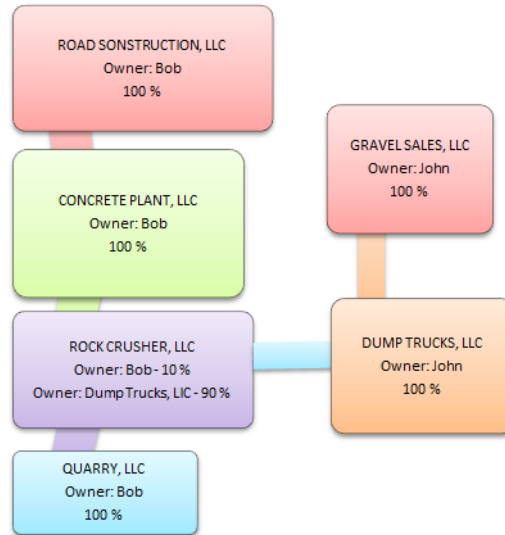


Here, one (1) exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

(4-11-15)

iv. Example 4. This is an example showing how owners of common enterprises may intersect.

(4-11-15)



This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.

(4-11-15)

e. In cases of partial ownership as noted in example four wherein Bob owns ten percent (10%) and Dump Trucks, LLC owns ninety percent (90%) only the majority owner is eligible to receive this exemption.

(4-11-15)

03. Cross Reference. For information on applying for the exemption provided in Section 63-602KK(2), Idaho Code, see Rule 626 of these rules.

(4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

632. PROPERTY EXEMPT FROM TAXATION - OIL OR GAS RELATED WELLS (RULE 632).

Section 63-602OO, Idaho Code

01. Definitions of Oil or Gas Well. (3-20-14)

a. Wells drilled for the production of oil, gas or hydrocarbon condensate may include the well, casing, and other structures permanently affixed inside the well, and the land inside the perimeter of the well. (3-20-14)

b. The well shall include the part where the gas producing stratum has been successfully cased off from any oil. (3-20-14)

02. Ineligible Land and Equipment. (3-20-14)

a. Wellheads and gathering lines or any line extending above ground level shall not qualify. Equipment used for the extraction, storage, or transportation of oil, gas, or hydrocarbon condensate shall not qualify.

(3-20-14)

b. Land, other than that used for the well as defined in Subsection 632.01 of these rules, shall not qualify. If the presence of the well increases the market value of nearby land, the assessed value of such land shall reflect the increase, unless the land qualifies independently for any other property tax exemption. (3-20-14)

~~**03. Application.** As provided in Section 63-602(3), Idaho Code, annual application is required for the exemption provided in this section and must be made to the county commissioners by April 15. (3-20-14)~~

633. -- 644. (RESERVED)

645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (RULE 645).
Section 63-604, Idaho Code

01. Definitions. The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)

a. Homesite. The “homesite” is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)

b. Associated Site Improvements. The “associated site improvements” include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)

c. Nursery Stock. Nursery stock is defined in Section 22-2302, Idaho Code. (3-15-02)

d. Land Used to Produce Nursery Stock. “Land used to produce nursery stock” means land used by an agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or any areas not primarily used for the nurturing, growth or propagation of nursery stock. (3-15-02)

e. Speculative Value Exemption. The “speculative value exemption” is the exemption allowed on land actively devoted to agriculture. (7-1-99)

02. Homesite Assessment. Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. (7-1-99)

a. Accepted Assessment Procedures. Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. (7-1-99)

b. Appropriate Market and Comparable Selection. The appropriate market is the market most similar to the homesite and improvements located on the homesite. In applying the sales comparison approach, the appraiser should select comparables having actual or potential residential use. (7-1-99)

c. Assigning secondary category. List and report the secondary category for the homesite using the chart in Subsection 645.02.c.

Description of Land	Secondary Category
Rural and Nonsubdivided	10
Rural and Subdivided	15

Description of Land	Secondary Category
Urban	20

(4-2-08)

d. Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99)

03. Valuing Land, Excluding the Homesite. The assessor shall value land, excluding the homesite, on the following basis: (5-3-03)

a. Land Used for Personal Use or Pleasure. Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a for profit enterprise, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and shall not qualify for the speculative value exemption. (4-11-06)

b. Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and shall not qualify for the speculative value exemption. Land meeting the use qualifications identified in Section 63-604, Idaho Code, and in a subdivision without restrictions prohibiting agricultural use shall be valued as land actively devoted to agriculture using the same procedures as used for valuing land actively devoted to agriculture and not located in a subdivision. (4-11-06)

c. Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less shall be presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule, and shall not qualify for the speculative value exemption. If the owner produces evidence that each contiguous holding of land under the same ownership has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For holdings of five (5) contiguous acres or less gross income is measured by production of crops, nursery stock, grazing, or gross income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at time of sale. The use of the land and the income received in the prior year must be certified with the assessor by ~~March~~ April 15, each year. (~~4-11-15~~)()

d. Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of a for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. (4-11-06)

04. Cross Reference. For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For agricultural land taxable value calculation examples, see Rule 614 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code

01. Definitions. (4-5-00)

a. “Change of Land Use Classification.” “Change of land use classification” shall mean any change in land use resulting in a secondary category change and in a change in taxable land value to be reflected on the current property roll. (4-7-11)

b. “Incremental Value as of December 31, 2006.” “Incremental value as of December 31, 2006” means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll for the 2006 tax year. (4-7-11)

c. “Nonresidential Structure.” “Nonresidential structure” shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

02. New Construction Roll Listing. “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. In addition, new construction related to change of land use classification, but required by section 50-2903(4) to be added to the base assessment roll, cannot be added to any new construction roll. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (3-29-12)

a. Qualifying new construction which is valued by the State Tax Commission shall be reported to the county assessor for each applicable taxing district by October 1 and shall be listed by the assessor on the immediate next new construction roll. ()

b. Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, occurred during any one of the immediately preceding five (5) years and has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit. The taxing district has the burden of proving the new construction was omitted from a new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year’s new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (3-29-12)

c. Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. (3-29-12)

d. Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. In addition, the deduction for lower values resulting from appeals shall be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. (3-29-12)

03. Special Provisions for Value Increases and Decreases. Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule or increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code. (4-4-13)

a. Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

i. Except as provided in Subparagraph 802.03.a.iii., increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll. (4-4-13)

ii. Except as provided in Subparagraph 802.03.a.iii., the increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (4-4-13)

iii. Subject to the limitations found in Paragraph 802.06.a. of this rule, increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code, shall be reported on the new construction roll in the year the exemption is lost, provided this occurs no later than June 30 of that year. If the exemption is lost after June 30 of a given year, the resulting increase in land value shall be reported on the new construction roll in the immediate following year. (4-4-13)

b. Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. The amount of decrease in any one year shall never exceed the amount of value originally added to the new construction roll for the same property. (4-4-13)

i. Value decreases are to be reported only for land for which taxable market value was reduced as a result of change of land use classification or granting of the exemption for site improvements provided in Section 63-602W(4), Idaho Code, during any one (1) of the immediately preceding five (5) years and for which an increase in value due to addition of site improvements or change of land use classification during the same five-year period had been added to a new construction roll. For the site improvement exemption provided in Section 63-602W(4), Idaho Code, the five-year period shall commence with the year following the year the exemption is first granted. For example, if a parcel first received the exemption in 2012, any site improvement related addition to a new construction roll for 2008 or more recently must be subtracted from the 2013 new construction roll, unless the exemption is lost by June 30, 2013, in which case there is no subtraction and no addition to the new construction roll for the loss of this exemption. (4-4-13)

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). (4-7-11)

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). (4-7-11)

iv. Provided the criteria in Subparagraph 802.03.b.i. are met, value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-4-13)

v. Except as provided in Subparagraph 802.03.b.vi., only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. (4-4-13)

vi. Provided the criteria in Subparagraph 802.03.b.i. are met, land value decreases resulting from the exemption provided in Section 63-602W(4), Idaho Code, are to be subtracted from the new construction roll in the year immediately following the most recent year in which the exemption has been granted. To comply with the

budget adjustments required by Section 63-802, Idaho Code, which limits taxing district budgets based on the highest amount of property tax revenue requested during the previous three (3) years, such subtraction shall be required for up to three (3) years, provided the property continues to receive the exemption. For example, a property for which five hundred thousand dollars (\$500,000) was added to the 2011 new construction roll for site improvements that were added and taxable at that time receives a five hundred thousand dollar (\$500,000) exemption pursuant to Section 63-602W(4), Idaho Code, in 2012. The property continues to receive the exemption in the same amount in 2013, but the exempt amount increases to five hundred twenty thousand dollars (\$520,000) in 2014. The property loses the exemption before June 30, 2015. However, the 2015 value of the site improvements has been determined to be only four hundred thousand dollars (\$400,000) because of market value changes. Therefore, only four hundred thousand dollars (\$400,000) in value is added as a result of the loss of the exemption. Table A shows the effect on each year's new construction roll, while Table B shows the effect on a hypothetical taxing district's maximum allowable property tax budget. (4-4-13)

vii. Table A - Effect on New Construction Roll:

Table A - Effect on New Construction Roll		
Year	Occurrence	Effect on New Construction Roll (for that year)
2011	Site improvements added and taxable	+ \$500,000
2012	Site improvements exempt	NA (no prior year's exemption)
2013	Site improvements exempt	- \$500,000
2014	Site improvements exempt	- \$500,000
2015	Loses site improvement exemption before June 30	+ \$400,000

(4-4-13)

viii. In Table B, assume that the taxing district has a tax levy rate of zero point zero zero two five (0.0025) in 2010, a total taxable value of one hundred million dollars (\$100,000,000) in 2010 and a property tax budget in 2010 that is two hundred fifty thousand dollars (\$250,000) and was the highest of the preceding three (3) years. The total amount of new construction is the amount due to the site improvements and no other value change occurs in the district during the period shown. There are no property tax replacement monies for this district. Beginning in 2011 the taxing district levies the maximum it is allowed each year. The factor of one point zero three (1.03) shown in Table B is used to calculate the allowable three percent (3%) increase. (4-4-13)

ix. Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget:

Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget				
Year	Occurrence	Effect on New Construction Roll (for that year)	Maximum Allowable Property Tax Budget	Calculations
2011	Site improvements added and taxable	+ \$500,000	\$258,750	$(\$250,000 \times 1.03) + (\$500,000 \times 0.0025)$ (tax levy rate = $\$258,750 / \$100,000,000 = 0.002574627$)
2012	Site improvements exempt	NA (no prior year's exemption; no new construction value)	\$266,512	$\$258,750 \times 1.03$ (tax levy rate = $\$266,512 / \$100,000,000 = 0.002665120$)

Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget				
Year	Occurrence	Effect on New Construction Roll (for that year)	Maximum Allowable Property Tax Budget	Calculations
2013	Site improvements exempt	- \$500,000	\$273,174	$(\$266,512 \times 1.03) - (\$500,000 \times 0.002665120)$ (tax levy rate = $\$273,174 / \$100,000,000 = 0.002731744$)
2014	Site improvements exempt	- \$500,000	\$280,003	$(\$273,174 \times 1.03) - (\$500,000 \times 0.002731744)$ (tax levy rate = $\$280,003 / \$100,000,000 = 0.002800033$)
2015	Loses site improvement exemption before June 30	+ \$400,000	\$289,523	$(\$280,003 \times 1.03) + (\$400,000 \times 0.002731744)$ (tax levy rate = $\$289,523 / \$100,400,000 = 0.002883696$)

(4-4-13)

04. Manufactured Housing. “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

05. Partial New Construction Values. Except as provided in Subsection 802.06 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.06 of this rule, any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s or years’ partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.06 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2009. The improvement was occupied February 2, 2009. Assume the ten thousand dollar (\$10,000) value was on the 2009 new construction roll. Assume that in 2010 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2010 new construction roll is calculated as follows:

2010 Value	\$90,000
2009 Value Already Reported on New Construction Roll	<\$10,000>
2010 New Construction Roll Value (this improvement)	\$80,000

(4-7-11)

06. Change in Status. (4-2-08)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W(3) or (4), Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: (4-4-13)

i. If the exemption is lost by June 30 of the year in which the exempt amount was to be subtracted from the new construction roll, then there shall be no subtraction, nor shall the formerly exempt amount be added, to the new construction roll, unless it had been previously subtracted from a new construction roll. For example, the property first became exempt in 2012, but lost the exemption by June 30, 2013. The 2013 new construction roll was not adjusted downward, so any previous inclusion of the exempt value would not be added in the future. Had the property lost the exemption later in 2013, there would have been a subtraction from the 2013 new construction roll and a subsequent addition to the 2014 new construction roll. (4-4-13)

ii. If the exemption was granted to property for which no value had been added to any new construction roll, the value of the property (site improvements) at the time the exemption was first granted may be added to the new construction roll following loss of the exemption. (4-4-13)

b. Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current incremental value minus the “incremental value as of December 31, 2006,” shall be added to the appropriate year’s new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year’s new construction roll. (4-7-11)

c. When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006.” (4-7-11)

i. Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. (4-7-11)

ii. Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area. (4-7-11)

iii. Step 3. Add any positive difference calculated in Step 2 to the current year’s new construction roll value. (4-7-11)

iv. Step 4. Adjust the “incremental value as of December 31, 2006” for the RAA by subtracting the increment value determined in Step 1. (4-7-11)

v. The following table shows the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006” applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

Steps (as designated in Paragraph 802.06.c.)	Area	Value
	December 31, 2006, increment value of the original RAA	\$10,000,000
Step 1	December 31, 2006, increment value of the de-annexed area	\$1,000,000
	December 31, 2009, increment value of the de-annexed area	\$3,000,000
Steps 2 and 3	Amount related to the de-annexed area to be added to the 2010 new construction roll	\$2,000,000
Step 4	Adjustment amount to be deducted from the original RAA’s “incremental value as of December 31, 2006”	<\$1,000,000>
	Adjusted “incremental value as of December 31, 2006” for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)	\$9,000,000

(4-7-11)

07. Limitation on Annexation and New Construction Roll Value. For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

08. Notification of New Construction Roll and Annexation Values. On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-1502
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 63-105 and 63-2427, 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 16, 2015.

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:

Motor Fuels Tax Rule 280, Refund to Consumers for Nontaxable Uses of Motor Fuels. This rule will be deleted. The State Tax Commission will require that International Fuel Tax Agreement (IFTA) licensees must use the Form 75, Idaho Fuels Use Report, to claim refunds of the motor fuel tax when using tax-paid special fuels on nontaxable Idaho roads.

Motor Fuels Tax Rule 422, Documentation for Idaho Full-Fee Registrants. This rule outlines the records an Idaho Full Fee registrant and requires records to be from two sources. The requirement for two sources is being removed in addition to other changes to clarify who is required to follow the record requirements.

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 July 1, 2015, Idaho Administrative Bulletin, [Vol. 15-7, page 96](#).

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 Don Williams at (208) 334-7855. 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 23, 2015.

DATED this 2nd Day of September 2015.

Don W. Williams
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
Phone (208) 334-7855
Fax (208) 334-7844
Don.williams@tax.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1502
(Only Those Sections With Amendments Are Shown.)

271. -- ~~278~~9. (RESERVED)

~~280. REFUND TO CONSUMERS FOR NONTAXABLE USES OF MOTOR FUELS (RULE 280).~~

~~The Idaho Form 75 must be used to claim a fuels tax refund for all nontaxable uses of Idaho tax-paid motor fuels, except for refunds claimed by IFTA licensees for nontaxable miles which must be claimed on the licensee's IFTA return. (5-3-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

422. DOCUMENTATION FOR IDAHO FULL FEE REGISTRANTS (RULE 422).
Section 49-439, Idaho Code

01. **Records Required For Idaho Full Fee Registrations.** Registrants must keep records to verify the accuracy of any Idaho Full Fee registration application submitted to the Idaho Transportation Department. ~~These No~~ records ~~must include all summaries and source documents for all registered vehicles, except~~ are required for full fee vehicles registered at less than sixty-two thousand (62,000) lbs. gvwr or those registered at the maximum tier, ~~which is more than~~ of over fifty thousand (50,000) miles per year reporting period. ~~To provide primary and secondary source verification of the distance reported on the application,~~ Registrants must keep records by individual vehicle for each reporting period of July 1st through June 30th, ~~using two (2) of the following recordkeeping options~~ Examples of records include, but are not limited to: (3-29-10)()

a. Distance Measuring Devices. Odometer, hubometer, GPS or perpetual life-to-date readings ~~must be supported by a second source of documentation such as fuel purchases, trip logs, or daily logs~~. Records must include the date the reading was recorded and the reading. When changing devices, the change must be properly documented. (3-29-10)()

b. Daily Trip Logs. ~~Daily trip logs should show~~ Logs include the date of travel, origin and destination of the trip, and number of miles traveled. ~~Daily trip sheets should be~~ Logs may be supported by load tickets, billing invoices, or other original source documents that can ~~be used as verification of~~ verify miles traveled. (3-29-10)()

c. Number of Trip/Round Trip Miles. ~~This method is used by registrants~~ When making numerous short trips from the same origin to the same destination, records include the origin, destination, and round trip miles. Computations ~~should~~ must be supported by scale tickets, load tickets, a route map, or a Commission approved trip analysis. (3-29-10)()

d. Fuel Purchases. ~~Records of~~ Retail fuel purchases ~~must be supported by~~ are fuel invoices ~~that show with the~~ date, location, quantity, and type of fuel purchased. Bulk fuel records must be sufficient to prove the accuracy of the fuel use. Fuel purchase records ~~should include~~ must show the usage per unit. ~~If fuel purchases are used to determine miles,~~ The records should contain must documentation of how the average miles-per-gallon (MPG) was calculated. (3-29-10)()

02. **Credit For Off-Road Miles And Documentation Required.** Credit for off-road miles may be given for roads not maintained by a government entity or roads built or maintained by the registrant pursuant to a contract, according to Subsection 292.03 of these rules. These include roads on private property, roads under construction but not open to the public, and may include designated Forest Service roads. Off-road miles must be documented by using odometer readings, maps, contracts, GPS readings, or a Commission approved trip analysis. (3-29-10)

03. **IFTA Licensees with Full Fee Registration.** An International Fuel Tax Agreement (IFTA) licensee with full fee registration must maintain records required by IFTA. ()

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.03.01 - RULES GOVERNING GROUP INSURANCE

DOCKET NO. 38-0301-1501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2015.

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 67-5761, 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 16, 2015.

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 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:

Revises the definition for eligible active employee, adds definitions for seasonal employee and part-time temporary employee and removes obsolete definition.

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

The addition of the definitions confers a benefit to the industry by clarifying the rule and eliminating confusion for HR staff and employees by conforming the language in the rules to the language used in the insurance contracts.

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

No fee or charge is being changed or imposed through this rulemaking.

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

There is no fiscal impact from the rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule change will provide conformity with federal law.

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 documents are being 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 Keith Reynolds at (208) 332-1826.

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 23, 2015.

DATED this 10th Day of August, 2015.

Keith Reynolds,
Deputy Director / CFO
Department of Administration
650 W. State St.
P.O. Box 83720
Boise, Idaho 83720-0013
Phone: (208) 332-1826
Fax: (208) 334-2307

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 38-0301-1501
(Only Those Sections With Amendments Are Shown.)**

011. DEFINITIONS.

01. Child. Child includes a natural child, stepchild, adopted child or child in the process of adoption from the time placed with the eligible active employee or eligible retiree. The term also includes a child legally dependent upon the eligible active employee, the eligible active employee's spouse, the eligible retiree or the eligible retiree's spouse for support where a normal parent-child relationship exists with the expectation that the eligible active employee or eligible retiree will continue to rear that child to adulthood. The definition does not include a child where one or both of that child's natural parents live in the same household with the eligible active employee or eligible retiree, as a parent-child relationship is not deemed to exist even though the eligible active employee, eligible retiree or their spouses provide support. (3-29-10)

02. Date of Hire. The first day an individual begins work for the state or his employer. (3-29-10)

03. Director. The director of the Department of Administration. (3-29-10)

04. Eligible Active Employee. An officer or employee of a state agency, department or institution, including a state official, elected official or employee of another governmental entity which has contracted with the state of Idaho for group insurance coverage, who is working twenty (20) hours or more per week, and ~~whose term of employment is expected to exceed five (5) consecutive months~~ who is not classified by their employer as a seasonal employee or a part-time temporary employee. (3-29-10)(7-1-15)T

a. Seasonal Employee. An employee in a position for which the customary annual employment is six (6) months or less. (7-1-15)T

b. Part-Time Temporary Employee. An employee who is expected, at the time of hire, to work twenty (20) hours or more per week but less than thirty (30) hours per week, and whose term of employment is not expected to exceed five (5) consecutive months. (7-1-15)T

05. Eligible Dependent of an Eligible Active Employee. An eligible dependent of an eligible active employee who is enrolled in group insurance, is a person who is any of the following: (3-29-10)

a. The spouse of an eligible active employee. (3-29-10)

b. A child up to the age of twenty-six (26) of an eligible active employee or an eligible active employee's spouse. (7-1-14)

06. Eligible Dependent of an Eligible Retiree. An eligible dependent of an eligible retiree who is enrolled in group insurance, is a person who is any of the following: (3-29-10)

- a. The non-Medicare-eligible spouse of an eligible retiree. (3-29-10)
- b. A child up to the age of twenty-six (26) of an eligible retiree or an eligible retiree's spouse. (7-1-14)
- 07. Eligible Retiree.** A person who is any of the following: (3-29-10)
- a. An officer or employee of a state agency, department or institution, including state and elected officials, who retired on or before June 30, 2009, and who is not Medicare eligible. (3-29-10)
- b. An officer or employee of a state agency, department or institution, including state and elected officials, who meets all of the following: (3-29-10)
- i. He retires after June 30, 2009, and retires directly from state employment. (3-29-10)
- ii. He is not Medicare eligible. (3-29-10)
- iii. He was hired on or before June 30, 2009, and has at least twenty thousand eight hundred (20,800) credited state service hours on or before June 30, 2009, is reemployed, reelected or reappointed after June 30, 2009, and accrues an additional six thousand two hundred forty (6,240) continuous credited state service hours. (3-21-12)
- c. A person receiving benefits from a state of Idaho retirement system who has at least twenty thousand eight hundred (20,800) credited state service hours in a state of Idaho retirement system, and who is not Medicare eligible. (3-21-12)
- 08. Group Insurance.** Medical, dental, vision, life, disability and other types of insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide such insurance to eligible active employees, eligible retirees and their dependents. (3-29-10)
- 09. Health Care Coverage.** Medical insurance coverage provided through a carrier who has contracted with the Office of Group Insurance to provide medical insurance to eligible active employees, eligible retirees and their dependents. (3-29-10)
- ~~**10. Medicare Coverage Gap.** Under a Medicare supplement plan, there is a gap in coverage for prescription medications between the initial coverage limit (two thousand seven hundred dollars (\$2,700) in 2009) and the catastrophic coverage threshold (four thousand three hundred fifty dollars (\$4,350) in 2009). Within this gap, the Medicare recipient pays one hundred percent (100%) of the cost of prescription medications before catastrophic coverage begins. (3-29-10)~~
- 10. Medicare Eligible.** A person who is age sixty-five (65) or older and qualifies to receive Medicare. (3-29-10)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1501

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 40-312, Idaho Code, and Section 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

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 removes the minimum business-hour requirements for motor vehicle dealers that were added during the 2015 Idaho Legislative Session. It also clarifies a requirement that all vehicle dealers must declare, in writing to the Department, the regular hours that their dealerships are open and when they are available to be contacted by the Department or their customers.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased by this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact to the state 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 June 3, 2015, Idaho Administrative Bulletin, [Volume 15-6, Page 66](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Smith, Vehicle Service Manager, (208) 334-8660.

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 23, 2015.

DATED this 29th Day of July, 2015.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 W State St, PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0203-1501
(Only Those Sections With Amendments Are Shown.)

100. GENERAL PROVISIONS.

01. Physical or Electronic Records System Inspection. A vehicle dealer shall make available all books, records and files maintained at the dealership location for immediate inspection for cause or complaint, or within three (3) business days if records are stored at an approved off-site location for random compliance review by a peace officer or authorized agent of the Department. (3-29-12)

02. Title Fee Disclosure. A dealer may reflect the payment of a state-required title fee as specified by Section 49-202(2)(b), Idaho Code, however: (7-2-92)

a. The fee must be clearly identified as a "TITLE FEE"; (7-2-92)

b. The fee must be shown as the exact amount required by law; (7-2-92)

c. Any documentation fees charged must be clearly listed separately from other fees and identified to the customer as dealer document preparation fees that are subject to sales tax as part of the purchase price of the vehicle. (7-2-92)

03. Surety Bond. A valid bond in the amount required by Section 49-1608D, Idaho Code, for three (3) years after initially licensed, unless otherwise provided by code; (4-11-15)

04. Idaho Consumer Asset Recovery (ICAR) Fund. (4-11-15)

a. All licensed dealers shall pay the annual fee as set by the Idaho Consumer Asset Recovery (ICAR) Board as required by Section 49-1608C, Idaho Code, unless otherwise provided by code. (4-11-15)

b. The ICAR fund fee shall be set by the ICAR Board annually to be effective the following January 1. Such fee shall be posted on the Department web site and all applicable forms for dealer licensing. (4-11-15)

05. Liability Insurance. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. (4-11-15)

06. Declared Business Hours. ~~(4-11-15)~~

~~a. All licensed dealers shall declare in writing to the Department the regular business hours that their dealerships are open and when they are available to be contacted by the Department or their customers. *These regular business hours shall be no less than twenty (20) hours per week, part of which must be during Monday through Friday 8:00 am to 5:00 pm.* (4-11-15)~~

~~b. Wholesale dealers are required to declare in writing to the Department at least four (4) business hours per week that they are open, part of which must be during Monday through Friday 8:00 am to 5:00 pm, when customers or the department can contact the dealer~~ All wholesale dealers shall declare in writing to the department the regular hours that their dealerships are open and when they are available to be contacted by the department or their customers. (4-11-15)()

07. Vehicle Dealer License Suspension. Any dealer not meeting the requirements of the Vehicle Dealer Act shall be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. (7-2-92)

a. The Department's agent shall give written notice of deficiencies to the dealer or applicant.

- (12-26-90)
- b. At its discretion the Department may give the licensed dealership a reasonable amount of time to
comply. (12-26-90)
- c. Upon compliance, the license shall be reinstated or issued. (12-26-90)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.26 - RULES GOVERNING TEMPORARY VEHICLE CLEARANCE FOR CARRIERS

DOCKET NO. 39-0226-1501 (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 40-312, Idaho Code and Section 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

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 changes bring the rule into alignment with current Idaho Transportation Department (ITD) fees, terminology, procedures and administrative processes. The changes have no major impacts on the public or industry.

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

In 2009, the Idaho Legislature passed House Bill 334 in which, the legislature made changes to statutory Idaho Transportation Department (ITD) fees. With specific regard to IDAPA 39.02.26, the legislature amended Section 49-202, Idaho Code, which details what fees ITD can collect. Specifically, Section 49-202(m), Idaho Code, changed the fee charged "For issuing letters of temporary vehicle clearance to Idaho-based motor carriers" from ten dollars (\$10) to eighteen dollars (\$18). This change directly impacted IDAPA 39.02.26, therefore the proposed rule change is necessary to reflect the change made in this legislation. The fee change became effective January 1, 2010.

HB 334 made several amendments and in Section 49-202, Idaho Code, modified numerous ITD fees. In total, ITD estimated that all of the changes made to the Department's fees would result in an additional \$13.1 million annually for ITD's State Highway Account. The one-time cost of these fee changes was estimated to be \$72,000; which includes 600 hours of system programming by contractors (\$45,000) and form development/printing (\$27,000). Again, it should be noted that the additional monies generated and the costs associated with the implementation of these changes encompass the modifications made to numerous ITD fees in HB 334 and not simply the amendment of Section 49-202(m), 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: There is no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule changes are 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: There are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

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 23, 2015.

DATED this 29th Day of July, 2015.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 W State Street
PO Box 7129, Boise ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 39-0226-1501
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

~~*This rule provides for temporary vehicle clearance (TVC) procedures in Idaho, self issued by selected carriers or issued by the Department via facsimile equipment. (1-2-93)*~~

01. Title. This rule shall be cited as IDAPA 39.02.26, "Rules Governing Temporary Vehicle Clearance for Carriers," IDAPA 39, Title 02, Chapter 26. ()

02. Scope. This rule provides for temporary vehicle clearance (TVC) procedures in Idaho, self issued by carriers or issued by the Department. ()

002. WRITTEN INTERPRETATIONS.

~~There are no written interpretations for this chapter. ()~~

003. ADMINISTRATIVE APPEALS.

~~Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()~~

004. INCORPORATION BY REFERENCE.

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

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. ()

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday, and state holidays. ()

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8611 or by fax at (208) 334-2006. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

~~All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()~~

~~007. -- 009. (RESERVED)~~

010. DEFINITIONS.

01. **Carrier.** The person or company who is qualified for ~~operation~~ registration in Idaho, and whose vehicles are issued ~~Temporary Vehicle Clearances.~~ (1-2-93)()

02. **Temporary Vehicle Clearance (TVC).** Temporary clearance issued ~~in lieu of permanent registration~~ for immediate operation of a vehicle pending receipt of credentials. (1-2-93)()

011. -- 099. (RESERVED)

100. **ADMINISTRATION.**

Temporary Vehicle Clearances, valid for a maximum of forty-five (45) days or to the registration year expiration date, may be issued to a carrier whose account is in good standing ~~pending receipt by the Department of the registration application or pending receipt of proof of title.~~ (1-2-93)()

101. -- 199. (RESERVED)

200. **ISSUANCE OF TVC.**

01. **Temporary Vehicle Clearances.** Carriers may apply for request temporary vehicle clearances ~~on new or replacement vehicles at~~ online, from the department or an Idaho port of entry. ~~When all licensing requirements are met, a temporary clearance is transceived from the Department to the port of entry.~~ Fees are payable when the clearance is issued. (1-2-93)()

~~02. **Clearance Issued Electronically.** Clearances may be issued by the Department electronically to business locations selected by the carrier. (1-2-93)~~

~~201. **SELF-ISSUE PERMITS.**~~

~~Companies whose accounts are in good standing and who meet requirements outlined in signed agreements with the Department may purchase temporary vehicle clearances for self-issuance to put newly purchased vehicles into service immediately pending receipt by the Department of the registration application. The required agreement is shown in Exhibit A. (1-2-93)~~

~~202. **TEMPORARY VEHICLE CLEARANCE PENDING PROOF OF OWNERSHIP.**~~

~~01. **Temporary Clearance for Untitled Vehicles.** An Idaho based carrier may be issued a TVC, upon receipt of all registration fees, when an Idaho title has not been obtained because: (1-2-93)~~

~~a. The vehicle was recently purchased; (1-2-93)~~

~~b. The vehicle was recently transferred from out-of-state and the title application is pending; or (1-2-93)~~

~~c. The vehicle belongs to an owner/operator from another state, is leased to an Idaho carrier and a copy of the out of state title is not available. (1-2-93)~~

~~02. **Second Temporary Vehicle Clearance.** A carrier may be issued a second TVC when written verification of delay in obtaining the Idaho title is received from the carrier. (1-2-93)~~

~~203.1. **CONVERSION OF TEMPORARY VEHICLE CLEARANCE TO PERMANENT IDENTIFICATION ISSUANCE OF VEHICLE REGISTRATION (CAB CARD) AND LICENSE PLATE(S).**~~

01. **Conversion to Permanent Identification Issuance of Vehicle Registration & License Plate(s).** ~~A temporary vehicle clearance may be converted to a permanent identification~~ The vehicle registration and license plate(s) may be issued when: (1-2-93)()

a. The online application is received by the Department and all licensing requirements are met; (1-2-93)()

b. The carrier submits a copy of an Idaho title or title receipt showing that the ~~name on the title and the registered owner are the same~~ vehicle is titled in the owners name; (1-2-93)()

~~e. The carrier submits a copy of the out of state title showing that the name on the title and registered owner are the same if the vehicle is leased from out-of-state.~~ (1-2-93)

02. **Permanent Identification.** When all criteria are met, a permanent registration and a validation plate and/or sticker shall be issued. (1-2-93)()

~~2042.~~ -- 299. (RESERVED)

300. COST AND PAYMENT.

The fee for temporary vehicle clearances issued via facsimile transceiver equipment or self issued by the carrier is ~~ten~~ eighteen dollars (\$~~10~~18) per clearance, payable in advance by the carrier. (1-2-93)()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS

DOCKET NO. 39-0316-1501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 23, 2015.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section 40-312, Idaho Code, and Sections 49-201 and 49-1004, 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 16, 2015.

