

IDAHO ADMINISTRATIVE BULLETIN

September 6, 2017 - Vol. 17-9

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PREFACE

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

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency, if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2015 Bulletin is cited as Volume **15-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of rule.

1. 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.

2. 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 very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

3. 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 these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. 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.

4. 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 statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

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.

5. 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.

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.

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

“**05.**” refers to Title **05**, which is the Department of Administration’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 2017

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
17-1	January 2017	*November 25, 2016	January 4, 2017	January 25, 2017
17-2	February 2017	January 6, 2017	February 1, 2017	February 22, 2017
17-3	March 2017	February 3, 2017	March 1, 2017	March 22, 2017
17-4	April 2017	March 3, 2017	April 5, 2017	April 26, 2017
17-5	May 2017	April 7, 2017	May 3, 2017	May 24, 2017
17-6	June 2017	May 5, 2017	June 7, 2017	June 28, 2017
17-7	July 2017	June 9, 2017	July 5, 2017	July 26, 2017
17-8	August 2017	July 7, 2017	August 2, 2017	August 23, 2017
17-9	September 2017	August 4, 2017	September 6, 2017	September 27, 2017
17-10	October 2017	**September 1, 2017	October 4, 2017	October 25, 2017
17-11	November 2017	October 6, 2017	November 1, 2017	November 22, 2017
17-12	December 2017	November 3, 2017	December 6, 2017	December 27, 2017

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2018

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
18-1	January 2018	*November 24, 2017	January 3, 2018	January 24, 2018
18-2	February 2018	January 5, 2018	February 7, 2018	February 28, 2018
18-3	March 2018	February 2, 2018	March 7, 2018	March 28, 2018
18-4	April 2018	March 2, 2018	April 4, 2018	April 25, 2018
18-5	May 2018	April 6, 2018	May 2, 2018	May 23, 2018
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18-9	September 2018	August 3, 2018	September 5, 2018	September 26, 2018
18-10	October 2018	**August 31, 2018	October 3, 2018	October 24, 2018
18-11	November 2018	October 5, 2018	November 7, 2018	November 28, 2018
18-12	December 2018	November 2, 2018	December 5, 2018	December 26, 2018

****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 01 – BOARD OF ACCOUNTANCY

01.01.01 – IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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

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

Amend Rule 004.02 to appropriately date the Statement on Standards for Continuing Professional Education (CPE) that are incorporated by reference. The year notated will be changed from 2012 to 2016.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are simple in nature and the Statement on Standards are a joint effort from the National Association of State Boards (NASBA) and the American Institute of Certified Public Accountants (AICPA).

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 Statement on Standards for Continuing Professional Education (CPE) Programs (Standards) is published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) to provide a framework for the development, presentation, measurement, and reporting of CPE programs for the accounting profession. The Standards provide specific information to both program sponsors to help ensure they are providing a rewarding educational experience and to licensees to aid them in choosing a personal and professional educational development plan suited to their development. A solid and consistent set of CPE standards will allow licensees who are licensed in multiple states to be better equipped to adhere to multiple jurisdiction requirements and give the citizens of Idaho the assurance that licensed professionals must adhere to standards as it relates to a licensee's professional development through continuous education.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, Executive Director, 208-334-2490. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 1st day of August, 2017.

Kent A. Absec, Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
P.O. Box 83720
Boise, Idaho 83720-0002
Phone: (208) 334-2490
Fax: (208) 334-2615
E-mail: kent.absec@isba.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 004).

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

01. AICPA Standards. The AICPA Professional Standards as applicable under the circumstances and at the time of the services, except as superseded by Section 54-206(8), Idaho Code. (3-29-10)

02. CPE Standards. 201~~2~~⁶ Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. ~~(4-4-13)~~()

03. PCAOB Standards. The Standards issued by the Public Company Accountability Oversight Board, as applicable under the circumstances and at the time of the services. (3-29-10)

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

IDAPA 01 – BOARD OF ACCOUNTANCY

01.01.01 – IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1702

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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

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

Amend Rule 020.02.b. and 020.03 to bring it in conformity with a recent statute change of Section 54-219(f), Idaho Code. The amended rule will clarify the fact the Board is now permitted to consider a licensee's conviction of or a guilty plea to any crime involving moral turpitude, an element of which is dishonesty or fraud, even where the licensee or proposed licensee has obtained a withheld judgment or other order or decree of expungement. The amended rule also clarifies the factors of rehabilitation the Board may consider in evaluating a current licensee or candidate for licensure.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change is being made to bring the rule into compliance with a statute change made during the 2017 Idaho Legislative session.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, Executive Director, (208) 334-2490. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 1st day of August, 2017

Kent A. Absec, Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
P.O. Box 83720
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Phone: (208) 334-2490
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1702
(Only Those Sections With Amendments Are Shown.)

020. GOOD MORAL CHARACTER (RULE 020).

01. Demonstrating Good Moral Character. Applicants have the burden of demonstrating good moral character as defined by Section 54-206(11), Idaho Code, in the manner specified by the Board in its application forms. (5-8-09)

02. Evidence. Prima facie evidence of a lack of good moral character includes, but is not limited to: (5-8-09)

a. Any deferred prosecution agreement involving an admission of wrongdoing, or any criminal conviction, including conviction following a guilty plea or plea of nolo contendere, for any felony or any crime, an essential element of which is fraud, dishonesty, or deceit, or any other crime which evidences an unfitness of the applicant to provide professional services in a competent manner and consistent with the public safety; (5-8-09)

b. Revocation, suspension or the lapsing in lieu of discipline of any license or other authority to practice by or before any state, federal, foreign or other licensing or regulatory authority; or ~~(5-8-09)~~()

c. Any act which would be grounds for revocation or suspension of a license if committed by a licensee of the Board. (5-8-09)

03. Rehabilitation. ~~Factors which~~ The applicant may offer, and the Board may consider the following factors in determining ~~rehabilitation of~~ whether the applicant's moral character has been rehabilitated as of the date the applicant is seeking licensure. These factors include, but are not limited to:

a. The applicant's completion of criminal probation, restitution, community service, military or other public service; ~~;~~ ()

b. ~~The~~ the passage of time without the applicant's commission of further crime or act demonstrating a lack of good moral character; ~~;~~ and ()

c. ~~The~~ the entry of an order by any state of federal court expungement ~~ing~~ of any conviction, ~~or reduction~~ reducing of a conviction from a felony to misdemeanor; ~~;~~ or commuting, suspending, or withholding any judgment as provided by law. ~~(5-8-09)~~()

IDAPA 01 – BOARD OF ACCOUNTANCY

01.01.01 – IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1703

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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

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

Amend Rule 506.01.b. to provide clarity to licensees relating to information needed on documentation to support credit hours they are reporting for their Continuous Professional Education (CPE). This amendment to the rule will also reflect the language and requirements within standards set by the National Association of State Boards (NASBA) and the American Institute of Certified Public Accountants (AICPA) used by most state boards in the regulation of CPE. This will provide consistency for an Idaho licensee who may be licensed in multiple states.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change is simple in nature and is a reflection of the standards set by NASBA and the AICPA for the profession.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, Executive Director, (208) 334-2490. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 1st day of August, 2017.

Kent A. Absec, Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
P.O. Box 83720
Boise, Idaho 83720-0002
Phone: (208) 334-2490
Fax: (208) 334-2615
E-mail: kent.absec@isba.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1703
(Only Those Sections With Amendments Are Shown.)

506. REPORTING, CONTROLS AND LATE FEES (RULE 506).

01. Reporting. No later than January 31 of each year, individuals renewing their licenses must provide a signed reporting form either: (4-2-03)

a. Applying for exception, extension, or exemption under Rule 502; or (4-2-03)

b. Disclosing the following information pertaining to the educational programs submitted for qualification under this rule: (4-2-03)

i. Sponsoring organization and contact information; (4-2-03)()

ii. Participant's name, and location of program, if applicable; (4-2-03)()

iii. Course Title of program or description of content and field of study; (4-2-03)()

iv. Dates attended completed; (4-2-03)()

v. Hours of credit claimed; and Amount of CPE credit recommended; (4-2-03)()

vi. Any other information as may be called for to verify they have met the requirements for participation in a program of CPE as set forth in Rule 503 Type of instructional and delivery method used; (4-2-03)()

vii. Verification of CPE program sponsor representative; and ()

viii. Any other information as may be called for to verify they have met the requirements for participation in a program of CPE as set forth in Rule 503. ()

02. Controls. The Board shall review the signed reporting forms submitted by licensees, which are subject to formal verification. If a licensee submits a reporting form and it is not approved, the licensee shall be notified and administrative action shall be taken pursuant to Rules 507 through 509. (4-2-03)

03. Late Fees. Until the licensee files the reporting form with supporting documentation, pays the fee for late filing as prescribed in Rule 703 and the license renewal fee, and any other penalty the Board may impose, a license will not be issued. (4-2-03)

IDAPA 01 – BOARD OF ACCOUNTANCY

01.01.01 – IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1704

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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

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

Amend Rule 602.01, Peer Review Program Participation, to bring it in conformity with a recent statute change of Idaho Code 54-206(3), the definition of Attest. The amended rule will provide consistency between the Accountancy Act and Rules. The rule will now clearly define for a licensee which services are considered as peer reviewable and therefore require a firm who performs these services to participate in a peer review program.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change is being made to bring the rule into compliance with a statute change made during the 2017 Idaho Legislative session.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, Executive Director, (208) 334-2490. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 1st day of August, 2017.

Kent A. Absec, Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1704
(Only Those Sections With Amendments Are Shown.)

602. PEER REVIEW PROGRAM PARTICIPATION (RULE 602).

01. Participation. Any firm that issues reports on accounting and auditing engagements, including audits, reviews, compilations, ~~and~~ prospective financial information, engagements performed in accordance with the PCAOB, and any examination, review or agreed-upon procedures engagement performed in accordance with the statement on standards for attestation engagements shall participate. A licensee who issues compilation reports through any form of business other than a firm shall participate in the peer review program. Such licensees must meet the requirements for registration and peer review as set forth in Subchapter G. ~~(4-2-03)~~(____)

02. Practice Privileges. Individuals with practice privileges in Idaho shall comply with the peer review requirements in the state of their principal place of business. (5-8-09)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.14 – RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 71-111, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

Update the incorporation by reference for automotive spark engine fuel, diesel fuel and biodiesel fuel blends.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during 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 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7 page 19](#).

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:

This rule change updates the primary reference document for gasoline, diesel fuel, and bio-diesel fuels to the 2016 ASTM specifications.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kevin Merritt, Section Manager at (208) 332-8690.

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 27, 2017.

DATED this 1st day of August, 2017.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0214-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The 2017 edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,” hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. (3-29-17)

02. Required Reference Materials for Checking Prepackaged Commodities. The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, “Checking the Net Contents of Packaged Goods,” hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in these rules. (2-13-04)

03. Specifications for Diesel Fuel and Biodiesel Fuel. American Society of Testing and Materials (ASTM) D975-~~07~~**16a**, “Standard Specification for Diesel Fuel Oils,” and ASTM D6751-~~07a~~**15ce**, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (~~4-2-08~~)()

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D4814-~~07a~~**16ce**, “Standard Specification for Automotive Spark-Ignition Engine Fuel”, dated ~~October 17, 2007~~ **November 15, 2016**, is hereby incorporated by reference and is the specification for gasoline. (~~5-8-09~~)()

05. Local Availability. Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading at <https://www.nist.gov/pml/weights-and-measures/publications>. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from <http://www.astm.org>, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428. (4-7-11)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.14 – RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1702

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 71-111, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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

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

Add definitions for Liquefied and Compressed Natural Gas, Diesel Gallon Equivalent (DGE), Gasoline Gallon Equivalent (GGE), and their metric equivalents. Add a provision allowing the GGE and DGE units as an acceptable method of sale for compressed and liquefied natural gas motor fuel.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during 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 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7 page 20](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kevin Merritt, Section Manager at (208) 332-8690.

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 27, 2017.

DATED this 1st day of August, 2017.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0214-1702
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Sections 71-108 and 71-401, Idaho Code. (10-26-94)

01. Biodiesel. A fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100. (4-2-08)

02. Biodiesel Blends. A fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend. (4-2-08)

03. Person. The word "person" shall be construed to import both the plural and singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this rule, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association as well as that of the person. (4-2-08)

04. Compressed Natural Gas (CNG). Natural Gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel. ()

05. Liquefied Natural Gas (LNG). Natural gas that has been liquefied at minus one hundred sixty-two degrees Celsius (-162 °C) (minus two hundred sixty degrees Fahrenheit (-260 °F)) and stored in insulated cryogenic tanks for use as an engine fuel. ()

06. Gasoline Gallon Equivalent (GGE). Equivalent to five point six hundred sixty thousandths (5.660) pounds (two point five hundred sixty seven thousandths (2.567) kilograms) of compressed natural gas. ()

07. Gasoline Liter Equivalent (GLE). Equivalent to one point four hundred ninety-five thousandths (1.495) pounds (zero point six hundred seventy-eight thousandths (0.678) kilograms) of compressed natural gas. ()

08. Diesel Gallon Equivalent (DGE). Equivalent to six point three hundred eighty-four thousandths (6.384) pounds of compressed natural gas or six point fifty-nine thousandths (6.059) pounds of liquefied natural gas. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. PETROLEUM PRODUCTS.

01. Liquefied Petroleum. Liquefied petroleum gas shall be considered to be a petroleum product and shall be sold only by weight or liquid measure as provided in Sections 71-232 and 71-241, Idaho Code, of the Idaho Weights and Measures Law. (7-1-93)

02. Metering System Installation. A liquefied petroleum gas metering system installation shall be complete, that is, so installed to insure that liquefied petroleum gas is maintained in a liquid state while being metered. This includes an adequate means for vapor elimination upstream of meter and a properly installed and functioning differential valve downstream from meter. (7-1-93)

03. Maintaining Scales. Scales used for liquefied petroleum gas bottle filling shall be maintained in an adequate and accurate functioning condition. This means the periodic checking by a competent scale repairman, and checked regularly by your company's serviceman for any foreign material and clearances around lever system and working parts. Scales shall be installed so that they are protected against weather effects so that weight value indicating elements can be accurately read. (7-1-93)

04. Gauge Stick Measurement. Petroleum products shall not be sold by gauge stick measurement. (7-1-93)

05. Single Meters. Trucks with a single meter which are used to meter oils and gasolines shall be calibrated and adjusted on one of the following only: furnace or heating oils, diesel fuels, kerosene and/or high flash solvents. (7-1-93)

06. Modified Procedure. In addition to standard gallon pricing, the following modified procedures for retail motor fuel dispenser (gas pumps) with limited variator capability of ninety-nine cents (\$0.999) shall be permitted until January 1, 1983, for all establishments charging more than ninety-nine (\$0.999) per gallon: (7-1-93)

a. When using "half-gallon" pricing, the price per gallon of gasoline computed in fractional cents per gallon shall end in even tenths of a cent. (Examples: \$1.012, \$1.014, \$1.016, etc.) (7-1-93)

b. Each establishment shall use only "gallon," "half-pricing," or "liter" pricing or any combination thereof. (7-1-93)

c. All establishments selling by the "liter" shall post in a conspicuous place on the premises a chart allowing comparisons between gallon and liter prices. (7-1-93)

d. Establishments using "half-pricing" shall set the unit price on the pump at one-half of the selling price and legible decals shall be affixed to the face of each pump using figures that are the approximate size and print as the pump figures in the following manner: (Illustrations of the following may be obtained from the Bureau of Weights and Measures, Idaho Department of Agriculture.) (7-1-93)

i. Immediately following the unit price indications add the term "per one-half (1/2) gallon." (7-1-93)

ii. Immediately beneath the unit price indication, add the correct unit price "per gallon." (7-1-93)

iii. Immediately following the total price, add the term "one-half total price." (7-1-93)

e. Establishments using half-pricing shall post a notice in the vicinity of each island or group of pumps stating that the money values on the pump are computed at the one-half (1/2) gallon price basis. (7-1-93)

f. All roadside price signs must be complete and accurate. Price advertising using "liter" pricing must also use comparison gallon pricing. (7-1-93)

g. All sales must be within one cent (\$.01) mathematical agreement, when total sales price is compared with volume actually dispensed. (7-1-93)

h. Half-gallon pricing with full total price retail motor fuel dispensers shall be considered to be in compliance with Handbook 44 requirements, but only at each dispenser's present installation site and only until such time as any one (1) of the following conditions has occurred: (7-1-93)

i. The selling unit price of the product being dispensed exceeds one dollar and ninety-nine cents (\$1.99) per gallon; or (7-1-93)

ii. The dispensing device or its computing head is retired from service or replaced; or (7-1-93)

iii. The date of January 1, 1983, has arrived. (7-1-93)

i. The correct price per gallon of the product being dispensed must be posted conspicuously next to, but not obscuring, the indicated price per half-gallon display on both sides of the dispenser face. (7-1-93)

j. The above sections relating to one half-gallon pricing shall not apply when the retail motor fuel dispenser is modified by a one hundred (100) cent wheel kit (see Subsection 300.06.k.i. below) prior to January 1, 1983. (7-1-93)

k. This section is an exemption to the National Bureau of Standards, or its successor organization, the National Institute of Standards and Technology, Handbook No. 44, Section GS-5.2.3., Size and Character of Indicating Elements. (7-1-93)

i. Retail motor fuel dispensers in service in the state of Idaho as of December 31, 1981, which are limited in computing capability to nine hundred ninety-nine one thousandths cents (\$.999) per gallon, but which are satisfactorily modified by zero to ninety-nine cents (\$.00 to \$.99) analog decal overlay strips or replacement wheels so as to change dispenser computations over to full cent per gallon increment basis from one dollar to nine dollars and ninety-nine cents (\$1.00 to \$9.99) per gallon, are hereby granted an exemption from Section GS-5.2.3. of Handbook No. 44 providing that the dispenser is presently installed. This exemption is temporary and lasts until (a) the dispensing device or its computing head is taken out of service, OR (b) the date of January 1, 1985, has arrived. (7-1-93)

ii. All dispensers modified pursuant to this provision must meet all other applicable provisions of the National Bureau of Standards, or its successor organization, the National Institute of Standards and Technology, Handbook No. 44, including but not limited to, general code Section GS-5.5., Money Values--Mathematical Agreement. (7-1-93)

07. Compressed Natural Gas. All compressed natural gas kept, offered or exposed for sale and sold at retail as a vehicle fuel shall be measured in terms of mass, and indicated in gasoline gallon equivalent (GGE), diesel gallon equivalent (DGE) units, or mass. ()

08. Liquefied Natural Gas. All liquefied natural gas kept, offered, or exposed for sale and sold at retail as a vehicle fuel shall be measured in terms of mass, and indicated in diesel gallon equivalent (DGE) units, or mass. ()

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.02 – RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1701

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 25-2710, 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 20, 2017.

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 incorporate by reference information and updates contained in the 2018 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

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

ISDA has incorporated the Association of American Feed Control Officials (AAFCO) Official Publication into the Rules Pertaining to the Idaho Commercial Feed Law for a number of years. The only change to the incorporation by reference section is to the date of the Official Publication.

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) 332-8622 or email jared.stuart@isda.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 27, 2017.

DATED this 1st day of August 2017.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0602-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “2017~~8~~ Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. ~~The AAFCO Official Publication is a copyrighted publication and not available in electronic format.~~ A copy may be purchased online from the AAFCO website at: www.aafco.org. (3-29-17)()

02. The Merck Index. The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc at: <http://www.rsc.org/merckindex>. (4-7-11)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.12 – RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1701
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 22-604, 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 20, 2017.

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 incorporate by reference information and updates contained in the 2018 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

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

The Association of American Plant Food Control Officials (AAPFCO) Official Publication and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer industry and all state and federal fertilizer control officials and regulators.

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) 332-8622 or email jared.stuart@isda.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 27, 2017.

DATED this 1st day of August, 2017.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0612-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (4-7-11)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.

The Terms, Ingredient Definitions, and Policies, as published in the “2017~~8~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: http://www.aapfco.org/pdf/order_form_70.pdf. ~~(3-29-17)~~()

02. The Merck Index.

The “2006 Merck Index,” 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at: <http://www.rsc.org/merckindex>. (4-7-11)

03. The Association of Official Agricultural Chemists (AOAC) International.

The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. (3-29-12)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.21 – RULES FOR VOLUNTARY PUBLIC SERVICES OF
THE IDAHO DEPARTMENT OF AGRICULTURE LABORATORIES
DOCKET NO. 02-0621-1701 (CHAPTER REPEAL)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-604, 22-2006, 22-2204, and 25-2710, 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 20, 2017.

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:

Historically the Feed and Fertilizer (F&F) Laboratory's primary function (>90%) has been regulatory/enforcement testing. However, it occasionally accepts public service samples on a fee basis. Since January 2014, the lab had 28 customers totaling \$18,114.18 of business. Of that amount, 84% or \$15,223.35 came from two other State Agencies from Oregon and Michigan that use the ISDA F&F Lab because of its extremely low prices. The primary mission of the F&F Lab is to provide enforcement testing services in an accurate and timely manner. These public service samples, for the most part, do not even benefit Idaho residents and tie up valuable lab space and time. Therefore, the ISDA has halted voluntary service sample testing as of January 1st, 2017.

The ISDA is repealing the rule for voluntary public services.

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

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

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 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 27](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dan Salmi at (208) 332-8526 or Daniel.salmi@isda.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 27, 2017.

DATED this 1st day of August, 2017.

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

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

IDAPA 02.06.21 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 02 – DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0641-1701

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 22-2204, 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 20, 2017.

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 incorporate by reference information and updates contained in the 2018 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

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

The Association of American Plant Food Control Officials (AAPFCO) Official Publication and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the industry and all state and federal soil and plant amendments control officials and regulators.

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) 332-8622 or jared.stuart@isda.idaho.gov. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before September 27, 2017.

DATED this 1st day of August, 2017.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0641-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: (4-7-11)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.

The terms, ingredient definitions and policies as published in the “201~~7~~⁸ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: http://www.aapfco.org/pdf/order_form_70.pdf. ~~(3-29-17)~~()

02. The Merck Index.

The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at: <http://www.rsc.org/merckindex..> (4-7-11)

03. The Association of Official Agricultural Chemists (AOAC) International.

The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. (3-29-12)

IDAPA 07 – DIVISION OF BUILDING SAFETY
07.01.06 – RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE
DOCKET NO. 07-0106-1701
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 54-1001 and 54-1006, 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 20, 2017.

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 2016 Idaho Legislature passed HB 643, which established Section 54-1001A, Idaho Code that directs the Idaho Division of Building Safety to promulgate rules governing the use, inspection and safety of submersible well pumps in Idaho's lakes, rivers, ponds and streams. This rulemaking amends the electrical code relating to installation and safety requirements of non-listed submersible well pumps in Idaho's waters where authorized swimming and marine activities take place. The DBS conducted negotiated rulemaking with the pump and electrical industry in order to develop these amendments. Pursuant to the negotiated rule notice, which published in the May 2016 Administrative Bulletin under Docket No. 07-0106-11601, meetings occurred in 2016, which included informal collaborative meetings with industry, and these rule changes were again discussed in the 2017 Electrical Board meetings.

This rulemaking would amend the 2017 National Electric Code (NEC) to add a new section permitting the installation of disconnects grouped in one- and two-family dwelling units where multiple feeders enter the building in certain circumstances. Additionally, the rulemaking provides exceptions to several articles of the NEC addressing the installation of submersible well pumps in swimming and marine areas, and the electrical equipment used therein such installations.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 Idaho Administrative Bulletin, [Vol. 16-5, pages 38 through 39](#).

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:

This rulemaking would amend the 2017 National Electric Code (NEC) to add a new section permitting the installation of disconnects grouped in one and two family dwelling units where multiple feeders enter the building in certain circumstances. Additionally, the rulemaking provides exceptions to several articles of the NEC addressing the installation of submersible well pumps in swimming and marine areas, and the electrical equipment used therein such installations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Warren Wing at (208) 332-7147.

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 27, 2017.

DATED this 9th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0106-1701
(Only Those Sections With Amendments Are Shown.)

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE.

01. Documents. Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2017 Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2017, with the following amendments: (3-29-17)

a. Article 110.3(A) and 110.3(B) shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. ()

b. Article 210.8(A)(7) Sinks. Delete article 210.8(A)(7) and replace with the following: Sinks - located in areas other than kitchens where receptacles are installed within one and eight tenths (1.8) meters (six (6) feet) of the outside edge of the sink. (3-20-14)

c. Article 210.8(A)(10). Delete article 210.8(A)(10). (3-20-14)

d. Article 210.8(D). Delete article 210.8(D). (3-20-14)

e. Article 210.52(E)(3). Delete article 210.52(E)(3) and replace with the following: Balconies, Decks, and Porches. Balconies, decks, and porches having an overall area of twenty (20) square feet or more that are accessible from inside the dwelling unit shall have at least one (1) receptacle outlet installed within the perimeter of the balcony, deck, or porch. The receptacle shall not be located more than two (2.0) meters (six and one half (6½) feet) above the balcony, deck, or porch surface. (3-20-14)

f. Add a new Article 225.30(F) – One (1)- or Two (2)-Family Dwelling Unit(s). For a one (1)- or two (2)-family dwelling unit(s) with multiple feeders with conductors one aught (1/0) or larger, it shall be permissible to install not more than six (6) disconnects grouped at one (1) location where the feeders enter the building, provided that the feeder conductors originate at the same switchboard, panelboard, or overcurrent protective device location. ()

g. Where the height of a crawl space does not exceed one and four tenths (1.4) meters or four and one half (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two and one tenth (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (3-20-14)

h. Article 675.8(B). Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (3-20-14)

i. Article 682.10 shall not apply to submersible well pumps installed in swimming and marine areas; provided however, such articles shall apply to all other equipment required in the installation of a submersible well pump in such areas except for the actual submersible well pump itself. ()

j. Article 682.11. Add the following exception to Article 682.11: This article shall not apply to service equipment that is located on or at the dwelling unit and which is not susceptible to flooding. ()

k. Article 682.13. Add the following exceptions to Article 682.13: ()

i. Exception No 1. Wiring methods such as HDPE schedule eighty (80) electrical conduit or its equivalent or greater, and clearly marked at a minimum "Caution Electrical" to indicate that it contains electrical conductors shall be approved. It shall be buried whenever practical, and in accordance with the requirements of the authority having jurisdiction. The use of gray HDPE water pipe rated at 250 PSI (eg. SIDR-7 or DR-9) is suitable for use as a chase only when the following conditions are met: ()

(1) When internal conductors are jacketed submersible pump cable. ()

(2) When used in continuous lengths, directly buried, or secured on a shoreline above and below the water line. ()

(3) When submersible pump wiring terminations in the body of water according to 682.13 Exception No. 2 are met. ()

ii. Exception No 2. Any listed and approved splices required to be made at the submersible well pump itself, outside of a recognized submersed pump sleeve or housing, when wires are too large to be housed inside such sleeve, shall be covered with a non-metallic, impact resistant material, no less than .25 (one quarter) inches thick, such as heavy duty heat shrink or other equivalent method approved by the authority having jurisdiction. (Eg. install a heat shrink over the sleeve or housing that the submersible well pump is installed in, and then recover (apply heat) the heat shrink over both the HDPE and the water line). At least six (6) inches shall be over the sleeve and at least twelve (12) inches over the HDPE and water line. ()

iii. Exception No. 3. Pipe, conduit, PVC well casing, or other electrically unlisted tubing may be used as a chase, but not as a raceway, to protect conductors or cables from physical damage. Conductors or cables within a chase shall be rated for the location. ()

l. Article 682.14. Add the following additional exception to Article 682.14: For installations of submersible well pumps installed in public swimming and marine areas, submersible well pumps shall be considered directly connected and shall be anchored in place. Ballast is an acceptable form of anchoring. ()

m. Article 682.14(A). Add the following exception to Article 682.14(A): For installations of submersible well pumps installed in public swimming and marine areas, motor controller circuits such as remotely located stop pushbutton/s, disconnect/s, relay/s or switches shall be permitted as a required disconnecting means. Such circuits shall be identified at a minimum as "Emergency Pump Stop", or "Emergency Stop" with other obvious indications on the visible side of the enclosure, that it controls a submersible pump in the body of water. ()

n. Article 682.15. Add the following exceptions to Article 682.15: ()

i. Exception No. 1. Submersible pumps, and their motor leads, located in bodies of water, and that are rated sixty (60) amperes maximum, two hundred fifty (250) volts maximum of any phase, shall have GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, protected by means selected by a licensed installer, meeting listing or labeling requirements, and inspected by the AHJ prior to submersion in bodies of water. ()

ii. Exception No. 2. Installations or repair and replacement of submersible pumps located in bodies of water, that are rated over sixty (60) amperes, and rated at any voltage, shall be evaluated by a qualified designer or experienced licensed contractor, or involve engineering or be engineered, for each specific application, with the goal

of public safety. Whenever possible, GFCI or Ground Fault Equipment Protection designed to trip at a maximum of thirty (30) milliamps or less, meeting listing or labeling requirements, shall be installed, and inspected by the AHJ prior to submersion in bodies of water. ()

g. Article 550.32(B). Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (5-3-03)

h. Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (4-6-05)

i. Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. Article 210.12 shall apply in full. Exception: In dwelling units Arc-Fault Circuit-Interrupter Protection shall only apply to all branch circuits and outlets supplying bedrooms. All other locations in dwelling units are exempt from the requirements of Article 210.12. (3-29-17)

02. Availability. A copy of the National Electrical Code is available at the offices of the Division of Building Safety at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201. (3-20-14)

IDAPA 07 – DIVISION OF BUILDING SAFETY
07.02.04 – RULES GOVERNING PLUMBING SAFETY INSPECTIONS
DOCKET NO. 07-0204-1701
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 54-2601, 54-2605, 54-2606 and 54-2607, 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 20, 2017.

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 Cross Connection Control Manual published by the American Water Works Association (AWWA) has previously been used as the standard for the installation of cross connection control and back flow prevention devices. However, the Idaho State Plumbing Code (ISPC) already contains provisions related to backflow installations. The plumbing industry would prefer to reference only one book – the ISPC. This rulemaking creates clarity by eliminating the need for plumbers and inspectors to reference the Cross Connection Control Manual. It also saves the industry and the state money inasmuch as plumbers and inspectors will no longer need to reference and purchase two code books.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 12 through 13](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Nielsen at (208) 332-7112.

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 27, 2017.

DATED this 3rd day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0204-1701
(Only Those Sections With Amendments Are Shown.)

012. REQUIREMENTS IN ADDITION TO THE PLUMBING CODE.

~~01. Cross-Connection Control Manual. The "Cross-Connection Control Manual" published by the Pacific Northwest Section of the American Water Works Association (April, 2012 7th Edition) is hereby adopted as the standard for cross-connection control and back-flow prevention devices. (4-11-15)~~

021. Jurisdiction/Septic Systems. Septic tank and drain fields: Under the definition of a plumbing system as set forth in Section 54-2604(h), Idaho Code, the plumbing contractor's interest and responsibility ceases with the "connection" to the septic tank. (11-14-85)

032. Waste Disposal. The Department of Environmental Quality is the inspection authority on waste disposal. (6-4-76)

IDAPA 07 – DIVISION OF BUILDING SAFETY
07.02.06 – RULES CONCERNING IDAHO STATE PLUMBING CODE
DOCKET NO. 07-0206-1701
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 54-2601, 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 20, 2017.

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:

Amendment to Section 603.5.7 of the 2017 Idaho State Plumbing Code would eliminate freezing issues the industry is currently having because code currently requires installing hose bibb-type vacuum breaker on freeze resistant sanitary yard hydrants. Amendment to Section 604.10.1 is expected to assist homeowners and contractors in saving money by not requiring a tracer wire for non-metallic pipe if the electrical wiring for the well is contained in the same trench from the well to the structure.

This rulemaking would amend the Idaho State Plumbing Code (ISPC) to remove a requirement that sanitary yard hydrants be protected by a non-removable hose bibb-type backflow preventer and to eliminate the need for installing an additional tracer wire in a trench in situations where the electrical wiring for the pump is also installed in the same trench.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 14 through 15](#).

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:

This rulemaking would amend the 2017 Idaho State Plumbing Code (ISPC) to remove a requirement that sanitary yard hydrants be protected by a non-removable hose bibb-type backflow preventer, and to eliminate the need for installing an additional tracer wire in a trench in situations where the electrical wiring for the pump is also installed in the same trench.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Nielsen at (208) 332-7112.

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 27, 2017.

DATED this 9th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
Phone: (208) 332-7150 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0206-1701
(Only Those Sections With Amendments Are Shown.)

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE IDAHO STATE PLUMBING CODE.

The Idaho State Plumbing Code published in 2017, including Appendices “A, B, C, D, E, G, I, J, K and L,” (herein ISPC) is adopted and incorporated by reference with amendments as prescribed by the Idaho Plumbing Board and contained in this Section. The Idaho State Plumbing Code is modeled after the 2015 Uniform Plumbing Code (UPC). The Idaho State Plumbing Code is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. It may also be accessed electronically online at <http://dbs.idaho.gov/>. (3-29-17)

01. Section 105.3 Testing of Systems. (3-29-17)

a. Delete and replace the following: Plumbing systems shall be tested and approved in accordance with this code or the Authority Having Jurisdiction. Tests may be conducted in the presence of the Authority Having Jurisdiction or the Authority Having Jurisdiction’s duly appointed representative. (3-29-17)

b. No test or inspection shall be required where a plumbing system, or part thereof, is set up for exhibition purposes and has no connection with a water or drainage system. In cases where it would be impractical to provide the required water or air tests, or the presences of the Authority Having Jurisdiction, or for minor installations and repairs, the Authority Having Jurisdiction, in accordance with procedures established thereby, shall be permitted to make such inspection as deemed advisable in accordance with the intent of this code. Joints and connections in the plumbing system shall be gastight and watertight for the pressures required by the test. (3-29-17)

02. Section 218 Definitions. Delete definition of “Plumbing System.” Incorporate definition of “Plumbing System” as set forth in Section 54-2604, Idaho Code. (3-29-17)

03. Section 314.4 Excavations. Add: Where unsuitable or soft material is encountered, excavate to a depth not less than two (2) pipe diameters below the pipe and replace with select backfill. Such backfill shall be sand, fine gravel, or stone and shall provide lateral support for the pipe. Where rock is encountered, the trench shall be excavated to a minimum depth of six (6) inches (152 mm) below the bottom of the pipe. Sand shall be added to provide uniform bedding and support for the pipe. The pipe shall not rest on any rock at any point, including joints. (3-29-17)

04. Section 401.2 Qualities of Fixtures. Replace with the following: Plumbing fixtures shall be constructed of dense, durable, non-absorbent materials and shall have smooth, impervious surfaces, free from unnecessary concealed fouling surfaces. (3-29-17)

05. Section 403.3 Exposed Pipes and Surfaces. Delete. (3-29-17)

06. Section 407.4 Transient Public Lavatories. Self-closing or self-closing metering faucets may be installed on lavatories intended to serve the transient public, such as those in, but not limited to, service stations, train stations, airports, restaurants, convention halls, and rest stops. Installed metered faucets shall deliver a maximum of zero point two six (0.26) gallons (one point zero (1.0) liter) of water per use. (3-29-17)

07. Section 408.5 Finished Curb or Threshold. Delete the last sentences of the first paragraph and replace with the following: The finished floor of the receptor shall slope uniformly from the sides toward the drain not less than one-eighth (1/8) inch per foot (20.8 mm/m), nor more than one-half (1/2) inch per foot (41.8 mm/m). (3-29-17)

08. Section 408.7.5 Tests for Shower Receptors. Delete. (3-29-17)

09. **Section 409.4 Limitation of Hot Water in Bathtubs and Whirlpool Bathtubs.** Delete. (3-29-17)
10. **Section 503.1 Inspection of Chimneys or Vents.** Add the following to the end of section 503.1: Water heating appliances using Category 3 or 4 exhaust venting shall be tested in its entirety with five (5) pounds of air for fifteen (15) minutes. Plastic vents shall be constructed using manufacturer's instructions. (3-29-17)
11. **Section 507.2 Seismic Provisions.** Delete. (3-29-17)
12. **Section 507.13 Installation in Garages.** Replace 507.13 with the following: Any plumbing appliance or appurtenance in residential garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices or other sources of ignition are located not less than eighteen (18) inches (450 mm) above the floor unless listed as flammable vapor ignition resistant. (3-29-17)
13. **Table 603.2 Backflow Prevention Devices, Assemblies and Methods.** (3-29-17)
- a. Delete from the table the entire row related to freeze resistant sanitary yard hydrant devices. (3-29-17)
- b. Delete the backflow preventer for Carbonated Beverage Dispensers text from the first column of the table and replace with the following: Backflow preventer for Carbonated Beverage Dispensers (Reduced Pressure Principle Backflow Prevention Assembly). (3-29-17)
- 14. Section 603.5.7 Outlets with Hose Attachments.** Delete and replace with the following: Potable water outlets with hose attachments, other than water heater drains, boiler drains, freeze resistant yard hydrants and clothes washer connections, shall be protected by a nonremovable hose bibb-type backflow preventer, a nonremovable hose bibb-type vacuum breaker, or by an atmospheric vacuum breaker installed not less than six (6) inches (one hundred fifty-two (152) mm) above the highest point of usage located on the discharge side of the last valve. In climates where freezing temperatures occur, a listed self-draining frost-proof hose bibb with an integral backflow preventer or vacuum breaker shall be used. ()
- ~~145.~~ **Section 603.5.12 Beverage Dispensers.** Delete and replace with the following: Potable water supply to beverage dispensers, carbonated beverage dispensers, or coffee machines shall be protected by an air gap or a Reduced Pressure Principle Backflow Prevention Assembly in accordance with ASSE 1013. For carbonated beverage dispensers, piping material installed downstream of the backflow preventer shall not be affected by carbon dioxide gas. (3-29-17)
- ~~156.~~ **Section 603.5.17 Potable Water Outlets and Valves.** Delete. (3-29-17)
- ~~167.~~ **Section 603.5.21 Chemical Dispensers.** Add the following new section 603.5.21: The water supply to chemical dispensers shall be protected against backflow. The chemical dispenser shall comply with ASSE 1055 or the water supply shall be protected by one of the following methods: (3-29-17)
- a. Air gap; (3-29-17)
- b. Atmospheric vacuum breaker (AVB); (3-29-17)
- c. Pressure vacuum breaker backflow prevention assembly (PVB); (3-29-17)
- d. Spill-resistant pressure vacuum breaker (SVB); or (3-29-17)
- e. Reduced-pressure principle backflow prevention assembly (RP). (3-29-17)
- 18. Section 604.10.1 Tracer Wire.** Add the following exception: Where the electrical wiring for the pump is installed in the same trench as the water line, from the point of origin to the structure, a tracer wire shall not be required. ()

~~1-79.~~ **Section 605.6.2 Mechanical Joints.** Add to the end of the section the following: Listed PE (polyethylene), one hundred sixty (160) psi minimum, water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. Polyethylene (PE) plastic pipe or tubing and fitting joining methods shall be installed in accordance with the manufacturer's installation instructions. (3-29-17)

~~1-820.~~ **Section 609.1 Installation.** Delete the following sentence: Building supply yard piping shall be not less than twelve (12) inches (305 mm) below the average local frost depth; and replace it with the following: The cover shall be not less than forty-two (42) inches (1068mm) below grade. (3-29-17)

~~1-921.~~ **Section 609.4 Testing.** Testing. Deleting the phrase "Except for plastic piping," at the beginning of the third sentence and add the following sentence at the end of the section: Plastic piping is to be tested in accordance with manufacturer's installation standards. (3-25-13)

~~2-02.~~ **Section 609.10 Water Hammer.** Does not apply to residential construction. (3-25-13)

~~2-13.~~ **Section 609.11 Pipe Insulation.** Delete. (3-29-17)

~~2-24.~~ **Table 610.3 and Appendix Table A 103.1.** Change fixture unit loading value for both public and private for bathtub or combination bath/shower, and clothes washers to two (2) fixture units. (3-29-17)

~~2-35.~~ **Section 610.2 Pressure Loss.** Add the following: All new one (1) and two (2) family residences built slab on grade or that will have a finished basement at the time of final inspection must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. (3-29-17)

~~2-46.~~ **Table 611.4 Sizing of Residential Softeners.** Amend Footnote 3 to read: Over four (4) bathroom groups, softeners shall be sized according to the manufacturer's standards. (3-29-17)

~~2-57.~~ **Section 612.0 Residential Sprinkler System.** Add the following to the end of the first sentence in section 612.1: and the requirements of the Authority Having Jurisdiction (AHJ). (3-29-17)

~~2-68.~~ **Table 702.1 Drainage Fixture Unit Valves (DFU).** Change fixture unit loading value for clothes washers, domestic for private to two (2) fixture units. (3-29-17)

~~2-79.~~ **Section 703.1 Minimum Size.** Add the following at the end of section 703.1: No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-29-17)

~~2-830.~~ **Section 704.2 Single Vertical Drainage Pipe.** Two inch (2") and smaller double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (3-29-17)

~~2-931.~~ **Section 704.3 Commercial Sinks.** Delete. (3-29-17)

~~3-02.~~ **Table 703.2 Maximum Unit Loading and Maximum Length of Drainage and Vent Piping.** Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (3-29-17)

~~3-13.~~ **Section 705.5.2 Solvent Cement Joints.** Add to the end of the section the following: PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1. (3-29-17)

~~3-24.~~ **Section 707.4 Locations.** Add the following: A clean out shall be installed for double sanitary tees two (2) inches (50 mm) or less in diameter that receive the discharge from fixture connections. Exception in Section 707.4 shall not apply. A full-sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer. Cleanouts shall be installed at fifty (50) foot intervals in

horizontal drain lines two (2) inches or smaller. (3-29-17)

335. **Section 710.3(4) Sewage Ejectors and Pumps.** Add: Exception (4): One (1) pump shall be permitted for “public use” occupancies provided that such tank receives the discharge of not more than one (1) water closet and ten (10) fixture units (See Section 710.9 Alarms). (3-29-17)

346. **Section 710.5 Size Building Drains and Sewers.** Add the following exception: In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-29-17)

357. **Section 712.1 Media.** In the first sentence, delete the phrase “except that plastic pipe shall not be tested with air.” (3-25-13)

368. **Section 717.0 Size of Building Sewers.** Add the following to the end of section 717.1: Exception: The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines. (3-29-17)

379. **Section 723.0 General.** Delete the following sentence: “Plastic DWV piping systems shall not be tested by the air test method.” (3-29-17)

3840. **Section 801.3.3 Food Handling Fixtures.** Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five and four tenths (25.4) mm). (3-29-17)

3941. **Section 805.41 General.** Add to the end of the first paragraph the following: Provisions must be made for the discharge of the water softener to terminate in an approved location. The drain line for a water softener must be three-fourths (3/4) inch minimum. A washer box with a dual outlet is an approved location as long as it is on the same floor or one (1) floor below the softener unit and the water softener drain line is a minimum three-fourths (3/4) inch. (3-29-17)

402. **Section 807.3 Domestic Dishwashing Machines.** A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-29-17)

413. **Section 906.1 Roof Termination.** Delete the existing provision and replace with the following: (3-29-17)

a. Roof venting. When conventional roof venting is utilized, each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six (6) inches (one hundred fifty-two (152) mm) above the roof nor less than one (1) foot (three hundred five (305) mm) from any vertical surface. (4-2-08)

b. Sidewall venting. When sidewall venting is utilized, the vent shall extend flush with the eaves/gable end, shall turn down using a ninety (90) degree ell, and shall terminate as close to the roof peak as possible. The vent end must be properly screened. Sidewall venting is acceptable on new or remodel construction on cabins, log homes, and residential or commercial buildings. (4-2-08)

c. Sidewall venting must meet the intent of Section 906.2 of the ISPC. (3-25-13)

424. **Section 908.1 Vertical Wet Venting.** Add to the end of the section the following: A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 of the ISPC are met. (3-29-17)

435. **Section 909.0 Special Venting for Island Fixtures.** Add: Parameters for the limited use of Air Admittance Valves (A.A.V.). (3-29-17)

- a. An A.A.V. may be used only in residential buildings. (4-2-08)
 - b. In remodels, an A.A.V. may be used with island fixtures or remotely located sinks such as in bar, kitchen, or laundry tray locations. An A.A.V. shall not be used in bathroom groups. (4-2-08)
 - c. In new construction, an A.A.V. may be used on island fixture sinks. (4-2-08)
 - d. Each A.A.V. may be used to vent only one (1) floor. (4-2-08)
 - e. Each A.A.V. must be readily accessible. (4-2-08)
 - f. The cross-sectional area of venting must remain the same and must meet the largest required building drain. (4-2-08)
 - g. An A.A.V. shall only be installed in accordance with the manufacturer's installation standards as per ASSE 1051. (4-2-08)
 - h. An A.A.V. may not be used in an attic, crawl space, outside installation, or in connection with chemical or acid waste systems. (4-2-08)
- 446. Section 1002.3 Change of Direction.** Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. (3-29-17)
- 457. Section 1007.0 Trap Seal Protection.** Delete section 1007.1 and replace with the following: Floor drains or similar traps directly connected to the drainage system and subject to infrequent use shall be protected with a trap seal primer or other approved trap seal protection device, except where not deemed necessary for safety or sanitation by the Authority Having Jurisdiction. Trap seal primers shall be accessible for maintenance. (3-29-17)
- 468. Section 1016.1 Discharge.** Add the following to the end of section 1016.1: Floor drains installed in residential garages shall be permitted to use the interceptor as the fixture trap. (3-29-17)
- 479. Section 1502.1 General.** Add to this section the following paragraph: Plumbing for a gray water system from any fixture up to, but not to include the exterior irrigation system tank shall be inspected by the Authority Having Jurisdiction. The Idaho Department of Environmental Quality (IDEQ) shall have jurisdiction to inspect and approve the installation of the exterior irrigation system tank and all piping therefrom to the point of disposal in accordance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." Gray water system location and design criteria requirements related to irrigation and leaching shall be determined in accordance with the requirements as established by the IDEQ. (3-29-17)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.03.01 – RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1701

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 39-4107 and 39-4109, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 2012 International Residential Code (IRC) is currently utilized by building jurisdictions throughout the state; however, it does not provide adequate guidance related to the construction of “Tiny Homes.” The construction of tiny homes in Idaho has increased significantly in the past several years and there is a need to establish specific residential code provisions to properly address some of the unique characteristics of tiny homes. The tiny home provisions contained in this rulemaking would be added as an appendix to the IRC, and may be adopted by building code jurisdictions to address the installation of such homes. Additionally, because of increases to allowable design stresses in the 2012 International Building Code (IBC), masonry allowable stress design (ASD) lap lengths could exceed strength design laps. Placing a limit on the required lap length corrects this problem and provides consistency between masonry design methods.