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 improve efficiency for motor carriers by allowing them to haul more than one non-reducible item on a 53-foot trailer on certain routes. This rule states the maximum sizes allowed by an overlegal permit. The proposed rule changes: 1) Clarify in Section 100 which types of loads will be permitted as non-reducible and that those loads may be hauled on a 53-foot trailer on the majority of routes in Idaho; 2) Clarify in Section 200 that vehicles hauling reducible-height loads must be of legal dimensions for the highway of travel; 3) Remove language in Section 300.01 that is not needed because it is in Section 300.03 and 4) Remove language in Section 400 that pertains to self-issue permits with a fee account (monthly billings for permits) because fee accounts will be eliminated after the implementation of the new cash drawer and the availability of escrow accounts.

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

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 RULE-MAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is temporary.

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 Regina Phipps, Vehicle Size and Weight Specialist, (208)334-8418.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2015.

DATED this 29th Day of July, 2015.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
Idaho Transportation Department

ramon.hobdey-sanchez@itd.idaho.gov
Phone: (208) 334-8810
3311 W State St, PO Box 7129, Boise ID 83707-1129

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0316-1501
(Only Those Sections With Amendments Are Shown.)

100. GENERAL OVERSIZE LIMITATIONS.

01. **Maximum Dimensions Allowed.** The maximum dimensions of oversize vehicles or oversize loads shall depend on the character of the route to be traveled: width of roadway, alignment and sight distance, vertical or horizontal clearance, and traffic volume. (3-29-12)

02. **Practical Minimum Dimension of Load.** Oversize loads shall be reduced to a practical minimum dimension. Except ~~as~~ where noted below, permits will not be issued to exceed legal size if the load is more than one (1) unit in width, ~~length or~~ height, or length which results in them exceeding legal overhang. ~~nor shall~~ Additionally, permits shall not be utilized for multiple unit loads which may be ~~reduced in number of units and re-~~ positioned to meet legal dimensions established in Section 49-1010, Idaho Code. (8-25-94)(7-23-15)T

03. ~~Multiple Unit~~ **Overwidth Loads on Single or Double Trailers.** ~~Multiple unit overwidth loads must be transported on legal dimension vehicles. Overwidth~~ Non-reducible loads may be transported on double trailer combinations not exceeding seventy-five (75) feet combination length and single trailers not exceeding fifty-three (53) feet exclusive of load overhang. (4-2-08)(7-23-15)T

04. **Overwidth Overhang.** Over width loads shall distribute overhang to the sides of the trailer as evenly as possible. (8-25-94)

(BREAK IN CONTINUITY OF SECTIONS)

300. OVERWIDTH HAULING VEHICLES, RESTRICTIONS.

01. **Width of Hauling Equipment.** Overlegal permits may be issued for ten (10) foot wide trailers hauling non-reducible loads smaller than ten (10) feet wide. ~~Overlegal permits shall not be issued for trailers over ten (10) feet wide hauling any load on an overwidth vehicle unless such vehicle has been designed and constructed for the specific purpose of hauling a particular load the nature of which makes it impractical to be hauled on a legal width vehicle.~~ The permit issued for oversize loads being hauled on oversize equipment will be valid for the unladen movement and the laden movement, which shall not include commodities either to or from the point of loading or unloading of the oversize load. (3-29-12)(7-23-15)T

02. **Load Dimensions.** Any load exceeding the dimensions of the trailer shall be non-reducible in size, and any load exceeding legal allowable weight shall be non-reducible in weight. Annual permits issued for such hauling vehicles shall be subject to the requirements and limitations of IDAPA 39.03.19, "Rules Governing Annual Overlegal Permits," and 39.03.13, "Rules Governing Overweight Permits," Section 200. (3-29-12)

03. **Hauling Equipment in Excess of Ten Feet.** Special overwidth hauling vehicles exceeding ten (10) feet in width will be permitted, and may be required, in the hauling of excessively heavy loads to improve the lateral distribution of weight, or when a combination of weight, width, or height makes extra width in the hauling vehicle desirable in the public interest. The use of such vehicles more than ten (10) feet in width shall be restricted to loads requiring an overwidth hauling vehicle and the backhaul permit shall be for the unladen vehicle. (10-2-89)

04. **Buildings.** Buildings which are too wide to be safely transported on legal-width hauling vehicles shall be moved either on house moving dollies or on trailers which can be reduced to legal width for unladen travel. (10-2-89)

301. -- 399. (RESERVED)

400. OVERWIDTH PERMITS FOR IMPLEMENTS OF HUSBANDRY.

01. Farm Tractors on Interstate Highways. Farm tractors transported on Interstate Highways are required to have overlegal permit authority if width exceeds nine (9) feet. A farm tractor when attached to an implement of husbandry or when drawing an implement of husbandry shall be construed to be an implement of husbandry and is not required to have a permit. Farmers, equipment dealers or custom operators may be issued single trip or annual permits under this rule for transportation of farm tractors, having a width in excess of nine (9) feet to or from a farm involving Interstate Highway travel. The transportation of farm tractors or implements of husbandry for hire, or not being transported from one farm operation to another, is a common-carrier operation. Exemptions from legal width limitation do not apply to common-carrier operations. Farm tractors or implements of husbandry hauled for hire, or used in the furtherance of a business (not to include farming operations), are subject to the same overlegal permit regulations as other oversize loads when the width of the load exceeds legal-width limitations, and must operate under oversize permits. (3-30-01)

02. Other Than Farm to Farm. Implements of husbandry exceeding eight (8) feet six (6) inches in width being transported other than from one (1) farm operation to another farm operation shall require overlegal permits except when the farmer or their designated agent is transporting implements of husbandry and equipment for the purpose of: (3-29-12)

a. The repair or maintenance of such implements of husbandry and equipment when traveling between a farm and a repair or maintenance facility during daylight hours; or (3-29-12)

b. The purchase or sale of such implements of husbandry or equipment when traveling between a farm and a dealership, auction house, or other facility during daylight hours. (3-29-12)

03. Farm Permits. Single trip permits must be ordered at the permit office ~~and the operator may post a security bond to establish credit (See IDAPA 39.03.21, "Rules Governing Overlegal Permit Fees," Section 300) and thereby qualify to complete an application form, call the overlegal permit office for a permit number, and carry the application form with the overwidth vehicle in lieu of the overlegal permit form.~~ Under provisions of IDAPA 39.03.19, "Rules Governing Annual Overlegal Permits," Section 100, annual permits will be issued to towing units or to self-propelled farm tractors or towed units, or blanket permits may be issued to an Idaho domicile applicant without vehicle identification. Such blanket permits may be transferred from one vehicle to another vehicle but shall be valid only when the permit is with the overwidth vehicle and/or load. A photocopy of the permit is valid provided that the Pilot/Escort Vehicle and Travel Time Requirements Map and Vertical Clearance of Structures Map furnished by the Idaho Transportation Department are included. Such annual permits for implements of husbandry or farm tractors are subject to the same maximum dimensions, travel time exclusions and safety requirements as other overwidth annual permits and are valid for continuous travel for twelve (12) consecutive months. (3-29-12)(7-23-15)T

04. Overwidth Farm Trailers. Trailers or semi-trailers exceeding eight feet six inches (8' 6") wide, but not wider than the implement of husbandry, used for the transportation of implements of husbandry from a farm to a farm for agricultural operations, shall be exempt from overlegal permitting requirements. This exemption does not apply to trailers or semi-trailers used in common carrier operations, hauling for hire or used in the furtherance of a business (not to include farming operations). (3-20-04)

a. Exempt trailers, as listed above, may not be used to haul implements of husbandry that are narrower than the overwidth trailer. (3-20-04)

b. Empty trailers, as listed above, being used to pick up or drop off an implement of husbandry from a farm to a farm are also exempt and must be reduced to a practical minimum dimension (i.e. dropping side extensions). (3-20-04)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.19 - RULES GOVERNING ANNUAL OVERLEGAL PERMITS

DOCKET NO. 39-0319-1501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 23, 2015.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section 40-312, Idaho Code, and Sections 49-201 and 49-1004, 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 16, 2015.

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

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

The proposed rule change would increase the load width allowed under an annual permit from the current maximum of 14' 6" to 16' wide. The proposed rule change also makes sure that this rule is in line and working order with IDAPA 39.03.17.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason: the change confers a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased by this rulemaking.

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

NEGOTIATED RULE-MAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is temporary.

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 Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2015.

DATED this 29th Day of July, 2015.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
Idaho Transportation Department

ramon.hobdey-sanchez@itd.idaho.gov
Phone: (208) 334-8810
3311 W State St, PO Box 7129, Boise ID 83707-1129

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0319-1501
(Only Those Sections With Amendments Are Shown.)

004. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P. O. Box 7129, Boise, ID 83707-1129. (7-23-15)T

02. Office Hours. Daily office hours are 7:30 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (7-23-15)T

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at (208) 334-8420 or by fax at (208) 334-8419. (7-23-15)T

005. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (7-23-15)T

~~0046.~~ -- 009. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL.

Overlegal permits may be issued for continuous operation to haul or transport nonreducible loads having specified maximum dimensions of oversize or overweight provided such permits for multiple trips can maintain the same measure of protection to highway facilities and to the traveling public as is provided by single trip permits. (4-5-00)

01. Oversize. Permits for continuous operation, oversize only. (10-2-89)

a. Permits for continuous operation shall be issued to one (1) specified power unit. The permittee may tow various units with the specified power unit, either as towaway vehicles or as trailers hauling oversize loads. Except as provided in IDAPA 39.03.07, "Rules Governing Restricted Routes for Semitrailers," 39.03.16, "Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads," Section 200 and 39.03.22, "Rules Governing Overlegal Permits for Extra-Length Vehicle Combinations," oversize loads shall be nonreducible in width, length, or height. In the case of specially constructed equipment, mounted on a towed vehicle, or if the towed vehicle is only hauling an oversize but not overweight load, the permit may be issued to the towed vehicle. (4-5-00)

b. Maximum size of loads or vehicles transported under authority of an annual oversize or manufactured homes/modular buildings and office trailer permit, for black and interstate routes, shall be limited to a width of ~~four~~sixteen (14~~6~~) feet ~~six (6) inches~~ (manufactured homes, modular buildings, and office trailers limited as per IDAPA 39.03.17, "Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers"), a height of fifteen (15) feet six (6) inches, and to a combination length of one hundred ten (110) feet including load overhang. Annual oversize permits for red coded routes shall be limited to a width of twelve (12) feet six (6) inches. A current Pilot/Escort Vehicle and Travel Time Requirements Map shall accompany such permits for extended operations and shall be considered to be a part of the permit. ~~(4-5-00)~~(7-23-15)T

02. Overweight/Oversize. Permits for continuous operation involving overweight loads shall be subject to the following conditions and requirements: (10-2-89)

a. Annual permits may not be issued for gross weights in excess of two hundred thousand (200,000)

pounds for any colored route. Gross weights in excess of two hundred thousand (200,000) pounds must operate by single trip permit. (4-5-00)

b. Since the fees are now based on the number of axles and gross weight to calculate the fee per mile, annual overweight permits will have to be issued to various combinations including those with a different number of axles and higher gross weights for those axles. You will no longer be able to operate less axles than the number stated on the permit, because the fee per mile (using less axles) would be greater than the fee per mile for the higher number of axles and gross weight. The number of axles in the vehicle configuration may be greater than the number of axles listed on the permit. The gross weight of the vehicle configuration may be less than the gross weight stated for each colored route, but your fee per mile will be based on and reported at the stated gross weight for each colored route on the permit (i.e. black, purple, green and yellow) and the number of axles. (4-5-00)

~~**e.** A percent reduction in the total fees may be given when the following requirements are met: (4-5-00)~~

~~**i.** A two percent (2%) reduction per axle group (such as tandem or tridem), to a maximum of ten percent (10%) per vehicle configuration, for axle groups that are wider than ten (10) feet. (4-5-00)~~

~~**ii.** A two percent (2%) reduction per axle group (such as tandem or tridem), to a maximum of ten percent (10%) per vehicle configuration, for axle groups with sixteen (16) tires per axle. (4-5-00)~~

~~**iii.** If both the above requirements are met for an axle group, a five percent (5%) reduction per axle group, to a maximum of twenty five percent (25%) per vehicle configuration may be given. This reduction will be taken off of the total roadway use fees charged for the vehicle and will not reduce the administrative fee. (4-5-00)~~

dc. To comply with Section 49-4361001, Idaho Code, the permittee will make quarterly reports of mileage to the Department at the permitted weight levels separate from the registered weight mileage otherwise required to be reported to that agency. Mileage for single trip overweight permits is charged for and collected at the time of issuance, and need not be reported elsewhere. ~~Unladen miles are reported at the registered weight of a vehicle or combination of vehicles~~ A quarterly statement is mailed out every three (3) months and required to be returned to the department even if no miles were traveled using the overweight part of the annual permit during that quarter. Every time a non-reducible vehicle and/or load exceeds legal axle weights and/or eighty thousand (80,000) pounds operating under an annual overweight/oversize permit it must be reported on the quarterly statement. The gross weight, number of axles, and the total miles traveled will be the information needed to report. If the gross weight is in between two (2) weight categories listed on the permit/quarterly statement, the permittee will report at the next higher gross weight limit. (4-5-00)(7-23-15)T

ed. Annual permits involving overweight loadings will be available at the following levels: (4-6-92)

i. Red Routes -- The red routes contain posted bridges and require approval or analysis from the Department. A vehicle configuration may be issued an annual overweight/oversize permit for travel on red routes, upon completion of an analysis verifying the requested weights are acceptable. The annual permit will be issued for a specific vehicle configuration, operating on a specific route, at specific weights. All information will be listed on the annual permit and will be subject to revocation at such time the vehicle configuration changes (such as axle spacings), the approved weights change, or a bridge rating changes. (8-4-95)

ii. Yellow Routes -- The yellow overweight level is based on a single axle loading of twenty-two thousand five hundred (22,500) pounds, a tandem axle loading of thirty-eight thousand (38,000) pounds, and a tridem axle loading of forty-eight thousand (48,000) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula $W = 560 ((LN/N-1) + 12N + 36)$. (4-6-92)

iii. Orange Routes -- The orange overweight level is based on a single axle loading of twenty-four thousand (24,000) pounds, a tandem axle loading of forty-one thousand (41,000) pounds, and a tridem axle loading of fifty-one thousand five hundred (51,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula $W = 600 ((LN/N-1) + 12N + 36)$. (3-30-01)

iv. Green Routes -- The green overweight level is based on a single axle loading of twenty-five

thousand five hundred (25,500) pounds, a tandem axle loading of forty-three thousand five hundred (43,500) pounds and a tridem axle loading of fifty-four thousand five hundred (54,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula $W = 640 ((LN/N-1) + 12N + 36)$. (4-6-92)

v. Blue Routes -- The blue overweight level is based on a single axle loading of twenty-seven thousand (27,000) pounds, a tandem axle loading of forty-six thousand (46,000) pounds, and a tridem axle loading of fifty-seven thousand five hundred (57,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula $W = 675 ((LN/N-1) + 12N + 36)$. (3-30-01)

vi. Purple Routes -- The purple overweight level is based on a single axle loading of thirty thousand (30,000) pounds, a tandem axle loading of fifty-one thousand five hundred (51,500) pounds, and a tridem axle loading of sixty-four thousand five hundred (64,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula $W = 755 ((LN/N-1) + 12N + 36)$. (3-30-01)

vii. Black Routes -- The black overweight level is based on a single axle loading of thirty-three thousand (33,000) pounds, a tandem axle loading of fifty-six thousand (56,000) pounds, and a tridem axle loading of seventy thousand five hundred (70,500) pounds or the equivalent loading as determined by spacings and number of axles and computed by applying the formula $W = 825 ((LN/N-1) + 12N + 36)$. (4-6-92)

viii. Vehicles or loads exceeding the axle weights, groups of axle weights, or total gross weights allowed on any of the overweight levels must operate by single trip permit only. (4-6-92)

ix. Weight Formula. "W" is the maximum weight in pounds (to the nearest five hundred (500) pounds) carried on any group of two (2) or more consecutive axles. "L" is the distance in feet between the extremes of any group of two (2) or more consecutive axles, "N" is the number of axles under consideration and "F" is the load factor most appropriate based on the most critical bridge on the highway route. (4-6-92)

fe. The maximum overweight levels shall not exceed eight hundred (800) pounds per inch width of tire nor the maximum weights authorized by IDAPA 39.03.13, "Rules Governing Overweight Permits," Subsection 200.01. (4-5-00)

gf. Annual overweight permits shall become invalid subject to the conditions of IDAPA 39.03.23, "Rules Governing Revocation of Special Permits." (4-5-00)

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - RULES OF THE IDAHO DIVISION OF VOCATIONAL REHABILITATION

DOCKET NO. 47-0101-1501

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 33-2301, Idaho Code, and the Rehabilitation Act of 1973 and all subsequent amendments.

METHOD OF PARTICIPATION: Interested persons wishing to participate in the negotiated rulemaking must respond to this notice by contacting the undersigned either in writing, by email, or by calling the phone number listed below. To participate, responses must be received by September 11th, 2015.

Should a reasonable number of persons respond to this notice, negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary and made available on the agency website.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Person's wishing to participate may contact Tracie Bent at the Office of the State Board of Education, PO Box 83720, Boise, Idaho 83720-0037 or tracie.bent@osbe.idaho.gov, to schedule a meeting or provide written comments. All meeting dates, locations, and teleconference information will be posted on the Board of Education website at www.boardofed.idaho.gov.

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 Idaho Division of Vocational Rehabilitation (IDVR) Field Service Manual contains internal processes to IDVR as well as eligibility and program requirements for the people and agencies IDVR serves. Currently this manual is incorporated by reference into Idaho Administrative Code, IDAPA 47.01.01. IDVR has identified a number of processes in the Field Service Manual that belong, more appropriately, in a policies and procedures manual of the agency, the proposed changes would remove these sections and make technical corrections to the field service manual.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Tracie Bent at (208)332-1582 or tracie.bent@osbe.idaho.gov. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the State Board of Education website once drafted at the following web address: www.boardofed.idaho.gov.

All written comments must be directed to the undersigned and must be delivered on or before September 23rd, 2015, electronic comments must be submitted to tracie.bent@osbe.idaho.gov.

DATED this 7th Day of August, 2015.

Tracie Bent
Chief Planning and Policy Officer
Idaho State Board of Education
650 W State St.
PO Box 83720
Boise, ID 83702-0037
Phone: (208)332-1582, Fax: 334-2632

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1501

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 rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 16, 2015. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to comply with a recent revision to the Clean Water Act that requires planning documents, that are used for State Revolving Fund (SRF) projects, to assess the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation. This proposed rule change incorporates the required elements of planning documents that are not already in the existing rule. The additional required elements are a result of the 2014 amendments to the Clean Water Act (Pub.L. 113-121).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies 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 2015 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2016 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 the outcome of the negotiated rulemaking process conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the July 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 100](#), and a preliminary draft rule was made available for public review. A meeting was held on July 21, 2015. Members of the public did not attend the meeting or submit written comments. 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. The negotiated rulemaking record, which includes the negotiated rule drafts, and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0104-1501.

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 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 Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

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 September 30, 2015.

Dated this 2nd Day of September, 2015.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
Tel: (208) 373-0418 / Fax: (208) 373-0481
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0104-1501
(Only Those Sections With Amendments Are Shown.)

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare a wastewater treatment facility planning document. The planning document will identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-29-12)

01. Planning Document. (3-29-12)

a. A planning document shall include all items required by IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules shall be required prior to construction. (3-29-12)

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (3-29-12)

i. The draft planning document shall include all items required by 58.01.16 "Wastewater Rules," Subsection 411.03 or 410.04, as well as the following: (3-29-12)

- (1) Description of existing conditions for the proposed project area; (4-2-08)
- (2) Description of future conditions for the proposed project area; (4-2-08)
- (3) Development and initial screening of alternatives; and (3-29-12)
- (4) Development of an environmental review specified by the Department as described in Section 042. (3-29-12)

ii. The final planning document shall include all items required of the draft planning document as well as the following: (3-29-12)

- (1) Final screening of principal alternatives and plan adoption; (4-2-08)
- (2) Selected plan description and implementation arrangements; ~~and~~ ~~(3-29-12)~~ ()
- (3) Relevant engineering data supporting the final alternative; ~~and~~ ~~(3-29-12)~~ ()

(4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. ()

iii. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the grant recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared. (3-29-12)

c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-29-12)

d. The draft and final planning documents must be reviewed and approved by the Department. (3-29-12)

e. The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (4-2-08)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1501

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 rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 16, 2015. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Congress recently amended the Clean Water Act's requirements for the State Revolving Fund (SRF) loan effort. The amendment requires that Idaho consider population trends and unemployment data, in addition to the existing criteria of median household income, when determining which borrowers will qualify for disadvantaged loan terms. This rule change incorporates the additional criteria for evaluating the eligibility for disadvantaged loans that are not already in the existing rule. The additional required elements are a result of the 2014 amendments to the Clean Water Act (Pub.L. 113-121).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies 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 2015 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2016 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 the outcome of the negotiated rulemaking process conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the July 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 138](#), and a preliminary draft rule was made available for public review. A meeting was held on July 21, 2015. Members of the public did not attend the meeting or submit written comments. 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. The negotiated rulemaking record, which includes the negotiated rule drafts, and documents distributed during the negotiated rulemaking process, is available at www.deq.idaho.gov/58-0112-1501.

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 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 Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

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 September 30, 2015.

Dated this 2nd Day of September, 2015.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0112-1501
(Only Those Sections With Amendments Are Shown.)

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-29-12)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an annual user rate for wastewater service for residential customers which exceeds ~~one and one-half percent (1½%)~~ two percent (2%) of the applicant community's median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community's median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. The applicant shall agree to a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. The annual user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area. (3-29-12)()

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. Consistent with achieving user rates ~~of one and one-half percent (1½%) of the applicant community's median household income~~ as per the criteria set forth in Subsection 021.01, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. (3-29-12)()

a. Decreasing Interest Rate. The loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual user rate ~~equal to one and one-half percent (1½%) of median household income~~ equaling the criteria set forth in Subsection 021.01. The interest rate may be reduced to as low as zero percent (0%). (3-29-12)()

b. Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds ~~one and one-half percent (1½%) of median household income; the criteria set forth in Subsection 021.01,~~ then the principal which causes the user charge to exceed ~~one and one-half percent (1½%) may be reduced except the criteria set forth in Subsection 021.01 may be partially forgiven or reduced.~~ ‡The principal reduction cannot exceed fifty percent (50%) of the total loan. Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below ~~one and one-half percent (1½%) of the applicant community's median household income~~ the criteria set forth in Subsection 021.01. (3-29-12)()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.25 - RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM

DOCKET NO. 58-0125-1401 (NEW CHAPTER - FEE RULE)

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 39-101 et seq., and 39-175A-C, 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 18, 2015. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to implement Idaho Code § 39-175C, which directed DEQ to seek approval of a National Pollutant Discharge Elimination System (NPDES) program. These rules will be promulgated under a new DEQ rule chapter, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," IDAPA 58.01.25.

In order to gain approval of the program, DEQ must have rules in place that meet the requirements of the Clean Water Act and federal regulations. These rules will establish procedures for submitting permit applications, writing and issuing IPDES permits, filing appeals, fee structures, developing general permits, and other required components of an NPDES program. DEQ negotiated certain elements of the IPDES program including the permit application process, the appeals process, the fee structure, and compliance enforcement with IPDES permits. With respect to required NPDES program components, federal regulations have been incorporated by reference into the proposed rules.

Major and minor municipal discharges; industrial dischargers; facilities, organizations and individuals seeking coverage under a general permit; facilities that currently have or will have a pretreatment permit to a wastewater facility; and other groups interested in point source discharges to waters of the United States in Idaho may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2015 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2016 legislative session if adopted by the Board and approved by the Legislature.

Before this rule docket can become effective, it will be necessary to revise various sections of Idaho Code. DEQ intends to submit draft companion legislation for consideration by the 2016 Idaho 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:

Incorporating the federal regulations by reference benefits the agency and simplifies the overall rule chapter by incorporating those sections of the federal regulations that must be adhered to in the course of developing an IPDES program. This reduces the overall costs of the rule and will allow the agency to adhere to the legally mandated deadline of submitting a complete application to EPA by September of 2016. The alternative to incorporating the federal regulations by reference is to restate the federal regulations in the new IPDES rules. This approach allows for the regulated public to have the entire rule set in one location rather than having to search out 40 CFR chapters. The downside is additional rulemaking pages and the associated annual rule administrative costs.

FEE SUMMARY: Pursuant to Section 39-175C(2), Idaho Code, the Board of Environmental Quality is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States Environmental Protection Agency including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of Section 39-175C, Idaho Code. Section 110 of the rule imposes an annual fee which must be paid for each year beginning one year after the effective date of the IPDES program for the affected category of discharger.

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.

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 November 2014 Idaho Administrative Bulletin, [Vol. 14-11, pages 72-73](#), and a preliminary draft rule was made available for public review. Eight meetings were held between December 2014 and July 2015. 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, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at www.deq.idaho.gov/58-0125-1401.

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 proposed rule is not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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)373-0291.

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 2, 2015.