This rulemaking adds several provisions to the residential code (IRC) in the form of a new appendix addressing certain aspects of “Tiny Homes.” These include key definitions, as well as provisions related to ceiling height, lofts, stairways and ladders, and escape and rescue roof access windows. This rulemaking will also add an amendment that will place a limit on the required length of reinforcement lap splices for allowable stress design (ASD) of masonry. It will make the allowable stress maximum lap length equivalent to the current strength design maximum lap length.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 1, 2017 Idaho Administrative Bulletin, [Vol. 17-3, pages 16 through 17](#).

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:

This rulemaking adds several provisions to the 2012 International Residential Code (IRC) in the form of a new appendix addressing certain aspects of “Tiny Homes.” This rulemaking also add an amendment to the 2015 International Building Code (IBC) that will place a limit on the required length of reinforcement lap splices for allowable stress design (ASD) of masonry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Arlan Smith at (208) 332-7123.

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 27, 2017.

DATED this 9th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0301-1701
(Only Those Sections With Amendments Are Shown.)

004. ADOPTION AND INCORPORATION BY REFERENCE.

Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. Pursuant to Section 39-4109, Idaho Code, the effective date of any edition of the codes adopted in this Section, or any amendments identified thereto, shall be January 1 of the succeeding year following legislative approval of the rulemaking establishing the edition or amendment. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the International Code Council at <http://www.iccsafe.org>. (3-20-14)

01. International Building Code. 2015 Edition with the following amendments: (3-29-17)

a. Delete section 305.2.3 and replace with the following: Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

b. Delete section 308.6.4 and replace with the following: Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

c. Delete section 310.5 and replace with the following: Residential Group R-3. Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: (3-29-17)

i. Buildings that do not contain more than two (2) dwelling units; (3-20-14)

ii. Boarding houses (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

iii. Boarding houses (transient) with ten (10) or fewer occupants; (3-20-14)

iv. Care facilities that provide accommodations for five (5) or fewer persons receiving care; (3-20-14)

v. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

vi. Congregate living facilities (transient) with ten (10) or fewer occupants; or (3-20-14)

vii. Dwelling units providing day care for twelve (12) or fewer children. (3-20-14)

viii. Lodging houses with five (5) or fewer guest rooms. (3-29-17)

d. Delete section 310.5.1 and replace with the following: Care facilities within a dwelling, Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code. (3-20-14)

e. Delete the last paragraph of section 2107.2.1 Lap Slices, and replace with the following: In regions of moment where the design tensile stresses in the reinforcement are greater than eighty percent (80%) of the allowable steel tension stress, FS, the lap length of splices shall be increased not less than fifty percent (50%) of the minimum required length, but need not be greater than 72 db. Other equivalent means of stress transfer to accomplish the same fifty percent (50%) increase shall be permitted. Where epoxy coated bars are used, lap length shall be increased by fifty percent (50%). ()

e.f Add footnote (f) in the header row of the table column labeled “Drinking Fountains” of Table 2902.1 Minimum Number of Required Plumbing Fixtures, and add footnote (f) under Table 2902.1 to state the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. (3-29-17)

f.g. Delete footnote (e) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures and replace with the following: For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. (3-29-17)

02. International Residential Code. 2012 Edition with the following amendments: (3-20-14)

a. Delete exception No. 1 contained under IRC section R101.2 - Scope. (3-20-14)

b. Delete exception No. 2 contained under IRC section R101.2 - Scope, and replace with the following: Owner-occupied lodging houses with five (5) or fewer guestrooms shall be permitted to be constructed in accordance with the International Residential Code for One- and Two-family Dwellings. (4-11-15)

c. Delete item No. 7 contained under the “Building” subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

d. Add the following item No. 11 at the end of the “Building” subsection of IRC section R105.2 - Work exempt from permit: Flag poles. (3-20-14)

e. Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

f. IRC Table R302.1(1) Exterior Walls -- delete Table R302.1(1) and replace with the following:

TABLE R302.1(1)
EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour-tested in accordance with ASTM E 119 or UL263 with exposure from both sides	< 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Projections	Fire-resistance rated	1 hour on the underside	≥ 2 feet to < 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Openings in Walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area	0 hours	≥ 3 feet to < 5 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	≥ 3 feet

For SI: 1 foot = 304.8 mm.
 N/A = Not Applicable

(4-11-15)

g. Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following two (2) exceptions: (3-25-16)

i. When provided with an automatic fire sprinkler system per section R313.1, a common one (1)-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts, or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides, and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. (3-25-16)

ii. Two (2) one (1)-hour fire-resistance-rated wall assemblies (as specified in Section R302.1) or a common two (2)-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 are permitted for townhouses. If two (2) one (1)-hour fire-resistance-rated walls are used, plumbing and electrical installations within the wall cavity shall conform to fire-resistance penetration requirements in accordance with section R302.4 through R302.4.2 for each of the two (2) one (1)-hour rated walls penetrated. The two (2)-hour fire-resistance-rated common wall shall not contain plumbing or mechanical equipment, ducts or vents within its wall cavity. The wall shall be rated for fire exposure from both sides, and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. (3-25-16)

h. Delete IRC section R303.4 and replace with the following: R303.4 Mechanical Ventilation. Dwelling units shall be provided with whole-house mechanical ventilation in accordance with Section M1507.3

Exception: Where the air infiltration rate of a dwelling unit is equal to 5 air changes per hour or greater when tested with a blower door at a pressure of 0.2 inch w.c. (50 pa) in accordance with Section N1102.4.1.2. (4-11-15)

i. Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where either two (2) one (1)-hour fire-resistance-rated walls or a common two (2)-hour fire-resistance rated wall, as specified in exception 2 of section R302.2 is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (3-25-16)

j. Delete IRC section R313.2. (3-29-10)

k. Add the following to IRC section R315.3 - Where required in existing dwellings: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from

the requirements of this section; and 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. (3-20-14)

l. Delete IRC section R322.1.10. (3-29-10)

m. Delete IRC section R322.2.2 subparagraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm²) for each square foot (0.093 m²) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-20-14)

n. Delete IRC section R501.3 and its exceptions. (3-20-14)

o. Delete IRC section R602.10 and replace with the following: Wall bracing. Buildings shall be braced in accordance with this section or, when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this section, those portions shall be designated and constructed in accordance with section R301.1. (3-20-14)

p. Chapter 11 [RE] Energy Efficiency - The following sections and tables of chapter 11 shall be amended in accordance with the requirements contained below in Subsection 004.04 of these rules which correspond to the appropriate section: (3-20-14)

i. Table N1102.1.1 (Table R402.1.1) - Insulation and Fenestration Requirements by Component; (3-20-14)

ii. Table N1102.1.3 (Table R402.1.3 - Equivalent U-Factors; (3-20-14)

iii. Table N1102.2.6 (Table R402.2.6) - Steel-Frame Ceiling, Wall and Floor Insulation (R-Value); (3-20-14)

iv. Section N1102.4.1 (R402.4.1) Building Thermal Envelope; (3-20-14)

v. Section N1102.4.1.1 (R402.4.1.1) - Insulation; (3-20-14)

vi. Table N1102.4.1.1 (Table R402.4.1.1) - Air Barrier and Insulation Installation; (3-20-14)

vii. Section N1102.4.1.2 (R402.4.1.2) Testing Option; (3-20-14)

viii. Add Section N1102.4.1.3 (R402.4.1.3) - Visual Inspection Option; (3-20-14)

ix. Add Section N1102.6 (R402.6) - Residential Log Home Thermal Envelope; (3-20-14)

x. Add Table N1102.6 (Table R402.6) - Log Home Prescriptive Thermal Envelope Requirements by Component; and (3-20-14)

xi. Section N1104.1 (R404.1) - Lighting Equipment. (3-20-14)

q. Add an Appendix R, titled Tiny Homes to include the following provisions: ()

i. Section AR101 Scope. This appendix shall be applicable to tiny houses used as single dwelling units. Tiny houses shall comply with this code except as otherwise stated in this appendix. ()

ii. Section AR102 Definitions. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of this code for general definitions. ()

(1) Tiny House. A dwelling that is four hundred (400) square feet (37 m) or less in floor area excluding

lofts. ()

(2) Escape and Rescue Roof Access Window. A skylight or roof window designed and installed to satisfy the emergency escape and rescue opening requirements in Section R310. ()

(3) Landing Platform. A landing provided as the top step of a stairway accessing a loft. ()

(4) Loft. A floor level located more than thirty (30) inches (762 mm) above the main floor and open to it on at least one (1) side with a ceiling height of less than six (6) feet eight (8) inches (2032 mm), used as a living or sleeping space. ()

(iii) Section AR103 Minimum Ceiling Height. Habitable space and hallways in tiny houses shall have a ceiling height of not less than six (6) feet eight (8) inches (2032 mm). Bathrooms, toilet rooms, and kitchens shall have a ceiling height of not less than six (6) feet four (4) inches (1930 mm). Obstructions shall not extend below these minimum ceiling heights including beams, girders, ducts, lighting and other obstructions. Exception: Ceiling heights in lofts are permitted to be less than six (6) feet eight (8) inches (2032 mm). ()

iv. Section AR104 Lofts. ()

(1) AR104.1 Minimum loft area and dimensions. Lofts used as a sleeping or living space shall meet the minimum area and dimension requirements of Sections AR104.1.1 through AR104.1.3. ()

(a) AR104.1.1 Minimum area. Lofts shall have a floor area of not less than thirty-five (35) square feet (3.25 m). ()

(b) AR104.1.2 Minimum dimensions. Lofts shall be not less than five (5) feet (1524 mm) in any horizontal dimension. ()

(c) AR104.1.3 Height effect on loft area. Portions of a loft with a sloping ceiling measuring less than three (3) feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft. Exception: Under gable roofs with a minimum slope of 6:12, portions of a loft with a sloping ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft. ()

(2) AR104.2 Loft Access. The access to and primary egress from lofts shall be any type described in Sections AR104.3 through AR104.6. ()

(3) AR104.3. Stairways. Stairways accessing lofts shall comply with this code or with Sections AR104.3.1 through AR104.3.5. ()

(a) AR104.3.1 Width. Stairways accessing a loft shall not be less than seventeen (17) inches (432 mm) in clear width at or above the handrail. The minimum width below the handrail shall be not less than twenty (20) inches (508 mm). ()

(b) AR104.3.2 Headroom. The headroom in stairways accessing a loft shall be not less than six (6) feet two (2) inches (1880 mm), as measured vertically, from a sloped line connecting the tread or landing platform nosings in the middle of their width. Exception: The headroom for a landing platform, where stairways access lofts, shall be not less than four (4) feet six (6) inches (1372 mm). ()

(c) AR104.3.3 Treads and Risers. Risers for stairs accessing a loft shall be not less than seven (7) inches (178 mm) and not more than twelve (12) inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following formulas: ()

(i) The tread depth shall be twenty (20) inches (508 mm) minus 4/3 of the riser height, or ()

(ii) The riser height shall be fifteen (15) inches (381 mm) minus 3/4 of the tread depth. ()

(d) AR104.3.4 Landing Platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than six (6) feet two (2) inches (1880 mm) where the stairway meets the loft. The landing platform shall be eighteen (18) inches to twenty-two (22) inches (457 to 559 mm) in depth measured from the nosing of the landing platform to the edge of the loft, and sixteen (16) to eighteen (18) inches (406 to 457 mm) in height measured from the landing platform to the loft floor. ()

(e) AR104.3.5 Stairway Handrails. Handrails shall comply with Section R311.7.8. ()

(f) AR104.3.6 Stairway Guards. Guards at open sides of stairways shall comply with Section R312.1. ()

(4) AR104.4 Ladders. Ladders accessing lofts shall comply with Sections AR104.4.1 and AR104.4.2. ()

(a) AR104.4.1 Ladder Size and Capacity. Ladders accessing lofts shall have a rung width of not less than twelve (12) inches (305 mm) and ten (10) inches (254 mm) to fourteen (14) inches (356 mm) spacing between rungs. Ladders shall be capable of supporting a two hundred (200) pound (75 kg) load on any rung. Rung spacing shall be uniform within 3/8-inch (9.5 mm). ()

(b) AR104.4.2 Ladder Incline. Ladders shall be installed at seventy (70) to eighty (80) degrees from horizontal. ()

(5) AR104.5 Alternating Tread Devices. Alternating tread devices accessing lofts, and handrails of alternating tread devices shall comply with sections 1011.14.1 and 1011.14.2 of the International Building Code, excluding the exception. The clear width at and below the handrails shall be not less than twenty (20) inches (508 mm). ()

(6) AR104.6. Ships Ladders. Ships ladders accessing lofts, and treads and handrails of ships ladders shall comply with sections 1011.15.1 and 1011.15.2 of the International Building Code. The clear width at and below handrails shall be not less than twenty (20) inches (508 mm). ()

(7) AR104.7 Loft Guards. Loft guards shall be located along the open side of lofts. Loft guards shall not be less than thirty-six (36) inches (914 mm) in height or one (1)-half of the clear height to the ceiling, whichever is less. ()

v. SECTION AR105. Emergency Escape and Rescue Openings. Tiny houses shall meet the requirements of Section R310 for emergency escape and rescue openings. Exception: Escape and rescue roof access windows in lofts used as sleeping rooms shall be deemed to meet three (3) requirements of Section R310 where installed such that the bottom of the opening is not more than forty-four (44) inches (1118 mm) above the loft floor, provided the escape and rescue roof access window complies with the minimum opening area requirements of Section R310. ()

03. International Existing Building Code. 2015 Edition. (3-29-17)

04. International Energy Conservation Code. 2015 Edition with the following amendments: (3-29-17)

a. Delete the Residential Provisions of the 2015 International Energy Conservation Code (IECC) set forth in chapters 1 [RE] through 6 [RE], including Appendix RA (pages R-1 through R-57), and replace with the Residential Provisions of the 2012 IECC set forth therein in chapters 1 [RE] through 5 [RE] (pages R-1 through R-47) and as such provisions may be further amended herein these rules. (3-29-17)

b. Add the following as new subsection C101.5.3: Industrial, electronic, and manufacturing equipment. Buildings or portions thereof that are heated or cooled exclusively to maintain the required operating temperature of industrial, electronic, or manufacturing equipment shall be exempt from the provisions of this code. Such buildings or portions thereof shall be separated from connected conditioned space by building thermal envelope assemblies complying with this code. (3-25-16)

c. Add the following exception No. (10) under section C403.3 Economizers (Prescriptive): Unusual outdoor air contaminate conditions – Systems where special outside air filtration and treatment for the reduction and treatment of unusual outdoor contaminants, makes an air economizer infeasible. (3-29-17)

d. Delete the values contained in Table R402.1.1 (Table N1102.1.1) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:

TABLE R402.1.1										
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT										
Climate Zone	Fenestration U- Factor	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Slab R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	NR	38	20 or 13+5 ^h	13/17	30 ^g	10/13	10, 2 ft	10/13
6	0.35	0.60	NR	49	20 or 13+5 ^h	15/19	30 ^g	15/19	10, 4 ft	10/13

(3-20-14)

e. Add the following footnote to the title of Table R402.1.1 - Insulation and Fenestration Requirements by Component: ^k For residential log home building thermal envelope construction requirements see section R402.6. (3-25-16)

f. Delete the values contained in Table R402.1.3 (Table N1102.1.3) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following:

TABLE R402.1.3								
EQUIVALENT U-FACTORS								
Climate Zone	Fenestration U-factor	Skylight U-factor	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	0.030	0.057	0.082	0.033	0.059	0.065
6	0.35	0.60	0.026	0.057	0.060	0.033	0.050	0.065

(3-20-14)

g. Delete Table R402.2.6 (Table N1102.2.6) and replace with the following:

TABLE R402.2.6	
STEEL-FRAME CEILING, WALL AND FLOOR INSULATION (R-VALUE)	
Wood Frame R-value Requirement	Cold-formed Steel Equivalent R-value^a
Steel Truss Ceilings^b	
R-30	R-38 or R-30 + 3 or R-26 + 5
R-38	R-49 or R-38 + 3
R-49	R-38 + 5
Steel Joist Ceilings^b	
R-30	R-38 in 2 x 4 or 2 x 6 or 2 x 8 R-49 in any framing
R-38	R-49 in 2 x 4 or 2 x 6 or 2 x 8 or 2 x 10
Steel-Framed Wall	
R-13	R-13 + 5 or R-15 + 4 or R-21 + 3 or R-0 + 10
R-19	R-13 + 9 or R-19 + 8 or R-25 + 7
R-21	R-13 + 10 or R-19 + 9 or R-25 + 8
Steel Joist Floor	
R-13	R-19 in 2 x 6 R-19 + 6 in 2 x 8 or 2 x 10
R-19	R-19 + 6 in 2 x 6 R-19 + 12 in 2 x 8 or 2 x 10
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value.	
b. Insulation exceeding the height of the framing shall cover the framing.	

(3-25-16)

h. Delete section R402.4.1 (N1102.4.1) and replace with the following: Building thermal envelope. The building thermal envelope shall comply with sections R402.1.1 and either section R402.4.1.2 or R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. (3-25-16)

i. Delete section R402.4.1.1 (N1102.4.1.1) and replace with the following: Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer’s instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. (3-25-16)

j. Delete the criteria requirement for the “Fireplace” component of Table R402.4.1.1 (Table N1102.4.1.1) - Air Barrier and Insulation Installation, and replace with the following: An air barrier shall be installed on fireplace walls. (3-20-14)

k. Delete section R402.4.1.2 (N1102.4.1.2) and replace with the following: Testing option, Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven (7) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing: (3-25-16)

- i. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed; (3-20-14)
- ii. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers; (3-20-14)
- iii. Interior doors shall be open; (3-20-14)
- iv. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed; (3-20-14)
- v. Heating and cooling system(s) shall be turned off; (3-20-14)
- vi. HVAC ducts shall not be sealed; and (3-20-14)
- vii. Supply and return registers shall not be sealed. (3-20-14)
- l.** Add the following as section R402.4.1.3 (N1102.4.1.3): Visual inspection option. Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table R402.4.1.1, applicable to the method of construction, are field verified. Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation. (3-25-16)
- m.** Add the following section: R402.6 (N1102.6) Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections R401 (General), R402.4 (Air Leakage), R402.5 (Maximum Fenestration U-Factor and SHGC), R403.1 (Controls), R403.2.2 (Sealing), R403.2.3 (Building Cavities), sections R403.3 through R403.9 (referred to as the mandatory provisions), Section R404 (Electrical Power and Lighting Systems), and either i., ii., or iii. as follows: (3-25-16)
 - i. Sections R402.2 through R402.3, R403.2.1, R404.1 and Table R402.6; (3-25-16)
 - ii. Section R405 Simulated Performance Alternative (Performance); or (3-25-16)
 - iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)
- n.** Add Table R402.6 (Table N1102.6) Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with item i. of section R402.6 above to appear as follows:

TABLE R402.6
LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT

For SI: 1 foot = 304.8 mm.

Climate Zone	Fenestration U-factor ^a	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-value	Min. Average Log Size In Inches	Floor R-value	Basement Wall R-value ^d	Slab R-value & Depth ^b	Crawl Space Wall R-value ^d
5, 6 - High efficiency equipment path ^c	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

- a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- b. R-5 shall be added to the required slab edge R-values for heated slabs.
- c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).
- d. "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/13" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

(3-25-16)

o. Delete section R404.1 (N1104.1) and replace with the following: Lighting equipment (Mandatory). A minimum of fifty percent (50%) of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or a minimum of fifty percent (50%) of the permanently installed lighting fixtures shall contain only high efficacy lamps. (3-20-14)

05. References to Other Codes. Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.03.11 – RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

DOCKET NO. 07-0311-1701

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 44-2104, 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 20, 2017.

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 name of the Manufactured Housing Board was statutorily changed to the Factory Built Structures Board in 2016. This rulemaking changes the name of the Manufactured Housing Board to the Factory Built Structures Board. Additionally, individuals licensed in the Manufactured Housing industry as installers, and retailers who are installers, are required to perform continuing education in order to renew their licenses. The Division and Board desire to establish the amount of continuing education credits in an amount consistent with the federal licensing requirements, which is eight (8) hours of continuing education during the three-year period prior to licensure renewal. This new requirement reflects a more practical and valuable schedule for licensees to acquire necessary education. The rulemaking also modifies the requirement that installers of manufactured homes, or retailers who are also installers, complete eight (8) hours of continuing education during the three-year period prior to licensure renewal in lieu of twelve (12) hours of education that is currently in the rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 20 through 21](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ron Whitney, Deputy Administrator, at (208) 332-7150.

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 27, 2017.

DATED this 4th day of August, 2017.