DATED this 2nd day of September, 2015.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR FEE DOCKET NO. 58-0125-1401

**IDAPA 58
TITLE 01
CHAPTER 25**

**58.01.25 - RULES REGULATING THE IDAHO POLLUTANT DISCHARGE
ELIMINATION SYSTEM PROGRAM**

000. LEGAL AUTHORITY.

The Department and the Board are authorized to formulate and adopt rules as are necessary to obtain approval of the IPDES program by EPA pursuant to Section 39-175C, Idaho Code. The Department is authorized to implement and enforce the rules in this chapter pursuant to the Sections 39-175A-C and the provisions of the Environmental Protection and Health Act, Sections 39-101 et.seq., Idaho Code. The rules in this chapter shall not be effective until the requirements in Section 39-175C, Idaho Code, have been met and the United States EPA has approved, under 33 U.S.C. 1342(b), Idaho's administration of the IPDES program. ()

001. TITLE AND SCOPE.

01. Title. The rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program." ()

02. Scope. These rules establish the procedures and requirements for the issuance and maintenance of permits for facilities or activities for which a person is required by Idaho Code and the Clean Water Act to obtain authorization to discharge pollutants to waters of the United States. These permits shall be referred to in these rules as "IPDES permits" or "permits." ()

002. CONFIDENTIALITY OF RECORDS.

01. Identifying Confidential Information. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21 (Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality). In accordance with Sections 9-337 through 9-347, Idaho Code, any information submitted to the Department pursuant to these rules may be claimed as confidential by the submitter. It shall be the responsibility of the submitter to give notice of the existence of a claim of confidentiality on each page or other portion of information at the time of submittal and such person shall have the burden of demonstrating that the information is confidential. ()

02. Denial of Confidential Claims. In accordance with Section 9-342A, Idaho Code, a claim of confidentiality, including but not limited to a claim as to information claimed confidential as a trade secret, shall be denied and any person may inspect and copy: ()

a. The name and address of any IPDES applicant or permittee; ()

b. The content of any IPDES permit; ()

c. IPDES permit applications, and information required to be submitted by IPDES application forms under Section 105 (Application for an Individual IPDES Permit), or IPDES General Permit Notice of Intent, and information required to be submitted under Section 130 (General Permits), whether the information is submitted on the application forms themselves or in any attachments used to supply information required by the application forms; and ()

d. Effluent data as defined in 40 CFR 2.302. ()

003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

01. Availability of Reference Material. Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: ()

a. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. ()

b. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. ()

c. Electronic Code of Federal Regulations (eCFR) <http://www.ecfr.gov/cgi-bin/ECFR>. ()

02. Incorporation by Reference. The following documents are incorporated by reference into these rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules: ()

a. [40 CFR 122.21\(r\)](#), revised as of July 1, 2015 (Application Requirements for Facilities with Cooling Water Intake Structures); ()

b. [40 CFR 122.23](#), revised as of July 1, 2015 (Concentrated Animal Feeding Operations); ()

c. [40 CFR 122.24](#), revised as of July 1, 2015 (Concentrated Aquatic Animal Production Facilities); ()

d. [40 CFR 122.25](#), revised as of July 1, 2015 (Aquaculture Projects); ()

e. [40 CFR 122.26\(a\)](#) through (b) and [40 CFR 122.26\(e\)](#) through (g), revised as of July 1, 2015 (Storm Water Discharges); ()

f. [40 CFR 122.27](#), revised as of July 1, 2015 (Silvicultural Activities); ()

g. [40 CFR 122.29\(d\)](#), revised as of July 1, 2015 (Effect of Compliance with New Source Performance Standards); ()

h. [40 CFR 122.30](#) and [40 CFR 122.32](#) through [40 CFR 122.37](#), revised as of July 1, 2015 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems); ()

i. [40 CFR 122.42\(e\)](#), revised as of July 1, 2015 (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations); ()

j. [Appendix A to 40 CFR 122](#), revised as of July 1, 2015 (NPDES Primary Industry Categories); ()

k. [Appendix C to 40 CFR 122](#), revised as of July 1, 2015 (Criteria for Determining a Concentrated Aquatic Animal Production Facility); ()

l. [Appendix D to 40 CFR 122](#), revised as of July 1, 2015 (NPDES Permit Application Testing Requirements); ()

m. [Appendix J to 40 CFR 122](#), revised as of July 1, 2015 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works); ()

n. [40 CFR 125.1](#) through [40 CFR 125.3](#) (Subpart A), revised as of July 1, 2015 (Criteria and Standards for imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act); ()

o. [40 CFR 125.10](#) through [40 CFR 125.11](#) (Subpart B), revised as of July 1, 2015 (Criteria for Issuance of Permits to Aquaculture Projects); ()

p. [40 CFR 125.30](#) through [40 CFR 125.32](#) (Subpart D), revised as of July 1, 2015 (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act); ()

q. [40 CFR 125.70](#) through [40 CFR 125.73](#) (Subpart H), revised as of July 1, 2015 (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act); ()

r. [40 CFR 125.80](#) through [40 CFR 125.89](#) (Subpart I), revised as of July 1, 2015 (Requirements

Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act); ()

s. 40 CFR 125.90 through 40 CFR 125.99 (Subpart J), revised as of July 1, 2015 (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); ()

t. 40 CFR 129.1 through 40 CFR 129.105 (Subpart A), revised as of July 1, 2015 (Toxic Pollutant Effluent Standards and Prohibitions); ()

u. 40 CFR 133.100 through 40 CFR 133.105, revised as of July 1, 2015 (Secondary Treatment Regulation); ()

v. 40 CFR Part 136, revised as of July 1, 2015 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); ()

w. 40 CFR Part 401, revised as of July 1, 2015 (General Provisions); ()

x. 40 CFR 403.1 through 40 CFR 403.3; 40 CFR 403.5 through 40 CFR 403.9; and 40 CFR 403.11 through 40 CFR 403.18, revised as of July 1, 2015 (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); ()

y. 40 CFR Part 405 through 40 CFR Part 471, revised as of July 1, 2015 (Effluent Limitations and Guidelines); and ()

z. 40 CFR 503.2 through 40 CFR 503.48, revised as of July 1, 2015 (Sewage Sludge, including Appendices A and B). ()

aa. The term “Waters of the United States or waters of the U.S.,” as defined in 40 CFR 122.2, revised as of August 28, 2015 by 80 Federal Register 37054-37127 (June 29, 2015), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in 40 CFR 122.2, revised as of July 1, 2015. ()

03. Term Interpretation. For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: ()

a. The term Administrator or Regional Administrator means the EPA Region 10 Administrator; ()

b. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; ()

c. The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; ()

d. The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); ()

e. The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. ()

004. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of

Administrative Procedure before the Board of Environmental Quality.” ()

005. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

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

The state office of the Department of Environmental Quality is located at 1410 N. Hilton, Boise, Idaho 83706, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program,” the following definitions apply: ()

01. Animal Feeding Operation. A lot or facility (other than an aquatic animal production facility) where the following conditions are met: ()

a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and ()

b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. ()

02. Applicable Standards and Limitations. All state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under the Clean Water Act sections 301, 302, 303, 304, 306, 307, 308, 403 and 405. ()

03. Application. The IPDES forms for applying for a permit or the EPA equivalent standard national forms when deemed acceptable by the Department, including any additions, revisions or modifications to the forms. ()

04. Approved Program or Approved State. A state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123. ()

05. Aquaculture Project. A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. ()

06. Average Monthly Discharge Limitation. The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. ()

07. Average Weekly Discharge Limitation. The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. ()

08. 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. ()

09. Best Management Practices (BMPs). Schedules of activities, prohibitions of practices,

maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. ()

10. Biochemical Oxygen Demand (BOD). The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. ()

11. 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. ()

12. Bypass. The intentional diversion of wastewater from any portion of a treatment facility. ()

13. Chemical Oxygen Demand (COD). A bulk parameter that measures the oxygen-consuming capacity of organic and inorganic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. ()

14. Class I Sludge Management Facility. Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment. ()

15. Clean Water Act. Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972. Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq. ()

16. Clean Water Act and Regulations. The Clean Water Act and applicable regulations promulgated thereunder. In the case of an approved IPDES program, it includes Department program requirements. ()

17. Compliance Schedule or Schedule of Compliance. A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Clean Water Act and these rules. ()

18. Concentrated Animal Feeding Operation (CAFO). Animal feeding operation that is defined as a Large CAFO in accordance with 40 CFR 122.23(b)(4), as a Medium CAFO in accordance with 40 CFR 122.23(b)(6), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. ()

19. Concentrated Aquatic Animal Production (CAAP). A hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the Department designates under 40 CFR 122.24(c). ()

20. Continuous Discharge. A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. ()

21. Daily Discharge. The discharge of a pollutant measured during a calendar day or any twenty-four-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day. ()

22. Department. The Idaho Department of Environmental Quality. ()

23. **Design Flow.** The average or maximum point source discharge volume per unit time that a facility or system is constructed to accommodate. ()
24. **Direct Discharge.** The discharge of a pollutant to waters of the United States. ()
25. **Director.** The Director of the Idaho Department of Environmental Quality or authorized agent. ()
26. **Discharge Monitoring Report (DMR).** The facility or activity report containing monitoring and discharge quality and quantity information and data required to be submitted periodically, as defined in the discharge permit. These reports must be submitted to the Department on a Department-approved format. ()
27. **Discharge.** When used without qualification means the discharge of a pollutant. ()
28. **Discharge of a Pollutant.** Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger. ()
29. **Draft Permit.** A document prepared under these rules indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsections 107.01 and 203.02, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection 201.01, is not a draft permit. A proposed permit is not a draft permit. ()
30. **Effluent.** Any discharge of treated or untreated pollutants into waters of the United States. ()
31. **Effluent Limitation.** Any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, in accordance with these rules and the Clean Water Act. ()
32. **Effluent Limitations Guidelines.** A regulation published by the EPA under the Clean Water Act section 304(b) to adopt or revise effluent limitations. ()
33. **Electronic Signature.** Information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature. ()
34. **Environmental Protection Agency (EPA).** The United States Environmental Protection Agency. ()
35. **Equivalent Dwelling Unit (EDU).** A measure where one (1) equivalent dwelling unit is equivalent to wastewater generated from one (1) single-family residence. The number of EDUs must be calculated from the municipality's population served divided by the average number of people per household as defined in the most recent Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). ()
36. **Existing Source.** Any source which is not a new source or a new discharger. ()
37. **Facilities or Equipment.** Buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source. ()

- 38. Facility or Activity.** Any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the IPDES program. ()
- 39. Fundamentally Different Factors.** The factors relating to a discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national effluent limits. ()
- 40. General Permit.** An IPDES permit issued under Section 130 (General Permits) authorizing a category of discharges within a geographical area. ()
- 41. Hazardous Substance.** Any substance designated under 40 CFR Part 116 pursuant to the Clean Water Act section 311. ()
- 42. Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. ()
- 43. Indian Country.** ()
- 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; ()
- b.** All dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of the state; and ()
- c.** All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same. ()
- 44. Indian Tribe.** Any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. ()
- 45. Indirect Discharger.** A nondomestic discharger introducing pollutants to a privately or publicly owned treatment works. ()
- 46. Industrial Wastewater.** Any waste, together with such water as is present that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater (see Process Wastewater). ()
- 47. Infiltration.** Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. ()
- 48. Inflow.** Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration. ()
- 49. Interstate Agency.** An agency of two (2) or more states established by or under an agreement or compact, or any other agency of two (2) or more states having substantial powers or duties pertaining to the control of pollution. ()
- 50. Load Allocation (LA).** The portion of a receiving water body's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. ()

- 51. Major Facility.** A facility or activity that is: ()
- a.** A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or ()
 - b.** A non-municipal facility that equals or exceeds the eighty (80) point accumulation obtained as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document. ()
- 52. Maximum Daily Discharge Limitation.** The highest allowable daily discharge. ()
- 53. Maximum Daily Flow.** The largest volume of flow to be discharged during a continuous twenty-four-hour period expressed as a volume per unit time. ()
- 54. 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. ()
- 55. Municipality.** A city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act section 208. ()
- 56. National Pollutant Discharge Elimination System (NPDES).** The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act sections 307, 402, 318, and 405. ()
- 57. New Discharger.** Any building, structure, facility, or installation: ()
- a.** From which there is or may be a discharge of pollutants; ()
 - b.** That did not commence the discharge of pollutants at a particular site prior to August 13, 1979; ()
 - c.** Which is not a new source; and ()
 - d.** Which has never received a finally effective NDPEs or IPDES permit for discharges at that site. ()
 - e.** This definition includes an indirect discharger which commences discharging into waters of the United States after August 13, 1979. It also includes any existing mobile point source such as an aggregate plant, that begins discharging at a site for which it does not have a permit; ()
- 58. New Source.** Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: ()
- a.** After promulgation of standards of performance under the Clean Water Act section 306 which are applicable to such source; or ()
 - b.** After proposal of standards of performance in accordance with the Clean Water Act section 306 which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty (120) days of their proposal. ()
- 59. Notice of Intent to Deny.** A type of draft permit that shall convey to a permit applicant or

permittee, the Department's intent to not issue or renew an IPDES permit. ()

60. Notice of Intent to Obtain Coverage under an IPDES General Permit. An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to: ()

- a. Construction General Permit (CGP); ()
- b. Multi-Sector General Permit (MSGP); ()
- c. Municipal Separate Storm Sewer System (MS4) General Permit; ()
- d. Concentrated Animal Feeding Operation (CAFO) General Permit; ()
- e. Concentrated Aquatic Animal Production (CAAP) Facility General Permit; ()
- f. Ground Water Remediation General Permit; ()
- g. Suction Dredge General Permit; ()
- h. Vessel General Permit (VGP); or ()
- i. Pesticide General Permit (PGP). ()

61. Notice of Intent to Terminate. A notice of intent to terminate shall: ()

- a. Convey to a permittee the Department's intent to terminate an existing IPDES permit for cause; or ()
- b. Convey to the Department a permittee's intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is obligated to submit a notice of intent to terminate upon completion of construction activities and, in the case of storm water control, that final stabilization has been achieved. ()

62. Owner or Operator. The person, company, corporation, district, association, or other organizational entity that is an owner or operator of any facility or activity subject to regulation under the IPDES program. ()

63. Permit. The authorization, license, or equivalent control document issued by the Department to implement the requirements of these rules. This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit. ()

64. 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, or an agent or employee thereof, which is recognized by law as the subject of rights and duties. ()

65. 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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. ()

66. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean: ()

- a. Sewage from vessels; or ()
- b. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well-used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976). ()
67. **Potable Water.** Water which is free from impurities in such amounts that it is safe for human consumption without treatment. ()
68. **Pretreatment.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e). ()
69. **Primary Industry Category.** Any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR Part 122. ()
70. **Privately Owned Treatment Works.** Any device or system which is used to treat wastes and is not a Publicly Owned Treatment Works (POTW). ()
71. **Process Wastewater.** Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product (see Industrial Wastewater definition). ()
72. **Proposed Permit.** An IPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit. ()
73. **Publicly Owned Treatment Works (POTW).** A treatment works as defined by the Clean Water Act section 212, which is owned by a state or municipality, as defined by the Clean Water Act section 502(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in the Clean Water Act section 502(4), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. ()
74. **Receiving Waters.** Those waters of the United States to which there is a discharge of pollutants. ()
75. **Recommencing Discharger.** A source which renews discharges after terminating operations. ()
76. **Regional Administrator.** The Region 10 Administrator of the Environmental Protection Agency or the authorized representative of the Regional Administrator. ()
77. **Secondary Industry Category.** Any industry category which is not a primary industry category.

()

78. Secondary Treatment. Technology-based requirements for direct discharging POTWs, based on the expected performance of a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD5, total suspended solids (TSS), and pH (except as provided by treatment equivalent to secondary treatment and other special considerations). ()

79. Secretary. The Secretary of the Army, acting through the Chief of Engineers. ()

80. Septage. The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained. ()

81. Severe Property Damage. Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. ()

82. 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. ()

83. Sewage from Vessels. Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under the Clean Water Act section 312. ()

84. Sewage Sludge. Any solid, semi-solid, or liquid residue removed during the treatment of wastewater. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. ()

85. Sewage Sludge Use or Disposal Practice. The collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge. ()

86. Significant Industrial User. ()

a. All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 400 through 471; and ()

b. Any other industrial user that: ()

i. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); ()

ii. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or ()

iii. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)). ()

87. Silvicultural Point Source. Any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road

construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit. ()

88. 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. ()

89. Sludge-Only Facility. Any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. ()

90. Source. Any building, structure, facility, or installation from which there is or may be discharge of pollutants. ()

91. Standards for Sewage Sludge Use or Disposal. Regulations promulgated pursuant to the Clean Water Act section 405(d) and these rules which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person. ()

92. State. The state of Idaho. ()

93. State/EPA Agreement. An agreement between the EPA Regional Administrator and the state of Idaho which coordinates EPA and Department activities, responsibilities and programs including those under the Clean Water Act programs. ()

94. Storm Water. Storm water runoff, snow melt runoff, and surface runoff and drainage. ()

95. Technology-Based Effluent Limitation (TBEL). Treatment requirements under 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. ()

96. Total Dissolved Solids. The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. ()

97. Toxic Pollutant. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the United States 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 pollutants include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to the Clean Water Act section 307(a), or in the case of sewage sludge use or disposal practices, any pollutant identified in regulations implementing the Clean Water Act section 405(d). ()

98. Treatment. A process or activity conducted for the purpose of removing pollutants from wastewater. ()

99. Treatment Facility. Any physical facility or land area for the purpose of collecting, treating, neutralizing, or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, wastewater treatment plant, or privately or publicly owned treatment works. ()

100. Treatment Works Treating Domestic Sewage (TWTDS). A POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this

definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. ()

101. Upset. An exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. ()

102. User. Any person served by a wastewater system. ()

103. Variance. Any mechanism or provision under the Clean Water Act section 301 or 316 or under 40 CFR Part 125, or in the applicable effluent limitations guidelines allowing modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Clean Water Act sections 301(c), 301(g), 301(h), 301(i), or 316(a). ()

104. Wasteload Allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution. ()

105. Wastewater. Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. ()

106. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the United States, or the discharge of any pollutant into the waters of the United States, 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. ()

107. Water Quality-Based Effluent Limitation (WQBEL). An effluent limitation determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source to a specific receiving water. ()

108. Water Transfer. An activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. ()

109. Wetlands. Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. ()

110. Whole Effluent Toxicity. The aggregate toxic effect of an effluent measured directly by a toxicity test. ()

011. -- 049. (RESERVED)

050. COMPUTATION OF TIME.

01. Computing Time. In computing any period of time scheduled to begin after or before the occurrence of an act or event, the date of the act or event shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor holiday. ()

02. Notice by Mail. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper and the notice or paper is served upon him or her by mail,

three (3) days shall be added to the prescribed time. ()

051. -- 089. (RESERVED)

090. SIGNATURE REQUIREMENTS.

01. Permit Applications and Notices of Intent. All IPDES permit applications and notices of intent must be signed as follows: ()

a. For a corporation, a responsible corporate officer shall sign the application or notice of intent. In this subsection, a responsible corporate officer means: ()

i. 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 ()

ii. The manager of one (1) or more manufacturing, production, or operating facilities, if: ()

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental statutes and regulations; ()

(2) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for IPDES permit application requirements; and ()

(3) Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; ()

b. For a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and ()

c. For a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application. In this subsection, a principal executive officer of an agency means: ()

i. The chief executive officer of the agency; or ()

ii. A senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency. ()

02. Reports and Other Information Submitted. Any report or information required by an IPDES permit, notice of intent, monitoring and reporting provisions, and any other information requested by the Department, must be signed by a person described in Subsection 090.01, or by a duly authorized representative of that person. A person is a duly authorized representative only if: ()

a. The authorization is made in writing by a person described in Subsection 090.01; ()

b. The authorization specifies either: ()

i. An individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of manager, operator, superintendent or position of equivalent responsibility; or ()

ii. An individual or position having overall responsibility for environmental matters for the company; and ()

c. The written authorization is submitted to the Department. ()

03. New Authorization. If an authorization is no longer accurate due to a change in staffing or personnel for the overall operation of the facility, a new authorization satisfying the requirements of Subsection 090.01 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative. ()

04. Certification. Any person signing a document under Subsections 090.01 or 090.02 shall certify as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." ()

05. Electronic Signatures. The Department may require any signed, certified, or authorized information required under these rules to be submitted electronically, with an electronic signature approved by the Department. ()

091. -- 099. (RESERVED)

100. EFFECT OF A PERMIT.

01. Rights. The issuance of, or coverage under, an IPDES permit does not convey any property rights or any exclusive privilege nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. The issuance of, or coverage under, an IPDES permit does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity, and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits. ()

02. Compliance. Except for any toxic effluent standards and prohibitions imposed under the Clean Water Act section 307, and standards for sewage sludge use or disposal under the Clean Water Act section 405(d), compliance with an IPDES permit during its term constitutes compliance, for purposes of enforcement, with Clean Water Act sections 301, 302, 306, 307, 318, 403, and 405(a) through (b). However, a permit or coverage under a permit may be modified, revoked and reissued, or terminated during its term for cause as set out in Sections 130 (General Permits), 201 (Modification, or Revocation and Reissuance of IPDES Permits), and 203 (Termination of IPDES Permits). ()

101. DURATION.

01. Permit Term. IPDES permits shall be issued for a fixed duration not to exceed five (5) years. ()

a. The Department may issue a permit for a period of less than five (5) years. An explanation of the reasoning behind issuing a permit for a shorter period shall be provided in the fact sheet. ()

b. The duration of a permit may not be modified to lengthen the effective term of the permit past the maximum five (5) year duration. ()

c. A permit may be issued to expire on or after the statutory deadline set forth in the Clean Water Act sections 301(b)(2)(A), (C), and (E), if the permit includes effluent limitations to meet the requirements of the Clean Water Act sections 301(b)(2)(A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. ()

d. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under Subsection 101.01.c. is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated. ()

e. A federally-issued NPDES permit, the administration of which has been transferred to the Department upon or after EPA approval of the IPDES program, shall continue in effect and be enforceable by the Department, subject to Subsections 101.02 and 101.03. ()

02. Continuation of Individual Permits. ()

a. The conditions of an expired individual permit, whether a federal NPDES permit (except for permits over which EPA retains authority) or a state-issued IPDES permit, will remain fully effective and enforceable until the effective date of a new permit or the date of the Department's final decision to deny the application for the new permit, if: ()

i. The permittee has submitted a timely and complete application for a new permit under Section 105 (Application for an Individual IPDES Permit); and ()

ii. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. ()

b. Permits continued under this section shall be considered high priority for completion. ()

03. Continuation of General Permits. The conditions of an expired general permit, whether a federal NPDES permit or a state-issued IPDES permit, will remain fully effective and enforceable (except for permits over which EPA retains authority) until the date the authorization to discharge under the new permit is determined, if: ()

a. The permittee has submitted a timely notice of intent to obtain coverage under the new general permit as specified in Section 130 (General Permits); and ()

b. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new general permit with an effective date on or before the expiration date of the previous permit. ()

04. Continuation of Permits During an Appeal. Whether the conditions of an expired permit remain effective and enforceable during an appeal of a new permit, or an appeal of the denial of a permit application, is governed by Section 204 (Appeals Process). ()

102. OBLIGATION TO OBTAIN AN IPDES PERMIT.

01. Persons Who Must Obtain a Permit. Any person who discharges or proposes to discharge a pollutant from any point source into waters of the United States, or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503 or these rules, and who does not have an IPDES or NPDES permit in effect, shall submit a complete IPDES permit application to the Department, unless the discharge, proposed discharge, or TWTDS: ()

a. Is covered by one (1) or more general permits in compliance with Section 130 (General Permits). Any applicant must complete a notice of intent for any discharge or proposed discharge that is covered by one (1) or more general permits; ()

b. Is excluded from IPDES permit requirements under Subsection 102.04; ()

c. Is by a user to a privately owned treatment works, and the Department, under Section 370 (Pretreatment Standards), does not otherwise require the person to apply for a permit; or ()

d. Is a TWTDS facility that uses or disposes of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have not been published. Such facilities shall submit limited background information, as specified in Subsection 105.17.o., within one (1) year after publication of applicable standards.()

02. Operator's Duty to Obtain a Permit. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. ()

03. Permits Under the Clean Water Act Section 405(f). All new and currently permitted TWTDS whose sewage sludge use or disposal practices are regulated by 40 CFR Part 503 must submit permit applications according to the applicable schedule in Subsection 105.17. The Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge. ()

04. Exclusions from Permit. A person shall not discharge pollutants from any point source into waters of the United States without first obtaining an IPDES permit from the Department or coverage under an IPDES general permit, unless the discharge is excluded from IPDES permit requirements or the discharge is authorized by an IPDES or NPDES permit that continues in effect. The Department will not require IPDES permits for facilities or activities not required to have permits under the Clean Water Act and federal Clean Water Act regulations. Discharges excluded from IPDES permit requirements, but that may be regulated by other state or federal regulations include: ()

a. Any sewage discharge from vessels and any effluent from properly functioning marine engines, laundry, shower and galley sink wastes, or any other discharge incidental to the normal operation of a vessel of the U.S. Armed Forces within the meaning of the Clean Water Act section 312, and a recreational vessel within the meaning of the Clean Water Act section 502(25). None of these exclusions apply to: ()

i. Rubbish, trash, garbage, or other such materials discharged overboard; nor to ()

ii. Other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as: ()

(1) An energy or mining facility; ()

(2) A storage facility, or when secured to a storage facility; or ()

(3) When secured to the bed of the waters of the United States for the purposes of mineral or oil exploration or development; ()

b. Any discharge of dredged or fill material into waters of the United States that is regulated under the Clean Water Act section 404; ()

c. Sewage, industrial wastes, or other pollutants discharged into publicly owned treatment works (POTWs) by an indirect discharger who has received a will-serve letter authorizing the discharge to the POTW. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works; ()

d. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), or 33 CFR 153.10(e) (Control of Pollution by Oil and Hazardous Substances, Discharge Removal); ()

e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; however, this exclusion does not apply to discharges from concentrated animal feeding operations (CAFO) as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production (CAAP) facilities, discharges to aquaculture projects, and discharges from silvicultural point sources; ()

f. Any return flow from irrigated agriculture; ()

g. Discharges into a privately owned treatment works, except as the Department may otherwise require under Subsection 302.15; and ()

h. Discharges from a water transfer. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred. ()

103. PERMIT PROHIBITIONS.

The Department will not issue an IPDES permit for a discharge: ()

01. Clean Water Act Compliance. Unless the conditions of the permit provide for compliance with the applicable requirements of IDAPA 58.01.02, "Water Quality Standards" and 58.01.25 "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ()

02. EPA Objection. When the Department has received written objection from the EPA Regional Administrator to issuance of the permit, and the Department has not addressed the objections to the satisfaction of the EPA Regional Administrator according to the process identified in the Memorandum of Agreement between EPA and the Department; ()

03. Water Quality Requirements. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; ()

04. Anchorage and Navigation Impaired. When, in the judgment of the Secretary of the United States Army through the Army Corp Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge; ()

05. Banned Content. Of any radiological, chemical, or biological warfare agent or high level radioactive waste; ()

06. Area Wide Waste Treatment Management Plans. That is inconsistent with a plan or plan amendment approved under the Clean Water Act section 208(b); or ()

07. New Sources or New Dischargers. For a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. ()

a. When the owner or operator of a new source or new discharge proposes to discharge into a water segment that does not meet applicable water quality standards, or that is not expected to meet those standards even after the application of the effluent limitations required by Clean Water Act sections 301(b)(1)(A) and (B), and for which the state or interstate agency has performed a pollutant load allocation for the pollutant to be discharged, then the owner or operator must demonstrate that: ()

i. There are sufficient remaining pollutant load allocations to allow for the discharge; and ()

ii. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. ()

b. The Department may waive the submission of the information by the permit applicant required in Subsection 103.07 if the Department determines that it already has adequate information to evaluate the request. ()

c. An explanation of the development of limitations to meet the criteria of this section is to be included in the fact sheet to the permit. ()

104. PRE-APPLICATION PROCESS.

Any person who intends to apply for a permit or who proposes to discharge a pollutant into the waters of the United States should contact the Department to schedule a meeting prior to submitting an application to discuss: ()

01. IPDES Permit Applicability. Whether the actions or proposed facility will require an IPDES permit, and whether other suitable permitting options are available; ()

02. Application Content. The IPDES permit application requirements; and ()

03. Application Schedule. The IPDES permit application submittal schedule. ()

105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.

01. Electronic Submittals. The Department may require an applicant to submit information required by this section electronically, if the Department approves an electronic method of submittal. ()

02. Application Retention Schedule. An applicant shall keep records of all data used to complete a permit application and any supplemental information submitted for a period of at least three (3) years from the date the application is signed. ()

03. Time to Apply. Any person required under Subsections 102.01 through 102.03 to obtain an IPDES permit shall submit to the Department a complete application for a permit in compliance with the requirements of this subsection. A permit application must be signed and certified as required by Section 090 (Signature Requirements). ()

a. A person proposing a new discharge shall submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. A facility proposing a new discharge of storm water associated with industrial activity shall submit an application one hundred eighty (180) days before that facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. ()

b. Facilities described under 40 CFR 122.26(b)(14)(x) or (b)(15)(i) shall submit an application at least ninety (90) days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit. ()

c. Any TWTDS that commences operations after promulgation of any applicable “standard for sewage sludge use or disposal” must submit an application to the Department at least one hundred eighty (180) days prior to the date proposed for commencing operations. ()

d. A person discharging from a permitted facility with a currently effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. ()

e. Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department’s prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit or commencement of new discharge. ()

f. In no instance shall the application be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be received and reviewed as an application for a new source or new discharger. ()

04. Individual Permit Application Forms. An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant’s facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit shall submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form: ()

a. All applicants, other than a POTW and other treatment works treating domestic sewage (see Subsection 105.06), EPA Form 1, revised as of August 1, 1990, and the following additional forms, if applicable: ()

i. Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B, revised as of November 2008; ()

ii. Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C, revised as of August 1, 1990; ()

iii. Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D, revised as of August 1, 1990; ()

iv. Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.b.), EPA Form 2E, revised as of August 1, 1990; ()

v. Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F, revised May 31, 1992, unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant's discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or ()

vi. Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S, revised January 14, 1999; ()

b. For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.16): ()

i. EPA Form 2A, revised January 14, 1999; and ()

ii. EPA Form 2S, revised January 14, 1999, if applicable. ()

05. Application Information for All Dischargers. In addition to the application information required for specific dischargers, the Department may require the submittal of any information necessary to ensure compliance with Section 103 (Permit Prohibitions). Such information includes, but is not limited to: ()

a. Information required to determine compliance with the antidegradation policy and antidegradation implementation provisions set forth in IDAPA 58.01.02.051 and 052, "Water Quality Standards"; ()

b. Information required to determine compliance with the mixing zone provisions set forth in IDAPA 58.01.02.060, "Water Quality Standards"; or ()

c. Information necessary for the Department to authorize a compliance schedule under IDAPA 58.01.02.400, "Water Quality Standards." ()

06. Individual Permit Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS) and Publicly Owned Treatment Works (POTWs). An applicant for an IPDES permit other than a POTW and other TWTDS, shall provide the following information to the Department, using the appropriate forms specified in Subsection 105.04: ()

a. The applicant's activity that requires an IPDES permit; ()

b. The name, mailing address, electronic mail address, and location of the facility for which the application is submitted; ()

c. Up to four (4) North American Industry Code System (NAICS) codes that best identify the

principal products or services provided by the facility; ()

d. The operator’s name, mailing address, electronic mail address, telephone number, ownership status, and status as federal, state, private, public, or other entity; ()

e. A statement that the facility is located in Indian country, if applicable; ()

f. A listing of all permits or construction approvals received or applied for under any of the following programs: ()

i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; ()

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; ()

iii. IPDES program under IDAPA 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; ()

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ()

v. Nonattainment program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ()

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ()

vii. Dredge or fill permits under the Clean Water Act section 404; or ()

viii. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits; and ()

g. A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting: ()

i. The facility and each of its intake and discharge structures; ()

ii. The location of the facility’s hazardous waste treatment, storage, or disposal areas; ()

iii. The location of each well where fluids from the facility are injected underground; and ()

iv. The location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area; and ()

h. A brief description of the nature of the business. ()

07. Individual Permit Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers. ()

a. Facilities proposing to discharge to a POTW that does not have an established and effective pretreatment program shall submit an IPDES permit application after receiving a will-serve letter from the POTW. The applicant shall complete the necessary forms stipulated in Subsection 105.04. ()

b. Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity shall

provide the following information to the Department, using the applicable forms specified in Subsection 105.04:

- ()
- i. For each outfall: ()
 - (1) The latitude and longitude to the nearest fifteen (15) seconds and the name of each receiving water; ()
 - (2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; ()
 - (3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ()
 - (4) For a privately owned treatment works, the identity of each user of the treatment works; and ()
 - (5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; ()
- ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsection 105.07.b.i.(2). through 105.07.b.i.(5). that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; ()
- iii. A reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.; ()
- iv. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates; ()
- v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement; ()
 - (1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and ()
 - (2) The Department has adequate information to issue the permit; ()
- vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge; and ()
- vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.d. through n. ()
- c. The owner or operator of a facility subject to this subsection shall submit, with an application, a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. ()
 - i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsection 105.07.b.i.(2) through 105.07.b.i.(5). ()

ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. ()

iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures. ()

d. In addition to the items of information listed in Subsections 105.07.a. through 105.07.c., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.b. shall: ()

i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and ()

ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method. ()

e. An applicant for an IPDES permit under this subsection shall: ()

i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), Enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()

ii. For all other pollutants, use twenty-four (24) hour composite samples, except that a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; ()

f. For purposes of Subsection 105.07.d., exceptions to testing and data provision requirements for effluent characteristics include: ()

i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and ()

ii. An applicant's duty under Subsections 105.07.k., l., and m. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report that those pollutants are present. ()

g. For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall: ()

i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and ()

ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following: ()

(1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots; ()

(2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; or ()

(3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required; ()

iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus; ()

iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including: ()

(1) Sampling locations; ()

(2) The season in which the sampling takes place; ()

(3) The minimum duration between the previous measurable storm event and the sampled storm event; ()

(4) The minimum or maximum level of precipitation required for an appropriate storm event; ()

(5) The form of precipitation sampled, whether snow melt or rain fall; ()

(6) Protocols for collecting samples under 40 CFR Part 136; and ()

(7) Additional time for submitting data; and ()

v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence. ()

h. Unless a reporting requirement is waived under Subsection 105.07.i., every applicant subject to this subsection shall report quantitative data for the following pollutants for every outfall: ()

i. 5-day biochemical oxygen demand (BOD5); ()

ii. Chemical oxygen demand (COD); ()

iii. Total organic carbon (TOC); ()

iv. Total suspended solids (TSS); ()

v. Ammonia, as N; ()

vi. Temperature (both winter and summer); and ()

vii. pH. ()

i. The Department may waive the reporting requirements under Subsection 105.07.h for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.h. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. ()

j. Except as provided in Subsection 105.07.o., an applicant with an existing facility described in Subsection 105.07.b. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: ()

i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: ()

(1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and ()

(2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2, 3, and 4 to 40 CFR 122.21; and ()

ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. ()

k. An applicant for an IPDES permit under this section must disclose, in an application, whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged. ()

l. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are not otherwise required under Subsection 105.07.j., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.o., the applicant must: ()

i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater; ()

ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and ()

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation. ()

m. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant. ()

n. An applicant for an IPDES permit under this subsection must disclose, in an application, and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant: ()

i. Uses or manufactures the following: ()

- (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); ()
- (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); ()
- (3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); ()
- (4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); ()
- (5) 2,4,5-trichlorophenol (TCP); or ()
- (6) Hexachlorophene (HCP); or ()
- ii. Knows or has reason to believe that TCDD is or may be present in an effluent. ()

o. An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.j. or 105.07.k. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122, if that applicant qualifies as a small business under one (1) of the following criteria: ()

- i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or ()
- ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars (\$287,300) per year in 2014 dollars. ()

p. In addition to the information reported on the application form, an applicant under this subsection shall provide to the Department, at the Department's request, any other information that the Department may reasonably require to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. ()

08. Individual Permit Application Requirements for Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater. ()

a. Facilities proposing to discharge to a POTW that does not have an established and effective pretreatment program shall submit an IPDES permit application after receiving a will-serve letter from the POTW. The applicant shall complete the necessary forms stipulated in Subsection 105.04. ()

b. An applicant for an IPDES permit that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: ()

- i. The number of each outfall, the latitude and longitude to the nearest fifteen (15) seconds, and the name of each receiving water; ()
- ii. For a new discharger, the date of expected commencement of discharge; ()
- iii. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; ()
- iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; ()
- v. Effluent characteristics prepared and submitted as described in Subsections 105.08.c. and 105.08.d.; ()

- vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; ()
- vii. A brief description of any treatment system used or to be used; ()
- viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and ()
- ix. The signature of the certifying official under Section 090 (Signature Requirements). ()
- c.** Except as otherwise provided in Subsections 105.08.e. through h., an IPDES permit application for a discharger described in Subsection 105.08.b. must include quantitative data for the following pollutants or parameters: ()
 - i. 5-day biochemical oxygen demand (BOD5); ()
 - ii. Total suspended solids (TSS); ()
 - iii. Fecal coliform, if believed present or if sanitary waste is or will be discharged; ()
 - iv. Total residual chlorine (TRC), if chlorine is used; ()
 - v. Oil and grease; ()
 - vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; ()
 - vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; ()
 - viii. Ammonia, as N; ()
 - ix. Discharge flow; ()
 - x. pH; and ()
 - xi. Temperature, both in winter and summer, respectively. ()
- d.** For purposes of the data required under Subsection 105.08.c.: ()
 - i. Grab samples must be used for oil and grease, fecal coliform, and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()
 - ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.c., other than those specified in Subsection 105.08.d.i. Twenty-four (24) hour composite samples must, at a minimum, be composed of four (4) grab samples, equally spaced through the twenty-four (24)-hour period, unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite aliquots is required; ()
 - iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and ()
 - iv. The applicant shall collect and analyze samples in accordance with 40 CFR Part 136. ()
- e.** The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.d. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. ()

- f. If the applicant is a new discharger, the applicant shall: ()
- i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, as required by Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and ()
- ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.c.; ()
- g. For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data shall be accompanied by documents supporting the estimated value. ()
- h. An applicant's duty, under Subsections 105.08.c., d. and f., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. ()
- 09. Individual Permit Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO).** An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ()
- a. The name of the owner or operator; ()
- b. The facility location and mailing addresses; ()
- c. Latitude and longitude of the production area, measured at the entrance to the production area; ()
- d. A topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area; ()
- e. Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof; ()
- f. The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater; ()
- g. The total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater; ()
- h. Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons; ()
- i. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and ()
- j. A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR

122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable. ()

10. Individual Permit Application Requirements for New and Existing Concentrated Aquatic Animal Production (CAAP) Facilities. An applicant for an IPDES permit for a new or existing CAAP facility shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ()

- a. The maximum daily and average monthly flow from each outfall; ()
- b. The number of ponds, raceways, and similar structures; ()
- c. The name of the receiving water and the source of intake water; ()
- d. For each species of aquatic animal, the total yearly and maximum harvestable weight; and ()
- e. The calendar month of maximum feeding and the total mass of food fed during that month. ()

11. Individual Permit Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department. ()

a. Except as provided in Subsection 105.11.b., an applicant that is a POTW and any other discharger designated by the Department shall provide the information in this subsection to the Department, using the applicable forms specified in Subsection 105.04.b. A permit applicant under this subsection shall submit all information available at the time of permit application; however, an applicant may provide information by referencing information previously submitted to the Department. ()

b. The Department may waive any requirement of this subsection if the Department has access to substantially identical information. The Department may also waive any requirement of this subsection if that information is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. ()

c. An applicant under this subsection must provide the following information: ()

- i. Name, mailing address, and location of the facility for which the application is submitted; ()
- ii. Name, mailing address, electronic mail address, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both; ()

iii. A list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities: ()

(1) Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ()

(2) Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ()

(3) IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ()

(4) Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

- (5) Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()
- (6) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()
- (7) Dredge or fill permits under the Clean Water Act section 404; ()
- (8) Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and ()
- (9) Other relevant environmental permits, programs, or activities, including those subject to state jurisdiction, approval, and permits; ()
- iv. The name and population or equivalent dwelling units (EDU) of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer; ()
- v. A statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country; ()
- vi. The facility's design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years; ()
- vii. A statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises; ()
- viii. The following information for outfalls to waters of the United States and other discharge or disposal methods: ()
- (1) For effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows; ()
- (2) For wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent; ()
- (3) For wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent; ()
- (4) For effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, electronic mail address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant, the name, mailing address, electronic mail address, contact person, phone number, and IPDES or NPDES permit number, if any, of the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day (MGD); and ()
- (5) For wastewater disposed of in a manner not included in Subsections 105.11.c.viii.(1) through (4), including underground percolation and underground injection, a description of the disposal method, the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent; and ()
- ix. The name, mailing address, electronic mail address, telephone number, and responsibilities of all

contractors responsible for any operational or maintenance aspects of the POTW facility. ()

d. In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide: ()

i. The current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration; ()

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing: ()

(1) The treatment plant area and unit processes; ()

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable; ()

(3) Each well where fluids from the treatment plant are injected underground; ()

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment works; ()

(5) Sludge management facilities including on-site treatment, storage, and disposal sites; and ()

(6) Each location at which waste classified as hazardous under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," enters the treatment plant by truck, rail, or dedicated pipe; ()

iii. A process flow diagram or schematic as follows: ()

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and ()

(2) A narrative description of the diagram; and ()

iv. The following information regarding scheduled improvements: ()

(1) The outfall number of each affected outfall; ()

(2) A narrative description of each required improvement; ()

(3) Scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this subsection that has been completed; and ()

(4) A description of permits and clearances concerning other federal and state requirements. ()

e. An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: ()

i. For each outfall: ()

(1) The outfall number; ()

(2) The county, and city or town in which the outfall is located; ()

- (3) The latitude and longitude, to the nearest fifteen (15) seconds; ()
- (4) The distance from shore and depth below surface; ()
- (5) The average daily flow rate, in million gallons per day (MGD); ()
- (6) If the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and ()
- (7) A statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate; ()
 - ii. For each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available: ()
 - (1) The name of each receiving water; ()
 - (2) The critical flow of each receiving stream; and ()
 - (3) The total hardness of the receiving stream at critical low flow; and ()
 - iii. For each outfall discharging to waters of the United States, the following information describing the treatment of the discharges: ()
 - (1) The highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for: ()
 - (a) The design biochemical oxygen demand removal percentage; ()
 - (b) The design suspended solids removal percentage; ()
 - (c) The design phosphorus removal percentage; ()
 - (d) The design nitrogen removal percentage; and ()
 - (e) Any other removals that an advanced treatment system is designed to achieve; and ()
 - (2) A description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates, if disinfection is accomplished through chlorination. ()
- f. In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection shall undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable: ()
 - i. Sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 CFR Part 122;()
 - ii. For an applicant with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD), sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 CFR Part 122, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility's effluent, is not required to sample or analyze chlorine; ()
 - iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is: ()

- (1) A POTW that has a design flow rate equal to or greater than one million (1,000,000) gallons per day (MGD); ()
- (2) A POTW that has an approved pretreatment program; ()
- (3) A POTW that is required to develop a pretreatment program; or ()
- (4) Any POTW, as required by the Department to ensure compliance with these rules; ()
- iv. Sampling and analysis for additional pollutants, as the Department may require, on a case-by-case basis; ()
- v. Data from a minimum of three (3) samples taken within four and one-half (4 ½) years before the date of the permit application; to meet this requirement: ()
 - (1) Samples must be representative of the seasonal variation in the discharge from each outfall; ()
 - (2) Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application; and ()
 - (3) Additional samples may be required by the Department on a case-by-case basis; and ()
- vi. All existing data for pollutants specified in Subsections 105.11.f.i. through iv. collected within four and one-half (4 ½) years of the application. This data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only the data collected for that pollutant within one (1) year of the application must be provided. ()
- g. To meet the information requirements of Subsection 105.11.f., an applicant must: ()
 - i. Collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing IPDES or NPDES permit; ()
 - ii. Use the following methods: ()
 - (1) Grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and volatile organics. Temperature, pH, and residual chlorine data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()
 - (2) Twenty-four (24) hour composite samples for all other pollutants; for a composite sample, only one (1) analysis of the composite of aliquots is required; and ()
 - iii. Provide at least the following information for each parameter: ()
 - (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values; ()
 - (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value; ()
 - (3) The analytical method used; and ()
 - (4) The threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and ()
 - iv. Report metals as total recoverable, unless the Department requires otherwise. ()

h. When an applicant under this subsection has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit sampling data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone, pursuant to IDAPA 58.01.02, "Water Quality Standards." ()

i. An application under this subsection must be signed by a certifying official in compliance with Section 090 (Signature Requirements). ()

12. Whole Effluent Toxicity (WET) Monitoring for POTWs and Other Designated Dischargers. ()

a. An applicant for a permit under Subsection 105.11 shall submit information on effluent monitoring for WET, including an identification of any WET tests conducted during the four and one-half (4 ½) years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge. ()

b. An applicant under Subsection 105.11 shall submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant: ()

i. Has a design flow rate greater than or equal to one million (1,000,000) gallons per day (MGD); ()

ii. Has an approved pretreatment program or is required to develop a pretreatment program; or ()

iii. Is required to comply with this subsection by the Department, based on consideration of the following factors: ()

(1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors; ()

(2) The ratio of effluent flow to receiving stream flow; ()

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW; ()

(4) Receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource water; or ()

(5) Other considerations, including the history of toxic impacts and compliance problems at the POTW that the Department determines could cause or contribute to adverse water quality impacts. ()

c. When an applicant under Subsection 105.11 has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone. ()

d. An applicant under Subsection 105.12.b. that is required to perform WET testing must provide: ()

i. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application or results from four (4) tests performed at least annually in the four and one-half (4 ½) year period before the application, if the results show no appreciable toxicity using a safety factor determined by the Department;()

ii. The number of chronic or acute whole effluent toxicity tests that have been conducted since the last

permit reissuance; ()

iii. The results using the form provided by the Department, or test summaries, if available and comprehensive, for each WET test conducted under this subsection for which the information has not been reported previously to the Department; ()

iv. For WET data submitted to the Department within four and one-half (4 ½) years before the date of the application, the dates on which the data were submitted and a summary of the results; and ()

v. Any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any WET test conducted within the past four and one-half (4 ½) years revealed toxicity. ()

e. An applicant under Subsection 105.11 must conduct tests with no less than two (2) species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water dilution. Unless the Department directs otherwise, an applicant shall conduct acute or chronic testing based on the following dilutions: ()

i. Acute toxicity testing if the dilution of the effluent is greater than a ratio of one thousand to one (1,000:1) at the edge of the mixing zone; ()

ii. Acute or chronic toxicity testing, if the dilution of the effluent is between a ratio of one hundred to one (100:1) and one thousand to one (1,000:1) at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (one thousand to one (1,000:1)), and chronic testing may be more appropriate at the lower end of this range (one hundred to one (100:1)); or ()

iii. Chronic testing if the dilution of the effluent is less than a ratio of one hundred to one (100:1) at the edge of the mixing zone. ()

f. For purposes of the WET testing required by this section, an applicant must conduct testing using methods approved under 40 CFR Part 136. ()

13. Individual Permit Application Requirements for POTWs Receiving Industrial Discharges. ()

a. An applicant for an IPDES permit as a POTW under Subsection 105.11 shall state in its application the number of significant industrial users (SIU) and categorical industrial users (CIU) discharging to the POTW. A POTW with one (1) or more SIUs shall provide the following information for each SIU that discharges to the POTW: ()

i. The name and mailing address of the SIU; ()

ii. A description of all industrial processes that affect or contribute to the SIU's discharge; ()

iii. The principal products and raw materials of each SIU that affects or contributes to that SIU's discharge; ()

iv. The average daily volume of wastewater discharged by the SIU, indicating the amount attributable to process flow and non-process flow; ()

v. A statement whether the SIU is subject to local limits; ()

vi. A statement whether the SIU is subject to one (1) or more categorical standards, and if so, under which category and subcategory; and ()

vii. A statement whether any problems at the POTW, including upsets, pass-through, or interference have been attributed to the SIU in the past four and one-half (4 ½) years. ()

b. The information required in Subsection 105.12.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.: ()

- i. An annual report submitted within one (1) year of the application; or ()
- ii. A pretreatment program. ()

14. Individual Permit Application Requirements for POTWs Receiving Discharges from Hazardous Waste Generators and from Waste Cleanup or Remediation Sites. ()

a. A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information: ()

i. If the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any wastes that are regulated as hazardous wastes under 40 CFR Part 261 and IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," the applicant must report the following: ()

- (1) The method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received; and ()
- (2) The applicable hazardous waste number designated in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" for the transported waste, and the amount received annually of each hazardous waste; and ()

ii. If the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act sections 3004(u) or 3008(h), the applicant must report the following: ()

- (1) The identity and description of each site or facility at which the wastewater originates; ()
- (2) The identity of any known hazardous constituents specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," in the wastewater; and ()
- (3) The extent of any treatment the wastewater receives or will receive before entering the POTW. ()

b. An applicant under this subsection is exempt from the requirements of Subsection 105.14.a.ii. if the applicant receives no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste." ()

15. Individual Permit Application Requirements for POTWs with Combined Sewer Systems and Overflows. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls: ()

- a.** A system map indicating the location of: ()
 - i. All combined sewer overflow discharge points; ()
 - ii. Any sensitive use areas potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems; ()
 - iii. Outstanding national resource waters potentially affected by combined sewer overflows; and ()
 - iv. Waters supporting threatened and endangered species potentially affected by combined sewer overflows; ()

- b.** A system diagram of the combined sewer collection system that includes the locations of: ()
 - i. Major sewer trunk lines, both combined and separate sanitary; ()
 - ii. Points where separate sanitary sewers feed into the combined sewer system; ()
 - iii. In-line and off-line storage structures; ()
 - iv. Flow-regulating devices; and ()
 - v. Pump stations; ()
- c.** Information on each outfall for each combined sewer overflow discharge point covered by the permit application, including: ()
 - i. The outfall number; ()
 - ii. The county and city or town in which the outfall is located; ()
 - iii. The latitude and longitude, to the nearest second; and ()
 - iv. The distance from shore and depth below surface; ()
- d.** A statement whether the applicant monitored any of the following in the past year for a combined sewer overflow: ()
 - i. Rainfall; ()
 - ii. Overflow volume; ()
 - iii. Overflow pollutant concentrations; ()
 - iv. Receiving water quality; ()
 - v. Overflow frequency; and ()
 - vi. The number of storm events monitored in the past year; ()
- e.** Information regarding the number of combined sewer overflows from each outfall in the past year and, if available: ()
 - i. The average duration per event; ()
 - ii. The average volume for each event; and ()
 - iii. The minimum rainfall that caused a combined sewer overflow event in the last year; ()
- f.** The name of each receiving water according to the National Hydrography Dataset (NHD); ()
- g.** A description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water; and ()
- h.** All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility. ()

16. Individual Permit Application Requirements for New Sources and New Discharges. ()

a. An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: ()

i. The latitude and longitude to the nearest fifteen (15) seconds of the expected outfall location and the name of each receiving water; ()

ii. The expected date the discharge will commence; ()

iii. The following information on flows, sources of pollution, and treatment technologies: ()

(1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged; ()

(2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.c.; and ()

(3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks; ()

iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary; ()

v. The effluent characteristics information as described in Subsection 105.16.b.; ()

vi. The existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge; ()

vii. Any optional information the permittee wishes the Department to consider; and ()

viii. The signature of the certifying official under Section 090 (Signature Requirements). ()

b. An applicant under this section must provide the following effluent characteristics information: ()

i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters: ()

(1) Biochemical oxygen demand (BOD5); ()

(2) Chemical oxygen demand (COD); ()

(3) Total organic carbon (TOC); ()

(4) Total suspended solids (TSS); ()

(5) Flow; ()

- (6) Ammonia, as N; ()
- (7) Temperature, in both winter and summer; and ()
- (8) pH. ()
- ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant; ()
- iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall: ()
 - (1) All pollutants in Table IV of Appendix D to 40 CFR Part 122; ()
 - (2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122; ()
 - (3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for: ()
 - (a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars (\$287,300) per year in 2014 dollars for the next three (3) years; or ()
 - (b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year; ()
- iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent: ()
 - (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5; ()
 - (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1); ()
 - (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4); ()
 - (4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3); ()
 - (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or ()
 - (6) Hexachlorophene (HCP) (CAS #70-30-4); and ()
- v. The potential presence any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit. ()
- c. No later than two (2) years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit. ()
- d. The effluent characteristics requirements in Subsections 105.08.c., d., and f. that an applicant must

provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass. ()

e. The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. ()

17. Individual Permit Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS). All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. ()

a. The Department may waive any requirement of this subsection if there is access to substantially identical information. The Department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. ()

b. All applicants must submit the following information: ()

i. The name, mailing address, and location of the TWTDS for which the application is submitted; ()

ii. The name, mailing address, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both; ()

iii. Whether the facility is a Class I Sludge Management Facility; ()

iv. The design flow rate in million gallons per day (MGD); ()

v. The total population or equivalent dwelling units (EDU) served; and ()

vi. The TWTDS's status as federal, state, private, public, or other entity. ()

c. All applicants must submit the facility's NPDES or IPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs: ()

i. Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ()

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ()

iii. IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ()

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

- v. Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()
- vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()
- vii. Dredge or fill permits under the Clean Water Act section 404; ()
- viii. Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and ()
- ix. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits. ()
- d. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country. ()
- e. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond property boundaries of the facility and showing the following information: ()
 - i. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and ()
 - ii. Wells, springs, and other surface water bodies that are within one-quarter (1/4) mile of the property boundaries and listed in public records or otherwise known to the applicant. ()
- f. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction. ()
- g. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for the applicant's use or disposal practices on the date of permit application. ()
 - i. The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis; ()
 - ii. Applicants must provide data from a minimum of three (3) samples taken within four and one-half (4 1/2) years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one (1) month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application; ()
 - iii. Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods) unless an alternative has been specified in an existing sewage sludge permit; and ()
 - iv. The monitoring data provided must include at least the following information for each parameter: ()
 - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values; ()
 - (2) The analytical method used; and ()
 - (3) The method detection level. ()

h. If the applicant is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, the following information must be provided: ()

i. If the applicant's facility generates sewage sludge, the total dry metric tons per three hundred sixty-five (365)-day period generated at the facility; ()

ii. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received: ()

(1) The name, mailing address, and location of the other facility; ()

(2) The total dry metric tons per three hundred sixty-five (365)-day period received from the other facility; and ()

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics; ()

iii. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information must be submitted: ()

(1) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge; ()

(2) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and ()

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge; ()

iv. If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one (1) of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; ()

v. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information: ()

(1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and ()

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away; and ()

vi. If sewage sludge from the applicant's facility is provided to another person who generates sewage sludge during the treatment of domestic sewage in a treatment works or a person who derives a material from sewage sludge, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information for each facility receiving the sewage sludge: ()

(1) The name and mailing address of the receiving facility; ()

(2) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility; ()

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic; ()

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and ()

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge. ()

i. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection 105.17.h.iv., v., or vi., the applicant must provide the following information: ()

i. The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; ()

ii. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located; ()

iii. The following information for each land application site that has been identified at the time of permit application: ()

(1) The name (if any), and location for the land application site; ()

(2) The site's latitude and longitude to the nearest second, and method of determination; ()

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location; ()

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant; ()

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant; ()

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11; ()

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation; ()

(8) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and ()

(9) Other information that describes how the site will be managed, as specified by the permitting authority. ()

iv. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site: ()

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority; ()

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection 105.17.i.iv.(1) bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993; ()

v. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum: ()

(1) Describes the geographical area covered by the plan; ()

(2) Identifies the site selection criteria; ()

(3) Describes how the site(s) will be managed; ()

(4) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and ()

(5) Provides for advance public notice of land application sites in the manner prescribed by state and local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application. ()

j. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information: ()

i. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per three hundred sixty-five (365)-day period; ()

ii. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate: ()

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and ()

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period placed on the surface disposal site; ()

iii. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates: ()

(1) The name or number and the location of the active sewage sludge unit; ()

(2) The unit's latitude and longitude to the nearest second, and method of determination; ()

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location; ()

(4) The total dry metric tons placed on the active sewage sludge unit per three hundred sixty-five (365)-day period; ()

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit; ()

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec; ()

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal; ()

- (8) If the active sewage sludge unit is less than one hundred fifty (150) meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line; ()
- (9) The remaining capacity (dry metric tons) for the active sewage sludge unit; ()
- (10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified; ()
- (11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit: ()
- (a) The name, contact person, and mailing address of the facility; and ()
- (b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics; ()
- (12) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge; ()
- (13) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit: ()
- (a) A description of any ground water monitoring occurring at the active sewage sludge unit; ()
- (b) Any available ground water monitoring data, with a description of the well locations and approximate depth to ground water; ()
- (c) A copy of any ground water monitoring plan that has been prepared for the active sewage sludge unit; and ()
- (d) A copy of any certification that has been obtained from a qualified ground water scientist that the aquifer has not been contaminated; and ()
- (14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request. ()
- k.** If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information: ()
- i. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per three hundred sixty-five (365)-day period; ()
- ii. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate: ()
- (1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and ()
- (2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ()
- iii. The following information for each sewage sludge incinerator that the applicant owns or operates: ()
- (1) The name and/or number and the location of the sewage sludge incinerator; ()

- (2) The incinerator's latitude and longitude to the nearest second, and method of determination; ()
- (3) The total dry metric tons per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ()
- (4) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR Part 61 will be achieved; ()
- (5) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR Part 61 will be achieved; ()
- (6) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation; ()
- (7) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation; ()
- (8) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value; ()
- (9) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator; ()
- (10) The type of sewage sludge incinerator; ()
- (11) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; ()
- (12) The following information on the sewage sludge feed rate used during the performance test: ()
 - (a) Sewage sludge feed rate in dry metric tons per day; ()
 - (b) Identification of whether the feed rate submitted is average use or maximum design; and ()
 - (c) A description of how the feed rate was calculated; ()
- (13) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used; ()
- (14) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; ()
- (15) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following: ()
 - (a) Total hydrocarbons or Carbon Monoxide; ()
 - (b) Percent Oxygen; ()
 - (c) Percent moisture; and ()
 - (d) Combustion temperature; and ()
- (16) A list of all air pollution control equipment used with this sewage sludge incinerator. ()

i. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent: ()

i. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF; ()

ii. The total dry metric tons per three hundred sixty-five (365)-day period sent from this facility to the MSWLF; ()

iii. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and ()

iv. Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258. ()

m. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal. ()

n. At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR Part 503, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements. ()

o. TWTDS facilities using or disposing of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have been published shall submit the following information on EPA Form 2S, Part I, or on the Department equivalent form: ()

i. The TWTDS's name, mailing address, location, and status as federal, state, private, public, or other entity; ()

ii. The applicant's name, address, telephone number, and ownership status; ()

iii. A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of Subsection 105.17.h.iv., the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites; ()

iv. Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and ()

v. The most recent data the TWTDS may have on the quality of the sewage sludge. ()

18. Individual Permit Application Requirements for Municipal Separate Storm Sewer Discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) shall include: ()

a. Part 1 of the application shall consist of: ()

i. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity; ()

ii. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in Subsection 105.18.b.i., the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria; ()

iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system. The following information shall be provided: ()

(1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application; ()

(2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; ()

(3) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided; ()

(4) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste; ()

(5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; ()

(6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and ()

(7) The identification of publicly owned parks, recreational areas, and other open lands. ()

iv. A description of the discharge including: ()

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events; ()

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used; ()

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been: ()

(a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; ()

(b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; ()

(c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain

water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards); ()

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (include the following: A description of those publicly owned lakes for which uses are known to be impaired, a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes, and a description of methods and procedures to restore the quality of such lakes); ()

(e) Recognized by the applicant as highly valued or sensitive waters; ()

(f) Defined by the state as wetlands; and ()

(g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. ()

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24)-hour period with a minimum period of four (4) hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria: ()

(a) A grid system consisting of perpendicular north-south and east-west lines spaced one-quarter ($\frac{1}{4}$) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells; ()

(b) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points; ()

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity; ()

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination; ()

(e) Hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types; ()

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (500) cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than two hundred fifty (250) cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and ()

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv.(4)(a) through (f), because a sufficiently detailed map of the separate

storm sewer systems is unavailable, shall field screen no more than five hundred (500) or two hundred fifty (250) major outfalls respectively (or all major outfalls in the system, if less). In such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced one-quarter (1/4) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant will then select major outfalls in as many cells as possible until at least five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls; and ()

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., which shall include: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii.(1), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see Subsection 105.18.a.iv.(3)) to the extent practicable; ()

v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system, which shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements; ()

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system, which should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and ()

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. ()

b. Part 2 of the application shall consist of: ()

i. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance. or series of contracts which authorizes or enables the applicant at a minimum to: ()

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; ()

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; ()

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; ()

(4) Control through interagency agreements among co-applicants the contribution of pollutants from a portion of the municipal system to another portion of the municipal system; ()

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and ()

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. ()

ii. The location of any major outfall that discharges to waters of the United States that was not

reported under Subsection 105.18.a.iii.(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (SIC) codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity; ()

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii.(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.d. through 105.07.n. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including: ()

(1) Quantitative data from representative outfalls designated by the Department (based on information received in part 1 of the application. The Department shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five (5) outfalls covered in the application, the Department shall designate all outfalls) developed as follows: ()

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.d. through 105.07.n. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions); ()

(b) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ()

(c) For samples collected and described under Subsections 105.18.b.iii.(1)(a) and (b), quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants: ()

- (i) Total suspended solids (TSS); ()
- (ii) Total dissolved solids (TDS); ()
- (iii) COD; ()
- (iv) BOD5; ()
- (v) Oil and grease; ()
- (vi) Fecal coliform; ()
- (vii) Fecal streptococcus; ()
- (viii) pH; ()
- (ix) Total Kjeldahl nitrogen; ()
- (x) Nitrate plus nitrite; ()
- (xi) Total ammonia plus organic nitrogen; ()
- (xii) Dissolved phosphorus; and ()
- (xiii) Total phosphorus; ()

(d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness); ()

(2) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods; ()

(3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii.(2) of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection 105.18.b.iii.(1); and ()

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment; ()

iv. A proposed management program covers the duration of the permit, which shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: ()

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: ()

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers; ()

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed (controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in Subsection 105.18.b.iv.(4)); ()

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities; ()

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible; ()

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste, which shall identify priorities and

procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection 105.18.b.iv.(3)); and ()

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities; ()

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include: ()

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description shall address all types of illicit discharges; however, the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States); ()

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens; ()

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation); ()

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer; ()

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers; ()

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and ()

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary; ()

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall: ()

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; and ()

(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv.(3), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES or IPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Subsections 105.07.k. through m.; ()

(4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include: ()

(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts; ()

(b) A description of requirements for nonstructural and structural best management practices; ()

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and ()

(d) A description of appropriate educational and training measures for construction site operators; ()

v. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water; ()

vi. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsections 105.18.b.iii. and iv. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds; ()

vii. Where more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and ()

viii. Where requirements under Subsections 105.18.a.iv.(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. ()

19. Individual Permit Application Requirements for Industrial and Construction Storm Water Discharges. Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. ()

a. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, shall submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. ()

b. Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section shall provide: ()

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: ()

(1) Each of its drainage and discharge structures; ()

(2) The drainage area of each storm water outfall; ()

(3) Paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); ()

(4) Each well where fluids from the facility are injected underground; and ()

(5) Springs, and other surface water bodies which receive storm water discharges from the facility; ()

ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: ()

(1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water; ()

(2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; ()

(3) Materials loading and access areas; ()

(4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; ()

(5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and ()

(6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ()

iii. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an IPDES permit. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test; ()

iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application; ()

v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters: ()

(1) Any pollutant limited in an effluent guideline to which the facility is subject; ()

(2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit); ()

(3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; ()

(4) Any information on the discharge required under Subsections 105.07.k. through m.; ()

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and ()

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ()

vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.c., 105.07.b.i.(2) through 105.07.b.i.(5), 105.07.b.ii., 105.07.b.iii., 105.07.h., 105.07.i., 105.07.j., and 105.07.n.; and ()

vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.16.a.iii.(2), 105.16.a.iii.(3), and 105.16.b. ()

c. An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26 (b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator shall provide a narrative description of: ()

i. The location (including a map) and the nature of the construction activity; ()

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit; ()

iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements; ()

iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements; ()

v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and ()

vi. The name of the receiving water. ()

d. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection 105.19.b., unless the facility: ()

i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which

notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or ()

ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or ()

iii. Contributes to a violation of a water quality standard. ()

e. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. ()

f. Applicants shall provide such other information the Department may reasonably require under Subsection 105.07.p. to determine whether to issue a permit and may require any facility subject to Subsection 105.19.c. to comply with Subsection 105.19.b. ()

106. INDIVIDUAL PERMIT APPLICATION REVIEW.

01. Completeness Criteria. The Department will not begin processing or issue an individual IPDES permit application before receiving a complete application. The Department will not consider a permit application to be complete until all applicable fees required under Section 110 (Permit Fee Schedule for IPDES Permitted Facilities) are paid. ()

02. Independence. The Department shall judge the completeness of any IPDES permit application independently of any other permit application or permit. ()

03. Schedule. The Department will notify an applicant in writing whether the application is deemed complete for purposes of this section within: ()

a. Thirty (30) days if the application is for a new source or new discharger under the IPDES program, or ()

b. Sixty (60) days if the application is for an existing source or sludge-only facility. ()

04. Additional Information. Notification that an application is complete does not preclude the Department from requiring the applicant submit additional information for the Department's use in processing the application. This additional information may only be requested when necessary to clarify, modify, or supplement previously submitted material. ()

a. Requests for additional information will not render an application incomplete. ()

b. If the Department decides that a site visit is necessary for any reason in connection with the processing of an application, the Department shall notify the applicant and a date shall be scheduled. Failure to schedule or refusal of a requested site visit are grounds for permit denial. ()

c. The applicant's failure or refusal to correct deficiencies, or supply requested information may result in permit denial, and appropriate enforcement actions may be initiated, if warranted. ()

05. Incomplete Due to Waiver Denial. The Department will not consider a permit application to be complete if the Department waived application requirements under Subsection 105.11 or 105.17 and the EPA has disapproved the waiver. ()

06. Impact of Waiver Delay. If a person required to reapply for a permit submits a waiver request to the EPA more than two hundred ten (210) days before an existing permit expires, and the EPA does not disapprove the waiver request one hundred eighty-one (181) days before the permit expires, the Department will consider the permit application to be complete without the information that is the subject of the waiver request. ()

07. Application Completeness Date. The completeness date of an application is the date on which the Department notifies the applicant that the application is complete. ()

107. DECISION PROCESS.

After the Department has determined that a permit application is complete the Department will tentatively decide whether to tentatively deny the application, or prepare an IPDES draft permit. ()

01. Application Denial. If the Department decides to tentatively deny the application: ()

a. A notice of intent to deny the permit application shall be issued, and shall be made available for public comment, and the Department shall give notice of opportunity for a public meeting, as specified in Section 109 (Public Notification and Comment); ()

b. The Department shall generate a response to public comment; and ()

c. Issue a final decision. The final decision may: ()

i. Be to withdraw the notice of intent to deny the application, and proceed to prepare a draft permit and fact sheet as defined in Section 108 (Draft Permit and Fact Sheet); or ()

ii. Confirm the decision to deny the application. ()

d. The applicant may appeal the final decision to deny the application by adhering to the requirements of Section 204 (Appeals Process). ()

02. Draft Permit. If the Department decides to generate a draft permit and fact sheet it will comply with Section 108 (Draft Permit and Fact Sheet). ()

a. Upon completion of the draft permit and fact sheet the Department shall issue a public notification as required in Subsection 109.01. ()

b. An opportunity for the public to comment and request a public meeting shall be provided. ()

c. The Department shall generate a response to public comment as stipulated in Subsection 109.03. ()

03. Proposed Permit. After the close of the public comment period on a draft permit, the Department will make appropriate changes in response to comments, and generate a proposed permit. ()

04. Final Permit. After the close of the public comment period on a draft permit, and after receipt of comments on the proposed permit, if any, from EPA, the Department shall issue a final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. ()

a. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. ()

b. A final permit decision shall become effective twenty-eight (28) days after the service of notice of the decision unless: ()

i. A later effective date is specified in the decision; or ()

ii. A Petition for Review is filed with the Department as specified in Section 204 (Appeals Process). ()

108. DRAFT PERMIT AND FACT SHEET.

- 01. Draft Permit.** ()
- a.** If the Department decides to prepare a draft permit, it shall contain the following information: ()
- i. All conditions established under Section 300 (Conditions Applicable to All Permits); ()
- ii. All conditions for specific categories established under Section 301 (Permit Conditions for Specific Categories) and 40 CFR 122.42(e). ()
- iii. All conditions established under Section 302 (Establishing Permit Provisions); ()
- iv. All conditions established under Section 303 (Calculating Permit Provisions); ()
- v. All monitoring requirements established under Section 304 (Monitoring and Reporting Requirements); ()
- vi. Schedules of compliance established under Section 305 (Compliance Schedules); and ()
- vii. Any variances that are approved. ()
- b.** General and individual municipal and industrial proposed permits shall be available to the EPA Region 10 Administrator for comment as specified in Subsections 107.03 (Proposed Permit) and 107.04 (Final Permit). ()
- 02. Fact Sheets.** ()
- a.** A fact sheet containing the information required in Subsection 108.02.b. must accompany the draft permit prepared for: ()
- i. A major IPDES facility or activity; ()
- ii. A Class I sludge management facility; ()
- iii. An IPDES general permit; ()
- iv. A permit that incorporates a variance or requires an explanation under Subsection 108.02.b.ix. through 108.02.b.x.; ()
- v. A permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix); and ()
- vi. A permit that the Department finds is the subject of wide-spread public interest or raises major issues. ()
- b.** A fact sheet must briefly set out the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit and must include, if applicable, the following information: ()
- i. A brief description of the type of facility or activity that is the subject of the draft permit; ()
- ii. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged; ()
- iii. A brief summary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record; ()

- iv. Reasons for the Department's tentative decision on any requested variances or alternatives to required standards; ()
- v. A description of the procedures for reaching a final decision on the draft permit, including: ()
 - (1) The beginning and ending dates of the comment period under Subsection 109.02 and the address where comments should be submitted; ()
 - (2) The procedure for requesting a public meeting and the nature of that meeting; and ()
 - (3) Any other procedures by which the public may participate in the final decision; ()
- vi. The name and telephone number of a person to contact for additional information; ()
- vii. The justification for waiver of any application requirements under Section 105 (Application for an Individual IPDES Permit) for new and existing POTWs; ()
- viii. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard as required by Section 302 (Establishing Permit Provisions), and reasons why the effluent limitations and conditions are applicable, or an explanation of how any alternate effluent limitation was developed; ()
- ix. If applicable, an explanation of why the draft permit contains the following conditions or waivers: ()
 - (1) Limitations to control toxic pollutants under Subsection 302.07; ()
 - (2) Limitations on internal waste streams under Section 304 (Monitoring and Reporting Requirements); ()
 - (3) Limitations on indicator pollutants under 40 CFR 125.3(g); ()
 - (4) Limitations established on a case-by-case basis under 40 CFR 125.3 (c)(2) or (c)(3) or pursuant to the Clean Water Act section 405(d)(4); ()
 - (5) Limitations to meet the criteria for permit issuance under Subsection 103.07; or ()
 - (6) Waivers from monitoring requirements granted under Subsection 302.03; ()
- x. For a draft permit for a treatment works owned by a person other than a state or municipality, an explanation of the Department's decision on regulation of users under Subsection 302.15; ()
- xi. If appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and ()
- xii. For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit. ()

109. PUBLIC NOTIFICATION AND COMMENT.

- 01. Public Notification.** ()
 - a.** The Department will give notice to the public that: ()
 - i. A draft permit has been prepared under Subsection 108.01; ()
 - ii. The Department intends to deny a permit application under Subsection 107.01; ()

- iii. A public meeting is scheduled; or ()
- iv. An IPDES new source determination has been made. ()
- b. A public notice may describe more than one (1) permit or permit action. ()
- c. The Department will allow at least thirty (30) days for public comment on the items in the notice, and will provide at least thirty (30) days' notice before the public meeting. Notice of the draft permit and the meeting may be combined and given at the same time. ()
- d. Public notice that a draft permit has been prepared, and any public meeting on the draft permit must be given by the following methods: ()
 - i. By mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this subsection waives that person's right to receive notice for any classes and categories of permits: ()
 - (1) The applicant, unless there is no applicant for an IPDES general permit; ()
 - (2) Any other agency (including EPA when the draft permit is prepared by the state) that the Department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs: ()
 - (a) Resource Conservation and Recovery Act, under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ()
 - (b) Underground Injection Control (UIC) Program under Idaho Department of Water Resources as authorized under Idaho Code Title 42 Chapter 39 and regulated under IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ()
 - (c) Clean Air Act, under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()
 - (d) Idaho Pollution Discharge Elimination System Program, under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; or ()
 - (e) Sludge Management Program, under IDAPA 58.01.16.650, "Wastewater Rules"; and ()
 - (f) Dredge and Fill Permit Program (Clean Water Act section 404); ()
 - (3) Affected federal and state agencies with jurisdiction over fish, shellfish, wildlife, and other natural resources, state historic preservation officers, and any affected Indian tribe; ()
 - (4) Any state agency responsible for plan development under the Clean Water Act sections 208(b)(2), 208(b)(4), or 303(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service; ()
 - (5) Any user identified in the permit application of a privately owned treatment works; ()
 - (6) Persons on a mailing list developed by: ()
 - (a) Recording those who request in writing to be on the list; ()
 - (b) Soliciting persons for area lists from participants in past permit proceedings in that area; and ()
 - (c) Publishing notice of the opportunity to be on the mailing list on the Department's website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, ()

state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the Department's request; ()

(7) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and ()

(8) Each state agency having any authority under state law with respect to the construction or operation of the facility; ()

ii. For a major facility permit, a general permit, and a permit that includes sewage sludge land application plans, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity; and ()

iii. By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation. ()

e. A public notice issued under this subsection must contain at least the following information:()

i. Name and address of the office processing the permit action for which notice is being given and where comments may be submitted; ()

ii. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of IPDES draft general permits; ()

iii. A brief description of the business conducted at the facility or activity described in the permit application, or for general permits when there is no application, in the draft permit; ()

iv. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;()

v. A brief description of the comment and public meeting procedures required by this subsection and the time and place of any meeting that will be held; if no meeting has already been scheduled, a statement of procedures to request a meeting and other procedures by which the public may participate in the final permit decision; ()

vi. A general description of the location of each existing or proposed discharge point and the name of the receiving water; ()

vii. The sludge use and disposal practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application; ()

viii. A description of requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 89, 125.90 through 99, and 125.130 through 139; and ()

ix. Directions to the Department's website where interested parties can obtain copies of the draft permit, fact sheet, and the permit application, if any; and ()

f. In addition to the information required by Subsection 109.01.e., the public notice for a draft permit for a discharge for which a request has been filed under the Clean Water Act section 316(a) must include: ()

i. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act sections 301 or 306, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under the Clean Water Act sections 301 or 306; ()

ii. A statement that a request has been filed under the Clean Water Act section 316(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the Clean Water Act section 316(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and ()

iii. If the applicant has filed an early screening request under 40 CFR 125.72 for a variance under the Clean Water Act section 316(a), a statement that the applicant has submitted that early screening request. ()

g. In addition to the general public notice described in Subsection 109.01.e., the public notice of a meeting under this section must contain the following information: ()

i. Reference to the date of previous public notices relating to the permit; ()

ii. Date, time, and place of the meeting; and ()

iii. A brief description of the nature and purpose of the meeting, including the applicable rules and procedures. ()

h. The Department shall mail a copy of the general public notice described in Subsection 109.01.e. to all persons identified in Subsections 109.01.d.i.(1), (2), (3), and (4). ()

i. The Department will hold a public meeting whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit. The Department may also hold a public meeting if a meeting might clarify one (1) or more issues involved in the permit decision or for other good reason in the Department's discretion. ()

j. When a fact sheet has been prepared under Subsection 108.02, the Department shall issue a revised fact sheet for the final permit, which must include all of the requirements of Subsection 108.02.b., and be available to the public. ()

02. Public Comment. ()

a. During the public comment period, any interested person may submit written comments on the draft permit. Written comments shall be submitted to the person identified in the notice and as specified in Subsection 109.01.e. ()

b. During the public comment period, any interested person may request a public meeting if no public meeting has been scheduled. A request for a public meeting shall be in writing and must be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01. The Department shall schedule and hold a public meeting if the Department determines that significant public interest exists in the draft permit. ()

c. If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the state would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay. ()

d. If, during the comment period for an IPDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may

include the specified conditions in the permit to the extent the Department determines they are necessary to comply with the provisions of the Clean Water Act. ()

e. In some cases, the Department may confer with one (1) or more of the agencies referred to in Subsections 109.02.c. and 109.02.d. before issuing a draft permit and may set out an agency's view in the fact sheet or the draft permit. ()

f. The Department will consider all comments in making the final decision and will answer the comments as provided in this subsection. ()

g. Requests for extending a public comment period must be received in writing by the Department prior to the last day of the comment period. ()

h. After the close of the public comment period and prior to the issuance of the final permit decision, the Department shall afford the permit applicant an opportunity to provide additional information to respond to public comments. In addition, in order to respond to comments, the Department may request the applicant provide additional information. ()

03. Response to Comments. When the Department issues a final permit, the Department will issue a response to comments, which must be available to the public. The response must: ()

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and ()

b. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any meeting. ()

110. FEE SCHEDULE FOR IPDES PERMITTED FACILITIES.

01. Effective Date. Annual fees shall be paid for each fee year beginning one (1) year after the effective date of the IPDES program for the affected category of discharger and continuing for each succeeding year. ()

02. Fee Schedule. ()

a. Publicly and privately owned treatment works shall pay an annual fee based on the number of equivalent dwelling units (EDUs) as defined in Section 010 (Definitions). The rate shall be \$1.74 per EDU. The Department will calculate EDUs and the appropriate annual fee by the following: ()

i. Using the most recent Census Bureau statistics for estimates of the population served and the average number of people in a household; or ()

ii. Existing facilities may report to the Department the number of EDUs served, annually; or ()

iii. New facilities may report to the Department the number of EDUs to be served, based on the facility planning design as part of the IPDES permit application. ()

b. All other permitted IPDES dischargers shall pay an annual fee, an application fee, or both according to the following schedule:

Permit Type	Application	Annual
Industrial Permits		
Major	\$0	\$13,000
Minor	\$0	\$4,000

Permit Type	Application	Annual
Storm Water Permits		
Construction (CGP)		
1-10 acres	\$200	\$0
10-50 acres	\$400	\$75
50-100 acres	\$750	\$100
100-500 acres	\$1,000	\$400
>500 acres	\$1,250	\$400
Low Erosivity Waiver (CGP)	\$125	\$0
Industrial (MSGP) Permits	\$1,500	\$1,000
Cert. of No Exposure (MSGP)	\$250	\$100
Other General Permits	\$0	\$0

()

03. Fee Assessment.

()

a. An annual fee assessment will be generated for each IPDES-permitted facility for which an annual fee is required as set forth in Subsection 110.02. Annual fees will be determined based on the twelve (12) months between October 1 and September 30 of the following calendar year. ()

b. Application Fees and Annual Fees:

()

i. Application fees, as identified in Subsection 110.02.b., are assessed at the time of application for coverage under an individual permit, or notice of intent for coverage under a general permit. ()

ii. Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) immediately following the receipt of the application or notice of intent for coverage. ()

c. Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a given year (October through September of the following calendar year). If the permittee was covered for less than a full twelve (12) months, the assessed fee shall be pro-rated to account for less than a full year's coverage under the permit. ()

04. Billing. For those permitted facilities subject to an annual fee, the annual fee shall be assessed and a statement will be mailed by the Department on or before July 1 of each year. ()

05. Payment.

()

a. Payment of the annual fee shall be due on October 1, unless it is a Saturday, Sunday, or legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. ()

b. If a POTW serves five hundred seventy-five (575) EDUs or more, the facility may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement. ()

i. The Department will notify an applicable POTW, in writing, of approval or denial of a requested

monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request. ()

ii. If a POTW has been approved to pay monthly installments then each installment shall be due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the successive business day. ()

iii. If a POTW has been approved to pay quarterly installments then each installment shall be due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the first successive business day. ()

c. Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit. ()

06. Delinquent Unpaid Fees. A permittee covered under either a general permit or an individual permit will be delinquent in payment if the annual fee assessed has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due. ()

07. Suspension of Services and Disapproval Designation. ()

a. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06 in excess of ninety (90) days, technical services provided by the Department shall be suspended. The permittee will be informed of the fee delinquency in a warning letter, which shall identify administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit. ()

b. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06, in excess of one hundred and eighty (180) days, the Department shall suspend all technical services provided by the Department and consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in Section 500 (Enforcement) of these rules. ()

08. Reinstatement of Suspended Services and Approval Status. For any permittee for which delinquency of fee payment pursuant to Subsection 110.07 has resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both will occur upon payment of delinquent annual fee assessments. ()

09. Enforcement Action. Nothing in Section 110 (Fee Schedule for IPDES Permitted Facilities) waives the Department's right to undertake a non-fee related enforcement action at any time, including seeking penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code. ()

10. Responsibility to Comply. Subsection 110.07 shall in no way relieve any permittee from its obligation to comply with all applicable state and federal statutes, rules, regulations, permits, or orders. ()

111. -- 119. (RESERVED)

120. NEW SOURCES AND NEW DISCHARGES.

01. Criteria for New Source Determination. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition in Section 010 (Definitions), and: ()

a. Is constructed at a site at which no other source is located; or ()

b. Totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or ()

c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Department shall consider such factors as: ()

i. The extent to which the new facility is integrated with the existing plant; and ()

ii. The extent to which the new facility is engaged in the same general type of activity as the existing source. ()

02. New Source vs. New Discharger. A source meeting the requirements of Subsection 120.01 is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger, as defined in Section 010 (Definitions). ()

03. Modification vs. New Source/Discharger. Construction on a site at which an existing source is located, results in a modification subject to Subsection 201.02, rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subsection 120.01, but otherwise alters, replaces, or adds to existing process or production equipment. ()

04. New Source Construction. Construction of a new source has commenced if the owner or operator has: ()

a. Begun, or caused to begin as part of a continuous on-site construction program: ()

i. Any placement, assembly, or installation of facilities or equipment; or ()

ii. Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or ()

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Items which do not constitute contractual obligations under this section include: ()

i. Options to purchase or contracts which can be terminated or modified without substantial loss; ()

ii. Contracts for feasibility engineering; and ()

iii. Design studies. ()

121. -- 129. (RESERVED)

130. GENERAL PERMITS.

01. Coverage. The Department may issue a general permit in accordance with the following: ()

a. Within a geographic area, the general permit shall be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.ii., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as: ()

i. Designated planning areas under the Clean Water Act sections 208 and 303; ()

ii. Sewer districts or sewer authorities; ()

iii. City, county, or state political boundaries; ()

- iv. State highway systems; ()
- v. Standard metropolitan statistical areas as defined by state or federal agencies; ()
- vi. Urbanized areas as designated by the U.S. Census Bureau; or ()
- vii. Any other appropriate division or combination of boundaries. ()
- b.** The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either: ()
 - i. Storm water point sources; or ()
 - ii. One (1) or more categories or subcategories of point sources other than storm water point sources or treatment works treating domestic sewage, if the point sources or treatment works treating domestic sewage within each category or subcategory all: ()
 - (1) Involve the same or substantially similar types of operations; ()
 - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; ()
 - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; ()
 - (4) Require the same or similar monitoring; and ()
 - (5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits. ()
- c.** Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations. ()
- d.** Other requirements: ()
 - i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit; and ()
 - ii. The general permit may exclude specified sources or areas from coverage. ()
- 02. Electronic Submittals.** The Department may require the applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal. ()
- 03. Information Retention Schedule.** An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed. ()
- 04. Notice of Intent.** ()
 - a.** Any person required under Subsections 102.01 through 102.03 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05. ()
 - b.** A notice of intent must be signed and certified as required by Section 090 (Signature Requirements). ()

- 05. Administration.** ()
- a.** General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits). ()
- b.** Authorization to discharge, or authorization to engage in sludge use and disposal practices shall follow these procedures: ()
- i.** Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger shall submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications; ()
- ii.** A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless: ()
- (1)** The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or ()
- (2)** The Department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.; ()
- iii.** All notices of intent shall be signed as required in Section 090 (Signature Requirements); ()
- iv.** The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum: ()
- (1)** The legal name and address of the owner or operator; ()
- (2)** The facility name and address; ()
- (3)** Type of facility or discharges; and ()
- (4)** The receiving stream(s); ()
- v.** Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.; ()
- vi.** Notices of intent for coverage under a general permit for concentrated animal feeding operations (CAFOs) must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map; ()
- vii.** A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h); ()
- viii.** General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements; ()
- ix.** General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit; ()
- x.** General permits shall specify whether a discharger (or treatment works treating domestic sewage), who has submitted a complete and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either: ()

- (1) Upon receipt of the notice of intent by the Department; ()
- (2) After a waiting period specified in the general permit; ()
- (3) On a date specified in the general permit; or ()
- (4) Upon receipt of notification of inclusion by the Department; ()

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider: ()

- (1) The type of discharge; ()
- (2) The expected nature of the discharge; ()
- (3) The potential for toxic and conventional pollutants in the discharges; ()
- (4) The expected volume of the discharges; ()
- (5) Other means of identifying discharges covered by the permit; and ()
- (6) The estimated number of discharges to be covered by the permit; and ()

xii. The Department may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit as specified in Subsection 130.05.d. ()

c. The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following: ()

i. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general permit; ()

ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage; ()

iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit; ()

iv. A Water Quality Management plan containing requirements applicable to such point sources is approved; ()

v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; ()

vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or ()

vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors: ()

- (1) The location of the discharge with respect to waters of the United States; ()
- (2) The size of the discharge; ()
- (3) The quantity and nature of the pollutants discharged to waters of the United States; and ()
- (4) Other relevant factors. ()

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. ()

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit. ()

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment). ()

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. ()

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit. ()

f. A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. ()

06. Case-by-Case Requirements for Individual Permits. ()

a. The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department's decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant. ()

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge under the Clean Water Act section 308. ()

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. ()

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department. ()

131. -- 139. (RESERVED)

200. RENEWAL OF IPDES PERMITS.

01. Interim Effluent Limits. Except as provided in Subsection 200.02, when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based: ()

- a. Have materially and substantially changed since the time the permit was issued; and ()
- b. Would constitute cause for permit modification or revocation and reissuance under Subsection 201.02. ()

02. Final Effluent Limits. In the case of effluent limitations established by the Department on the basis of the Clean Water Act section 402(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Clean Water Act section 304(b) after the original issuance of a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit, except a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if: ()

- a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation; ()
- b. Information is available: ()
 - i. Which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or ()
 - ii. Which the Department determines indicates that technical mistakes or mistaken interpretations of law were made in issuing the permit under the Clean Water Act section 402(a)(1)(b); ()
- c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy; ()
- d. The permittee has received a permit modification under the Clean Water Act section 301(c), 301(g), 301(i), 301(k), 301(n), or 316(a); or ()
- e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification). ()

03. Effluent Limits and Water Quality Standards. In no event may a permit with respect to which Subsection 200.02 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters of the United States be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under IDAPA 58.01.02, "Water Quality Standards." ()

201. MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS.

01. Procedures to Modify, or Revoke and Reissue Permits. ()

a. Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or

reasons supporting the request. ()

b. If the Department tentatively decides to modify or revoke and reissue a permit, the Department shall prepare a draft permit under Section 108 (Draft Permit and Fact Sheet), incorporating the proposed changes. ()

i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application. ()

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. ()

iii. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. ()

iv. Minor modifications, as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment. ()

02. Causes to Modify, or Revoke and Reissue Permits. When the Department receives any pertinent information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file), the Department may determine whether or not one (1) or more of the causes listed in Subsections 201.02.c. and 201.02.d. for modification or revocation and reissuance or both exist. ()

a. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.b., and may request a new or updated application, if necessary. ()

b. If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit. ()

c. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees: ()

i. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit. ()

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance: ()

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and ()

(2) For new source or new discharger IPDES permits (Section 120), this cause shall include any significant information derived from effluent testing required under Subsection 105.08 or 105.16 after issuance of the permit. ()

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: ()

- (1) For promulgation of amended standards or regulations, when: ()
- (a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133; ()
- (b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and ()
- (c) A permittee requests modification in accordance with Subsection 201.01 or 203.01 within ninety (90) days after notice of the action on which the request is based; and ()
- (2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 201.01 or 203.01 within ninety (90) days of judicial remand. ()
- iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ()
- v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in Section 310 (Variances). ()
- vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Subsection 302.04. ()
- vii. When required by the reopener conditions in a permit, which are established in the permit under Subsection 302.05 or 40 CFR 403.18(e) (Pretreatment Standards). ()
- viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 303.07. ()
- ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and Implementation by POTW). ()
- x. Upon failure of an approved state to notify, as required by the Clean Water Act section 402(b)(3), another state whose waters may be affected by a discharge from the approved state. ()
- xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ()
- xii. To establish a notification level as provided in Subsection 302.08. ()
- xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ()
- xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when: ()
- (1) The permit does not include such measure(s) based upon the determination that another entity was

responsible for implementation of the requirement(s), and ()

(2) The other entity fails to implement measure(s) that satisfy the requirement(s). ()

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ()

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline). ()

xvii. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 (General Permits) is not a cause for modification pursuant to the requirements of this section. ()

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules. ()

d. The following are causes to modify or, alternatively, revoke and reissue a permit: ()

i. Cause exists for termination under Subsection 203.03, and the Department determines that modification or revocation and reissuance is appropriate; ()

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or ()

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. ()

03. Minor Modifications of Permits. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection without following the procedures of Sections 108 (Draft Permit and Fact Sheet), 109 (Public Notification and Comment), and Subsection 201.01. Any permit modification not processed as a minor modification under this subsection must be made for cause and must meet the requirements of Section 108 (Draft Permit and Fact Sheet) and Section 109 (Public Notification and Comment). Minor modifications may: ()

a. Correct typographical errors; ()

b. Require more frequent monitoring or reporting by the permittee; ()

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; ()

d. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; ()

e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge

under Section 120 (New Sources and New Discharges), and 40 CFR 122.29(d); ()

f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; ()

g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits; ()

h. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6); or ()

i. Make a change in a permit provision that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations. ()

202. TRANSFER OF IPDES PERMITS.

01. Transfers by Modification. Except as provided in Subsection 202.02, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under Subsection 201.02.d., or a minor modification made under Subsection 201.03, to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act. ()

02. Automatic Transfers. As an alternative to transfers by modification, any IPDES permit may be automatically transferred to a new permittee if: ()

a. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ()

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee; and ()

c. The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subsection may also be a minor modification under Subsection 201.03. If this notice is not received, the transfer is effective on the date specified in the agreement. ()

203. TERMINATION OF IPDES PERMITS.

01. Request to Terminate or Termination Initiated by the Department. Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department's own initiative. However, permits may only be terminated for the reasons specified in Subsection 203.03 or 203.04. All requests for termination shall be in writing and shall contain facts or reasons supporting the request. ()

02. Tentative Permit Termination. Except as provided in Subsection 203.04, if the Department tentatively decides to terminate a permit under Subsection 203.03, the Department shall issue a notice of intent to terminate. A notice of intent to terminate shall be available for public comment, and the Department shall give notice of an opportunity for public meetings, as specified in Section 109 (Public Notification and Comment). ()

03. Cause to Terminate Permits. The following are causes for terminating a permit during its term, or for denying a permit renewal application: ()

a. Noncompliance by the permittee with any condition of the permit; ()

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; ()

c. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or ()

d. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW). ()

04. Expedited Termination Process for Terminated or Eliminated Discharge. If the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. ()

a. Termination by notice shall be effective thirty (30) days after notice is sent (expedited permit termination), unless the permittee objects within that time. ()

b. If the permittee objects during that period, the Department shall follow procedures for termination in Subsection 203.02. ()

c. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under federal law. ()