Ron Whitney
Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0311-1701
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

The administrator of the Idaho Division of Building Safety and the Idaho Manufactured Housing Factory Built Structures Board are authorized to promulgate rules necessary to implement the provisions of Title 44, Chapters 21 and 22, Idaho Code, including the establishment of a mandatory statewide manufactured home setup code, as well as to define and prohibit deceptive practices, and to establish administrative penalties. ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purposes of these rules, the following terms will be used, as defined below: (5-25-94)

- 01. Administrator.** The administrator of the Division of Building Safety of the state of Idaho. (3-24-05)
- 02. Board.** The Manufactured Housing Factory Built Structures Board. The composition and duties of the Board are set forth at Section 44-2104, Idaho Code. (3-29-10)
- 03. Bond.** The performance bond required by Section 44-2103, Idaho Code. (5-25-94)
- 04. Branch Office.** An enclosed structure accessible and open to the public, at which the business of the manufactured/mobile home retailer is conducted simultaneously with and physically separated from his principal place of business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the retailer. (3-29-10)
- 05. Business.** Occupation, profession, or trade. (5-25-94)
- 06. Deceptive Practice.** Intentionally publishing or circulating any advertising concerning mobile or manufactured homes which:
 - a.** Is misleading or inaccurate in any material respect; (3-29-10)
 - b.** Misrepresents any of the products or services sold or provided by a manufacturer, manufactured/mobile home retailer, salesman, or installation company. (3-20-14)
- 07. Division.** The Division of Building Safety for the state of Idaho. (5-25-94)
- 08. Installer.** A person who owns a business which installs manufactured/mobile homes at the sites where they are to be occupied by the consumer. The term does not include the purchaser of a manufactured/mobile home or a manufactured/mobile home retailer who does not install manufactured/mobile homes. A retailer who does install manufactured/mobile homes is an installer. The term also does not include concrete contractors or their employees. (3-29-10)
- 09. Installation.** The term includes “setup” and is the complete operation of fixing in place a manufactured/mobile home for occupancy. (5-25-94)
- 10. Manufactured Home.** A structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one (1) or more sections, which, in the

traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401, et seq. (3-20-14)

- 11. Manufactured Home Retailer.** Except as otherwise provided in these rules: (3-29-10)
- a.** Any person engaged in the business of selling or exchanging new and used units; or (5-25-94)
 - b.** Any person or who buys, sells, lists, or exchanges three (3) or more new and used units in any one (1) calendar year. (5-25-94)

12. Manufactured/Mobile Home Salesman. Any person employed by a manufactured/mobile home retailer or resale broker for a salary, commission, or compensation of any kind to sell, list, purchase, or exchange or to negotiate for the sale, listing, purchase, or exchange of new, used, brokered, or third-party owned units, except as otherwise provided in Title 44, Chapter 21, Idaho Code. (3-20-14)

13. Manufacturer. Any person engaged in the business of manufacturing manufactured homes that are offered for sale, lease, or exchange in the state of Idaho. (3-20-14)

14. Mobile Home. A factory-assembled structure or structures generally constructed prior to June 15, 1976, the date of enactment of the Federal Manufactured Housing and Safety Standards Act (HUD Code), and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation. (3-20-14)

15. Person. A natural person, corporation, partnership, trust, society, club, association, or other organization. (5-25-94)

16. Principal Place of Business. The primary physical location at which the business of a manufactured home retailer or resale broker is lawfully conducted. Each of the following requirements shall be met to qualify as the principal place of business: (3-20-14)

- a.** The business of the manufactured or mobile home retailer or resale broker is lawfully conducted here; (3-20-14)
- b.** The office or offices of the retailer or resale broker is or are located here; (3-20-14)
- c.** The public may contact the retailer, resale broker, or salesman here; (3-20-14)
- d.** The offices are accessible and open to the public; and (3-20-14)
- e.** The greatest portion of the retailer's business is conducted here. The books and other records of a retailer must be kept and maintained at the retailer's principal place of business and be open to inspection during normal business hours by any authorized agent of the Division. Moreover, there shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the retailer. (3-29-10)

17. Responsible Managing Employee (RME). The person designated by the employer to supervise other employees, either personally or through others. (5-25-94)

18. Unit. A mobile or manufactured home. (5-25-94)

19. Used Manufactured Home or Mobile Home. A manufactured home or mobile home, respectively, which has been: (5-25-94)

- a. Sold, rented, or leased and occupied prior to or after the sale, rental, or lease; or (5-25-94)
- b. Registered with or been the subject of a certificate of title issued by the Idaho Department of Transportation or the appropriate authority of any state, the District of Columbia, or foreign state or country. (5-25-94)

(BREAK IN CONTINUITY OF SECTIONS)

014. PROOF OF EDUCATION REQUIRED.

01. Satisfactory Proof for Initial Application Submission. An application for a license as a manufactured/mobile home installer must include proof satisfactory to the Division that the applicant has completed the following number of hours of initial education in order to be approved: (4-7-11)

- a. Installers and retailers who are installers: eight (8) hours. (3-20-14)
- b. The course of initial education must be approved by the Division and shall include information relating to the provisions of these rules, Title 44, Chapters 21 and 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974. (4-7-11)

02. Satisfactory Proof for License Renewal. The Division shall not renew any installer license, or retailer license of any dealer who is also an installer, issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or these rules until the licensee has submitted proof satisfactory to the Division that he has, during ~~the one three~~ ~~(+3)~~ years immediately preceding the renewal of the license, completed at least ~~four~~ ~~eight~~ ~~(+8)~~ hours of continuing education. ~~(3-20-14)~~ ~~()~~

03. Continuing Education Course. The course of continuing education must be approved by the Division and shall include information relating to the following: (4-7-11)

- a. Manufactured housing or mobile home parks which will enable a person to give better service to the members of the general public and tenants of manufactured/mobile home parks; (4-7-11)
- b. The construction, including components and accessories, rebuilding, servicing, installation, or sale of manufactured/mobile homes; (4-7-11)
- c. Legislative issues concerning manufactured/mobile home housing and manufactured/mobile home parks, including pending and recently enacted state or federal legislation; and (4-7-11)
- d. These rules, Title 44, Chapters 21 or 22, Idaho Code, and the Manufactured Housing Safety Standards Act of 1974. (4-7-11)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.03.12 – RULES GOVERNING MANUFACTURED OR MOBILE HOME INSTALLATIONS

DOCKET NO. 07-0312-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 44-2201 and 44-2104, 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 20, 2017.

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:

Pursuant to Section 44-2201, Idaho Code, all used mobile and manufactured homes shall be installed in accordance with the Idaho Manufactured Home Installation Standard, as provided by rule. The Idaho Manufactured Home Installation Standard has not been updated since 2004. Through the negotiated rulemaking process the Division and Board have established a newer and updated edition of the standard reflecting installation requirements and safety considerations currently applicable to the industry. Additionally, the Division is seeking to modify the training requirements for manufactured home installation inspectors to reflect a more practical and valuable schedule for inspectors to acquire necessary education. This rulemaking updates the Idaho Manufactured Home Installation Standard and adopts the 2018 edition for application to the installation of used manufactured homes in the state. The rulemaking also modifies the annual training requirements for inspectors of manufactured home installations from an annual four (4) hour training requirement to eight (8) hours of training every three (3) years.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 18 through 19](#).

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:

Pursuant to Section 44-2201, Idaho Code, all used mobile and manufactured homes shall be installed in accordance with the Idaho Manufactured Home Installation Standard, as provided by rule. The Idaho Manufactured Home Installation Standard has not been updated since 2004. Through the negotiated rulemaking process, the Division and Board have established a newer and updated edition of the standard reflecting installation requirements and safety considerations currently applicable to the industry – Idaho Manufactured Home Installation Standard, January 1, 2018 edition.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ron Whitney, Deputy Administrator, at (208) 332-7150.

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 27, 2017.

DATED this 7th day of August, 2017.

Ron Whitney
Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0312-1701
(Only Those Sections With Amendments Are Shown.)

004. ADOPTION AND INCORPORATION BY REFERENCE.

The Idaho Manufactured Home Installation Standard (January 1, 200418 edition), as adopted by the administrator, is hereby adopted and incorporated by reference into these rules. A current copy is available for review or copying at the office of the Division of Building Safety, 1090 E. Watertower Street., Suite 150, Meridian, Idaho 83642, 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho, 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

018. MINIMUM TRAINING REQUIREMENTS FOR INSPECTORS.

01. Annual Training or Instruction. All installation inspectors employed by the Division of Building Safety or a city or county shall complete ~~four~~ eight (48) hours of ~~annual~~ training or instruction every three (3) years dedicated to the installation and inspection of manufactured and mobile homes. ~~(3-27-13)~~()

02. Division Approval. All training and instruction shall be approved by the Division in order to qualify and satisfy the requirements in Subsection 018.01 of these rules. (3-27-13)

03. Revocation of Approval. Training or instruction approval is subject to revocation by the Division if in its discretion it determines that for any reason the training or instruction fails to meet the intent of furthering the education of manufactured home installation inspectors including, but not limited to, inadequacies in course content or methods of delivery. (3-27-13)

IDAPA 07 – DIVISION OF BUILDING SAFETY
07.04.01 – RULES GOVERNING SAFETY INSPECTIONS – GENERAL
DOCKET NO. 07-0401-1701
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2601A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

Many of the statutory references, as well as certain provisions related to other programs and authorities in the current rules are very outdated, and do not apply. Additionally, statutory authority to administer the safety program for state facilities was transferred solely to the Division in 2015. Accordingly, other applicable rules related to the inspections thereof, which were previously administered by the Idaho Industrial Commission, have been updated. This rule amends outdated statutory provisions, and updates the adopted safety standards applicable to the safety inspections the Division conducts on state-owned buildings, or those it may conduct for a political subdivision. It also eliminates unnecessary references to programs that are no longer administered through this particular Division safety program such as elevators and boilers. Finally, the rulemaking updates certain requirements for public employers to ensure a safe workplace, as well as the annual inspection process the Division currently engages in when inspecting state facilities.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 20 through 21](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Barnes, Industrial Safety Program Manager, Division of Building Safety at (208) 332-8974.

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 27, 2017.

DATED this 4th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0401-1701
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted the administrator of the Division of Building Safety by Sections ~~39-4104, 39-4130, and 39-4131~~ 67-2601A and 67-2311 through 67-2318, Idaho Code. (7-1-97)()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 07.04.01, “Rules Governing Safety Inspections - General.” These rules prescribe the criteria for enforcement of Sections ~~39-4130, 39-4131, 67-2601A and 67-2311, 67-2312, 67-2313, 67-2314, 67-2316, 67-2317, 72-720, 72-721, 72-722, and 72-723~~ through 67-2318, Idaho Code. (7-1-97)()

002. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of this chapter *in the form of legal memoranda*. (7-1-97)()

003. ADMINISTRATIVE APPEALS.

There are no provisions for administrative appeal of these rules. (7-1-97)()

004. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Damage Prevention Board is at the Division of Building Safety office located at 1090 E. Watertower Street, Suite 150, Meridian, ID 83642. The Damage Prevention Board may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d’Alene, Idaho 83814, and at 2055 Garrett Way, Building 1, Suite 4, Pocatello, ID 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Division’s website is <http://dbs.idaho.gov>. ()

005. PUBLIC RECORDS ACT COMPLIANCE.

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

006. INCORPORATION BY REFERENCE.

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

~~007.~~ -- 010. (RESERVED)

011. SAFETY INSPECTIONS.

~~**01. Safety and Occupational Health Inspections.** (7-1-97)~~

~~**a.** Safety advisors for the Division of Building Safety, Bureau of Logging and Industrial Safety, Industrial Safety Section, will make periodic inspections in places of employment covered by Sections 39-4130 and 39-4131, Idaho Code, to ascertain whether there exists any violation of any law of this state relating to safety or sanitary conditions or practices, or whether there is a violation of any safety standards adopted by the Industrial Commission of the state of Idaho. (7-1-97)~~

01. Safety Advisors. Safety advisors for the Division of Building Safety, *Bureau of Logging and Industrial Safety*, Industrial Safety Section, will shall make periodic inspections of public buildings covered by Sections 67-2311, ~~67-2312, 67-2313, 67-2314, 67-2316, and 67-2317~~ through 67-2318, and 67-2601A, Idaho Code, and the immediate environs thereof, for the purpose of ascertaining unsafe or hazardous conditions not only to the state’s employees but to inmates therein, attendants thereat, and to the general public. (7-1-97)()

~~**e.** Safety Advisors for the Division of Building Safety, Bureau of Logging and Industrial Safety, Industrial Safety Section, will make periodic inspections of employment covered by Sections 72-720, 72-721, 72-722,~~

~~and 72-723, Idaho Code, in support of the Industrial Commission of the state of Idaho to ascertain whether there exists any violation of any law of this state relating to safety or sanitary conditions or practices, or whether there is a violation of any safety standards adopted by the Industrial Commission of the state of Idaho. (7-1-97)~~

402. Inspection Standards. Safety and occupational health inspections shall be conducted using ~~IDAPA 17-10.01, “Safety and Health Rules for Places of Public Employment,”~~ and as the primary standards, the rules contained herein. Idaho Code, ~~as the primary standards applicable; and applicable provisions, as determined by the division, of 29 CFR 1910, Occupational Safety and Health Standards, and 29 CFR 1926, Safety and Health Regulations for Construction,~~ with the following standards used as a basis for appraisals of other hazards: ~~Uniform the International Building Code (UBC) as adopted by the Building Code Board, and as amended and in effect pursuant to IDAPA 07.03.01; Uniform the International Fire Code (UFC), as adopted by the Department of Insurance, and as amended and in effect pursuant to IDAPA 18.01.50; Uniform the Mechanical Codes (UMC), as adopted by the Idaho Heating, Ventilation and Air Conditioning Board, and as amended and in effect pursuant to IDAPA 07.07.01; Uniform the Idaho State Plumbing Code (UIPC), as adopted by the Idaho Plumbing Board, and as amended and in effect pursuant to IDAPA 07.02.06; the National Electric Code (NEC), as adopted by the Idaho Electrical Board, and as amended and in effect pursuant to IDAPA 07.01.06; the most current edition of the Life Safety Code; the most current standards of the American National Standards Institute (ANSI); the most current standards of the National Fire Protection Association (NFPA); the most current standards of the Consumer Product Safety Commission (CPSC); the most current standards of the National Institute for Occupational Safety and Health (NIOSH); 29 CFR 1910, General Industry Standards; 29 CFR 1926, Construction Standards;~~ nationally recognized industry standards; and other nationally recognized standards and codes. (7-1-97)()

~~**02. Elevator Inspections.** (7-1-97)~~

~~**a.** Safety Advisors for the Division of Building Safety, Bureau of Logging and Industrial Safety, Industrial Safety Section, will witness the testing of elevators and related installations. (7-1-97)~~

~~**b.** The inspection and testing of elevators and related installations shall be conducted in accordance with the provisions of Title 39, Chapter 86, Idaho Code; ANSI A17.1 Safety Code for Elevators and Escalators; ANSI A17.1 Handbook; ANSI A17.2.1 Inspector’s Manual for Electric Elevators; ANSI A17.2.2 Inspector’s Manual for Hydraulic Elevators; ANSI A17.2.3 Inspector’s Manual for Escalators and Moving Walks; ANSI A17.3 Existing Elevators and Escalators; ANSI A117.1 Accessible and Usable Building and Facilities; the Uniform Building Code; and the National Electric Code. (7-1-97)~~

~~**03. Boiler and Pressure Vessel Inspections.** (7-1-97)~~

~~**a.** Boiler and pressure vessel inspections will be conducted by boiler and pressure vessel inspectors who work for an insurance company authorized to write insurance in Idaho, who are currently certified by the National Board of Boiler and Pressure Vessel Inspectors, and have a current Idaho Commission. (7-1-97)~~

~~**b.** The inspection of boilers and pressure vessels shall be conducted in accordance with the provisions of IDAPA 17-06.01, “Boiler and Pressure Vessel Safety Rules – General Requirements”; National Board Inspection Code; and the ASME Boiler and Pressure Vessel Code. (7-1-97)~~

012. REQUIREMENTS.

01. Safe Workplace. Every public employer shall furnish a place of employment free from recognized hazards which may cause serious injury or death to employees. Recognized hazards are those addressed by codes adopted by the state. ()

02. Safety Devices. Every public employer shall furnish and use appropriate safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are adequate to render the place of employment safe and free of occupational health hazards. ()

03. Posted Warnings. Every public employer shall post warning signs in areas where employees are exposed to injury hazards and shall ensure that employees comply with the posted warnings. ()

04. Training and Equipment. No public employer shall require an employee to go or be in any place of employment which is unsafe unless that employee has the appropriate training, is properly equipped, and is authorized to go or be in such place. ()

05. Minimum Construction Standards. No public employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment which does not meet the minimum safety requirements identified by codes adopted by the state, or other nationally recognized codes and standards as listed in Section 007 of these rules. ()

06. Training. ()

a. It shall be the responsibility of the public employer to establish and ensure a safe and healthful working environment, and to establish an accident-prevention program and training program to improve the skill and competency of all employees in the area of safety and occupational health. ()

b. Such training shall include on-the-job instruction in the safe use of powered materials-handling equipment, machine tool operations, use of hazardous/toxic materials, and operation of utility systems prior to assignment to jobs involving such exposures. ()

013. ADMINISTRATION.

01. Annual Inspections. All safety inspections of places of public employment conducted pursuant to these rules shall be performed by personnel of the Division of Building Safety, Industrial Safety Section, on an annual basis in accordance with Section 67-2313, Idaho Code. Such inspection shall be conducted in accordance with the standards and codes set forth herein. ()

02. Public Employer Responses. An employer shall respond within twenty (20) days of receipt of any inspection report containing findings. The response shall be made to the Division of Building Safety, Industrial Safety Section, 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. If additional time is needed to respond, the administrator is authorized to grant an extension when a written request is received from the agency. ()

03. Inapplicability of Penalties. Any provisions contained in the Occupational Safety and Health Administration regulations, including but not limited to 29 CFR 1910 and 29 CFR 1926, which relate to or provide for civil penalties for violations of the standards contained therein, shall not apply and shall not be enforced by the Division of Building Safety in the administration of the state's safety and occupational health program. ()

0124. -- 999. (RESERVED)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.04.02 – SAFETY RULES FOR ELEVATORS, ESCALATORS, AND MOVING WALKS

DOCKET NO. 07-0402-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-8605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

Adoption of the most recent editions of the codes enables the companies installing elevators and other conveyances and the building owners and operators the ability to use the most current and safest products and technology in their buildings. This rulemaking adopts updates and the most recent editions of the safety codes governing the installation and inspection of elevators, escalators, moving walks, and other conveyances in the state of Idaho.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 22 through 23](#).

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:

Adoption of the most recent editions of the codes enables the companies installing elevators and other conveyances and the building owners and operators the ability to use the most current and safest products and technology in their buildings. This rulemaking adopts and incorporates by reference updates and the most recent editions of the safety codes below:

- ANSI/ASME A17.1 2016, Safety Code for Elevators and Escalators.
- ANSI/ASME A17.2 2014 Guide for Inspection of Elevators, Escalators, and Moving Walks.
- ANSI/ASME A17.3 2015 Safety Code for Existing Elevators and Escalators.
- ANSI/ASME A17.5 2014 Elevator and Escalator Electrical Equipment.
- ANSI/ASME A17.7 2012 Performance-based Safety Code for Elevators and Escalators.
- ICC/ANSI A117.1 2009 Accessible and Usable Buildings and Facilities.
- ANSI/ASME A18.1 2014 Safety Standards for Platform Lifts and Chairlifts.
- ASME QE-1 2013 Standard for the Qualification of Elevator Inspectors.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Barnes at (208) 332-8974.

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 27, 2017.

DATED this 3rd day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0402-1701
(Only Those Sections With Amendments Are Shown.)

004. ADOPTION AND INCORPORATION BY REFERENCE.

01. Documents. The following codes, amendments, and updates are hereby adopted and incorporated by reference into these rules for all conveyances subject to this chapter. (4-2-08)

a. ANSI/ASME A17.1 201~~06~~, Safety Code for Elevators and Escalators with the following exceptions: ~~(3-29-12)~~()

i. Compliance with section 2.8.3.3.2 shall require that the means for disconnecting the main power as required by this section to be within sight of controller for all conveyances with an elevator machine room or control room. ~~(3-29-10)~~()

ii. Compliance with section 8.11.2.1.5(c) Car and Counterweight Buffer testing shall be conducted at slow speed in accordance with Item 5.9.2.1(a) in ANSI/ASME A17.2 20~~07~~14. ~~(3-29-12)~~()

iii. Compliance with Section 2.2.2.5, which requires a sump pump or drain in the elevator pit, shall be optional. If a sump pump or drain is installed, it shall meet the requirements of this section. A sump with a cover shall be provided in each elevator pit. (3-29-12)

b. ANSI/ASME A17.2 20~~07~~14 Guide for Inspection of Elevators, Escalators, and Moving Walks. ~~(3-29-10)~~()

c. ANSI/ASME A17.3 20~~08~~15 Safety Code for Existing Elevators and Escalators. ~~(3-29-10)~~()

d. ANSI/ASME A17.4 1999 Guide for Emergency Personnel. (4-2-08)

e. ANSI/ASME A17.5 20~~01~~14 Elevator and Escalator Electrical Equipment. ~~(5-8-09)~~()

f. ANSI/ASME A17.6 2010 Standard for Elevator Suspension, and Governor Systems. (3-29-12)

g. ANSI/ASME A17.7 20~~07~~12 Performance-based Safety Code for Elevators and Escalators. ~~(3-29-12)~~()

h. ICC/ANSI A117.1 200~~39~~ Accessible and Usable Buildings and Facilities. ~~(4-2-08)~~()

i. ANSI/ASME A18.1 20~~08~~14 Safety Standards for Platform Lifts and Chairlifts. ~~(3-29-10)~~()

j. ASME QE-1 201~~03~~ Standard for the Qualification of Elevator Inspectors. ~~(3-29-12)~~()

02. Copies. Copies of the codes, amendments, and updates listed in Subsection 004.01 of these rules are available for review at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Suite 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 74, Pocatello, Idaho 83201. ~~(3-29-12)~~()

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.07.01 – RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0701-1701

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 54-5001 and 54-5005, 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 20, 2017.

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 edition of the International Residential Code requires mechanical ventilation and details how to design the systems to achieve the required flowrate of air as expressed in cubic feet per minute (CFM). This is based on the number of bedrooms and square footage of the dwelling. The existing administrative rule provision does not improve or help administer this requirement beyond that which is already contained in the code itself. Accordingly, the code amendment in the rules is not needed. This rulemaking deletes an amendment to a mechanical provision (section M1502.4.2) of the International Residential Code related to System Design that is no longer necessary.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature. The International Residential Code (IRC) currently adopted for the State of Idaho already contains provisions related to designing mechanical systems to achieve the required flowrate of air in residences. This rulemaking merely deletes an unnecessary amendment to the IRC that is already adequately covered elsewhere therein. Additionally, the proposed rulemaking was discussed at several HVAC board meetings over the course of the last year, without opposition from mechanical contractors or the public.

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:

This rulemaking deletes an amendment to a mechanical provision (section M1502.4.2) of the International Residential Code related to System Design that is no longer necessary.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Nielsen at (208) 332-7112.

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 27, 2017.