204. APPEALS PROCESS.

01. Petition for Review of a Permit Decision. Appeal of a final IPDES permit decision, issued under Section 107 (Decision Process), to the Hearing Authority is commenced by filing a Petition for Review with the Department's Hearing Coordinator within the time prescribed in Subsection 204.01.b. The "Hearing Authority" shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. ()

a. Any person who is aggrieved by the final permit decision may file a Petition for Review as provided in this section. A person aggrieved is limited to the permit holder or applicant, and any person or entity who filed comments or who participated in the public hearing on the draft permit. ()

b. A Petition for Review must be filed with the Department's Hearing Coordinator within twenty-eight (28) days after the Department serves notice of the final permit decision under Section 107 (Decision Process). A petition is filed when it is received by the Department's Hearing Coordinator at the address specified in Subsection 204.13. ()

c. In addition to meeting the requirements in Subsection 204.06, a Petition for Review must: ()

i. Be confined to the issues raised during the public comment process or to changes made to the permit by the Department after the close of the public comment period; ()

ii. Identify the permit condition or other specific aspect of the permit decision that is being challenged; ()

iii. Set forth the legal and factual basis for the petitioner's contentions; ()

iv. Set forth the relief sought; and ()

v. Set forth the basis for asserting that the petitioner is an aggrieved person. ()

02. Public Notice of the Petition for Review. Within fourteen (14) days of the date a Petition for Review has been filed, the Hearing Authority must give reasonable notice to the public of the petition. ()

03. Administrative Record Filed By the Department. The Department shall file a certified copy of

the administrative record, as identified in Section 600 (Administrative Records and Data Management), with an index within twenty-eight (28) days of the date the Petition for Review was filed. ()

04. Participation by the Permit Applicant or Permit Holder. A permit applicant or permit holder who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance within twenty-eight (28) days of the date the Petition for Review was filed. ()

05. Petition to Intervene. Any person who has a direct and substantial interest in the outcome of the Petition for Review may file a Petition to Intervene. ()

a. The Petition to Intervene must set forth the interest of the intervener, and why intervention would not unduly broaden the issues and cause delay or prejudice to the parties. ()

b. Petitions to Intervene must be filed within fourteen (14) days of the notice of filing of the Petition for Review. ()

c. Any party opposing a Petition to Intervene must file objections within seven (7) days after service of the Petition to Intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. ()

d. If a Petition to Intervene shows direct and substantial interest in the outcome of the Petition for Review, does not unduly broaden the issues, and will not cause delay or prejudice to the parties, the Hearing Authority shall grant intervention. ()

06. Content and Form Requirements for Petitions and Briefs. All petitions and briefs filed under this section must: ()

a. Identify, in the caption, the permit applicant or holder, the permitted facility, and the permit number. The caption should also include the case number, if available at the time of filing, and the title of the document, and ()

b. Specify on the upper left corner of the first page, the name, address, telephone number, e-mail address and facsimile number if any of the person filing the document. If the person filing the document is a representative of a party as provided in Subsection 204.11, the document must identify the name of the person or entity represented. No more than two (2) representatives for service of documents may be listed. ()

07. Augmenting the Administrative Record. Consideration of the Petition for Review by the Hearing Authority is limited to the certified administrative record unless, upon the request of a party, the Hearing Authority allows the record to be augmented. A request to augment the record must be filed within fourteen (14) days of the filing of the certified administrative record, unless intervention is granted, in which case the request to augment must be filed within fourteen (14) days of the date the order granting intervention is issued. The Hearing Authority may allow the record to be augmented if the requesting party shows that the additional information is material, is relevant to the issues raised in the appeal and that: ()

a. There were good reasons for failure to present the information during the permitting proceeding; or ()

b. There were alleged irregularities in the permitting proceeding and the party wishes to introduce evidence of the alleged irregularities. ()

08. Brief of the Petitioner. Once all requests to augment the record and motions to intervene have been determined, the Hearing Authority shall issue an order notifying the parties that the administrative record has been settled and of the date by which the petitioner must file petitioner's brief in support of the Petition for Review. In addition to meeting the requirements of Subsection 204.06, the brief must include: ()

a. The legal arguments and citations to legal authority that support the allegations in the Petition for Review; and ()

b. The factual support for the allegations in the Petition for Review, including citations to the administrative record. ()

c. A statement regarding whether the party desires an opportunity for oral argument. ()

09. Response Briefs. Unless an alternative date is set by the Hearing Authority, the Department and all other parties must file response briefs within twenty-eight (28) days of the service of the petitioner's brief. In addition to meeting the requirements of Subsection 204.06, the response briefs must include: ()

a. A response to the arguments and assertions in the petitioner's brief (either in support or opposed); ()

b. A citation to all legal authorities and facts in the administrative record relied upon; and ()

c. A statement regarding whether the party desires an opportunity for oral argument. ()

10. Reply Briefs by the Petitioner. Unless an alternative date is set by the Hearing Authority, the petitioner may file a reply brief within fourteen (14) days after service of response briefs. A petitioner may not raise new issues or arguments in the reply. ()

11. Representation of Parties. Unless otherwise authorized or required by law, appearances and representation of parties or other persons shall be as follows: ()

a. A natural person may represent himself or herself or be represented by an attorney or, if the person lacks full legal capacity to act for himself or herself, then by a legal guardian or guardian ad litem or representative of an estate; ()

b. A general partnership may be represented by a partner or an attorney; ()

c. A corporation, or any other business entity other than a general partnership, must be represented by an attorney; ()

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization must be represented by an attorney; or ()

e. A state, federal or tribal governmental entity or agency must be represented by an attorney. ()

12. Substitution and Withdrawal of Representatives. A party's representative may be changed and a new representative may be substituted by notice to all parties so long as the proceedings are not unreasonably delayed. Representatives who wish to withdraw from a proceeding must immediately file a motion to withdraw representation and serve that motion on the party represented and all other parties. ()

13. Filing and Service Requirements. ()

a. All documents concerning actions governed by these rules must be filed with the Hearing Coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. Documents may also be filed by FAX at FAX No. (208) 373-0481 or may be filed electronically. The originating party is responsible for retaining proof of filing by FAX. The documents are deemed to be filed on the date received by the Hearing Coordinator. Upon receipt of the filed document, the Hearing Coordinator will provide a conformed copy to the originating party. ()

b. All documents subsequent to the petition must be served on all parties or representatives, unless otherwise directed by the Hearing Authority. ()

c. Service of documents on the named representative is valid service upon the party for all purposes in the proceeding. ()

14. Proof of Service. Every document meeting the requirements for service must be attached to or accompanied by proof of service containing the following certificate:

I hereby certify that on this (insert date), a true and correct copy of the foregoing (insert name of document) was served on the following as indicated below: (insert names and addresses of parties and method of delivery (first class U.S. mail, facsimile, hand-delivery, or overnight express)) (Signature)
--

()

15. Motions. A request for an interlocutory or procedural order or other relief must be made by written motion unless these rules prescribe another form. ()

a. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other parties concur or object to the motion and must indicate in the motion the attempt made and the response obtained. ()

b. Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within fifteen (15) days after service of the motion unless the Hearing Authority shortens or extends the time for response. ()

c. Any reply to a response must be filed within ten (10) days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response. ()

d. The Hearing Authority may act on a motion for a procedural order at any time without awaiting a response. ()

e. Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Hearing Authority with a reasonable opportunity to issue an order prior to the due date. ()

16. Oral Argument. The Hearing Authority may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties. ()

17. Withdrawal of Permit or Portions of Permit by the Department. The Department may, at any time, upon notification to the Hearing Authority and all parties, withdraw the permit or specified portions of the permit and prepare a new draft permit under Section 108 (Draft Permit and Fact Sheet) addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit. If applicable, any portions of the permit that are not withdrawn continue to apply, unless stayed under Sections 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). The appeal shall continue with respect to those portions of the permit that are contested in the appeal that the Department does not withdraw. ()

18. Request to Dismiss Petition. The petitioner, by motion, may request to have the Hearing Authority dismiss its appeal. The motion must briefly state the reason for its request. ()

19. Burden of Proof. The petitioner has the burden of proving the allegations in the Petition for Review. Factual allegations must be proven by a preponderance of the evidence. ()

20. Appointment of Hearing Officers. The Hearing Authority shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. Hearing Officers should be persons with technical expertise or experience in the issues involved in IPDES appeals. Notice of appointment of a Hearing Officer

shall be served on all parties. No Hearing Officer shall be appointed that has a conflict of interest as defined in 40 CFR 123.25(c). ()

21. Scope of Authority of the Hearing Authority. The Hearing Authority shall have the following authority: ()

a. The authority to set schedules and take such other actions to ensure an efficient and orderly adjudication of the issues raised in the Petition for Review; ()

b. The authority to hear and decide motions; and ()

c. The authority to issue an order that decides the issues raised in the appeal and includes findings of fact and conclusions of law. The required contents of an order are set forth in Subsection 204.24. ()

22. Ex Parte Communications. The Hearing Authority shall not communicate, directly or indirectly, regarding any substantive issue in the permit appeal with any party, except upon notice and opportunity for all parties to participate in the communication. The Hearing Authority may communicate ex parte with a party concerning procedural matters (e.g., scheduling). When the Hearing Authority becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during an appeal, the Hearing Authority shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. ()

23. Alternative Dispute Resolution. Parties to the permit appeal may agree to use a means of alternative dispute resolution. ()

24. Final Orders. ()

a. Final orders are issued by the Hearing Authority upon review of the petitions, briefs and the administrative record on appeal. ()

b. Every final order shall contain the following: ()

i. A reasoned statement in support of the decision; ()

ii. Findings of fact, with reference to the portions of the administrative record that support the findings. The findings of fact must be based exclusively on the administrative record, or if augmented during the appeal, the augmented record; ()

iii. Conclusions of law with respect to legal issues raised in the appeal; ()

iv. The final order shall either affirm the permitting decision, or vacate and remand the decision to the Department with instructions; and ()

v. A statement of the right to judicial review as set forth in Section 204.26. ()

c. Motions for reconsideration of any final order shall not be considered. ()

25. Final Agency Action for Purposes of Judicial Review. ()

a. Filing a Petition for Review is a prerequisite to seeking judicial review of the Department's permitting decision. ()

b. For purposes of judicial review under Sections 39-107 and 67-5270, Idaho Code, final agency action or determination regarding an appeal of a permit occurs when a final order that affirms the Department's permitting decision is issued. ()

c. An order that vacates and remands the decision to the Department with instructions is not a final agency action for purposes of judicial review. ()

26. Petition for Judicial Review. ()

a. Any person aggrieved by a final agency action or determination by the Department as defined in Subsection 204.25 has a right to judicial review by filing a petition for judicial review. ()

b. The petition for judicial review must be filed with the Hearing Coordinator as set out in Subsection 204.13 and with the district court and served on all parties. The petition for judicial review shall also be served upon the Hearing Authority, the Director of the Department, and upon the Attorney General of the State of Idaho. Pursuant to Section 67-5272, Idaho Code, petitions for judicial review may be filed in the District Court of the county in which: ()

i. The hearing was held; ()

ii. The final agency action was taken; ()

iii. The party seeking review of the agency action resides; or ()

iv. The real property or personal property that was the subject of the agency action is located. ()

c. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final agency action must be filed within twenty-eight (28) days of the service date of a final order issued by the Hearing Authority. ()

27. IPDES General Permits. ()

a. Persons affected by an IPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further Department proceedings. Instead, they may do either of the following: ()

i. Challenge the conditions in a general permit by filing an action in court; or ()

ii. Apply for an individual IPDES permit under Section 105 (Application for an Individual IPDES Permit), as authorized in Section 130 (General Permits), and may then petition the Hearing Authority to review the individual permit as provided by in these rules. ()

b. As provided in Subsection 130.05.c., any interested person may also petition the Department to require an individual IPDES permit for any discharger eligible for authorization to discharge under an IPDES general permit. ()

c. The Department's decision to terminate, revoke or deny coverage under a general permit and to require application for an individual permit may be appealed pursuant to the provisions of Section 204 (Appeals Process). ()

28. Appeals of Variances. ()

a. When the Department issues a permit on which EPA has made a variance decision, separate appeals of the Department permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the EPA Region 10 Administrator will decide, in consultation with the Department, which case will be heard first. ()

b. Variance decisions made by EPA may be appealed under the provisions of 40 CFR 124.19. ()

c. Stays for variances other than Clean Water Act section 301(g) variances are governed by Section 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). ()

205. CONTESTED PERMIT CONDITIONS.

01. Force and Effect of Conditions. As provided in Subsection 206.01, if an appeal of a permit decision is filed under Section 204 (Appeals Process), the force and effect of the contested conditions of the permit shall be stayed until final Department action. The Department must notify the discharger and all interested parties of the uncontested conditions of the permit that are enforceable obligations of the discharger in accordance with Subsection 206.01.c. ()

02. Control Technologies. When effluent limitations are contested, but the underlying control technology is not, the notice must identify the installation of the technology in accordance with the permit compliance schedules as an uncontested, enforceable obligation of the permit. ()

03. Combination of Technologies. When a combination of technologies is contested, but a portion of the combination is not contested, that portion must be identified as uncontested if compatible with the combination of technologies proposed by the requester. ()

04. Inseverable Conditions. Uncontested conditions, if inseverable from a contested condition, must be considered contested. ()

05. Enforceable Dates. Uncontested conditions shall become enforceable thirty (30) days after the date of notice under Subsection 205.01. ()

06. Uncontested Conditions. Uncontested conditions shall include: ()

a. Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures; and ()

b. Permit conditions which will have to be met regardless of the outcome of the appeal under Section 204 (Appeals Procedure). ()

206. STAYS OF CONTESTED PERMIT CONDITIONS.

01. Stays. ()

a. If a Petition for Review of an IPDES permit under Section 204 (Appeals Process) is filed, the effect of the contested permit conditions shall be stayed and will not be subject to judicial review pending final Department action. Uncontested permit conditions shall be stayed only until the date specified in Subsection 206.01.b. If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant will not be issued a permit for the proposed new facility, injection well, source or discharger pending final Department action. ()

b. Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Department must identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable thirty (30) days after the date of the notification required in Subsection 206.01.c. ()

c. As soon as possible after receiving notification from the Hearing Coordinator of the filing of a Petition for Review, the Department must notify the Hearing Authority, the applicant, and all other parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in Subsection 206.01.b., and the notice must comply with the requirements of Section 205 (Contested Permit Conditions). ()

02. Stays Based on Cross Effects. ()

a. The Department may grant a stay based on the grounds that an appeal to the Hearing Authority

under Section 204 (Appeals Process) of one permit may result in changes to another Department-issued IPDES permit only when each of the permits involved has been appealed to the Department. ()

b. No stay of an EPA-issued NPDES permit shall be granted based on the staying of any Department-issued IPDES permit except at the discretion of the EPA Region 10 Administrator and only upon written request from the Department. ()

03. Permittee Responsibilities. Any facility or activity holding an existing permit must: ()

a. Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits); and ()

b. To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. ()

207. -- 299. (RESERVED)

300. CONDITIONS APPLICABLE TO ALL PERMITS.

The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 (Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit. ()

01. Duty to Comply. The permittee must comply with all conditions of the permit. ()

a. Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act, and is grounds for: ()

i. Enforcement action; ()

ii. Permit termination, revocation and reissuance, or modification; or ()

iii. Denial of a permit renewal application. ()

b. The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement. ()

02. Duty to Reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. If the permittee complies with the application requirements of Section 105 (Application for an Individual IPDES Permit), or the notice of intent requirements of Section 130 (General Permits) for a general permit, and a permit is not issued prior to the permit's expiration date, the permit shall remain in force as stipulated in Subsections 101.02 and 101.03. ()

03. Need to Halt or Reduce Activity. In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity. ()

04. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. ()

05. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. ()

a. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. ()

b. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit or are required by IDAPA 58.01.16 "Wastewater Rules." ()

06. Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. ()

07. Property Rights. The permit does not convey any property rights of any sort, or any exclusive privilege. ()

08. Duty to Provide Information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by the permit. ()

09. Inspection and Entry. The permittee shall provide the Department's inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to: ()

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit; ()

b. Any records that must be kept under the conditions of the permit and, at reasonable times, to copy such records; ()

c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and ()

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. ()

10. Monitoring and Records. A permittee must comply with the following monitoring and recordkeeping conditions: ()

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. ()

b. The permittee shall retain the following records: ()

i. All monitoring information, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and ()

ii. The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five (5) years or longer as required by 40 CFR Part 503. ()

c. Records of monitoring information shall include: ()

i. All calibration and maintenance records; ()

- ii. All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department; ()
 - iii. Copies of all reports required by the permit; ()
 - iv. Records of all data used to complete the application or notice of intent for the permit; ()
 - v. The date, exact place, and time of sampling or measurements; ()
 - vi. The name of any individual(s) who performed the sampling or measurements; ()
 - vii. The date(s) any analyses were performed; ()
 - viii. The name of any individual(s) who performed the analyses; ()
 - ix. The analytical techniques or methods used; and ()
 - x. The results of the analysis. ()
- d.** Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another test method is required by 40 CFR Part 401 through 471 or Part 501 through 503. ()

11. Signatory Requirements. All applications, reports, or information submitted to the Department shall be signed and certified in accordance with Section 090 (Signature Requirements) and must include penalty provisions pursuant to Section 500 (Enforcement). ()

12. Reporting Requirements. ()

a. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: ()

i. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources and New Discharges) and 010 (Definitions); ()

ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 301.01.a.; or ()

iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites: ()

(1) Not reported during the permit application process, or ()

(2) Not reported pursuant to an approved land application or sludge disposal plan. ()

b. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. ()

c. The permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202 (Transfer of IPDES Permits). ()

d. Monitoring results shall be reported at the intervals specified in the permit. ()

i. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms (which may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. ()

ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Part 401 through 471 or Part 501 through Part 503, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department. ()

iii. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit. ()

e. A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit no later than fourteen (14) days following each schedule date of each requirement. ()

f. The permittee shall report to the Department any noncompliance which may endanger health or the environment as follows: ()

i. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances; ()

ii. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of: ()

(1) The noncompliance and its cause; ()

(2) The period of noncompliance, including exact dates and times; ()

(3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and ()

(4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;()

iii. The following shall be included as information which must be reported within twenty-four (24) hours: ()

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection 300.07, Property Rights); ()

(2) Any upset which exceeds any effluent limitation in the permit; and ()

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within twenty-four (24) hours (see Subsection 302.09, Twenty-Four Hour Reporting); and ()

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.12.f.iii. if the oral report has been received within twenty-four (24) hours. ()

g. The permittee shall report all instances of noncompliance not reported under Subsections 300.12.d., e., and f., at the time monitoring reports are submitted. The reports of noncompliance shall contain the information listed in Subsection 300.12.f. ()

h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or correct information. ()

13. Bypass Terms and Conditions. ()

a. Bypass, as defined in Section 010 (Definitions), is prohibited, and the Department may take enforcement action against a permittee for bypass, unless: ()

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; ()

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and ()

iii. The permittee submitted a notice of a bypass to the Department in accordance with Subsections 300.13.c. and d. ()

b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed in Subsection 300.13.a. ()

c. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass. ()

d. The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.12.f. (24-hour notice). ()

e. Bypasses not exceeding limitations, are allowed to occur, and are not subject to Subsection 300.13.a. or 300.13.d. if: ()

i. The bypass does not cause effluent limitations to be exceeded, and ()

ii. Only if it also is for essential maintenance to assure efficient operation. ()

14. Upset Terms and Conditions. ()

a. In any enforcement action for noncompliance with permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof. ()

b. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review. ()

c. The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: ()

i. An upset occurred and that the permittee can identify the cause(s) of the upset; ()

ii. The permitted facility was at the time being properly operated; ()

iii. The permittee submitted twenty-four (24)-hour notice of the upset as required Subsection 300.12.f.iii.(2); and ()

iv. The permittee complied with any remedial measures required under Subsection 300.04. ()

15. Penalties and Fines. Permits must include penalty and fine requirements pursuant to Section 500 (Enforcement). ()

301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES.

In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. ()

01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under Subsection 300.12, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe: ()

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: ()

i. One hundred micrograms per liter (100 µg/L); ()

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; ()

iii. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and ()

iv. One milligram per liter (1 mg/L) for antimony; ()

v. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or ()

vi. The level established by the Department in accordance with Subsection 302.08; and ()

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: ()

i. Five hundred micrograms per liter (500 µg/L); ()

ii. One milligram per liter (1 mg/L) for antimony; ()

iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or ()

iv. The level established by the Department in accordance with Subsection 302.08. ()

02. Publicly and Privately Owned Treatment Works. All POTWs and privately owned treatment works must provide adequate notice to the Department of the following: ()

a. Any new introduction of pollutants into the POTW or privately owned treatment works from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and ()

b. Any substantial change in the volume or character of pollutants being introduced into that POTW or privately owned treatment works by a source introducing pollutants into the POTW or privately owned treatment works at the time of issuance of the permit. For purposes of this subsection, adequate notice shall include information on: ()

i. The quality and quantity of effluent introduced into the POTW or privately owned treatment works, and ()

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or privately owned treatment works. ()

03. Municipal Separate Storm Sewer Systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include: ()

a. The status of implementing the components of the storm water management program that are established as permit conditions; ()

b. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with Subsection 105.18.b.iii.; ()

c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Subsection 105.18.b.iv. and 105.18.b.v.; ()

d. A summary of data, including monitoring data, that is accumulated throughout the reporting year; ()

e. Annual expenditures and budget for the year following each annual report; ()

f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and ()

g. Identification of water quality improvements or degradation. ()

04. Storm Water Dischargers. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable but in no event later than three (3) years after the date of issuance of the permit. ()

05. Concentrated Animal Feeding Operations (CAFOs). Any applicable permit must include provisions pursuant to 40 CFR 122.42(e). ()

302. ESTABLISHING PERMIT PROVISIONS.

An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules. ()

01. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. ()

02. Applicable Requirements. The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and Section 101 (Duration), and Subsections 304.01, and 305.01 of these rules. ()

a. Applicable requirements include all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit. ()

b. Applicable requirements also include any requirement which takes effect prior to the modification or revocation and reissuance of a permit under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits). ()

c. New or reissued permits, and to the extent allowed under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) for modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200 (Renewal of IPDES Permits), and 302 (Establishing Permit Provisions) through 304 (Monitoring and Reporting Requirements). ()

- 03. Technology-Based Effluent Limitations and Standards.** ()
- a.** Technology-based effluent limitations and standards shall be based on: ()
- i. Effluent limitations and standards promulgated under the Clean Water Act section 301; ()
- ii. New source performance standards promulgated under the Clean Water Act section 306; ()
- iii. Effluent limitations determined on a case-by-case basis under the Clean Water Act section 402(a)(1); or ()
- iv. A combination of the three (3), in accordance with 40 CFR 125.3. ()
- b.** For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d). ()
- c.** The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forego sampling of a pollutant found at 40 CFR Parts 401 through 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. ()
- i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger. ()
- ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. ()
- iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet. ()
- iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards. ()
- 04. Other Effluent Limitations and Standards.** ()
- a.** If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318, and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate proceedings under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition (see also Subsection 300.01). ()
- b.** Standards for sewage sludge use or disposal under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," shall be applied, unless those standards have been included in a permit issued under the appropriate provisions of: ()
- i. Subtitle C of the Solid Waste Disposal Act; ()
- ii. Part C of Safe Drinking Water Act; ()
- iii. The Clean Air Act; or ()

- iv. State permit programs approved by the EPA. ()
- c. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. ()
- d. If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201 (Modification, or Revocation and Reissuance of IPDES Permits), to conform to the standard for sewage sludge use or disposal. ()
- e. Include any requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 125.99. ()
- 05. Reopener Clause.** For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or disposal: ()
 - a. Is more stringent than any requirements for sludge use or disposal in the permit, or ()
 - b. Controls a pollutant or practice not limited in the permit. ()
- 06. Water Quality Standards and Requirements.** Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307, 318 and 405 shall be included in a permit if they are necessary to: ()
 - a. Achieve water quality standards established in IDAPA 58.01.02, "Water Quality Standards," including narrative criteria for water quality and antidegradation provisions. ()
 - i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality. ()
 - ii. When the Department determines whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the Department shall use procedures which account for: ()
 - (1) Existing controls on point and nonpoint sources of pollution; ()
 - (2) The variability of the pollutant or pollutant parameter in the effluent; ()
 - (3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate, ()
 - (4) The dilution of the effluent in the receiving water; ()
 - iii. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant. ()

iv. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity. ()

v. Except as provided in this subsection, when the Department determines, using the procedures in Subsection 302.06.a.ii., toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 302.06.a.ii., that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards. ()

vi. When the state has not established a numeric water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Department must establish effluent limits using one (1) or more of the following options: ()

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived: ()

(a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and ()

(b) Supplemented with other relevant information which may include EPA's Water Quality Standards Handbook, as currently revised, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration (FDA), and current EPA criteria documents; ()

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or ()

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided: ()

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation; ()

(b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards; ()

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and ()

(d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards. ()

vii. When developing water quality-based effluent limits under this subsection, the Department shall ensure that: ()

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and ()

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7; ()

b. Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302; ()

c. Conform to applicable water quality requirements under the Clean Water Act section 402(b)(5) when the discharge affects a state other than Idaho; ()

d. Incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations in accordance with the Clean Water Act section 301(b)(1)(C); ()

e. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or ()

f. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR 125.30 through 125.32. ()

07. Technology-Based Controls for Toxic Pollutants. ()

a. In determining whether to include limitations on toxic pollutants in a permit under this section, the Department will establish limits in accordance with Subsections 302.03, 302.04, and 302.06 and in a notification under Section 301 (Permit Conditions for Specific Categories), or other relevant information. The fact sheet must explain the development of limitations included in the permit. ()

b. An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07 and 301.01.a., or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ()

c. The requirement that the limitations control the pollutants meeting the criteria of Subsection 302.07.b. will be satisfied by: ()

i. Limitations on those toxic pollutants; or ()

ii. Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 302.07.b. to the levels required by 40 CFR 125.3(c). ()

08. Notification Level. An IPDES permit must include a condition requiring a notification level which exceeds the notification level of Subsection 301.01.a., upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ()

09. Twenty-Four (24) Hour Reporting. A permit shall list pollutants for which the permittee is required to report violations of maximum daily discharge limitations within twenty-four (24) hours under Subsection 300.12.f.iii.(3). This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance. ()

10. Permit Durations. Permits must include permit durations pursuant to Subsection 101.01. ()

11. Monitoring Requirements. Permits must include monitoring requirements pursuant to Section 304 (Monitoring and Reporting Requirements). ()

12. Pretreatment Program for POTWs. A POTW permit must include pretreatment program conditions requiring the permittee to: ()

a. Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR

Part 403; ()

b. Submit a local program when required by and in accordance with 40 CFR Part 403, to ensure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b); ()

i. The local program shall be incorporated into the permit as described in 40 CFR Part 403, and ()

ii. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403; ()

c. Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and ()

d. POTWs which are sludge-only facilities, are required to develop a pretreatment program under 40 CFR Part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d). ()

13. Best Management Practices. An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when: ()

a. Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities; ()

b. Authorized under the Clean Water Act section 402(p) for the control of storm water discharges; ()

c. Numeric effluent limitations are infeasible; or ()

d. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. ()

14. Reissued Permits. When a permit is renewed or reissued, it must include provisions pursuant to Section 200 (Renewal of IPDES Permits). ()

15. Privately-Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this section. ()

a. Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. ()

b. The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works. ()

16. Grants. An IPDES permit must include any conditions imposed in grants made by the EPA to POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of effluent limitations under the Clean Water Act section 301. ()

17. Sewage Sludge. An IPDES permit must include any requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations. ()

18. Navigation. An IPDES permit must include any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with

Subsection 103.04 and 109.02. ()

19. Qualifying State or Local Programs. ()

a. For storm water discharges associated with small construction activity disturbing one (1) acre or more, but less than five (5) acres as specified in 40 CFR 122.26(b)(15), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. Where a qualifying state or local program does not include one (1) or more of the elements in this subsection, then the Department must include those elements as conditions in the permit. ()

b. A qualifying state or local erosion and sediment control program is one that includes: ()

i. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; ()

ii. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; ()

iii. Requirements for construction site operators to develop and implement a storm water pollution prevention plan, which must include: ()

(1) Site descriptions; ()

(2) Descriptions of appropriate control measures; ()

(3) Copies of approved state or local requirements; ()

(4) Maintenance procedures; ()

(5) Inspection procedures; ()

(6) Identification of non-storm water discharges; and ()

iv. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts. ()

c. For storm water discharges from a construction activity disturbing five (5) acres or more, including activities that disturb less than five (5) acres but are part of a larger common plan of development or sale that will ultimately disturb five (5) acres or more, as specified in 40 CFR 122.26(b)(14)(x), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. A qualifying state or local erosion and sediment control program is one that includes the elements listed in Subsections 302.19.a. and b. and any additional requirements necessary to achieve the applicable technology-based standards of best available technology and best conventional technology based on the best professional judgment of the permit writer. ()

20. Water Quality Trading. The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through water quality trading. ()

303. CALCULATING PERMIT PROVISIONS.

01. Outfalls and Discharge Points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Subsection 302.13, (Best Management Practices,) and Subsection 303.08, (Internal Waste Streams.) ()

02. Production-Based Limitations. ()

a. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow. ()

b. Except in the case of POTWs or as provided in Subsection 303.02.b.ii., calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based upon a reasonable measure of actual production of the facility. ()

i. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations. ()

ii. The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels. ()

iii. For the automotive manufacturing industry only, the Department shall establish an alternate condition under 303.02.b.ii., if the applicant satisfactorily demonstrates to the Department, at the time the application is submitted, that: ()

(1) Its actual production, as indicated in Subsections 303.02.b. and 303.02.b.i. is substantially below maximum production capability, and ()

(2) There is a reasonable potential for an increase above actual production during the duration of the permit. ()

iv. If the Department establishes permit conditions under Subsection 303.02.b.ii.: ()

(1) The permit shall require the permittee to notify the Department at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify: ()

(a) The anticipated level, and the period during which the permittee expects to operate at the alternate level; and ()

(b) If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase; and ()

(c) New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice; ()

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under Subsection 303.02.b.ii., in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and ()

(3) The permittee shall submit, with the Discharge Monitoring Report, the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production. ()

03. Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136, unless: ()

a. An applicable effluent standard or limitation has been promulgated under the Clean Water Act and specifies the limitation for the metal in the dissolved or valent or total form; ()

b. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to

express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Clean Water Act; or ()

c. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium). ()

04. Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as: ()

a. Maximum daily and average monthly discharge limitations for all dischargers other than POTWs; or ()

b. Average weekly and average monthly discharge limitations for POTWs. ()