DATED this 11th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
Phone: (208) 332-7150 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1701
(Only Those Sections With Amendments Are Shown.)

006. ADOPTION AND INCORPORATION BY REFERENCE OF PART V (MECHANICAL) AND PART VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE (1)- AND TWO (2)- FAMILY DWELLINGS, 2012 EDITION.

01. Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One (1)- and Two (2)-Family Dwellings. The 2012 Edition, including appendixes “A, B, C, and D,” (herein IRC) is adopted and incorporated by reference with the following amendments: (3-20-14)

a. Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code, and IDAPA 07, Title 07, Chapter 01, the provisions in Idaho Code and IDAPA rules shall apply. (4-7-11)

b. All references to the International Plumbing Code (IPC) shall be construed as referring to the Idaho State Plumbing Code (ISPC) as adopted and amended by the Idaho State Plumbing Board. (3-20-14)

c. All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-7-11)

d. Add the following as section M1201.3 and section G2402.4 (201.4): Alternative materials, design and methods of construction equipment. The provisions of this part of the code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the authority having jurisdiction finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code. Compliance with the specific performance-based provisions of this part of the code in lieu of specific requirements of this code shall also be permitted as an alternate. (4-4-13)

e. Add the following as section M1201.3.1 and section G2402.4.1 (201.4.1): Tests. Whenever there is insufficient evidence of compliance with the provisions of this part of the code, or evidence that a material or method does not conform to the requirements of this part of the code, or in order to substantiate claims for alternative materials or methods, the authority having jurisdiction shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the authority having jurisdiction shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the authority having jurisdiction for the period required for retention of public records. (4-4-13)

f. Add the following as section M1203.1: Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages. (4-4-13)

g. Add the following as section M1203.2: Where required in existing dwellings. Where work requiring a permit occurs in existing dwellings that have attached garages or in existing dwellings within which fuel-fired appliances exist, carbon monoxide alarms shall be provided in accordance with Subsection 006.01.f. of these rules. (4-4-13)

h. Add the following as section M1203.3: Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer’s installation instructions. (4-4-13)

i. Section M1502.4.1 Material and size. Add the following exception: Dryer duct may be constructed of 0.013 (30 gauge) or equivalent if prefabricated 0.016 (28 gauge) ducts and fittings are not available. (3-20-14)

j. Delete Section M1502.4.2 Duct Installation and replace with the following: Exhaust ducts shall be supported at four (4) foot (1,219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct. (3-20-14)

~~**k.** Section M1507.3.1 System Design. Add the following to the end of the section: Outdoor air shall be ducted predominantly horizontal to avoid chimney effect. Outdoor air ducts will contain an accessible back draft damper and be designed to have an open cross section of twenty (20) square inches per one thousand (1,000) square feet of conditioned space. (3-20-14)~~

~~**k.** Table M1601.1.1 (2) Gauges of Metal Ducts and Plenums Used for Heating or Cooling. Add the following exception: Round duct, enclosed rectangular ducts and fittings less than fourteen (14) inches may be constructed of 0.013 (30 gauge) or equivalent if prefabricated 0.016 (28 gauge) ducts and fittings are not available. (3-20-14)~~

~~**l.** Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-7-11)~~

~~**m.** Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (one hundred forty (140) kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (seventy (70) kPa gauge), not less than sixty (60) psig (four hundred twenty (420) kPa gauge) test pressure shall be required. For systems over ten (10) psig (seventy (70) kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-7-11)~~

~~**n.** Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (4-7-11)~~

~~**o.** Add a new section G2427.4.1.2 as follows: Testing. All plastic pipe within a dwelling used for venting flue gases shall be tested at five (5) psi for fifteen (15) minutes. (4-4-13)~~

02. Availability of the International Residential Code for One (1)- and Two (2)-Family Dwellings.
The 2012 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150 Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. (3-20-14)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.07.01 – RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0701-1702

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 54-5005 and 54-5021, 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 20, 2017.

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

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

Section 54-5021, Idaho Code, requires that HVAC inspectors are to be appropriately certified for the type of HVAC work that they are inspecting in accordance with administrative rule. This rulemaking identifies two entities currently available that certify mechanical inspectors, and allows the HVAC Board the flexibility to approve any other professional certifying body.

This rule specifies that all mechanical inspectors in Idaho employed by the state or a local government shall hold an inspector certification as either a commercial or residential mechanical inspector, as required depending on the type of mechanical work being inspected. It also provides that mechanical inspectors shall obtain such certification from the International Association of Plumbing and Mechanical Officials (IAPMO), the International Code Council (ICC), or another professional certifying body as approved by the HVAC Board.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature. Idaho Code requires that HVAC inspectors be certified as commercial or residential mechanical inspectors. The large majority of mechanical inspectors with the Division and local jurisdictions attain certification through two organizations – International Code Council (ICC), and the International Association of Plumbing and Mechanical Officials (IAPMO). This rulemaking would only establish in rule what is largely occurring already among mechanical inspectors. Additionally, the proposed rulemaking was discussed at numerous HVAC board meetings over the course of several years, without opposition from mechanical inspectors or the public.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Nielsen at (208) 332-7112.

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 27, 2017.

DATED this 11th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
Phone: (208) 332-7150 / Fax: (877) 810-2840

1090 E. Watertower Street, Suite 150
P. O. Box 83720
Meridian, ID 83642

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1702
(Only Those Sections With Amendments Are Shown.)

061. INSPECTOR QUALIFICATIONS.

In accordance with Section 54-5021, Idaho Code, all mechanical inspectors in Idaho employed by the state or a local government shall hold an inspector certification as a commercial or residential mechanical inspector, as required depending on the type of mechanical work being inspected. Mechanical inspectors shall obtain the requisite certification from either the International Association of Plumbing and Mechanical Officials (IAPMO), the International Code Council (ICC), or other professional certifying body as approved by the board. ()

~~061~~². -- 069. (RESERVED)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.08.17 – IDAHO MINIMUM SAFETY STANDARDS AND PRACTICES FOR LOGGING – CABLE-ASSISTED LOGGING SYSTEMS

DOCKET NO. 07-0817-1701 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 67-2601A, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the June 7, 2017 Idaho Administrative Bulletin, [Vol. 17-6, pages 23 through 27](#).

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:

This rulemaking is not expected to impact the General Fund, and is not expected to have any significant effect on the funding for the program or the logging industry. The positive effect on the logging industry will be to enable those acquiring equipment for this type of logging operation the predictability they need to make informed investments in equipment that will likely meet industry standards into the future.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Larry Jeffres at (208) 332-4014 or by email at larry.jeffres@dbs.idaho.gov.

DATED this 31st day of July, 2017.

Larry Jeffres
Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-4014
Fax: (877) 810-2840

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.09.01 – SAFETY AND HEALTH RULES FOR PLACES OF PUBLIC EMPLOYMENT

DOCKET NO. 07-0901-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2601A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 rules of the Division of Building Safety, Safety and Health Rules for Places of Public Employment, IDAPA 07, Title 09, Chapter 01, are being repealed in their entirety. Statutory authority to administer the safety and health program for state facilities was transferred solely to the Division in 2015. Consequently, applicable rules contained herein this chapter will be updated and incorporated into a different chapter of the IDAPA code (07.04.01), which is already administered by the Division. As a result, this chapter of the rules is unnecessary.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted in an open, public meeting on May 2, 2017. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2017 Idaho Administrative Bulletin, [Vol. 17-4, pages 24 through 25](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Barnes, Industrial Safety Program Manager, Division of Building Safety at (208) 332-8974.

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 27, 2017.

DATED this 11th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
Phone: (208) 332-7150 / Fax: (877) 810-2840

1090 E. Watertower Street, Suite 150
P. O. Box 83720
Meridian, ID 83642

IDAPA 07.09.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.10.01 – RULES GOVERNING THE DAMAGE PREVENTION BOARD, DIVISION OF BUILDING SAFETY

DOCKET NO. 07-1001-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 55-2203, 55-2208 and 55-2211, 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 20, 2017.

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:

During the 2016 session, the Idaho Legislature established the Damage Prevention Board and amended the statutory scheme in Title 55, Chapter 22, Idaho Code, related to the prevention of damage of underground facilities throughout the state. Several statutory sections within Title 55, Chapter 22, Idaho Code, require the Board to adopt rules governing various aspects of the Board's authority to regulate safe practices, and the conduct of those involved in the industry in order to prevent damage to underground facilities. These statutory Sections include 55-2203, 55-2208 and 55-2211. The rules required pursuant to these statutes relate to the adoption of training programs, improving technology and facility owners' internal performance measures, the adoption of processes for filing claims and complaints related to damaged facilities and excavator downtime, and the establishment of civil penalties for violations of the Damage Prevention Board statutes and rules.

This rulemaking provides several definitions of key terms including "hand digging" and "soft digging;" it establishes the adoption process and accessibility of educational and training materials for use by stakeholders; as well as processes for the review of the adequacy of facility owners' ability to locate their facilities, and reviewing technology to improve communication and locating capabilities. The rulemaking also establishes procedural requirements for filing complaints and claims related to underground facility damage or excavator downtime. Finally, it establishes the civil penalties that may be imposed for certain violations of the statutes and rules.

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:

The 2016 Legislature amended Title 55, Chapter 22, Idaho Code related to the prevention of damage to underground facilities throughout the state. Several statutory sections within Title 55, Chapter 22, Idaho Code, require the Board to adopt rules governing various aspects of the industry to ensure safe practices and the protection of underground facilities. Because the statutes require much of the detail about administering the program to be set forth in rule, it is difficult for the Board to actually implement an effective damage prevention program. Additionally, the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation conducts an annual evaluation of the State's excavation and underground damage prevention program to determine if it meets federal requirements.

In 2016, PHMSA found that the State of Idaho's program was inadequate largely due to the State's inability to enforce safe practices related to the protection of underground facilities, including the imposition of penalties and other sanctions. Establishing the authorities and policies provided in this rulemaking will be a critical step toward obtaining approval from PHMSA when it performs its 2017 evaluation of the State's program. In the absence of a state-approved program, PHMSA exercises jurisdiction over all pipelines and hazardous materials facilities, which is not preferred by those within the industry.

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

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

There will be no fiscal impact to the state General Fund. It is expected that there will be a positive impact on the Damage Prevention Board dedicated fund as civil penalties are collected; however that may be offset by a negative impact to the Division as a result of the need to perform investigative activities in response to complaints received. Civil penalties will only adversely affect those stakeholders who do not comply with legal requirements. A positive and necessary economic result will be the reduction of underground facility damages throughout the State of Idaho, as well as reinforcement of public safety through the protection of life and property. The fiscal impact to the various stakeholders providing such assurance may be significant - up to hundreds of thousands of dollars spent in some cases on additional staffing and supporting resources to effectively reduce damage to underground facilities. Such expenses to facilities owners are expected to be offset by the reduction of actual damages when the damage prevention program begins to operate effectively.

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 March 1, 2017 Idaho Administrative Bulletin, [Vol. 17-3, pages 20 through 21](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ron Whitney, Deputy Administrator, at (208) 332-7150.

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 27, 2017.

DATED this 9th day of August, 2017.

Ron Whitney, Deputy Administrator
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83642
Phone: (208) 332-7150
Fax: (877) 810-2840

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 07-1001-1701
(Only Those Sections With Amendments Are Shown.)**

007. DEFINITIONS.

01. Hand Digging. Any excavation involving non-mechanized tools or equipment that when used properly will not damage underground facilities. Hand digging includes but is not limited to hand shovel digging, manual post hole digging, vacuum excavation, or soft digging. (9-1-17)T

02. Soft Digging. Any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation. (9-1-17)T

~~0078.~~ FUNDING OF BOARD ACTIVITIES.

Each owner of an underground facility shall pay a fee of ten cents (\$.10) each time such owner receives notice from a one-number notification service as required by Section 55-2205, Idaho Code. The fee assessed upon the underground facility owner shall be collected by the one-number notification service, and shall be payable to the board in accord with the following schedule: (3-24-17)

01. Fee Assessed. The fee shall be assessed on an underground facility owner for each notification issued by the one-number notification service to the underground facility owner, with the one-number notification service required to submit a summary of the number of notices issued in a given month to the board no later than fifteen (15) days following the end of the month in which the notices were issued. (3-24-17)

02. Payment Submission. The one-number notification service shall submit payment to the board for all payments received from underground facility owners no later than seventy (70) days following the end of the month in which the notices were issued to the facility owners. In those cases where the payment from the underground utility owner is received after the seventy-day (70) period, the one-number service shall include late payments in its next payment to the board. (3-24-17)

03. Notices Issued. The one-number notification service shall also submit a detailed list of notices issued, including the facility owner's contact information, for which payment has not been received within the seventy (70) day period following the end of the month in which the notices were issued. Such list shall be updated on a monthly basis to reflect the status of all past-due payments due from underground utility owners that have not been received. (3-24-17)

04. Civil Penalties. Underground facility owners failing to submit payment to the one-number notification service in a timely manner shall be subject to the imposition of civil penalties and other remedies referenced in Title 55, Chapter 22, Idaho Code. (3-24-17)

~~0089.~~ AUDIT OF ONE-NUMBER SERVICE RECORDS.

The board shall have the right to review and audit the payment records of any one-number notification service relating to the collection of the ten cent (\$.10) fee imposed on underground facility owners. In the event the board wishes to conduct a review and/or audit of a one-number notification service, the board shall provide no less than a five (5) business day advance notice of the intended action. The board may delegate any responsibilities contained herein this chapter to the Division of Building Safety. (3-24-17)

~~00910.~~ -- ~~999014.~~(RESERVED)

015. EDUCATIONAL AND TRAINING MATERIALS.

01. Approval of Training and Educational Programs. The Damage Prevention Board shall approve and provide public notice through the Division of Building Safety acceptable training courses or programs and educational materials on relevant underground facility damage prevention topics pertaining to safe excavation, locating and marking of facilities, determining facility damage, emergency procedures, excavator downtime, pre-marking of intended excavation areas, and appropriate procedures when encountering unmarked facilities. (9-1-17)T

02. Scope of Training and Educational Programs. Such training programs and educational materials shall relate to various aspects of underground facility damage prevention, and shall contain practices, information, and standards generally accepted and recognized among stakeholders in Idaho. (9-1-17)T

03. Accessibility of Training and Educational Programs. The Division of Building Safety shall maintain a database of approved educational materials and training programs, and periodically update such as may be required by the board. The Division of Building Safety shall cause such educational materials and the identity of such training programs to be placed on its website so that interested persons may view it online. (9-1-17)T

04. Purposes of Training and Educational Programs. Such programs may be used for general

educational use by stakeholders or for remedial training that may be ordered by the board or the administrator pursuant to Section 55-2211, Idaho Code. Should completion of a training course by a stakeholder be required as a result of a violation of this chapter in accordance with Section 55-2211, Idaho Code, The Division of Building Safety shall record and maintain validation of successful completion of any such required training for two (2) years from date of completion. (9-1-17)T

016. ADEQUACY OF FACILITY OWNERS LOCATING UNDERGROUND FACILITIES.

The board shall review all stakeholder complaints of violations related to underground facility line locating, as well as generally accepted practices and procedures related to locating. Stakeholders shall take remedial actions to improve line-locating performance and shall monitor and report performance improvements to the board. (9-1-17)T

017. IMPROVEMENT OF TECHNOLOGY AND COMMUNICATIONS BY STAKEHOLDERS.

01. Adoption of Technology and Communications Materials. On an annual basis the board shall review and adopt any available technology and communications materials which promote effective underground facility locating. The board shall make available any such appropriate technology and communications materials as it may determine to all stakeholders on the Division of Building Safety website at <http://dbs.idaho.gov>. (9-1-17)T

02. Availability of Technology and Communications Materials. The board may request that stakeholders provide it with information or data related to procedures, methods, or technologies utilized by such stakeholders to enhance communications among other stakeholders, or that enhances underground facility locating capabilities, or enhances the stakeholder's ability to gather and analyze data related to underground facility damage. The board shall review such technologies, methods, or materials adopted by stakeholders to ensure that such use is adequate, as well as to provide stakeholders with best practices. The Division of Building Safety shall maintain an approved database of such referenced stakeholder data for public viewing and analysis on its website. (9-1-17)T

018. DAMAGE PREVENTION COMPLAINTS.

01. Complaint Forms. Persons may submit written complaints to the administrator regarding an alleged violation of Title 55, Chapter 22, Idaho Code, on such forms as required by the Division of Building Safety. Forms are available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. They may also be accessed electronically on the Division of Building Safety's website at <http://dbs.idaho.gov/>. Notice of the complaint shall be served concurrently on the alleged violator by the person submitting the complaint. Verifiable proof of such notification of a complaint provided to the alleged violator shall also be provided to the administrator. (9-1-17)T

02. Contents. Complaints shall include the name and address of the complainant and the alleged violator, the date and location of the alleged violation, as well as a complete description of the nature of the violation alleged, including whether it resulted in damage to an underground facility or an excavator downtime event. Complainants may also provide additional documentation in support of a complaint. Complaints shall be accompanied by a sworn declaration from the complainant declaring that the information contained therein is true and accurate. The administrator may request additional information or documents in support of the complaint. Complaint forms shall be subject to Title 74, Chapter 1, Idaho Code. (9-1-17)T

03. Complaint Procedures and Timelines. The following timelines and procedure shall govern the process of filing and administering complaints related to violations of Title 55, Chapter 22, Idaho Code, and the rules of the Damage Prevention Board. (9-1-17)T

a. Initial Filing. Complaints shall be filed with the administrator not later than thirty (30) days from the date of the alleged violation giving rise to the complaint or from the date the violation should have reasonably been discovered by the complainant, whichever is later. (9-1-17)T

b. Response. The administrator shall notify the alleged violator of the complaint and request a response and any additional information from the alleged violator as may be necessary. The alleged violator may provide a response to the administrator within thirty (30) days from the date they are notified of the complaint by the administrator. (9-1-17)T

c. Recommendation. Within thirty (30) days of receipt of the response, or if no response is received, within fifteen (15) days from the deadline for filing a response, the administrator shall notify the complainant and the alleged violator of his recommended course of action. The administrator may extend the period of time in which to determine a recommended course of action, and so notify the parties, if he determines it is necessary to further review or investigate the complaint. (9-1-17)T

d. Contest. In accordance with Section 55-2211, Idaho Code, the alleged violator shall have the right to contest the imposition of a civil penalty before the damage prevention board. Notice of such contest shall be provided by the alleged violator not more than thirty (30) days after receipt of the administrator's recommended course of action. Recommendations of the administrator regarding complaints may be reviewed by the board at its next regularly scheduled meeting. (9-1-17)T

019. CLAIMS AND REPORTS OF DAMAGE OR EXCAVATOR DOWNTIME.

01. Claims. Claims for the cost of repairs for damaged underground facilities shall be enforced by the affected underground facility owner in accordance with procedures as may be established by the facility owner, and in accordance with applicable law. Underground facility owners shall provide notice to excavator contractors of such procedures, along with sufficient information supporting the basis for the amount of a claim within six (6) months from the date of the event giving rise to the claim or from the date the event should have reasonably been discovered by the underground facility owner, whichever is later. (9-1-17)T

02. Reports. Underground facility owners and excavators who observe, suffer or cause damage to an underground facility or observe, suffer or cause excavator downtime related to a failure of one (1) or more stakeholders to comply with applicable damage prevention statutes or regulations shall report such information to the board on forms or by such method adopted for such by the board. Forms are available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. They may also be accessed electronically on the Division's website at <http://dbs.idaho.gov/>. (9-1-17)T

020. CIVIL PENALTIES.

The Idaho Damage Prevention Board is authorized under Section 55-2203(17), Idaho Code, to establish by administrative rule the fines to be paid for civil penalties issued for violations of Title 55, Chapter 22, Idaho Code. To the extent authorized by Section 55-2211, Idaho Code, the acts described in this section shall subject the violator to a civil penalty of not more than one thousand dollars (\$1,000) for a second offense and a civil penalty of not more than five thousand dollars (\$5,000) for each offense that occurs thereafter within eighteen (18) months from an earlier violation, and where facility damage has occurred. (9-1-17)T

01. Violations of Title 55, Chapter 22, Idaho Code. The following acts shall subject a person to civil penalties: (9-1-17)T

a. Pre-marking Excavation Site. Any person who fails to adequately pre-mark onsite the path of proposed excavation as reasonably required under the circumstances in accordance with Section 55-2205(1)(b), Idaho Code, shall be subject to a civil penalty. (9-1-17)T

b. Notice of Excavation. Any person who fails to provide notice of the scheduled commencement of excavation to any underground facility owner through a one-number notification service, or directly to a facility owner, as applicable within the prescribed time as required by Section 55-2205(1)(c), Idaho Code, shall be subject to a civil penalty. (9-1-17)T

c. One-Number Notification to Facility Owner. A one-number notification service that fails to provide notice of a scheduled excavation upon notification from an excavator shall be subject to a civil penalty. (9-1-17)T

d. Failure to Locate or Mark. An underground facility owner who fails to locate or mark its underground facilities in accordance with Section 55-2205(2), Idaho Code, or within the prescribed time provided therein shall be subject to a civil penalty. (9-1-17)T

e. Failure to Wait for Locate or Maintain Markings. An excavator who commences excavation prior

to waiting the time prescribed by Section 55-2205(2), Idaho Code, for all known facilities to be located and marked, or an excavator who fails to maintain the markings of underground facilities previously so marked subsequent to the commencement of excavation in accordance with Section 55-2205(2), Idaho Code, shall be subject to a civil penalty. (9-1-17)T

f. Failure to Cease Excavation or Report Unidentified Facilities. An excavator who does not cease excavation in the immediate vicinity upon the discovery of underground facilities therein, whether such facilities be active or abandoned, which were not previously identified or located with reasonable accuracy, or does not notify the owner or operator of the facilities, or a one-number notification service in accordance with Section 55-2205(4), Idaho Code, shall be subject to a civil penalty. (9-1-17)T

g. Failure to Identify Facilities in Contract Documents. Project owners who fail to indicate in bid or contract documents the existence of underground facilities known by the owner to be located within the proposed area of excavation in accordance with Section 55-2207, Idaho Code, shall be subject to a civil penalty. (9-1-17)T

h. Precautions to Avoid Damage. An excavator who does not engage in any of the activities required by Section 55-2207(2), Idaho Code, or use reasonable care to avoid damage to underground facilities shall be subject to a civil penalty. (9-1-17)T

i. Reporting of Damage to Facility. An excavator who fails to report to a facility owner and a one-number notification service any contact or damage to an underground facility caused by such excavator in the course of excavation, or fails to alert an appropriate authority upon an actual breach of a facility which causes the release of gas or hazardous liquids as required by Section 55-2208(1), Idaho Code, shall be subject to a civil penalty. (9-1-17)T

j. Reporting to the Board. An excavator or underground facility owner who observes, suffers or causes damage to an underground facility or excavator downtime related to the failure of one (1) or more stakeholders to comply with the damage prevention regulations and fails to report such information to the board as required by Section 55-2208(5), Idaho Code, shall be subject to a civil penalty. (9-1-17)T

k. Failure to Participate. Any person who fails to participate or cooperate with a one-number notification service as required by Section 55-2206, Idaho Code, shall be subject to a civil penalty. (9-1-17)T

02. Second Offense. For the purpose of this section, a second offense shall be deemed to be any violation of Title 55, Chapter 22, Idaho Code, for which a civil penalty may be imposed in accordance with this section which occurs within eighteen (18) months of a previous violation of any provision. (9-1-17)T

03. Multiple Violations. Each day that a violation of Title 55, Chapter 22, Idaho Code, occurs for which a civil penalty may be imposed as provided herein shall constitute a separate offense. (9-1-17)T

04. Judicial Review. Any party aggrieved by the final action of the Idaho Damage Prevention Board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (9-1-17)T

021. -- 999. (RESERVED)

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

10.01.02 – RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved 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 54-1208, 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 amendments will clarify the requirement to follow the Qualifications Based Selection statute Section 67-2320, Idaho Code. The intent is to clarify this statute applies to both consultants and subconsultants.

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 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, page 42-43](#).

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 or the agency dedicated fund because the amendment is a clarification of a process already required by law and rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

DATED this 7th day of August, 2017.

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

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.03 – RULES GOVERNING THE OMBUDSMAN FOR THE ELDERLY PROGRAM

DOCKET NO. 15-0103-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5003(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 20, 2017.

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 amends terminology and complaint processing procedures to better reflect existing practices and the intent of the Older Americans Act. It also clarifies that disclosure of records must conform with the Older Americans Act. The changes revise the term ‘substate ombudsman’ to ‘local ombudsman’ to conform with applicable state statutes and common usage; clarify times at which the ombudsman shall have access to certain facilities for purposes of investigations; clarify that a facility’s release of resident information to the ombudsman for investigation purposes does not violate HIPAA; and clarify that the disclosure of ombudsman records must be consistent with the Older Americans Act.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it was not feasible. The changes being made are driven primarily by the requirement to conform with federal law, as established by the Older Americans Act.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cathy Hart at (208) 577-2855

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 27, 2017.

DATED this 4th day of August, 2017.

Cathy Hart
State Ombudsman
Commission on Aging
341 W. Washington
Boise, ID 83702
Phone: (208) 577-2855
Fax: (208) 334-3033

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0103-1701
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

Any item not specifically defined below shall have the same meaning as those defined in IDAPA 15.01.01, “Rules Governing Senior Services Program,” and the [Older Americans Act \(OAA\), Section 711](#), and Title 67, Chapter 50, Idaho Code. (7-1-98)

01. Access. Right to enter long-term care facility upon notification of person in charge. (7-1-98)

02. Affected Parties. Long-term care facilities, state or county departments or agencies, or others against whom a complaint has been lodged. (7-1-98)

03. Area III. Planning and service area made up of: Canyon, Valley, Boise, Gem, Elmore, Washington, Ada, Adams, Payette, and Owyhee counties. (7-1-98)

04. Complainant. The [substate local](#) ombudsman or any individual or organization who registers a complaint with the [substate local](#) ombudsman. (7-1-98)()

05. Complaint Investigation/Resolution. Activities related to receiving, analyzing, researching, observing, interviewing, verifying or resolving a complaint through advocacy, facilitation, conciliation, mediation, negotiation, representation, referral, follow-up, or education. (7-1-98)

06. Complaints. Allegations made by or on behalf of eligible clients, whether living in long-term care facilities or in the community. (7-1-98)

07. Designation. Process by which the Office approves the location of [substate local](#) ombudsman programs within AAAs and delegates to such programs the authority to carry out the purposes of the program. (7-1-98)()

~~108.~~ **[Substate Local](#) Ombudsman.** An individual associated with a designated local Ombudsman for the Elderly Program, who performs the duties of ombudsman. (7-1-98)()

~~109.~~ **Long-Term Care Facility.** Skilled nursing facilities as defined in IDAPA 16.03.02, Subsection 002.33, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities,” and residential care facilities as defined in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (7-1-98)

~~108.~~ **Non-Jurisdictional Complaints.** Complaints made by or on behalf of residents of long-term care facilities who are under the age of sixty (60) or complaints concerning persons outside the statutory jurisdiction of an ombudsman. (7-1-98)

~~0911.~~ **Office.** Office of the State Ombudsman for the Elderly pursuant to Title 67, Chapter 50, Idaho Code, Section 67-5009. (7-1-98)

~~112.~~ **Resident.** Resident as defined in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” (7-1-98)

011. -- 019. (RESERVED)

020. ADMINISTRATIVE REQUIREMENTS.

Each AAA [substate local](#) ombudsman program shall meet all administrative requirements as cited in OAA, Section 712 (a), and Title 67, Chapter 50, Idaho Code, Section 67-5009, unless granted a waiver by the [ICOA Office](#). (7-1-98)()

01. Procedures. All *substate local* ombudsmen shall follow procedures outlined in the *Ombudsman for the Elderly Office* Procedures Manual. (7-1-98)(____)

02. Space. Each AAA shall provide space assuring privacy for *substate local* ombudsmen to hold confidential meetings. (7-1-98)(____)

03. Supervision. *Substate Local* ombudsmen shall operate under the direct supervision of the Office for all complaint handling activities and are considered subdivisions of the Office. (7-1-98)(____)

04. Forms. All *substate local* ombudsmen shall utilize standardized forms provided by the Office. (7-1-98)(____)

05. Conflict of Interest. AAAs shall ensure that the *substate local* ombudsmen shall not be part of an organization that: (7-1-98)(____)

a. Is responsible for licensing and certifying skilled nursing or residential care facilities under IDAPA 16.03.22, "Rules for Licensed Residential and Assisted Living Facilities in Idaho"; (7-1-98)

b. Provides skilled nursing or living care or is an association of such a provider; or (7-1-98)

c. May impair the ability of the *substate local* ombudsmen to investigate and resolve complaints objectively and independently. (7-1-98)(____)

06. Travel Funds. Each AAA shall provide travel funds for the *substate local* ombudsman program to carry out activities related to complaint investigations. (7-1-98)(____)

07. Program Report. All *substate local* ombudsman programs shall comply with *ICOA's the Office's* reporting requirements. (7-1-98)(____)

08. Program Reviews. Each AAA shall submit to a program review of *substate local* ombudsman programs at reasonable intervals deemed necessary by the *ICOA Office*. (7-1-98)(____)

09. Adult Protection and Ombudsman Coordination. Each AAA shall ensure that Adult Protection staff and the *substate local* ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. (7-1-98)(____)

10. State Agreements. All *substate local* programs shall honor and carry out state-level agreements between the Office and other agencies of government. (7-1-98)(____)

021. STAFFING. Pursuant to the OAA, Section 712, in order to meet minimum requirements established for the position of *substate local* ombudsman, each AAA shall seek applicants having the following qualifications. (7-1-98)(____)

01. Minimum Qualifications. Any person hired to fill the position of *substate local* ombudsman on or after July 1, 1998, shall have: (7-1-99)(____)

a. A Bachelor's degree or equivalent; (3-30-01)

b. Minimum of one (1) year's experience working with the elderly; (7-1-98)

c. Ability to effectively communicate verbally and in writing; (7-1-98)

d. Knowledge of long-term care issues and resources; (7-1-98)

e. Demonstrated ability to interpret and apply relevant local, state and federal laws, rules, regulations, and guidelines; (7-1-98)

- f. Demonstrated ability to work independently; (7-1-98)
- g. Demonstrated skill in interviewing techniques; and (7-1-98)
- h. Demonstrated ability to collect data, conduct interviews and to form conclusions. (7-1-98)

02. Hiring. The Office shall be included in the process of interviewing and selecting applicants for the ~~substate~~ local ombudsman position. The AAA shall make the final selection from the top three (3) applicants. (7-1-98)()

022. -- 030. (RESERVED)

031. DESIGNATION OF AUTHORITY OF AAA.

The Office shall designate an entity as a ~~substate~~ local ombudsman. (7-1-98)()

01. Designation of Authority. Each AAA shall directly provide, through a contract agreement with the ICOA, a ~~substate~~ local ombudsman program employing at least one (1) full-time ~~substate~~ local ombudsman whose function shall be to carry out the duties of the ~~Ombudsman for the Elderly Program Office~~. AAAs I, II, IV, V and VI shall employ one (1) full-time ~~substate~~ local ombudsman; AAA III shall employ two (2) full-time ~~substate~~ local ombudsmen. An AAA may petition ~~ICOA~~ the Office in writing for a waiver of this requirement. (7-1-98)()

02. Grounds for Revocation or Termination. In revoking a designated ~~substate~~ local ombudsman program, the ~~ICOA Office~~ shall provide due process in accordance with applicable law and IDAPA 04.11.01, Section 000, et seq., “Idaho Rules of Administrative Procedure of the Attorney General.” (7-1-98)()

a. Following termination of a ~~substate~~ local ombudsman program, the ~~ICOA Office~~ shall perform the duties of the ~~substate~~ local program. (7-1-98)()

b. Following termination of a ~~substate~~ local ombudsman program, the ~~ICOA Office~~ shall withdraw funding for the ~~substate~~ local program for the remainder of the funding period. (7-1-98)()

c. An AAA’s appeal of ~~ICOA’s~~ the Office’s termination of its ~~substate~~ local ombudsman program shall be governed by the Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded under Title III, OAA. (7-1-98)()

032. HANDLING OF COMPLAINTS.

The ~~Ombudsman for the Elderly Program Office~~ has jurisdiction to accept, identify, investigate, and resolve complaints made by, or on behalf of, persons aged sixty (60) or older, living in the community or in long-term care facilities. The Office and the ~~substate~~ local ombudsmen shall ensure that persons aged sixty (60) or older have regular and timely access to services provided through the Office. The ~~Ombudsman for the Elderly Program Office~~ shall represent the interests of older persons before governmental agencies and shall seek to protect the health, safety, welfare and rights of older persons. (7-1-98)()

01. Non-Jurisdictional Complaints. ~~Substate Local~~ ombudsmen may respond to complaints made by or on behalf of under age sixty (60) long-term care residents where such action will: (7-1-98)()

- a. Benefit other residents; or (7-1-98)
- b. Provide the only viable avenue of assistance available to the complainant. (7-1-98)

02. Conflict of Interest. ~~Substate Local~~ ombudsmen shall refer to the Office any complaint involving AAA staff or contractors. (7-1-98)()

03. Complaints. Complaints concerning ~~substate~~ local ombudsmen, or relative to a ~~substate~~ local ombudsman’s official duties, shall be directly referred to the ~~ICOA Office~~. The ~~ICOA Office~~, upon completing an investigation of such complaint, shall provide findings and recommendations to the AAA. (7-1-98)()

04. Guardianship. The substate local ombudsmen shall not serve as an ex-officio or appointed member of any Board of Community Guardian, nor file an affidavit to the court for guardianship. ~~(7-1-99)~~()

05. Court Visitor. The substate local ombudsmen shall not act as court visitor in any guardianship/conservatorship proceeding concerning a past or current client. ~~(7-1-98)~~()

06. Legal Documents. Substate Local ombudsmen shall not, in their capacity as ombudsmen, act as a notary or a witness of signatures for legal documents. ~~(7-1-98)~~()

033. ACCESS.

The Office shall ensure that representatives of the Office have access to long-term care facilities and residents as well as appropriate access to medical and social records, and resident representative contact information needed to investigate complaints. ~~(7-1-98)~~()

01. Visitation. For visitation purposes, substate local ombudsmen shall have access to long-term care facilities during regular business hours. Visiting substate local ombudsmen shall: ~~(7-1-98)~~()

- a. Notify the person in charge upon entering the facility; (7-1-98)
- b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; and (7-1-99)
- c. Communicate privately and without restriction with any resident who consents to the communication. (7-1-98)

02. Investigation. Substate Local ombudsmen shall have access to long-term care facilities at any time for the purpose of conducting investigations. A substate local ombudsman conducting an investigation shall: ~~(7-1-98)~~()

- a. Notify the person in charge upon entering the facility; (7-1-98)
- b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; (7-1-98)
- c. Seek out residents who consent to communicate privately; (7-1-98)
- d. Communicate privately and without restriction with any resident who consents to the communication; and (7-1-98)
- e. Inspect a resident's records under conditions set forth in the OAA, Section 712. (7-1-98)

f. Inspect facility administrative records, policies, and documents that are accessible to the resident and general public. ()

03. Privacy. Substate Local ombudsmen shall have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. See Section 67-5009, Idaho Code. ~~(7-1-98)~~()

04. HIPAA. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR 164, subparts A and E, does not preclude release by the facility of resident private health information or other resident identifying information to the Office. ()

034. -- 040. (RESERVED)

041. WRITTEN CONSENT.

The Office shall ensure appropriate access to review medical and social records of a resident. (See OAA, Section 712) (7-1-98)

01. Resident Written Consent. Access to confidential records requires the written consent of the resident or legal representative. (7-1-98)

02. Lack of Consent. If the client is unable to provide written or oral consent, or the legal representative is unavailable to provide consent, the substate local ombudsman, with approval of the Office may inspect available client records, including medical records that are necessary for investigation of a complaint. (7-1-98)()

03. Consent Refused. If a substate local ombudsman has been refused access to records by legal representative but has reasonable cause to believe that the legal representative is not acting in the best interest of the client, the substate local ombudsman may, with the approval of the Office, inspect client records, including medical records. (7-1-98)()

04. Requirements for Informing Client or Resident. The substate local ombudsman shall inform the complainant or resident regarding: (7-1-98)()

- a. Who will receive the information; (7-1-98)
- b. What information will be disclosed; and (7-1-98)
- c. The purpose for which the information is being disclosed. (7-1-98)

042. CONFIDENTIALITY.

The Office shall be the custodian of all substate local ombudsman program records including, but not limited to, records and files containing personal information relative to complainants and residents of long-term care facilities. Requests for release of confidential information shall be submitted to the Office for approval or denial. Release of information shall be granted pursuant to OAA, Section 721(e). (7-1-98)()

01. Storage of Records. Client records shall be maintained in locked storage. Case records inactive for two (2) years or longer may be expunged. As required by law, release of these records shall be limited to persons authorized by the Office. (7-1-98)

02. Performance Evaluations. For performance evaluation purposes, direct supervisors shall have access to client files maintained by substate local ombudsmen. (7-1-98)()

03. Confidential Records. Records to be safeguarded include, but are not limited to, long-term care and community-based complaint files including: (7-1-98)

- a. Notes of interviews with complainants and clients or collateral contacts; (7-1-98)
- b. All copies of residents' medical records or diagnoses; (7-1-98)
- c. All records relevant to complaint investigations; (7-1-98)
- d. All memoranda generated by the Office or by another agency office during the evaluation and resolution of a complaint; (7-1-98)
- e. All photographs, video tapes, tape recordings, etc. pertaining to complaint investigation; (7-1-98)
- f. All memoranda or letters generated during evaluation or resolution of a complaint; (7-1-98)
- g. Written documentation that parties affected by ombudsman opinions or recommendations have been notified; and (7-1-98)
- h. Information containing unverified complaints about long-term care facility owners, administrators, staff or other persons involved in the long-term care system or in other service programs. (7-1-98)

04. Request for Anonymity. The ombudsman shall honor a resident's or complainant's request to remain anonymous. If investigation of a complaint requires that a resident's or complainant's name be divulged in order for the investigation to proceed, the ombudsman shall so inform the resident or complainant. If the resident or complainant insists on maintaining anonymity, the ombudsman may terminate the investigation. (7-1-98)

043. DISCLOSURE.

The Office ~~shall be~~ is the only entity ~~having authority to authorize disclosure of substate~~ authorized to disclose ombudsmen ~~program files, records, or information, maintained by the program except when the ICOA is subpoenaed by the court to disclose pertinent records~~ Identifying information of any resident or complainant shall be disclosed only with proper consent or in response to a court order. The Office, in its sole discretion, may delegate the disclosure of ombudsman program files, records, or information to a local ombudsman. (7-1-98)()

01. Court Order. Identifying information of a resident, complainant, or both may be disclosed, with or without the consent of the resident, complainant, or both, pursuant to a court order issued by a court of competent jurisdiction. ()

02. Resident Consent. Without a court order, identifying information of a resident shall be disclosed only if the resident or his representative communicates informed consent to the disclosure and the consent is given in writing, orally, visually or through the use of auxiliary aids and services; and such consent is documented by a representative of the Office in accordance with procedures. ()

03. Complainant Consent. Without a court order, identifying information of a complainant shall be disclosed only if the complainant communicates informed consent to the disclosure and the consent is given in writing, orally, visually or through the use of auxiliary aids and services; and such consent is documented by a representative of the Office in accordance with procedures. ()

044. -- 999. (RESERVED)

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

15.02.02 – VOCATIONAL REHABILITATION SERVICES

DOCKET NO. 15-0202-1701

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 67-5407(e) and 67-5408, 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 20, 2017.

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:

ICBVI must implement new rules in order to maintain compliance with the Workforce Innovation and Opportunity Act (WIOA) by establishing an order of selection for federal funds received through the agency. ICBVI is also adding a definition for “Most Significant Disability” and updating other rules.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, page 53](#).

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:

On July 22, 2014, President Obama signed into law Public Law No. 113-128, the Workforce Innovation and Opportunity Act (WIOA). WIOA is the first legislative reform of the public workforce development system in more than 15 years. WIOA supersedes the Workforce Investment Act of 1998 (WIA). Title IV of WIOA includes amendments to the Rehabilitation Act of 1973, including amendments to Title I of the Rehabilitation Act, which authorizes funding for the State Vocational Rehabilitation (State VR) Program.

To implement the changes to the Rehabilitation Act made by WIOA, the Secretary of Education amends the regulations governing the State VR program [34 CFR part 361] and the State Supported Employment Services Program [34 CFR part 363], administered by the Rehabilitation Services Administration (RSA), within the Office of Special Education and Rehabilitative Services. In addition, the Secretary of Education issues regulations in new 34 CFR part 397 that implement Section 511 of the Rehabilitation Act (Limitations on Use of Subminimum Wages).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mike Walsh at (208) 334-3220 ext. 110.

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 27, 2017.

DATED this 31st day of July, 2017.

Mike Walsh, Rehabilitation Services Chief
Idaho Commission for the Blind and Visually Impaired
Phone: (208) 334-3220 ext. 110 / Fax: (208) 334-2963

341 W. Washington Street
P. O. Box 83720
Boise, ID 83720-0012

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0202-1701
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Sections 67-5407(e) and 67-5408, Idaho Code, and the Rehabilitation Act of 1973, as amended. (4-2-08)()

001. TITLE AND SCOPE.

These rules will be known as Idaho Commission for the Blind and Visually Impaired Rules, IDAPA 15.02.02, "Vocational Rehabilitation Services." The provisions of these rules establish procedures ~~and~~ requirements, and implement program changes necessitated by the Rehabilitation Act of 1973, as amended, which address the provisions of vocational rehabilitation services to the blind and visually impaired population of Idaho. (4-5-87)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following federal laws and regulations are incorporated by reference into the rules of this chapter and copies are available at the Commission's office: (4-2-08)

01. 29 U.S.C. Section 701, et seq., Rehabilitation Act of 1973 as ~~Amended in 1998~~ through Public Law 114-95, enacted December 10, 2015. (4-2-08)()

02. 34 CFR 361 and 363. (4-2-08)

03. Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128, enacted July 22, 2014. ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Blind or Visually Impaired. A person whose visual acuity with correcting lenses is not better than twenty/two hundred (20/200) in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees; or a person who is functionally blind; or a person who is without any sight. (4-2-08)

02. Client. An individual who has applied for, or is determined to be eligible for, vocational rehabilitation services. (4-2-08)

03. Commission. The Idaho Commission for the Blind and Visually Impaired. (4-2-08)

04. Comprehensive Assessment. An assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual. An assessment also includes, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to

acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capabilities of the individual to perform adequately in a work environment. (4-2-08)

05. Comparable Benefits or Services. Any benefit or service that exists under any other programs that is available to the client. Examples are, but not limited to, Pell Grants, Medicaid, Medicare, private health insurance, and medical indigence programs for medication. (4-2-08)

06. Designated State Unit. Idaho Commission for the Blind and Visually Impaired. (4-2-08)

07. Functionally Blind. A person with a visual impairment which constitutes or results in a substantial impediment to employment or substantially limits one (1) or more major life activities. This is determined by the vocational rehabilitation counselor, not a physician. (4-2-08)

08. Maintenance. Monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the client's participation in an assessment for determining eligibility and vocational rehabilitation needs or the client's receipt of vocational rehabilitation services under an individualized plan for employment (34 CFR 361.5(35)). (4-2-08)

09. Most Significant Disability (MSD). Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34 CFR 361.5(c)(29), and is further defined as: Having a severe physical, mental, cognitive, or sensory impairment which seriously limits three (3) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome, and whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. ()

010. Vocational Rehabilitation Service or Services. Services that reduce the impact of functional limitations on the ability of a client to achieve an employment outcome. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

210. INDIVIDUAL PLAN FOR EMPLOYMENT.

For those clients determined eligible for vocational rehabilitation services, an IPE shall be developed between the client and their vocational rehabilitation counselor within ninety (90) days of eligibility determination, unless an extension is agreed to between the counselor and client, and documented in the case record. An approved IPE or IPE amendment must be signed by the client or the client's representative and appropriate Commission staff in order to be implemented. Services may be discontinued if the client fails to participate actively or does not make adequate progress toward plan completion. Prior to the IPE being written, a comprehensive assessment is required to evaluate the following components: (4-2-08)()

01. Employment Outcome. To determine the employment outcome that is selected by the client, with input from the vocational rehabilitation counselor, that is consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (4-2-08)

a. Provisions of Community Rehabilitation Program Services. The Commission will purchase vocational rehabilitation services from community rehabilitation programs that are accredited by either the Commission on Accreditation of Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System. In conjunction with the client, the vocational rehabilitation counselor will determine which, if any, community rehabilitation program services are required for the client to achieve an employment outcome. (4-2-08)

02. Nature and Scope. To identify the nature and scope of the vocational rehabilitation services that the client needs to become employed. (4-2-08)

03. Planned Services. To determine how the planned services will assist the client in overcoming the

barriers to employment that were identified in the eligibility determination. (4-2-08)

04. Costs. The client must apply for and secure any Comparable Benefits or Services, participate in paying for any or all costs of the IPE services, and make a commitment to cooperate and follow through with the IPE and achieve an employment outcome. Clients receiving services wherein costs are incurred and who possess the financial resources to do so will be required to participate in the payment for assistance provided them. (4-2-08)

211. -- 299. (RESERVED)

300. PAYMENT POLICY.

01. Upper Limits. In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

a. Education expenses - public in-state institutions. (3-25-16)

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: ~~Ninety percent (90%) of the actual costs for t~~Two (2) semesters per federal fiscal year at the institution of enrollment. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. ~~(3-25-16)()~~

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. (3-25-16)

b. Education expenses - private in-state institutions. (3-25-16)

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school: ~~Ninety percent (90%) of actual costs for t~~Two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at a public Idaho college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. ~~(3-25-16)()~~

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. (3-25-16)

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: ~~Ninety percent (90%) of actual costs for t~~Two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year that would be incurred at a public Idaho college ~~or~~ university, or other in-state education or training program. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. ~~(3-25-16)()~~

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study or training program is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study or training program that is closest geographically to the Commission regional office assisting the client. (4-2-08)()

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. (3-25-16)

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: To be paid at specialist's rate not to exceed three hundred dollars (\$300) maximum, plus actual cost of related procedures (e.g., x-rays). (3-25-16)

ii. Psychological exam by licensed psychologist: Two hundred fifty dollars (\$250) plus actual cost of psychometric tests. (3-25-16)

iii. Ophthalmologist/Optomtrist exam: Three hundred dollars (\$300) plus actual cost of visual field exam or other necessary tests. (3-25-16)

(1) Low vision exam: To be paid at specialist's rate not to exceed two hundred dollars (\$200). (3-25-16)

(2) Follow-up low vision consultation: ~~Sixty-five~~ Not to exceed one hundred dollars (~~\$65~~100). (3-25-16)()

(3) Eye report: Twenty-five dollars (\$25). (4-2-08)

iv. Eye glasses or contact lenses: Two hundred dollars (\$200) frame costs and the usual and customary cost for lenses and contact lenses. Twelve hundred dollars (\$1,200) for biotics. (3-25-16)

v. Audiologist exam: To be paid at specialists rate not to exceed two hundred dollars (\$200). (3-25-16)

vi. Physical exam (general basic medical): Two hundred dollars (\$200) plus actual cost of additional procedures and tests. (3-25-16)

f. Psychotherapy/Counseling sessions: Up to one hundred dollars (\$100) per hour and up to ten (10) sessions. Exceptions may be made by Rehabilitation Services Chief. (3-25-16)

g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. After the expiration of the three (3) month period, the commission will pay the state Medicaid rate for medication and medical supplies. (3-25-16)

h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: One thousand dollars (\$1,000) per case. (3-25-16)

i. Transportation. (4-2-08)

i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)

ii. Transportation services associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting).