05. Noncontinuous Discharges. Discharges which are not continuous, as defined in Section 010 (Definitions), shall be particularly described and limited, considering the following factors, as appropriate: ()

a. Frequency (for example, a batch discharge shall not occur more than once every three (3) weeks); ()

b. Total mass (for example, not to exceed one hundred (100) kilograms of zinc and two hundred (200) kilograms of chromium per batch discharge); ()

c. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two (2) kilograms of zinc per minute); and ()

d. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than one-tenth (0.1) mg/L zinc or more than two hundred fifty (250) grams (one-fourth (¼) kilogram) of zinc in any discharge). ()

06. Mass Limitations. ()

a. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except: ()

i. pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass; ()

ii. When applicable standards and limitations are expressed in terms of other units of measurement; or ()

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of total suspended solids (TSS) from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment. ()

b. Pollutants limited in terms of mass, may also be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations. ()

07. Pollutant Credits for Intake Water. ()

a. The following definitions apply to the consideration of intake credits in determining reasonable potential and establishing technology based and water quality based effluent limits for IPDES permits. ()

i. An intake pollutant is the amount of a pollutant that is present in waters of the United States (including ground water as provided in Subsection 303.07.a.iv.) at the time water is removed from the same body of

water by the discharger or other facility supplying the discharger with intake water. ()

ii. An intake pollutant must be from the same body of water as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the same body of water as the discharge if the Department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if: ()

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and ()

(2) There is a direct hydrological connection between the intake and discharge points. ()

iii. The Department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. ()

iv. An intake pollutant from ground water may be considered to be from the same body of water if the Department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. ()

b. Consideration of intake pollutants for technology based effluent limitations: ()

i. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if: ()

(1) The applicable effluent limitations and standards contained in 40 CFR Part 401 through 471, specifically provide that they shall be applied on a net basis; or ()

(2) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters. ()

ii. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere. ()

iii. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits. ()

iv. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if the Department finds that no environmental degradation will result. ()

v. This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water. ()

c. Consideration of intake pollutants for water quality based effluent limitations: ()

i. The Department will evaluate if there is reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion. If the Department determines that an intake pollutant in the discharge does not have the reasonable potential to cause or contribute to an exceedance of an applicable water quality standard, the Department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit. ()

ii. If a reasonable potential exists, then water quality-based effluent limits may be established that

reflect a credit for intake pollutants where a discharger demonstrates that the following conditions are met: ()

(1) The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made; ()

(2) The ambient background concentration of the pollutant does not meet the most stringent applicable water quality criterion for that pollutant; ()

(3) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants had not been removed from the body of water; ()

(4) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water; ()

(5) For the purpose of determining reasonable potential, the facility does not contribute any additional mass of the identified intake pollutant to its wastewater; and ()

(6) For the purpose of determining water quality-based effluent limits, the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water. ()

iii. Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the Department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in 303.07.c.ii. of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit. ()

iv. The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the Department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a Department evaluation of the use of best management practices. ()

v. Permit limits must be consistent with the assumptions and requirement of waste load allocations or other provisions in a TMDL that has been approved by the EPA. ()

08. Internal Waste Streams. ()

a. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 304 (Monitoring and Reporting Requirements) shall also be applied to the internal waste streams. ()

b. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as: ()

i. When the final discharge point is inaccessible (for example, under ten (10) meters of water);()

ii. The wastes at the point of discharge are so diluted as to make monitoring impracticable; or ()

iii. The interferences among pollutants at the point of discharge would make detection or analysis impracticable. ()

09. Disposal of Pollutants into Wells, into POTWs, or by Land Application. ()

a. When part of a discharger's process wastewater is not being discharged into waters of the United

States because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an IPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods: ()

i. If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards; or ()

ii. In all cases other than those described in Subsection 303.09.a.i., effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, subpart D, to make them more or less stringent if discharges to wells, POTWs, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$P=(E \times N)/T$ <p>where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.</p>

()

b. Subsection 303.09.a. does not apply to the extent that promulgated effluent limitations guidelines: ()

i. Control concentrations of pollutants discharged but not mass; or ()

ii. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs. ()

c. Subsection 303.09.a. does not alter a discharger's obligation to meet any more stringent requirements established under Sections 300 (Conditions Applicable to all Permits), 301 (Permit Conditions for Specific Categories), 40 CFR 122.42(e), and 302 (Establishing Permit Provisions). ()

d. Disposal of discharge into injection wells is regulated by: ()

i. Idaho Department of Water Resources, in compliance with the IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," for a Class I injection well; or ()

ii. Health District having jurisdiction, in compliance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," for a Class V injection well. ()

e. Disposal of discharge onto the surface of the land is regulated by the Department under IDAPA 58.01.17, "Recycled Water Rules." ()

304. MONITORING AND REPORTING REQUIREMENTS.

01. Monitoring Requirements. A permit must include the following requirements for monitoring: ()

a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); ()

b. The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; ()

- c.** Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity; ()
- d.** The mass (or other measurement specified in the permit) for each pollutant limited in the permit; ()
- e.** The volume of effluent discharged from each outfall; ()
- f.** Other measurements as appropriate, including: ()

 - i. Pollutants in internal waste streams under Subsection 303.08; ()
 - ii. Pollutants in intake water for net limitations under Subsection 303.07; ()
 - iii. Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 303.05; ()
 - iv. Pollutants subject to notification requirements under Subsection 301.01; and ()
 - v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules"; ()
- g.** According to test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters, or another method is required under 40 CFR Part 401 through 471 or Part 501 through 503; and ()
- h.** In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136, or methods are not otherwise required under 40 CFR Part 401 through 471 or Part 501 through 503, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters. ()

02. Reporting Monitoring Results. ()

- a.** Except as provided in Subsections 304.02.d. and 304.02.e., the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. ()
- b.** For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503, Section 380 (Sewage Sludge) of these rules, and Idaho's Wastewater Rules, IDAPA 58.01.16.650, "Wastewater Rules," (where applicable), but in no case less than once a year. ()
- c.** The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. ()
- d.** The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 304.02.c., on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to: ()

 - i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity; ()
 - ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether

additional control measures are needed; ()

iii. Maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance; ()

iv. Sign the report and certification in accordance with Section 090 (Signature Requirements); and ()

v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three (3) years by an Idaho licensed professional engineer. ()

e. A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.12. ()

305. COMPLIANCE SCHEDULES.

01. General. An IPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Clean Water Act and these rules. ()

a. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the Clean Water Act. ()

b. The first IPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three (3) years before commencement of the relevant discharge. ()

c. For recommending dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge. ()

d. If a permit establishes a schedule of compliance under this section that exceeds one (1) year from the date of permit issuance, the schedule must set out interim requirements and dates for achievement of the interim requirements. If the schedule includes interim requirements: ()

i. The time between interim dates shall not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six (6) months; or ()

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. ()

e. Within fourteen (14) days following each interim and final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if Subsection 305.01.d.ii. is applicable. ()

f. Permits may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations in accordance with IDAPA 58.01.02.400, "Water Quality Standards." ()

02. Alternative Schedules of Compliance. An IPDES permit applicant or permittee may cease conducting regulated activities (by terminating direct discharge for point sources) rather than continuing to operate

and meet permit requirements as follows: ()

a. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued: ()

i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or ()

ii. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit. ()

b. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline. ()

c. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two (2) schedules, as follows: ()

i. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; ()

ii. One (1) schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline; ()

iii. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and ()

iv. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under Subsection 305.02.c., it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities. ()

d. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation. ()

306. -- 309. (RESERVED)

310. VARIANCES.

01. Variance Requests by non-POTWs. ()

a. A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provisions, within the times specified in this subsection. ()

i. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows: ()

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under Section 109 (Public Notification and Comment); or ()

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than one hundred eighty (180) days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. ()

ii. The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met. ()

b. An applicant may request a variance for non-conventional pollutants under this section for the following: ()

i. A variance from the BAT requirements for Clean Water Act section 301(b)(2)(F) pollutants (commonly called non-conventional pollutants) pursuant to the Clean Water Act section 301(c) because of the economic capability of the owner or operator; or ()

ii. A variance pursuant to the Clean Water Act section 301(g) provided: ()

(1) The variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP), when determined by the EPA Administrator to be a pollutant covered by the Clean Water Act section 301(b)(2)(F); and ()

(2) Any other pollutant which the EPA Administrator lists under the Clean Water Act section 301(g)(4). ()

c. The request for variance as outlined in Subsection 310.01.b. must be made as follows: ()

i. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline, by submitting an initial request to the Department no later than two hundred seventy (270) days after promulgation of the applicable effluent limitation guideline followed by a completed request no later than the close of the public comment period under Section 109 (Public Notification and Comment). ()

(1) The initial request to the Department shall contain: ()

(a) The name of the discharger; ()

(b) The permit number; ()

(c) The outfall number(s); ()

(d) The applicable effluent guideline; and ()

(e) Whether the discharger is requesting a Clean Water Act section 301(c) or section 301(g) modification or both. ()

(2) The completed request shall demonstrate that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under the Clean Water Act section 301(g) shall be filed one hundred eighty (180) days before the Department must make a decision (unless the Department establishes a shorter or longer period). ()

ii. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with Subsection 310.01.c.i.(2) and need not be preceded by an initial request under Subsection 310.01.c.i.(1). ()

d. A modification under the Clean Water Act section 302(b)(2) of requirements under the Clean Water Act section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought. ()

e. A variance under the Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under Section 105 (Application for an Individual IPDES Permit), except that if thermal effluent limitations are established under the Clean Water Act section 402(a)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period under

Section 109 (Public Notification and Comment). ()

02. Variance Requests by POTWs. A discharger which is a POTW may request a variance from water quality based effluent limitations. A modification under the Clean Water Act section 302(b)(2) of the requirements under the Clean Water Act section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought. ()

03. Permit Variance Decision Process. ()

a. The Department may deny requests for variances. A variance that has been denied by the Department may be appealed according to the process identified in Section 204 (Appeals Process). ()

b. The Department may grant (subject to EPA objection under Subsection 103.02 or 40 CFR 123.44): ()

i. Variances for extensions under the Clean Water Act section 301(i) based on delay in completion of a POTW; ()

ii. Variances after consultation with EPA, extensions under the Clean Water Act section 301(k) based on the use of innovative technology; ()

iii. Variances under the Clean Water Act section 316(a) for thermal pollution; or ()

iv. Variances from water quality standards under IDAPA 58.01.02.260, "Water Quality Rules." ()

c. The Department may forward to EPA with or without a recommendation: ()

i. A variance based on the economic capability of the applicant under the Clean Water Act section 301(c); or ()

ii. A variance based on water quality related effluent limitations under the Clean Water Act section 302(b)(2). ()

d. The Department may forward to EPA with a written concurrence: ()

i. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based (Clean Water Act section 301(n)); or ()

ii. A variance based upon certain water quality factors under the Clean Water Act section 301(g). ()

e. The EPA may grant or deny a request for a variance that is forwarded by the Department. If the EPA Administrator (or his delegate) approves the variance, the Department shall prepare a draft permit incorporating the variance. ()

f. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under Section 204 (Appeals Process). ()

04. Expedited Variance Procedures and Time Extensions. ()

a. Notwithstanding the time requirements in Subsections 310.01 and 310.02, the Department may notify a permit applicant before a draft permit is issued under Section 108 (Draft Permit and Fact Sheet) that the draft permit will likely contain limitations which are eligible for variances. ()

i. In the notice, the Department may require the applicant, as a condition of consideration of any

potential variance request, to submit a request explaining how the requirements of 40 CFR Part 125, applicable to the variance, have been met and may require its submission within a specified reasonable time after receipt of the notice. ()

ii. The Department may send the notice before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance. ()

b. A discharger who cannot file a timely complete request required under Subsections 310.01.c.i.(2) or 310.01.c.ii. may request an extension. ()

i. The extension may be granted or denied at the discretion of the Department. ()

ii. The extension shall be no more than six (6) months in duration. ()

05. Special Procedures for Decisions on Thermal Variances. ()

a. The only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit is issued, are whether alternative effluent limitations would be justified under the Clean Water Act section 316(a) or whether cooling water intake structures will use the best available technology under section 316(b). ()

i. Permit applicants who wish an early decision on these issues should make a request to the Department, furnished with supporting reasons at the time their permit applications are filed. ()

ii. The Department will then decide whether or not to make an early decision. If it is granted, both the early decision on Clean Water Act section 316 (a) or (b) issues and the grant of the balance of the permit shall be: ()

(1) Considered permit issuance under these regulations, and ()

(2) Subject to the same requirements of public notice and comment and the same opportunity for an appeal. ()

b. If the Department, on review of the administrative record, determines that the information necessary to decide whether or not the Clean Water Act section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Department may issue a permit for a term up to five (5) years. ()

i. The permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge, no later than the date otherwise required by law. ()

ii. However, the permit shall also afford the permittee an opportunity to file a demonstration under Clean Water Act section 316(a), after conducting such studies as are required under 40 CFR 125.70 through 125.73. ()

iii. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its Clean Water Act section 316(a) variance request is finally approved. ()

c. Any proceeding held under Subsection 310.05.a. shall be: ()

i. Publicly noticed as required by Section 109 (Public Notification and Comment), and ()

ii. Conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied. ()

d. Whenever the Department defers the decision under the Clean Water Act section 316(a), any decision under the Clean Water Act section 316(b) may be deferred. ()

311. -- 369. (RESERVED)

370. PRETREATMENT STANDARDS.

- 01. Purpose and Applicability.** This section and 40 CFR Part 403 apply to: ()
- a.** Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.03 and 40 CFR 403.3; ()
 - b.** POTWs which receive wastewater from sources subject to National Pretreatment Standards; and ()
 - c.** Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant. ()
- 02. Objectives of General Pretreatment Regulations.** This section and 40 CFR Part 403 fulfill three (3) objectives: ()
- a.** To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; ()
 - b.** To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and ()
 - c.** To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. ()
- 03. Term Interpretation.** When used in the context of 40 CFR Part 403, unless the context in which a term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings: ()
- a.** The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; ()
 - b.** The term Approval Authority means the Department of Environmental Quality; ()
 - c.** The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1; ()
 - d.** The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program;()
 - e.** The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to the Clean Water Act section 402(b); ()
 - f.** The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and ()
 - g.** The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative. ()

04. Exceptions to Incorporation by Reference. The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules. ()

- a. 40 CFR 403.4 (State or Local Law). ()
- b. 40 CFR 403.10 (Development and Submission of NPDES State Pretreatment Programs). ()
- c. 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Wastewater Treatment Facility). ()
- d. 40 CFR 403.20 (Pretreatment Program Reinvention Pilot Projects Under Project XL). ()

371. -- 379. (RESERVED)

380. SEWAGE SLUDGE.

01. Purpose. The purpose of this section and 40 CFR Part 503 is to: ()

a. Establish standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge. ()

i. Include standards for sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator. ()

ii. Include: ()

(1) Pathogen and alternative vector attraction reduction requirements for sewage sludge applied to the land or placed on a surface disposal site; and ()

(2) On a case-by-case basis, controls for storm water runoff from lands where sewage sludge or septage has been placed for treatment or disposal. ()

b. Include the frequency of monitoring and recordkeeping requirements when sewage sludge is: ()

i. Applied to the land; ()

ii. Placed on a surface disposal site; or ()

iii. Fired in a sewage sludge incinerator; and ()

c. Include reporting requirements for: ()

i. Class I sludge management facilities; ()

ii. POTWs with a design flow rate equal to or greater than one million gallons per day (1 MGD); and ()

iii. POTWs that serve ten thousand (10,000) people or more. ()

02. Applicability. This section and 40 CFR Part 503 applies to: ()

a. Any person, who prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in a sewage sludge incinerator and to the owner or operator of a surface disposal site; ()

b. Sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator; ()

c. The exit gas from a sewage sludge incinerator stack; or ()

d. Land where sewage sludge is applied, to a surface disposal site, and to a sewage sludge incinerator. ()

03. Term Interpretation. When used in the context of 40 CFR Part 503, unless the context in which a term is used clearly requires a different meaning, terms in the 40 CFR Part 503 that are incorporated by reference in these rules have the following meanings: ()

a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; ()

b. The terms Director or State Program Director mean the Department of Environmental Quality as the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved IPDES program; and ()

c. The term permitting authority is the Department of Environmental Quality. ()

04. Exceptions to Incorporation by Reference. 40 CFR 503.1 (Purpose and Applicability) is excluded from the incorporation by reference found in Section 003 (Incorporation by Reference) of these rules. ()

381. -- 399. (RESERVED)

400. COMPLIANCE EVALUATION.

01. Non-Compliance Actions. When the permittee is not in compliance with any condition of the existing or expired permit that has been administratively continued, the Department may choose to do one (1) or more of the following: ()

a. Initiate an enforcement action; ()

b. Issue a notice of intent to deny the new application. If the application is denied and the expired permit is no longer effective as provided in Subsection 101.02, the owner or operator must cease the activities authorized by the permit or be subject to enforcement action for operating without a permit; ()

c. Issue a new permit with appropriate conditions; or ()

d. Take other actions authorized by state law. ()

401. -- 499. (RESERVED)

500. ENFORCEMENT.

01. General Enforcement and Penalties. Any person who violates any permit condition, filing or reporting requirement, duty to allow or carry out inspections, entry or monitoring requirements or any other provision in these rules shall be subject to administrative, civil or criminal enforcement and those remedies authorized in the Environmental Protection and Health Act, Sections 39-101 et seq., Idaho Code, including without limitation, civil and criminal penalties as provided in Sections 39-108 and 39-117, Idaho Code. ()

02. Truth in Reporting. It is a violation of these rules for any person to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under an IPDES permit. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code. ()

03. False Statements. It is a violation of these rules for any person to knowingly make any false

statement, representation, or certification in any record or other document submitted or required to be maintained under an IPDES permit, including monitoring reports or reports of compliance or non-compliance. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code. ()

04. Public Participation in Enforcement. The Department shall provide for public participation in the state enforcement process by: ()

a. Investigating and providing written responses to citizen complaints; ()

b. Not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and ()

c. Publishing notice of and providing at least thirty (30) days for public comment on any proposed settlement of a state enforcement action. ()

501. -- 599. (RESERVED)

600. ADMINISTRATIVE RECORDS AND DATA MANAGEMENT.

01. Administrative Record for Draft Permits. ()

a. The provisions of a draft permit prepared by the Department under Subsection 108.01 shall be based on the administrative record defined in this section. ()

b. For preparing a draft permit, the record shall consist of: ()

i. The application, if required, and any supporting data furnished by the applicant; ()

ii. The draft permit or notice of intent to deny the application or to terminate the permit; ()

iii. The fact sheet; ()

iv. All documents cited in the fact sheet; and ()

v. Other documents contained in the supporting file for the draft permit. ()

c. Material readily available at the Department or published material that is generally available, and that is included in the administrative record under Subsection 600.01, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet. ()

d. This subsection applies to all draft permits when public notice was given after the effective date of these rules. ()

02. Administrative Record for Final Permits. ()

a. The Department shall base final permit decisions on the administrative record defined in this section. ()

b. The administrative record for any final permit, including issuance, denial, transfer, modification, revocation and reissuance, or termination shall consist of the administrative record for the draft permit and fact sheet, as defined in Subsection 600.01, the proposed permit and associated information, and the following: ()

i. All comments received during the public comment period provided under Section 109 (Public Notification and Comment); ()

ii. The record of, and any written materials submitted as part of, any meeting(s) held under Section

109 (Public Notification and Comment); ()

iii. The application or notice of intent to obtain coverage under a general permit, notice of intent to deny the application, or to terminate the permit, and any supporting data furnished by the applicant; ()

iv. The response to comments required by Subsections 109.02 and 109.03 and any new material placed in the record under that section; and ()

v. Any other relevant correspondence and documents. ()

c. The final permit and fact sheet shall become part of the administrative record after the final permit is issued. ()

d. The additional documents identified under Subsection 600.02.b., 107.03, and 109.02 should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued. ()

e. This subsection applies to all IPDES permits when the draft permit was included in a public notice. ()

f. Material readily available from the Department or published materials which are generally available and which are included in the administrative record under Subsection 600.02 or Section 109 (Public Notification and Comment), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the fact sheet or in the response to comments. ()

03. Electronic Submittals. Any information which the Department requires to be submitted electronically, with an electronic signature approved by the Department, will become part of the Administrative Record in accordance with Subsections 600.01 and 02. ()

601. -- 999. (RESERVED)

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.02.01 - RULES FOR THE JUDGES' RETIREMENT FUND

DOCKET NO. 59-0201-1501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 21, 2015.

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 1-2012, 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 16, 2015.

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:

These rules apply to the Judges' Retirement Fund (JRF). The changes are proposed in anticipation of seeking for the JRF a determination letter of qualified status from the IRS. They are also designed to amend the rules in certain areas so that the language tracks the language in the rules for the PERSI Base Plan. That tracking will make for easier and consistent administration and may also lessen the need for future revisions.

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

To ensure the rules meet federal requirements, thereby lessening risk to qualified status (which benefits all members and beneficiaries and employers).

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 negotiated rulemaking is not feasible because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations and because several of the changes are required by federal law for qualified plan status.

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 Joanna L. Guilfooy, (208) 287-9271.

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 23, 2015.

DATED this 21st Day of July, 2015.

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
Phone: (208) 287-9230
Fax: (208)334-3408

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 59-0201-1501
(Only Those Sections With Amendments Are Shown.)**

010. DEFINITIONS (RULE 10).

The following definitions shall apply to this chapter: (7-1-14)

01. Accrued Benefit. The actuarial value of the retirement benefit to which the Member is entitled under the Judges' Retirement Fund upon attainment of Normal Retirement Age. (7-1-14)

02. Active Member. Each justice or judge who participates in the Judges' Retirement Fund as provided by Idaho Code. (7-1-14)

03. Administrator. The Board. (7-1-14)

04. Annual Additions. Annual additions are the total of all after-tax Member contributions in a year (not including rollovers) and forfeitures allocated to a Member's account under the Judges' Retirement Fund and all other qualified plans to which contributions are made based on the Member's service with the Employer. (7-1-14)

05. Beneficiary. The designated person (or, if none, the Member's estate) who is entitled to receive benefits under the Plan after the death of a Member. (7-1-14)

06. Board. The retirement board established in Section 59-1304, Idaho Code. (7-1-14)

07. Code. The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered. (7-1-14)

08. Compensation. All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Member's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Member's gross income for the calendar year but for a compensation reduction election under sections 125, 132(f), 401(k), 403(b), or 457(b) of the Code. (7-1-14)

09. Contingent Annuitant. The person designated by a Member under certain retirement options to receive payments upon the death of the Member. The person so designated must be born and living on the effective date of retirement. (7-1-14)

10. Designated Beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. (7-1-14)

11. ~~Distribution Calendar Year.~~ ~~A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Rule 100 of these rules.~~ **Differential Wage Payments.** Differential Wage Payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer. (7-1-14)(7-21-15)T

12. Employer. The common law employer of a Member. (7-1-14)

~~13. **Includible Compensation.** A Member's actual wages in box one (1) of Form W-2 for a year for services to the Employer, but subject to a maximum of two hundred thousand dollars (\$200,000) (or the maximum as may apply under section 401(a)(17) of the Code, if different) and increased (up to the dollar maximum) by any compensation reduction election under sections 125, 132(t), 401(k), 403(b), or 457(b) of the Code. (7-1-14)~~

143. Judges' Retirement Fund. The Judges' Retirement Fund established under Title 1, Chapter 20, Idaho Code, and rules applicable to the Judges' Retirement Fund. The Judges' Retirement Fund is intended to satisfy Code section 401(a) as applicable to governmental plans described in Code section 414(d). It is maintained for the exclusive benefit of Members and their beneficiaries. (7-1-14)

~~15. **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations. (7-1-14)~~

164. Member. An individual who is currently accruing benefits or who has previously accrued benefits under the Plan and who has not received a distribution of his entire benefit under the Plan. (7-1-14)

175. Normal Retirement Age. The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age. (7-1-14)

186. Plan. The plan of benefits under the Judges' Retirement Fund. (7-1-14)

197. Required Beginning Date. The date specified in Rule 100 of these rules. (7-1-14)

~~2018. **Severance from Employment.** The date that the Member dies, retires, or otherwise has a separation from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). (7-1-14)~~

(BREAK IN CONTINUITY OF SECTIONS)

100. TIME AND MANNER OF REQUIRED MINIMUM DISTRIBUTIONS (RULE 100).

~~01. **Required Beginning Date.** The Member's entire interest will be distributed, or begin to be distributed to the Member no later than the Member's Required Beginning Date. (7-1-14)~~

~~02. **Death of Member Before Distributions Begin.** If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows: (7-1-14)~~

~~a. **Surviving Spouse is Sole Designated Beneficiary.** If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age seventy and one-half (70½), if later. (7-1-14)~~

~~b. **Surviving Spouse is Not Sole Designated Beneficiary.** If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died. (7-1-14)~~

~~c. **No Designated Beneficiary.** If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death. (7-1-14)~~

~~d. **Surviving Spouse Dies Before Distribution.** If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Rule 100, other than Rule 100.02.a., will apply as if the surviving spouse were the Member. For purposes of this Subsection 100.02, distributions are considered to begin on the Member's Required Beginning Date~~

~~(or, if the preceding sentence applies, the date distributions are required to begin to the surviving spouse under this section). If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under this section), the date distributions are considered to begin is the date distributions actually commence. (7-1-14)~~

~~**e.** Form of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with this Rule 100. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the Member's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts. (7-1-14)~~

~~**03. Determination of Amount to be Distributed Each Year. (7-1-14)**~~

~~**a.** General Annuity Requirements. If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements: (7-1-14)~~

~~i. The annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year; (7-1-14)~~

~~ii. The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Rule 101 or Rule 103 of these rules; (7-1-14)~~

~~iii. Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; (7-1-14)~~

~~iv. Payments will either be nonincreasing or increase only as follows: (7-1-14)~~

~~(1) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics; (7-1-14)~~

~~(2) To the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the Member's beneficiary pursuant to an approved domestic relations order within the meaning of section 414(p) of the Code; (7-1-14)~~

~~(3) To provide cash refunds of employee contributions upon the Member's death; or (7-1-14)~~

~~(4) To pay increased benefits that result from a Plan amendment. (7-1-14)~~

~~**b.** Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under Rule 100.02 of these rules) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date. (7-1-14)~~

~~**e.** Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues. (7-1-14)~~

~~**04. Requirements for Annuity Distributions that Commence During Member's Lifetime. (7-1-14)**~~

~~a. Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse. If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain. (7-1-14)~~

~~b. Period Certain Annuities. Unless the Member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age seventy (70), the applicable distribution period for the Member is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this section, or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint And Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the annuity starting date. (7-1-14)~~

~~**05. Requirements for Minimum Distributions Where Member Dies Before Date Distributions Begin. (7-1-14)**~~

~~a. Member Survived by Designated Beneficiary. If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in this section, over the life of the designated beneficiary or over a period certain not exceeding: (7-1-14)~~

~~i. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or (7-1-14)~~

~~ii. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date. (7-1-14)~~

~~b. No Designated Beneficiary. If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest (to the estate of the Member in accordance with the applicable laws of distribution and descent) will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death. (7-1-14)~~

~~c. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Member dies before the date distribution of his interest begins, the Member's surviving spouse is the Member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to this section. (7-1-14)~~

~~d. Incidental Death Benefit. The foregoing limitations are designed to assure that any death benefits are paid in a form that complies with the incidental death benefit requirements of section 401(a)(9)(G) of the Code. (7-1-14)~~

01. Default Application of Federal Requirements. With respect to distributions under the Judges' Retirement Fund, and except as provided in Subsection 100.06, the Judges' Retirement Fund will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Judges' Retirement Fund to the contrary. (7-21-15)T

02. Required Beginning Date. Except as otherwise provided in Subsections 100.03 through 100.06, distributions under the Judges' Retirement Fund shall begin not later than April 1 following the later of: (7-21-15)T

a. The calendar year (hereinafter referred to as the "Commencement Year") in which the member reaches age seventy and one half (70 ½); and (7-21-15)T

b. The year in which he retires. (7-21-15)T

03. Lifetime Distributions. Distribution shall be made over the life of the Member or the lives of the Member and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. (7-21-15)T

04. Timing of Required Distributions. A required distribution shall be deemed to have been made during the Commencement Year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the Commencement Year. (7-21-15)T

05. Adjustment of Required Distributions. Benefits paid prior to the Commencement Year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. (7-21-15)T

06. Annuity Benefits Payable on Death of a Member. All death benefits payable in the form of an annuity will begin to be paid as soon as administratively practicable after the member's death, but must in any event begin to be paid before the end of the calendar year following the calendar year in which the member died. (7-21-15)T

07. Death Benefits. All death benefits payable in a lump sum will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. (7-21-15)T

101. MAXIMUM LIMITATIONS ON BENEFITS (RULE 101).

~~**01. Maximum Employer Derived Annual Retirement.** Effective January 1, 2002, the employer-derived annual retirement pension payable under the Judges' Retirement Fund shall not exceed one hundred sixty thousand dollars (\$160,000). However, if the Member has not completed ten (10) years of participation, such maximum amount shall be reduced to an amount equal to such maximum amount multiplied by the ratio which the number of years of his participation bears to ten (10). In no event shall the preceding sentence reduce the limitation set forth in the first sentence of this Subsection 101.01 to an amount less than one tenth (1/10) of such limitation (determined without regard to the preceding sentence). If the pension begins before the Member's sixty-second birthday, the maximum amount shall be the actuarial equivalent of one hundred sixty thousand dollars (\$160,000) beginning at age sixty-two (62). For purposes of the preceding sentence, the actuarial equivalent value shall be based on an interest rate equal to the greater of five percent (5%) per year or the interest rate otherwise used under the Plan in the determination of actuarial equivalent value. If the pension begins after the Member's sixty-fifth birthday, the maximum amount shall be the actuarial equivalent value based on an interest rate equal to the lesser of five percent (5%) per year or the interest rate otherwise used under the Plan in the determination of actuarial equivalent value, to that maximum benefit payable at age sixty-five (65). (7-1-14)~~

~~**a.** The preceding paragraph shall not apply to benefits payable as the result of the recipient becoming disabled by reason of personal injuries or sickness, or benefits payable to a beneficiary, survivors, or the estate of a Member as the result of the death of the Member. This section and Rule 102 of these rules are intended to reflect the~~

~~limitations of Internal Revenue Code section 415, to the extent applicable to governmental plans. (7-1-14)~~

~~**b.** As of January 1 of each calendar year on and after January 1, 2002, the dollar limitation in Subsection 101.01 above, with respect to both active and retired Members, shall be adjusted for increases in the cost of living, taking into consideration applicable guidelines. (7-1-14)~~

~~**c.** For limitation years beginning on or after July 1, 2007, the Plan will make any required adjustments to the dollar limitation in accordance with the final 415 regulations published on April 5, 2007. (7-1-14)~~

~~**02. Employer-Derived Annual Retirement Defined.** The employer-derived annual retirement pension is the excess, if any, of the total annual retirement pension over the Member derived annual retirement pension. (7-1-14)~~

~~**03. Member-Derived Annual Retirement.** The Member derived annual retirement pension shall be the actuarial equivalent of the Member's contribution under Appendix A. The rate of interest to be used in calculating actuarial equivalence for Plan Years beginning on or before December 31, 2007 shall be Thirty (30) Year Treasury Securities Rate for the month before the date of distribution. For plan years beginning on or after January 1, 2008, the rate of interest to be used in calculating actuarial equivalence shall be the adjusted first, second, and third segment rates applied under rules similar to the rules of Code section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe (the "post PPA '06 applicable interest rate"). For this purpose, the adjusted first, second, and third segment rates are determined without regard to the twenty-four (24) month averaging provided under Code section 430(h)(2)(D)(i), and Code section 417(e)(3)(D)(ii) provides a transition rule that phases in the use of the segment rates over five (5) years. The mortality rate to be used for plan years beginning on or before December 31, 2007 shall be based on the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on the date as of which present value is being determined. For plan years beginning on or after January 1, 2008, the mortality rate shall be based on a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of Code section 430(h)(3) (without regard to subparagraph (C) or (D) of such section) (the "post PPA '06 applicable mortality table"). (7-1-14)~~

~~**04. Benefits Accrued as of December 31, 1982.** Notwithstanding the preceding paragraph of this Section 101, in no event shall a Member's annual pension payable under the Plan be less than the benefit which the Member had accrued under the Plan as of December 31, 1982; provided, however, that in determining such benefit no changes in the Plan on or after July 1, 1982 shall be taken into account. (7-1-14)~~

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 101.01 and, if applicable, in Subsections 101.02 through 101.04).