- Exceptions can be approved by the Rehabilitation Services Chief. (3-25-16)
- iii. ICBVI may reimburse for state mileage rate for client transportation services or may reimburse for the actual cost of gasoline. (3-25-16)
 - iv. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
 - j. Maintenance: Three thousand dollars (\$3,000) per federal fiscal year and no more than five hundred dollars (\$500) per month. There is no limit on the number of months a client can receive maintenance up to the three thousand dollar (\$3,000) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (3-29-12)
 - i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
 - ii. If a client is participating in the Assessment and Training Center (ATC) and is not commuting to ATC for training, the maximum per month is three hundred dollars (\$300) for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (3-29-12)
 - k. Copy fees: Twenty dollars (\$20) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (3-25-16)
 - l. Tools and equipment: Two thousand dollars (\$2,000) per case depending on employment goal. Value of tools and equipment provided to client from existing Commission inventory will count towards the two thousand dollar (\$2,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (3-25-16)
 - m. On-the-Job training fees: ~~Three~~ **Five** thousand dollars (~~\$3~~**5**,000). (~~4-2-08~~)()
 - n. Computers including hardware and software: Two thousand dollars (\$2,000) per case. If the Commission determines that a change in computers is necessary, as appropriate, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (3-25-16)
 - o. Self-employment plans: Three thousand dollars (\$3,000), to include tools and equipment, excluding adaptive technology and computers. (3-25-16)
 - p. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)
 - q. Vehicle purchase: The Commission may provide finances to modify and/or repair an already owned vehicle to make it accessible for the client's use under the following circumstances: (3-25-16)
 - i. The cost of the modification and/or repair cannot exceed the current Blue Book fair trade in value of the vehicle; (3-25-16)
 - ii. The client must maintain insurance on the vehicle for replacement cost; (3-25-16)
 - iii. The Commission can aid in the purchase of a used vehicle or utility trailer as long as they are a part of the approved self-employment plan or a part of the Business Enterprise Program. (3-25-16)

r. Physical, Occupational, and Speech Therapy: The Commission may cover one hundred dollars (\$100) per session at maximum of ten (10) sessions per case. Exceptions can be made by rehabilitation Services Chief. (3-25-16)

02. **Exclusion of Surgery.** The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (3-25-16)

03. **Authorization to Purchase.** When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the Rehabilitation Services Chief or the Commission Administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (3-25-16)

04. **Exception Policy.** Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the Rehabilitation Services Chief of the Commission. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

356. ORDER OF SELECTION.

01. **Prioritizing Services.** In the event that ICBVI lacks the personnel or financial resources to provide the full range of VR services to all eligible individuals, the following Order of Selection (OOS) will be used to prioritize service provisions. Students with disabilities, as defined by 34 CFR 361.5(c)(51), who received pre-employment transition services prior to eligibility determination and assignment to a priority category shall continue to receive such services. All clients who have an Individualized Plan for Employment (IPE) will continue to be served. Priority will be given to eligible individuals as follows: ()

a. **Priority 1. Eligible individuals with the Most Significant Disabilities (MSD).** ()

b. **Priority 2. Eligible individuals with Significant Disabilities (SD).** ()

c. **Priority 3. All other eligible individuals with Disabilities (D).** ()

02. **Inability to Serve.** If ICBVI cannot serve all eligible individuals within a priority category, individuals will be released from the statewide waitlist based on priority category and date of application. ()

03. **Exemption.** Employed individuals, who are eligible for VR services and require immediate equipment or services to maintain their employment, are exempt from the Order of Selection policy, as authorized in the Rehabilitation Act, as amended by WIOA, 34 CFR 361.36(a)(3)(v). ()

~~3567.~~ -- 999. (RESERVED)

**IDAPA 15 – OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 – RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

DOCKET NO. 15-0401-1701

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 67-5309, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

**PUBLIC MEETING
September 15, 2017 – 9:00 a.m. to Noon**

**Office of the Division of Human Resources
304 N. 8th Street, Room 347
Boise, ID 83702**

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

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Appear at the public meeting to give oral testimony or written comments regarding proposed Rule changes. Written comments may also be delivered to the DHR Administrator, Susan E. Buxton, no later than September 15, 2017.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The Division of Human Resources proposes deleting reference to “provisional appointment,” which has not been used since 2004 and used only 7 times from 1990 – 2004; deleting reference to a specific company, Hay Management Consultants; deleting reference to coordination of recruitment with Director of Department of Labor as it is redundant and the applicant tracking system at Labor is being returned to the Division of Human Resources; and amending approval for closure of state offices due to weather.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text (if available), contact Shelli Boggie, DHR Consultant, (208) 854-3083. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency website at the following web address: <https://dhr.idaho.gov>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 15, 2017.

DATED this 7th day of August, 2017.

Susan E. Buxton
Administrator
Susan.Buxton@dhr.idaho.gov

304 North 8th Street
P.O. Box 83720
Boise, ID 83720-0066

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.01.04 – EMERGENCY MEDICAL SERVICES (EMS) – ACCOUNT III GRANTS

DOCKET NO. 16-0104-1701 (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 56-1018B, Idaho Code.

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

PUBLIC HEARING SCHEDULE
Thursday, September 21, 2017 - 10:30 am (MDT)
Department of Health & Welfare Bureau of EMS Preparedness Boise, ID
TELECONFERENCE CALL-IN
Toll Free: 1-213-929-4212 Participant Code: 897-402-816
WEBINAR
Participate through computer and Internet audio https://attendee.gotowebinar.com/register/368729305232240129 PRE-REGISTRATION is required

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

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

The Department is proposing this new chapter of rules in IDAPA 16.01.04, “Emergency Medical Services (EMS) - Account III Grants,” to update the processes for EMS grant applications and other requirements for the approval of these grants. The current chapter of rules under IDAPA 16.02.04, “Rules Governing Emergency Medical Services Account III Grants,” is being repealed in its entirety in this same Bulletin under Docket No. 16-0204-1701.

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

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

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. Funds that are distributed through this program are dedicated funds provided under Section 56-1018B, Idaho Code.

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 under the current chapter Docket No. 16-0204-1701 in the May 3, 2017, Idaho Administrative Bulletin, **Vol. 17-5, pages 63-64**, and the June 7, 2017, Idaho Administrative Bulletin, **Vol. 17-6, page 35**.

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 John Cramer at (208) 334-4000.

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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0104-1701
(This is a Complete Chapter Rewrite, All Sections are Included.)**

**IDAPA 16
TITLE 01
CHAPTER 04**

16.01.04 – EMERGENCY MEDICAL SERVICES (EMS) – ACCOUNT III GRANTS

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 56-1023, Idaho Code, to adopt rules and standards concerning the administration of the Idaho Emergency Medical Services Act, Sections 56-1011 through 56-1023, Idaho Code. The Director is authorized under Section 56-1003, Idaho Code, to supervise and administer an emergency medical service program. The Bureau of Emergency Medical Services of the Department of Health and Welfare is responsible under Section 56-1018B, Idaho Code, to administer the Emergency Medical Services Fund III. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.01.04, “Emergency Medical Services (EMS) – Account III Grants.” ()

02. Scope. These rules specify the eligibility criteria, application process, and distribution methodology used by the Department to award grants from this dedicated fund known as the Emergency Medical Services Account III. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, “Rules Governing

Contested Case Proceedings and Declaratory Rulings.” ()

004. INCORPORATION BY REFERENCE.

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

005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – TELEPHONE NUMBER – INTERNET WEBSITE.

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

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

03. Street Address. ()

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

b. The Bureau of Emergency Medical Services and Preparedness is located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249. ()

04. Telephone. ()

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

b. The telephone number for the Bureau of Emergency Medical Services and Preparedness is (208) 334-4000. The toll-free phone number is 1-877-554-3367. ()

c. The FAX number for the Bureau of Emergency Medical Services and Preparedness is (208) 334-4015. ()

05. Internet Websites. ()

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

b. The Bureau of Emergency Medical Services and Preparedness internet website is found at <http://www.idahoems.org>. ()

06. Email Address. The email address for grants is: emsgrants@dhw.idaho.gov. ()

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

01. Confidentiality of Records. Any disclosure of confidential information used or disclosed in the course of the Department’s business is subject to the restrictions in state or federal law and must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records.” ()

02. Public Records Act. The Department will comply with Title 74, Chapter 1, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules the following definitions apply. ()

01. Award. The placement of a grant applicant on a prioritized list indicating the potential for receipt

of grant approval during the current fiscal year. ()

02. Emergency Medical Services Advisory Committee (EMSAC). The statewide advisory board of the Department as described in IDAPA 16.01.01, “Emergency Medical Services (EMS) - Advisory Committee (EMSAC).” EMSAC members are appointed by the Director of the Idaho Department of Health and Welfare to provide counsel to the Department on administering the EMS Act. ()

03. Capital Equipment. Capital equipment refers to durable goods acquired by an entity but not consumed in the normal course of business. ()

04. EMS Account III. A dedicated fund subject to appropriation by the Legislature that is established and defined in Section 56-1018B, Idaho Code. ()

05. EMS Agency. Any organization licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements,” that operates an air medical service, ambulance service, or non-transport service. ()

06. EMS Bureau. The Bureau of Emergency Medical Services and Preparedness of the Idaho Department of Health and Welfare. ()

07. Grant. The disbursement of funds from, or capital equipment purchased by, EMS Account III revenue. ()

08. Grant Applicant. An entity submitting documents required by the EMS Bureau for the purposes of acquiring funds or capital equipment from the EMS Account III established by Section 56-1018B, Idaho Code. ()

09. Grant Approval. The disbursement of a grant from EMS Account III to a grant applicant. ()

10. Grant Cycle. The process of grant application distribution, application submission, awards and approval which occur in accordance with dates established in these rules. ()

011. -- 099. (RESERVED)

100. AWARD ELIGIBILITY REQUIREMENTS.

To be considered for an award, a grant applicant must be recognized by the EMS Bureau as one (1) of the following: ()

01. A Currently Licensed EMS Agency. The grant applicant must hold a current Ambulance or Non-Transport License in accordance with IDAPA 16.01.03, “Emergency Medical Services (EMS) -- Agency Licensing Requirements.” ()

02. A Grant Applicant with a Pending Idaho EMS License. Grant approval will not be issued to a grant applicant until an Idaho EMS license has been issued. ()

a. Grant applicants with a pending Idaho EMS license are ineligible if licensure is not achieved by the grant cycle application deadline described in Section 200 of these rules. ()

b. Grant applicants determined to be ineligible for an award due to licensure status may reapply in a subsequent grant cycle. ()

03. A Currently Licensed EMS Agency with a Pending Licensure Change Request. A grant applicant that is a currently licensed EMS agency with a pending change to licensure may receive grant approval for any ambulance or equipment which is necessary for the pending licensure change only if the licensure change is approved by the EMS Bureau. ()

101. -- 199. (RESERVED)

200. GRANT CYCLE.

The following subsections in this rule provide the grant cycle and due dates the EMS Bureau uses to conduct the grant process. ()

01. Application Availability. The EMS Bureau provides an application and guidance document available no later than January 1 of each year, which initiates the grant cycle. The application may be accessed online or requested as provided in Section 005 of these rules. ()

02. Application Period. The grant applicant has through April 1 of the grant cycle to complete and submit the application to the EMS Bureau. The application must be submitted by one (1) of the following methods on or before the due date of the grant cycle: ()

a. Email is the preferred method and must be received by the end of the due day; ()

b. Mail must be post marked by the due day; ()

c. Fax must be received by the end of the due day; or ()

d. In person, by the close of business on the due day. ()

03. Application Evaluation Period. The EMS Bureau and state EMS Advisory Committee evaluates the applications received from eligible grant applicants prior to June 1 of the grant cycle. ()

04. Award Notification. The EMS Bureau issues a notification to every grant applicant regarding the disposition of their grant request prior to July 1 of the grant cycle. ()

05. Grant Approval. Grant disbursements to the grant applicant occur prior to September 1 of the grant cycle. ()

06. Return of Unused Grant Funds. All unused grant funds must be returned to the EMS Account III by the grant applicant no later than June 1 of the next calendar year that ends the grant cycle. ()

201. APPLICATION REQUIRED.

A completed EMS Bureau grant application must be submitted by the grant applicant on or before the conclusion of the application period specified in Section 200 of these rules. ()

01. Required Information. The grant applicant must provide the following information for the application: ()

a. Documentation of one (1) or more vendor price quotes for all capital equipment purchases: ()

i. Contact EMS Bureau for an Agency Vehicle Fleet Report, to update and return with application; ()

ii. If requesting a vehicle, updated fleet information must be submitted on a form provided by the Bureau; ()

iii. If replacing a vehicle, include a copy of the title or registration for the vehicle being replaced; or ()

iv. If requesting extrication equipment, a list of all personnel trained for extrication operations must be included. ()

b. Operating budget; ()

c. All funding sources and revenue generated by source; ()

- d. Contact person for verification of fiscal information; ()
- e. Federal Tax Identification Number; ()
- f. Resident population within the grant applicant’s response area in Idaho; ()
- g. Type, and quantity of EMS Responses and run dispositions occurring during the specified time-period accompanied by supporting documents generated by the agency dispatch computer system or the agency electronic patient care reporting system; ()
- h. Type, quantity, and purpose of similar equipment presently in use by the applicant; ()
- i. Age and condition of equipment being replaced if applicable; ()
- j. Narrative descriptions of need; ()
- k. Prioritization by the grant applicant of equipment requested when the application requests funding for two (2) or more items or groups of identical items; and ()
- l. City or County governmental endorsement. ()

02. Incomplete Application. A grant application that is missing required information is excluded from consideration for an award. ()

03. Application Purpose. The grant application and any attachments submitted by the grant applicant are the primary source of information for awarding a grant. ()

202. -- 299. (RESERVED)

300. AWARD RECOMMENDATION.

IDAPA 16.01.01, “Emergency Medical Services (EMS) -- Advisory Committee (EMSAC),” Section 120, provides that EMSAC is responsible for reviewing and making recommendations to the EMS Bureau regarding the distribution of grant funds. ()

01. Assessment and Validation of Need. The EMSAC must review grant applications prior to EMSAC making a recommendation to the EMS Bureau regarding the distribution of awards. ()

02. Contingency Awards. The EMSAC may make recommendations regarding what awards the EMS Bureau may consider in the event that an award grant application is withdrawn as described in Section 501 of these rules. ()

301. CRITERIA FOR EMS VEHICLES.

The following criteria must be used to evaluate applications for EMS vehicles, with maximum weight available for each criterion as indicated. Greater weight will be assigned to those conditions which indicate greater need for each criterion: ()

01. Applicant Fleet Size. The number and type of vehicles currently in use by the grant applicant; weight = ten (10). The application demonstrating a smaller fleet size will be assigned greater weight. ()

02. Age of Applicant Vehicle(s). The number of years which has elapsed since the vehicle being replaced was originally manufactured or rechassied; weight = fifteen (15). The application demonstrating greater age of vehicle(s) will be assigned greater weight. ()

03. Mileage of Applicant Vehicle(s). The number of miles reflected on the vehicle odometer at the time of application; weight = fifteen (15). The application demonstrating higher mileage of similar vehicles in active use will be assigned greater weight. ()

04. Deployment Ratios. A mathematical comparison of current and post-grant vehicle availability based on the number of similar vehicles divided by the applicant coverage area in square miles and the number of similar vehicles divided by the population; weight = fifteen (15). The application demonstrating a greater change in deployment ratio will be assigned greater weight. ()

05. EMS Response Type. A comparison of pre-hospital EMS Response Types and total EMS Responses; weight = ten (10). The application demonstrating a higher percent of pre-hospital calls will be assigned a greater weight. ()

06. Fiscal Resource Base. The proportion of operating budget supported by public funds; weight = ten (10). The application demonstrating less revenue from public funds expressed as a percent of total revenue for the most recent year will be assigned greater weight. ()

07. Local Government Endorsement. Local government endorsements from Idaho cities and counties within the applicant's primary response area; weight = five (5). Applications submitted with one (1) or more endorsement(s) will be awarded five (5) points. ()

08. Prevalence of Volunteers. The percent of certified personnel identified on the most recent agency license application as volunteer; weight = percent/10. The application demonstrating a greater prevalence of volunteer certified personnel will be assigned greater weight. ()

09. Narrative. The need for and lack of availability of funds from other sources as documented by the grant applicant; weight = ten (10). The application demonstrating a greater need for and lack of available funds will be assigned greater weight. ()

10. Previous Award of Vehicle by EMS Account III Grant. Based on most recent vehicle award applicants will receive points based on elapsed time from most recent vehicle award; weight = five (5). The application declaring a recent vehicle award will be assigned a lesser value. ()

302. CRITERIA FOR OTHER EMS EQUIPMENT.

The following criteria must be used to evaluate grant applications for other EMS equipment, with maximum weight available for each criterion as indicated. Greater weight will be assigned to those conditions which indicate greater need for each criterion: ()

01. Applicant Equipment. The number, type and age of similar equipment currently in use by the grant applicant; weight = fifteen (15). The application demonstrating lack of accessibility to similar equipment will be assigned greater weight. ()

02. Anticipated Use. An estimate of the frequency and patient types for which the equipment may be used based on utilization percentages for the specified period; weight = fifteen (15). The application demonstrating greater anticipated use will be assigned greater weight. ()

03. Duration of Use. An estimate of the length of time the equipment would be used for a patient when indicated, expressed as a mean time; weight = fifteen (15). The application demonstrating a greater duration of use will be assigned greater weight. ()

04. Deployment Ratios. A mathematical comparison of current and post-grant equipment availability based on number of pieces of similar equipment divided by the applicant coverage area in square miles and the number of pieces of similar equipment divided by population; weight = fifteen (15). The application demonstrating a greater change in deployment ratio will be assigned greater weight. ()

05. EMS Response Type. A comparison of pre-hospital EMS Response Types and total EMS Responses; weight = ten (10). The application demonstrating a higher percent of pre-hospital calls will be assigned a greater weight. ()

06. Fiscal Resource Base. The proportion of operating budget supported by public funds; weight = ten (10). The application demonstrating less revenue from public funds expressed as a percent of total revenue for the

most recent year will be assigned greater weight. ()

07. Local Government Endorsement. Local government endorsements from Idaho cities and counties within the applicant’s primary response area; weight = five (5). Applications submitted with one (1) or more endorsement(s) will be awarded five (5) points. ()

08. Prevalence of Volunteers. The percent of certified personnel identified on the most recent agency license application as volunteer; weight = percent/10. The application demonstrating a greater prevalence of volunteer certified personnel will be assigned greater weight. ()

09. Narrative. The need for and lack of availability of funds from other sources as documented by the grant applicant; weight = ten (10). The application demonstrating a greater need for and lack of available funds will be assigned greater weight. ()

303. -- 399. (RESERVED)

400. SECURITY INTEREST.

Each successful grant applicant is required to execute a security agreement as required in Section 56-1018B(2)(e), Idaho Code. The security agreement must be a signed by the person authorizing the grant application. The Department provides a Subgrant and Security Agreement for Vehicle/Equipment for signature. ()

401. -- 499. (RESERVED)

500. UNUSED GRANT FUNDS.

All funds not expended for costs associated with the applicant’s award must be returned to the EMS Account III by June 1 of the grant cycle during which the funds were awarded. ()

501. WITHDRAWAL OF GRANT APPLICATION.

Any grant applicant may withdraw or forfeit a grant application at any time. ()

01. Notification. The EMS Bureau may discontinue the grant award or approval process if either of the following occurs: ()

a. The chief administrative official of the grant applicant agency or his designee submits a notice of withdrawal in written form to the EMS Bureau; or ()

b. The grant applicant does not provide required documentation during the award or approval process. ()

02. No Right of Assignment. The grant applicant may not assign any award. ()

03. Ability to Compete. The withdrawal of a grant application does not affect the grant applicant’s ability to reapply in a subsequent grant cycle. ()

502. FRAUDULENT INFORMATION ON GRANT APPLICATION.

Providing false information on any grant application or document submitted under these rules is grounds for declaring the grant applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the EMS III account. ()

503. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.04 – RULES GOVERNING EMERGENCY MEDICAL SERVICES ACCOUNT III GRANTS

DOCKET NO. 16-0204-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-1018B, Idaho Code.