(7-21-15)T

01. Less Than Ten Years of Service. If the Member has fewer than ten (10) years of participation in the Judges' Retirement Fund, the defined benefit dollar limitation shall be multiplied by a fraction: (7-21-15)T

a. The numerator of which is the number of years (or part thereof) of participation in the Judges' Retirement Fund; and (7-21-15)T

b. The denominator of which is ten (10). (7-21-15)T

02. Benefit Begins Prior to Age Sixty-Two. If the benefit of a Member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under Rule 101.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (7-21-15)T

03. Benefit Begins at Age Sixty-Five. If the benefit of a Member begins after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under Rule 101.01, if required.) The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (7-21-15)T

04. Transition. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former Members (with benefits limited by section 415(b)) who have an accrued benefit under the Judges' Retirement Fund immediately prior to the effective date of this Rule (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b).) (7-21-15)T

(BREAK IN CONTINUITY OF SECTIONS)

103. ROLLOVER DISTRIBUTIONS (RULE 103).

01. Direct Rollovers. A Member of the Judges' Retirement Fund or a beneficiary of a Member (including a Member's former spouse who is the alternate payee under an approved domestic relations order) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover. Effective January 1, 2006, in the event of a mandatory distribution greater than one thousand dollars (\$1,000), if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. (7-1-14)

02. Eligible Rollover Distribution Defined. For purposes of this Rule, an eligible rollover distribution means any distribution of all or any portion of a Member's account balance, except that an eligible rollover distribution does not include (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in section 408A of the Code. (7-1-14)

03. After-Tax Contributions. For purposes of the direct rollover provisions in Rule 103.01, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (7-21-15)T

04. Alternate Payees. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Rule 402 are distributees with regard to the interest of the spouse or former spouse. (7-21-15)T

05. Transfers to Non-Spouse Beneficiaries. This Rule 103.05 applies to distributions made on or after July 1, 2008. Notwithstanding any provision of the Judges' Retirement Fund to the contrary that would otherwise limit the options of the Beneficiary of a deceased Member who is not the Member's spouse, the administrator shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement

account established under Section 408 of the Code in accordance with the provisions of Code section 402(e)(11).
(7-21-15)T

(BREAK IN CONTINUITY OF SECTIONS)

406. EXCLUSIVE PURPOSE (RULE 406).

The Board shall hold the assets of the Judges' Retirement Fund in trust for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administration. It shall be impossible by operation of the Judges' Retirement Fund, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Judges' Retirement Fund, or any funds contributed thereto, to inure to the benefit of any Employer or otherwise be used for or diverted to purposes other than providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Judges' Retirement Fund.
(7-21-15)T

407. BENEFITS DURING MILITARY SERVICES (RULE 407).

01. Death Benefits. (7-21-15)T

a. This subsection 407.01 applies to a member of the Judges' Retirement Fund who dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code.
(7-21-15)T

b. The period of military service that results in the member's death will be counted in the determination of whether the member qualifies for the death benefit described in section 2009-1(b) to the extent required by Code Section 401(a)(37).
(7-21-15)T

02. Determination of Return to Employment for Benefit Accrual Purposes. (7-21-15)T

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code.
(7-21-15)T

b. For benefit accrual purposes, a member of the Judges' Retirement Fund shall be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability to the extent permitted by Code Section 414(u)(8).
(7-21-15)T

03. Differential Wage Payments. (7-21-15)T

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who, on or after January 1, 2009, receives differential wage payments from his or her Employer while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code.
(7-21-15)T

b. A member of the Judges' Retirement Fund shall be treated as employed by the Employer while performing qualified military service to the extent required by Code Section 3401(h).
(7-21-15)T

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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 16, 2015 unless otherwise noted.
Public hearing request deadline is September 23, 201 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

02-0421-1501, Rules Governing the Importation of Animals. Allows imported bulls to be considered virgins up to 18 months of age and Trichomoniasis tests to be valid for 60 days to standardize import regulations for all western states.

02-0429-1501, Rules Governing Trichomoniasis. Allows imported bulls to be considered virgins up to 18 months of age and Trichomoniasis tests to be valid for 60 days to standardize import regulations for all western states.

02-0622-1501, Noxious Weed Rules. Makes permanent the addition of Purple Starthistle (*Centaurea calcitrapa*) and Iberian Starthistle (*Centaurea iberica*) to the Early Detection Rapid Response (EDRR) section of the noxious weed list.

02-0625-1501, Rules Governing the Planting of Beans, Other Than Phaseolus Species, In Idaho. Adds a small trial ground exemption from disease testing for non-phaseolus beans from seed lots of 1 pound or less to allow researchers the ability to grow seed without a loss of seed from destruction during testing.

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS PO Box 83720, Boise, ID 83720-0285

05-0102-1501, Rules and Standards for Secure Juvenile Detention Centers. Clarifies appropriate use of force by staff as determined by a certified POST instructor; requires part-time direct care staff to obtain part-time juvenile detention officer certification; provides for on-going training; clarifies that detention center must have written policies and procedures for security inspections, incident reporting and proper training on security devices; removes obsolete rules.

05-0201-1501, Rules for Residential Treatment Providers. Changes term medical "authority" to medical "health professional"; clarifies that juveniles in custody may not be transported in a personal vehicle of a provider employee unless an emergency exists.

05-0202-1501, Rules for Staff Secure Providers. Changes term medical "authority" to medical "health professional"; adds additional provisions for unclothed body searches and body cavity searches.

05-0203-1501, Rules for Reintegration Providers. Changes term medical "authority" to medical "health professional"; adds additional provisions for unclothed body searches and body cavity searches.

**IDAPA 09 - DEPARTMENT OF LABOR
317 W. Main Street, Boise, ID 83735**

09-0106-1501, Rules of the Appeals Bureau. Allows the department to send hearing notices to interested parties by mail or electronic transmission.

**IDAPA 10 - IDAHO BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND
SURVEYORS**

1510 Watertower Street, Meridian, ID 83642

10-0101-1501, Rules of Procedure. Clarifies procedures and requirements for retired and expired license reinstatement; updates the reexamination requirements for those failing a professional licensure exam; beginning July 1, 2015, allows students to take either the Fundamentals of Engineering or of Surveying exams without first applying to the board; requires land surveyors applying for licensure to have a minimum of 2 years of boundary land surveying experience.

10-0104-1501, Rules of Continuing Professional Development. Clarifies the continuing professional development requirements for reinstatement of a retired or expired license.

**IDAPA 11 - IDAHO STATE POLICE - IDAHO STATE RACING COMMISSION
700 S Stratford Dr., Meridian, ID 83642**

11-0501-1401, Rules Governing Alcohol Beverage Control. Defines the term "Actual Use" as it pertains to an alcohol license; establishes criteria that define the minimum standards for placing a newly issued or transferred license into use.

**IDAPA 15 - OFFICE OF THE GOVERNOR
MILITARY DIVISION**

700 S. Stratford Drive, Bldg. 600, Meridian, ID 83642

15-0603-1501, Public Safety Communications Systems Installation and Maintenance Fee Rules. Updates rule to reflect organizational changes within the Military Division and the separation of the Public Safety Communications Branch from the Bureau of Homeland Security.

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

16-0219-1501, Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code). Updates the Idaho Food Code to current industry practices and food safety standards; incorporates by reference the 2013 FDA Model Food Code; adds definitions to clarify the status of "cottage food" operations in Idaho; adds a list of specific foods considered "cottage foods products"; and clarifies the necessary requirements for producers of "acidified foods."

16.03.19 - Rules Governing Certified Family Homes.

16-0319-1501, Adds an exception for the Veterans Affairs Medical Foster Homes; updates criminal history and background checks to be CFH specific; amends definitions to current terms and language; revises certification requirements to best practice for care and supervision, food and nutritional services, and training requirements; updates requirements for waiver, investigations, and enforcement actions, and resident rights policy requirements.

16-0319-1502, Increases the one-time application fee to become a CFH provider by \$25 and the monthly certification fee for a CFH provider by \$5 per month; an alternative, department-provided "Basic Medication Awareness" training course is being offered for a \$60 fee.

16-0601-1501, Child and Family Services. Aligns rules with federal requirements by clarifying requirements for adoption assistance and notification of relatives of children who are placed in foster care; allows the transfer of relative guardianship assistance benefits to a child's new guardian upon the death or incapacitation of the child's guardian.

16-0602-1501, Standards for Child Care Licensing. Aligns the rule with federal requirements regarding foster care and the application of the "reasonable and prudent parent standard."

16-0701-1501, Behavioral Health Sliding Fee Schedules. Combines the fee schedule for children's mental health, adult mental health, and substance use disorders services into one table; removes obsolete language and tables; update references for behavioral health services to rates set in Department contracts.

16-0710-1501, Behavioral Health Development Grants. Repeal of chapter.

16-0715-1501, Behavioral Health Programs. New chapter establishes requirements for the approval, denial, suspension, or revocation of certificates of approval for approved behavioral health programs in Idaho; sets fees for the approval process of applications and on-site reviews; and establishes requirements for the health, safety, and environment of care.

16-0717-1501, Alcohol and Substance Use Disorder Services. As part of the integration of the Behavioral Health Program by the department, mental health and alcohol and substance use disorders treatment and recovery support services and programs are combined into one chapter and include case management, alcohol and drug screening, child care, transportation, life skills, staffed safe and sober housing for adolescents and staffed safe and sober housing for adults.

16-0720-1501, Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs. Repeal of chapter.

**IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043**

18-0127-1501, Self-Funded Employee Health Care Plans Rule. Clarifies the scope of the rule to conform to statutory changes; defines terms of qualified liabilities; adds the requirements for contribution rates, contracts and services, and records; removes obsolete language.

18-0144-1501, Schedule of Fees, Licenses, and Miscellaneous Charges. Clarifies that registration of self-funded student health plans is subject to the \$500 licensing/renewal fee just like self-funded employer plans; adds an \$80 licensing/renewal fee for public adjusters and changes provision regarding the cost paid to a third party vendor by an applicant for a producer, public adjuster, or adjuster license to take an exam; eliminates fees for solicitation permits, updates terminology and deletes unnecessary language.

18-0160-1501, Long-Term Care Insurance Minimum Standards. Clarifies annual inflation protection requirements applicable to long-term care partnership policies, but will not require any minimum level of inflation protection.

**IDAPA 22 - IDAHO BOARD OF MEDICINE
PO Box 83720, Boise, ID 83720-0058**

22-0101-1501, Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho. Allows international graduates enrolled in Idaho residency programs to apply for full licensure after completing 2 years of residency training, written approval of the residency program director is given, and certain other conditions are met.

22-0115-1501, Rules Relating to Telehealth Services. Defines the scope of practice for telehealth service providers and defines how the patient-provider relationship may be established without face-to-face, in-person contact, and places limitations on the prescriptions that can be authorized via telehealth tools.

**IDAPA 34 - OFFICE OF THE SECRETARY OF STATE
PO Box 83720, Boise, ID 83720-0080**

34-0501-1501, Rules Governing Farm Products Central Filing System. (Temp & Prop) Changes simplify the fee schedule for both the customer and the state by creating a flat fee that is lower than all previous fees; changes add County Code 00 - All Idaho Counties.

**IDAPA 35 - IDAHO STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**

35.01.01, Income Tax Administrative Rules

35-0101-1501, Clarifies the definition of Idaho gross income and how it is calculated; modifies the definition of real property, the list of nonqualifying property for the Idaho capital gains deduction, and the procedure when property is

distributed by an S corporation or partnership; clarifies the items allowed as a deduction to owners of an interest in a pass-through entity when the tax is paid by the entity.

35-0101-1502, Adds tax brackets for calendar year 2015 and removes old data to retain only 5 years of historical data; adds the Foreign Service Retirement and Disability System and its offset program to the list of qualified benefits for the Retirement Benefits Deduction; adds the offset program of the Civil Service Retirement System to the list of qualified benefits; clarifies who must meet the gross income limitations for the Idaho capital gains deduction when the gain is passed through from an S corporation, partnership, trust, or estate; clarifies the procedure for adjustments to a net operating loss; corrects the distortive percentage that occurs when the ratio of Idaho total income is used to allow certain deductions to part-year or nonresidents; updates the amount of guaranteed payments that is sourced as compensation for services per Idaho Code; adds tax year 2015 and the applicable grocery credit amounts to the table.

35.01.03, Property Tax Administrative Rules

35-0103-1504, Amends Rule 315, Use of Ratio Study to Equalize Boise School District, at termination of a revenue allocation area (raa), the Boise School District needs instructions on how to handle the increment value. The increment value of a terminating raa will be included in the taxable value and if a ratio study indicates that an adjustment should be made, the adjustment will be applied to the actual value including the increment value. Amends Rule 626, Property Exempt from Taxation - Certain Personal Property, provides guidance to taxpayers and both ISTC appraisers and county assessors on the implementation of HB29 and directs the reporting and apportionment procedures of the I.C. 63-602KK (2) personal property exemption for operating properties as provided for HB29.

35-0103-1505, Updates incorporation by reference of manuals used to determine the value of recreational and certain other vehicles and railcars; changes "taxpayer" to "person"; deletes requirement to apply for exemption related to oil and gas wells; changes the date for use of land and income received assessor certification to April 15; adds new provision requiring qualifying new construction which is valued by the Idaho state tax commission to be reported to the county assessor by October 1 and be listed on the immediate next new construction roll; requires that personal property replacement revenue be added back to the tort budget when computing the school district's hypothetical new construction levy and requires that personal property exemption recoveries after 2013, for which no state replacement money is paid, is to be deducted from the budget and that, for recoveries related to personal property exempt in 2013, the recovery is to be paid to the state and future replacement amounts are to be reduced by the amount of such recovery; adds school emergency fund levy to the list of those levies that will not benefit the urban renewal revenue allocation area.

35-0105-1502, Idaho Motor Fuels Tax Administrative Rules. Deletes Rule 280 and now requires that International Fuel Tax Agreement (IFTA) licensees must use the Form 75, Idaho Fuels Use Report, to claim refunds of the motor fuel tax when using tax-paid special fuels on nontaxable Idaho roads; the requirement for two sources is being removed to clarify who is required to follow the record requirements for Documentation for Idaho Full-Fee Registrants.

IDAPA 38 - DEPARTMENT OF ADMINISTRATION PO Box 83720, Boise, ID 83720-0003

38-0301-1501, Rules Governing Group Insurance. Revises the definition for eligible active employee, adds definitions for seasonal employee and part-time temporary employee, and removes obsolete definition.

IDAHO TRANSPORTATION DEPARTMENT PO Box 7129, Boise ID 83707-1129

39-0203-1501, Rules Governing Vehicle Dealer's Principal Place of Business. Removes the minimum business-hour requirements for motor vehicle dealers and clarifies the requirement that all vehicle dealers must declare, in writing to the Department, the regular hours that their dealerships are open and when they are available to be contacted by the Department or their customers.

39-0226-1501, Rules Governing Temporary Vehicle Clearance for Carriers. Changes conform rule with current ITD fees, terminology, procedures and administrative processes.

39-0316-1501, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads. (Temp & Prop) Clarifies which types of loads will be permitted as non-reducible and that those loads may be hauled on a 53-foot trailer on the majority of routes in Idaho; clarifies that vehicles hauling reducible-height loads must be of legal dimensions for the highway of travel; removes language that pertains to self-issue permits with a fee account because fee accounts will be eliminated after the implementation of the new cash drawer and the availability of escrow

accounts.

39-0319-1501, Rules Governing Annual Overlegal Permits. (Temp & Prop) Increases the load width allowed under an annual permit from the current maximum of 14' 6" to 16' wide.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

PO Box 83720, Boise, ID 83720-0078

58-0104-1501, Rules for Administration of Wastewater Treatment Facility Grants. Conforms to Clean Water Act revision requiring planning documents, used for State Revolving Fund (SRF) projects, to assess the cost and effectiveness, as practicable, of efficient water use, reuse, recapture and conservation, and energy conservation.

58-0112-1501, Rules for Administration of Water Pollution Control Loans. Requires that Idaho consider population trends and unemployment data, in addition to the existing criteria of median household income, when determining which borrowers will qualify for disadvantaged loan under the amended the Clean Water Act's requirements for the State Revolving Fund (SRF) loan effort.

58-0125-1401, Rules Regulating the Idaho Pollutant Discharge Elimination System Program. New chapter establishes the procedures and requirements for the issuance and maintenance of permits for facilities or activities to obtain authorization to discharge pollutants to waters of the United States. These permits shall be referred to in these rules as "IPDES permits" or "permits."

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

PO Box 83720, Boise, ID 83720-0078

59-0201-1501, Rules for the Judges' Retirement Fund. (Temp & Prop) The changes are proposed in anticipation of seeking for the JRF a determination letter of qualified status from the IRS; amends the rules in certain areas so that the language tracks the language in the PERSI Base Plan rules to make for easier and consistent administration and to lessen the need for future revisions.

NOTICES OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08-0201-1501, Rules Governing Administration (Respond by Sept. 11, 2015)

08-0203-1507, Rules Governing Thoroughness (Respond by Sept. 11, 2015)

IDAPA 09 - DEPARTMENT OF LABOR

09-0130-1501, Unemployment Insurance Benefits Administration Rules (Respond by Sept. 16, 2015)

IDAPA 47 - DIVISION OF VOCATION REHABILITATION

47-0101-1501, Rules of the Idaho Division of Vocational Rehabilitation (Respond by Sept. 11, 2015)

Please refer to the Idaho Administrative Bulletin, [September 2, 2015, Volume 15-9](#), 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.

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Phone: 208-332-1820; Fax: 332-1896; Email: rulescoordinator@adm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Office of the Administrative Rules Coordinator
Idaho Department of Administration*

July 1, 1993 -- Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES (Index of Current Rulemakings)

*Office of the Administrative Rules Coordinator
Idaho Department of Administration*

April 11, 2015 -- September 2, 2015

(eff. PLR) - Final Effective Date Is 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 April 11, 2015 that are still in process and all current rulemakings promulgated after April 11, 2015 - Sine Die, 2015 Legislative Session.)

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02.02.14, Rules for Weights and Measures

- 02-0214-1501** Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0214-1501** Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

02.04.21, Rules Governing the Importation of Animals

- 02-0421-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0421-1501** Proposed Rulemaking, Bulletin Vol. 15-9

02.04.29, Rules Governing Trichomoniasis

- 02-0429-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0429-1501** Proposed Rulemaking, Bulletin Vol. 15-9

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

- 02-0602-1501** Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0602-1501** Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

02.06.12, Rules Pertaining to the Idaho Fertilizer Law

- 02-0612-1501** Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0612-1501** Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

02.06.22, Noxious Weed Rules

- 02-0622-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0622-1501** Proposed Rulemaking, Bulletin Vol. 15-9

02.06.25, Rules Governing the Planting of Beans, other than Phaseolus Species, in Idaho

- 02-0625-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-7
- 02-0625-1501** Proposed Rulemaking, Bulletin Vol. 15-9

02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001

- 02-0641-1501** Proposed Rulemaking, Bulletin Vol. 15-7
- 02-0641-1501** Adoption of Pending Rule, Bulletin Vol. 15-9 (eff. PLR 2016)

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05.01.02, Rules and Standards for Secure Juvenile Detention Centers

- 05-0102-1501** Proposed Rulemaking, Bulletin Vol. 15-9

05.02.01, Rules for Residential Treatment Providers

- 05-0201-1501** Proposed Rulemaking, Bulletin Vol. 15-9

05.02.02, Rules for Staff Secure Providers

- 05-0202-1501** Proposed Rulemaking, Bulletin Vol. 15-9

05.02.03, Rules for Reintegration Providers

- 05-0203-1501** Proposed Rulemaking, Bulletin Vol. 15-9

IDAPA 07 -- DIVISION OF BUILDING SAFETY

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001, Bulletin Vol. 15-7 (eff. 7-1-15)

07-0901-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001, Bulletin Vol. 15-7 (eff. 7-1-15)

07.02.03, Rules Governing Permit Fee Schedule

07-0203-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

07.02.05, Rules Governing Plumbing Safety Licensing

07-0205-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

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07.02.06, Rules Concerning Uniform Plumbing Code

07-0206-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

07.03.01, Rules of Building Safety

07-0301-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

07.04.02, Safety Rules for Elevators, Escalators, and Moving Walks

07-0402-1501 Adoption of Temporary Fee Rule, Bulletin Vol. 15-6 (eff. 5-1-15)T

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001 Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.01, Idaho Minimum Safety Standards and Practices for Logging - General Provisions

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.02, Idaho Minimum Safety Standards and Practices for Logging - Health, Safety, and Sanitation

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.03, Idaho Minimum Safety Standards and Practices for Logging - Explosives and Blasting

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.04, Idaho Minimum Safety Standards and Practices for Logging - Garages, Machine Shops, and Related Work Areas

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.05, Idaho Minimum Safety Standards and Practices for Logging - Signals and Signal Systems

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.06, Idaho Minimum Safety Standards and Practices for Logging - Truck Road Standards

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.07, Idaho Minimum Safety Standards and Practices for Logging - Transportation of Employees

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.08, Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.09, Idaho Minimum Safety Standards and Practices for Logging - Rigging, Lines, Blocks, and Shackles

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.10, Idaho Minimum Safety Standards and Practices for Logging - Canopy and Canopy Construction for Logging Equipment

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.11, Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.12, Idaho Minimum Safety Standards and Practices for Logging - Road Transportation

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.13, Idaho Minimum Safety Standards and Practices for Logging - Log Dumps, Landing, Log Handling Equipment, Loading and Unloading Booms, Log Ponds, Rafting, Towing, Stiff Booms, Boom Sticks and Foot Logs, Pond Boats and Tow Boats and Trailer Loading Hoists

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.14, Idaho Minimum Safety Standards and Practices for Logging - Helicopter Logging

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07.08.15, Idaho Minimum Safety Standards and Practices for Logging - Commonly Used Logging Terms

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07.08.16, Idaho Minimum Safety Standards and Practices for Logging - Recommended Safety Program

07-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

07-0901-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001 Bulletin Vol. 15-7 (eff. 7-1-15)

07.09.01, Safety and Health Rules for Places of Public Employment

07-0901-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to DBS, Bulletin Vol. 15-7 (eff. 7-1-15)

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08.01.13, Rules Governing the Idaho Opportunity Scholarship Program

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08-0201-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0201-1502 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-9

08.02.02, Rules Governing Uniformity

08-0202-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

08-0202-1502* Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6 (**Rulemaking Terminated*)

08-0202-1503 Notice of Adoption of Temporary Rule, Bulletin Vol. 15-7 (eff. 5-20-15)T

08.02.03, Rules Governing Thoroughness

- 08-0203-1501 Adoption of Temporary Rule, Bulletin Vol. 15-2 (eff. 1-22-15)T
- 08-0203-1502 Adoption of Temporary Rule, Bulletin Vol. 15-4 (eff. 2-19-15)T
- 08-0203-1503 Proposed Rulemaking, Bulletin Vol. 15-6
- 08-0203-1504 Temporary and Proposed Rulemaking, Bulletin Vol. 15-6 (4-16-15)T
- 08-0203-1505 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6
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- 08-0501-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6
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- 09-0130-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-9

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**11.04.11, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances
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- 11-0411-1501 Temporary and Proposed Rulemaking, Bulletin Vol. 15-8 (eff. 7-29-15)T

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- 13-0116-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4

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16.01.02, Emergency Medical Services (EMS) - Rule Definitions

- 16-0102-1501** Proposed Rulemaking, Bulletin Vol. 15-8

16.01.03, Emergency Medical Services (EMS) -- Agency Licensing Requirements

- 16-0103-1501** Proposed Rulemaking, Bulletin Vol. 15-8

16.01.05, Emergency Medical Services (EMS) -- Education, Instructor, & Examination Requirements

- 16-0105-1501** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 15-3

- 16-0105-1501 (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 15-4
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16.01.07, Emergency Medical Services (EMS) -- Personnel Licensing Requirements

- 16-0107-1501 Temporary and Proposed Rulemaking, Bulletin Vol. 15-1 (eff. 1-1-15)T
- 16-0107-1502 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-4
- 16-0107-1501 OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5 (eff. 1-1-15)T
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16.01.12, Emergency Medical Services (EMS) -- Complaints, Investigations, and Disciplinary Actions

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16.02.01, Rules of the Idaho Time Sensitive Emergency System Council

- 16-0201-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-9
- 16-0201-1401 Notice of Adoption of Temporary Rule (New Chapter - Fee Rule), Bulletin Vol. 15-2 (eff. 1-1-15)T
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- 16-0201-1401 Proposed Rulemaking and Amendment to Temporary Rule (New Chapter - Fee Rule), Bulletin Vol. 15-7 (eff. 7-1-15)T

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- 16-0219-1501 (Second) Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5
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- 16-0310-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

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- 16-0313-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-6

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16.03.18, Medicaid Cost-Sharing

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- 16-0319-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5
- 16-0319-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 15-6
- 16-0319-1501 Proposed Rulemaking, Bulletin Vol. 15-9
- 16-0319-1502 Proposed Rulemaking (Fee Rule), Bulletin Vol. 15-9

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- 16-0501-1501 Proposed Rulemaking, Bulletin Vol. 15-8

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16.07.01, Behavioral Health Sliding Fee Schedules

16-0701-1501 Proposed Rulemaking, Bulletin Vol. 15-9

16.07.10, Behavioral Health Development Grants

16-0710-1501 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-9

16.07.15, Behavioral Health Programs

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16.07.17, Alcohol and Substance Use Disorders Services

16-0717-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

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16.07.20, Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs

16-0720-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

16-0720-1501 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 15-9

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17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001
Bulletin Vol. 15-7 (eff. 7-1-15)

17-1001-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules Concerning Safety and Health for Places of Public Employment - Senate Bill No. 1001
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17.02.06, Employers' Reports

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17.02.07, Procedures to Obtain Compensation

17-0207-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

17.02.08, Miscellaneous Provisions

17-0208-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

17.02.09, Medical Fees

17-0209-1501 Adoption of Temporary Rule, Bulletin Vol. 15-1 (eff. 1-1-15)T

17-0209-1501 OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 127, Bulletin Vol. 15-5 (eff. 1-1-15)T

17-0209-1502 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

17-0209-1503 Adoption of Temporary Rule, Bulletin Vol. 15-7 (eff. 7-1-15)T

**17.02.10, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law --
Security for Compensation -- Insurance Carriers**

17-0210-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

17.02.11, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers

17-0211-1501 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 15-5

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority from the Idaho Industrial Commission to the Division of Building Safety for Rules for Minimum Safety Standards and Practices for Logging Operations - Senate Bill No. 1001
Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.01)

17.08.01, Idaho Minimum Safety Standards and Practices for Logging - General Provisions

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.02)

17.08.02, Idaho Minimum Safety Standards and Practices for Logging - Health, Safety, and Sanitation

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.03)

17.08.03, Idaho Minimum Safety Standards and Practices for Logging - Explosives and Blasting

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.04)

17.08.04, Idaho Minimum Safety Standards and Practices for Logging - Garages, Machine Shops, and Related Work Areas

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.05)

17.08.05, Idaho Minimum Safety Standards and Practices for Logging - Signals and Signal Systems

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.06)

17.08.06, Idaho Minimum Safety Standards and Practices for Logging - Truck Road Standards

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.07)

17.08.07, Idaho Minimum Safety Standards and Practices for Logging - Transportation of Employees

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.08)

17.08.08, Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.09)

17.08.09, Idaho Minimum Safety Standards and Practices for Logging - Rigging, Lines, Blocks, and Shackles

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.10)

17.08.10, Idaho Minimum Safety Standards and Practices for Logging - Canopy and Canopy Construction for Logging Equipment

17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.11)

17.08.11, Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding
17-0800-1500 Notice of Legislative Action Transferring Rulemaking Authority to DBS from IC, Bulletin Vol. 15-7 (eff. 7-1-15)

(Rule Transferred to IDAPA 07.08.12)

17.08.12, Idaho Minimum Safety Standards and Practices for Logging - Road Transportation
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(Rule Transferred to IDAPA 07.08.13)

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(Rule Transferred to IDAPA 07.08.14)

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