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

PUBLIC HEARING
Thursday, September 21, 2017 - 10:30 am (MDT)
Department of Health & Welfare Bureau of EMS Preparedness Boise, ID
TELECONFERENCE CALL-IN
Toll Free: 1-213-929-4212 Participant Code: 897-402-816
WEBINAR
Participate through computer and Internet audio https://attendee.gotowebinar.com/register/368729305232240129 PRE-REGISTRATION is required

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

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

This chapter of rules in IDAPA 16.02.04, “Rules Governing Emergency Medical Services Account III Grants,” is being repealed in its entirety. The Department is promulgating a new chapter of rules in this same Bulletin under IDAPA 16.01.04, “Emergency Medical Services (EMS) - Account III Grants,” Docket No. 16-0104-1701.

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

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

There is no anticipated fiscal impact to state general funds or any other funds except the costs of the rule promulgation, which includes printing and publication. Funds that are distributed through this program are dedicated funds provided by Section 56-1018B, Idaho Code.

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 3, 2017, Idaho Administrative Bulletin, **Vol. 17-5, pages 63-64**, and the June 7, 2017, Idaho Administrative Bulletin, **Vol. 17-6, page 35**.

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 John Cramer at (208) 334-4000.

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 27, 2017.

DATED this 4th day of August, 2017.

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 16.02.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.02.12 – PROCEDURES AND TESTING TO BE PERFORMED ON NEWBORN INFANTS

DOCKET NO. 16-0212-1701

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 39-605, 39-906, 39-1603, 39-4502, and 56-1003, 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 20, 2017.

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:

Most of the larger hospitals in Idaho perform universal Critical Congenital Heart Defect (CCHD) screening as part of the newborn screening panel. However, some of the smaller, more rural hospitals and birthing centers do not. Idaho is the only state that does not have rules that cover the requirements for CCHD screening. This rule change adds CCHD to the uniform screening panel for all newborns in Idaho. Congenital heart defects are the most common birth defect and impact approximately 8 out of every 1,000 infants born. Of these, approximately 25% (2.4 per 1,000) are considered critical and require immediate detection and intervention. In Idaho, it is estimated that approximately 55 infants are born each year with CCHD. The goal of CCHD screening is to identify and treat newborns with structural heart defects utilizing a simple, cost-effective, and noninvasive screening test where oxygen saturation is assessed after the first 24 hours of life. Without this intervention, the rates of mortality and survival with significant disability are extremely high among infants with CCHD.

This proposed rule change adds CCHD as a required screening and mandates that all newborns receive a CCHD screening shortly after birth. If the proposed rules are approved, the Department will add CCHD screening information to their birth certificate system in Vital Records. This would allow the Idaho Newborn Screening Program to monitor screening compliance and provide assistance to families including referrals for follow-up care on positive screens.

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

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

An annual ongoing cost of \$20,000 in general funds is projected for the Department to cover operating costs for pediatric cardiologist consultation, provider training, purchase of tool kits, and development of other educational materials. Staff time and other operating costs to implement the rules, such as the changes to the birth certificate system, will be covered annually under federal funds through the Department's Maternal and Child Health Program.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because informal stakeholder meetings are being conducted in a shorter time frame.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Critical CHD Screening Methods by the Centers for Disease Control and Prevention, from "Strategies of Implementing Screening for Critical Congenital Heart Diseases," Kemper, et al., 2011, is being incorporated by reference into these rules to give it the force and effect of law. The document is not being reprinted in this chapter of rules due to its format.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jacquie Watson at (208) 334-5963.

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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0212-1701
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. Title. ~~These rules are to be cited in full as Idaho Department of Health and Welfare Rules, title of these rules is~~ IDAPA 16.02.12, "Procedures and Testing to be Performed on Newborn Infants." (7-1-10)()

02. Scope. These rules specify the tests and procedures that must be performed on newborn infants for early detection of metabolic disorders, endocrine disorders, hemoglobin disorders, cystic fibrosis, critical congenital heart defects, and prevention of infant blindness. (7-1-10)()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations ~~that apply to~~ of these rules. (5-3-03)()

003. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-1-10)()

004. INCORPORATION BY REFERENCE.

~~Under Section 67-5229, Idaho Code, this chapter incorporates by reference the following document:~~ The Department has incorporated by reference the following documents: (7-1-10)()

01. Document Blood Collection on Filter Paper for Newborn Screening Programs: Approved Standard, Fifth Edition. The Department has adopted "Blood Collection on Filter Paper for Newborn Screening Programs; Approved Standard," Fifth Edition, Clinical and Laboratory Standards Institute, 2007: (ISBN 1-56238-644-1), and hereby incorporates this standard by reference. A copy is available for review at the Department described in Section 005 of these rules, or (7-1-10)

~~02. Availability. This document is available~~ through the Clinical and Laboratory Standards Institute, 940 West Valley Road, Suite 1400, Wayne, PA 19087-1898, telephone 610-688-0100. (7-1-10)()

02. Critical Congenital Heart Defects (CHDs). The Department has adopted the Critical CHD Screening Methods by the Centers for Disease Control and Prevention, from "Strategies of Implementing Screening for Critical Congenital Heart Diseases," Kemper, et al., 2011, and hereby incorporates this material by reference. Copies may be obtained from the Department described in Section 005 of these rules, or online at: <https://www.cdc.gov/ncbddd/heartdefects/hcp.html>. ()

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

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except

holidays designated by the state of Idaho. (7-1-10)

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. (7-1-10)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83702. (7-1-10)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (7-1-10)

05. Internet Website. ()

a. The Department's internet website is <http://www.healthandwelfare.idaho.gov>. (7-1-10)

b. The Department's internet website for newborn screening is <http://www.nbs.dhw.idaho.gov>. ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions will apply in the interpretation and enforcement of this chapter: (5-3-03)

01. Critical Congenital Heart Defects (CCHD). CCHD, also known as critical congenital heart disease, is a term that refers to a group of serious heart defects, as defined by the CDC, that are present from birth. ()

~~02.~~ **Department.** The Idaho Department of Health and Welfare. (5-3-03)

~~03.~~ **Dried Blood Specimen.** A blood specimen obtained from an infant by means of skin puncture, not by means of venipuncture or any other method, that is placed on special filter paper and allowed to dry. (7-1-10)

~~04.~~ **Hyperalimentation.** The administration of an amount of nutrients beyond minimum normal requirements of the appetite, in an attempt to replace nutritional deficiencies. (7-1-10)

~~05.~~ **Laboratory.** A medical or diagnostic laboratory certified according to the provisions of the Clinical Laboratory Improvement Amendments of 1988 by the United States Department of Health and Human Services. (5-3-03)

~~06.~~ **Newborn Screening.** Newborn screening means a laboratory procedure performed on dried blood specimens from newborns to detect those at risk for the diseases specified in Subsection 100.01 of these rules. (5-3-03)

~~07.~~ **Person Responsible for Registering Birth of Child.** The person responsible for preparing and filing the certificate of birth is defined in Section 39-255, Idaho Code. (5-3-03)

08. Pulse Oximetry. A non-invasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen using equipment approved by the U.S. Food and Drug Administration for use with newborn infants. ()

~~09.~~ **Test Kit.** The materials provided by the laboratory for the purposes of dried blood specimen collection and submission of specimens for newborn screening laboratory procedures. (5-3-03)

011. -- 049. (RESERVED)

050. USE AND STORAGE OF DRIED BLOOD SPECIMENS.

01. Use of Dried Blood Specimens. Dried blood specimens will be used for the purpose of testing the infant from whom the specimen was taken, for congenital birth defects. Limited use of specimens for routine calibration of newborn screening laboratory equipment and quality assurance is permissible. (7-1-10)

02. Prohibited Use of Dried Blood Specimens. Dried blood specimens may not be used for any purpose other than those described in Subsection 050.01 of this rule without the express written consent of the parent(s) or guardian(s) of the infant from whom the specimen was collected. ~~(7-1-10)~~()

03. Storage of Dried Blood Specimens. Dried blood specimens may be stored at the testing facility for a period not to exceed eighteen (18) months. Acceptable use of stored specimens will be for re-testing the specimen in the event of a symptomatic diagnosis or death of the infant during the storage period. (7-1-10)

051. -- 099. (RESERVED)

100. DUTIES OF THE ADMINISTRATOR OF THE RESPONSIBLE INSTITUTION AND THE PERSON REQUIRED TO REGISTER THE BIRTH OF A CHILD.

01. Conditions for Which Infants Will Be Tested. All infants born in Idaho must be tested for at least the following conditions: (7-1-10)

- a. Biotinidase deficiency; (5-3-03)
- b. Congenital hypothyroidism; (5-3-03)
- c. Galactosemia; (5-3-03)
- d. Maple syrup urine disease; *and* ~~(5-3-03)~~()
- e. Phenylketonuria; *and* ~~(5-3-03)~~()
- f. Critical congenital heart defects. ()

02. Blood Specimen Collection. (5-3-03)

a. The dried blood specimen collection procedures must follow the document listed in Subsection 004.01 of these rules. (7-1-10)

b. For infants admitted to the neonatal intensive care unit (NICU), the initial dried blood specimen for newborn screening must be obtained upon admission to the NICU. (7-1-10)

c. For non-premature infants, in-hospital, the initial dried blood specimen for newborn screening must be obtained between twenty-four (24) and forty-eight (48) hours of age. (7-1-10)

d. For newborns transferred from one hospital to another, the originating hospital must assure that the dried blood specimen is drawn. If the newborn is too premature or too sick to have a dried blood specimen drawn for screening prior to transfer and a dried blood specimen is not obtained, the originating hospital must document this, and notify the hospital to which the newborn is being transferred that a dried blood specimen for newborn screening has not been obtained. (7-1-10)

e. Prior to the discharge of an infant from the institution where initial newborn care or specialized medical care was rendered, the Administrator of the institution must assure that an adequate dried blood specimen has been collected regardless of the time the infant is discharged from the institution. (7-1-10)

f. For births occurring outside of a hospital, the birth attendant is responsible for assuring that an acceptable dried blood specimen is properly collected for newborn screening as stipulated in Section 100 of these rules. (7-1-10)

g. Newborns who require a blood transfusion, hyperalimentation, or dialysis must have a dried blood specimen collected for screening prior to these procedures. (7-1-10)

h. If a dried blood specimen cannot be obtained for newborn screening before transfusion, hyperalimentation, or dialysis, the hospital must ensure that a repeat dried blood specimen is obtained at the appropriate time when the specimen will reflect the infant's own metabolic processes and phenotype. (7-1-10)

i. All infants must be retested. A test kit must be given to the parents or responsible party at the time of discharge from the institution where initial newborn care was rendered, with instructions to have a second dried blood specimen collected. The preferred time for sample collection is between ten (10) and fifteen (15) days of age. (7-1-10)

03. Specimen Data Card. The person obtaining the newborn screening specimen must complete the demographic information card attached to the sample kit. The First Specimen Card must include the infant's mother's date of birth, address, and phone number. Both the First and Second Specimen's Card must include the items listed in 100.03.a. through 100.03.k. of this rule, optional fields may be completed as needed. (7-1-10)

a. Name of the infant; (7-1-10)

b. Whether the birth was a single or multiple-infant birth; (7-1-10)

c. Name of the infant's mother; (7-1-10)

d. Gender of the infant; (7-1-10)

e. Method of feeding the infant; (7-1-10)

f. Name of the birthing facility; (7-1-10)

g. Date and time of the birth; (7-1-10)

h. Date and time the specimen was obtained; (7-1-10)

i. Name of the attending physician or other attendant; (7-1-10)

j. Date specimen was collected; and (7-1-10)

k. Name of person collecting the specimen. (7-1-10)

04. Specimen Mailing. Within twenty-four (24) hours after collection, the dried blood specimen must be mailed to the laboratory by first class mail or its equivalent, except when mailing service is not available. When mailing service is not available on weekends and holidays, dried blood specimens must be mailed to the laboratory on the first available mail pick-up day. The preferred method of mailing, following a weekend or holiday, is by expedited mail service. (7-1-10)

05. Record Keeping. Maintain a record of all dried blood specimens collected for newborn screening. This record must indicate: (7-1-10)

a. Name of the infant; (7-1-10)

b. Name of the attending physician or other attendant; (7-1-10)

c. Date specimen was collected; and (7-1-10)

d. Name of person collecting specimen. (7-1-10)

06. Collection Protocol. Ensure that a protocol for collection and submission for newborn screening of

adequate dried blood specimens has been developed, documented, and implemented. Individual responsibilities must be clearly defined and documented. The attending physician must request that the test be done. The hospital may make an appropriate charge for this service. (7-1-10)

07. Responsibility for Recording Specimen Collection. (5-3-03)

a. The administrator of the responsible institution, or his designee, must record on the birth certificate whether the dried blood specimen for newborn screening has been collected. (7-1-10)

b. When a birth occurs outside a hospital, the person responsible for registering the birth of the child must record on the birth certificate whether the dried blood specimen for newborn screening has been collected and submitted within twenty-four (24) hours following collection. (7-1-10)

08. Fees. The Department will provide access to newborn screening laboratory services. If the administration of the responsible institution or the person required to register the birth of a child chooses to utilize this service, the Department will collect a fee equal to the cost of the test kit, analytical, and diagnostic services provided by the laboratory. The fees must be remitted to the Department before the laboratory provides the test kit to those responsible for ensuring the infant is tested according to these rules. (7-1-10)

(BREAK IN CONTINUITY OF SECTIONS)

301. NEWBORN CRITICAL CONGENITAL HEART DEFECTS (CCHD) SCREENING.

01. Pulse Oximetry for the Screening of CCHD. ()

a. For births occurring in a hospital, the administrator of the institution or his designee must assure that all infants who meet the CDC criteria for CCHD screening are screened following the algorithm on the CDC website at: <https://www.cdc.gov/ncbddd/heartdefects/hcp.html>. ()

b. For births occurring outside of a hospital, the birth attendant must assure that screening for congenital heart defects is conducted through the use of pulse oximetry following the algorithm on the CDC website at: <https://www.cdc.gov/ncbddd/heartdefects/hcp.html>. ()

02. Responsibility of Recording CCHD Screening Results. ()

a. For births occurring in a hospital, the administrator of the responsible institution or his designee must record on the birth certificate whether the CCHD screening was performed as “passed” or “failed” following the algorithm on the CDC website at: <https://www.cdc.gov/ncbddd/heartdefects/hcp.html>, or “not screened.” ()

b. For births occurring outside of a hospital, the person responsible for registering the birth of the child must record on the birth certificate whether the CCHD screening was performed as “passed” or “failed” following the algorithm on the CDC website at: <https://www.cdc.gov/ncbddd/heartdefects/hcp.html>, or “not screened.” ()

03. Follow Up for Abnormal CCHD Screening Results. ()

a. For births occurring in a hospital, the administrator of the responsible institution or his designee must make a referral for further evaluation of the newborn whose CCHD results are abnormal and inform the parent or legal guardian of the need for appropriate intervention. ()

b. For births occurring outside of a hospital, the person performing the screening is responsible for making an immediate referral for further evaluation of the newborn whose CCHD results are abnormal and inform the parent or legal guardian of the need for appropriate intervention. ()

301.2. -- 399. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.03.19 – RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-1701

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 20, 2017.

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 last major revision to this chapter occurred in 2006 which means that updates are needed to address changes regarding the health care environment, technology, and best practices that have occurred during the last 10 years. The changes in this docket show the underline and strikeout of all changes being made to the current rule which is a rewrite of IDAPA 16.03.19, "Rules Governing Certified Family Homes." Also, the Centers for Medicare and Medicaid Services, as a condition for approving Idaho's transition plan for implementing Home and Community Based Service standards, required the Department to develop an eviction process for residents living in Certified Family Homes that is comparable to Idaho's landlord tenant law.

Revisions and updates are being made regarding the following: admission process; adult hourly care; assessments; certification limitations; changes in location; definitions; elements of care; enforcement actions; eviction process; fire and life safety standards; medication policy; ongoing training requirements; physical home standards; plan of service; reporting and investigation of incidents and accidents; resident funds and finances; resident records; resident rights; variances and waivers; and voluntary home closures.

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

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

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost-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 May 3, 2017, Idaho Administrative Bulletin, [Vol. 17-5, pages 67-68](#).

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: This chapter of rules has not be updated since 2006 and the American with Disabilities Guidelines in the Standards for Accessible Design have been updated. The Department is adopting the 2010 ADA - Standards for Accessible Design in this chapter of rule. Changes are for accessibility in homes being certified under these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Millward at (208) 334-0706.

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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0319-1701
(Changes Present in Most of the Chapter, All Sections are Included.)

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Sections 56-1005 and 39-3505, Idaho Code, to adopt and enforce rules and standards for Certified Family Homes. The Department is authorized under Sections 56-264 and 56-1007, Idaho Code, to adopt and develop application and certification criteria, and to charge and collect application and certification fees. Under Sections 56-1002, 56-1003, 56-1004, 56-1004A, 56-1005, and 56-1009, Idaho Code, the Department and the Board of Health and Welfare have prescribed powers and duties to provide for the administration and enforcement of Department programs and rules. ~~(3-21-12)~~()

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 care provider who is paid to care for an adult living in the care provider’s 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 individual who 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 publicly-funded 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 Sections 39-3502 and 39-3512, Idaho Code. Homes that Care providers who provide care to both veterans and non-veterans living in a “medical foster home” are not exempt from these rules. ~~(7-1-17)~~()

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)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rule. (4-11-06)

003. ADMINISTRATIVE APPEALS.

All contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)

004. INCORPORATION BY REFERENCE.

The Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, ~~Appendix A to Part 36 - 2010 ADA Standards for Accessible Design~~, is incorporated by reference. The internet website is <http://www.ada.gov/regs2010/ADAREgs2010.htm> [2010ADASTandards_index.htm](http://www.ada.gov/regs2010/2010ADASTandards_index.htm). (4-11-06) ()

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

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

03. Street Address.

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

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

04. Telephone Numbers.

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

b. The business office of the Division of Licensing and Certification is (208) 364-1959. ()

c. The Program Manager of Certified Family Homes is (208) 334-0706. ()

05. Internet Website.

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

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

06. Regional Certifying Agent Contact Information. ()

a. Region 1 - 1120 Ironwood Drive, Coeur d'Alene, ID 83814 - (208) 665-8807; ()

b. Region 2 - 1118 F Street, Lewiston, ID 83501 - (208) 799-4438; ()

c. Region 3 - 3402 Franklin Road, Caldwell, ID 83605 - (208) 455-7120; ()

d. Region 4 - 1720 Westgate Drive, Boise, 83704 - (208) 334-0700; ()

e. Region 5 - 803 Harrison Street, Twin Falls, ID 83301 - (208) 732-1515; ()

f. Region 6 - 1070 Hilina Road, Pocatello, ID 83201 - (208) 239-6249; and ()

~~g. Region 7 - 150 Shoup Avenue, Idaho Falls, ID 83402 - (208) 528-5721. ()~~

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. **Confidential Records.** ~~The use of~~ Any disclosure of confidential information ~~related to used or disclosed in the course of the~~ Department's ~~client records covered by these rules~~ business is subject to the restrictions in state or federal law, and must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," ~~and federal Public Law 103-209.~~ (4-11-06)()

02. **Public Records Act.** The Department ~~of Health and Welfare~~ will comply with Title 74, Chapter 1, Idaho Code, when requests for examining ~~ing~~ and ~~of~~ copying public records are made. Unless otherwise exempted, all public records in the custody of the Department of Health and Welfare are subject to disclosure. (4-11-06)()

007. -- 008. (RESERVED)

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

01. ~~Compliance with~~ Department Criminal History and Background Check Clearance. The provider, substitute caregivers, and all adults living in the home are required to ~~comply~~ complete a Department criminal history and background check and receive a clearance in compliance with IDAPA 16.05.06, "Criminal History and Background Checks." The resident is exempt from criminal history check requirements. (4-11-06)()

02. **When Certification Can Be Granted.** Prior to certification being granted:

a. The provider must have a completed criminal history check, including clearance, ~~prior to certification;~~ and ()

b. Any other adult living in the home must have completed 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. (4-11-06)

06. **Additional Criminal Convictions, Pending Investigations, or Charges.** Once criminal history clearances have been received, the provider must ~~immediately~~ report to the Department any additional criminal convictions, pending investigation or charges for himself, any other adult living in the home or a substitute caregiver as described in Section 210 of these rules. (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 AND ABBREVIATIONS -- A THROUGH K.

For the purposes of these rules, the following definitions apply: ()

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, and washing, dressing, continence and toileting, grooming, eating, communicating, ~~continence, managing money;~~ transferring and 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 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 through evaluation of functional and cognitive ability using uniform criteria ~~developed by the Department and relevant councils for determining a person's need for care and services~~ that identifies the resident's strengths, weaknesses, risks and needs, and includes functional needs, medical needs and behavioral needs. (4-11-06)()

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

07. Certified Family Home. A home certified by the Department to provide a family-styled living environment and care to one (1) or two (2) adults; who are ~~unable~~ not able to reside ~~on~~ in their own home and who require care, help with activities of daily living, help with instrumental activities of daily living, protection and security, and need supervision, personal assistance or encouragement toward independence. The certified family home is referred to as "the home" in these rules. (4-11-06)()

08. Certified Family Home Care Provider. The adult member of the certified family home living in the home who is responsible for providing care to the residents and maintaining the home. The certified family home care provider is referred to as "the provider" in ~~this chapter of these~~ rules. (4-11-06)()

09. Certifying Agent. A person acting under the authority of the Department to participate in the certification, inspection, and regulation of a certified family home. ()

109. Chemical Restraint. The use of any medication that results or is intended to result in the modification of behavior for the purposes of discipline or convenience and not required to treat the resident's medical condition or symptoms. (4-11-06)()

11. Core Issue. Abuse, neglect, exploitation, inadequate care, inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system, and situations in which advocates, representatives, and certifying agents are denied access to records, residents, or the home according to their respective authority. ()

102. 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)

13. Critical Incident. Any actual or alleged event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety or well being of a resident. ()

~~14.~~ **Department.** The Idaho Department of Health and Welfare. (4-11-06)

~~15.~~ **Director.** The Director of the Idaho Department of Health and Welfare or his designee. (4-11-06)

~~136.~~ **Exploitation.** The misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage. (4-11-06)

~~17.~~ **Health Care Professional.** An individual licensed to provide health care within his respective discipline and scope of practice. ()

~~148.~~ **Immediate Jeopardy.** An immediate or substantial danger to a resident. (4-11-06)

~~159.~~ **Incidental Supervision.** Supervision provided by an individual approved by the provider to supervise the resident, not to exceed four (4) hours per week. (4-11-06)

~~20.~~ **Instrumental Activities of Daily Living.** The performance of secondary level activities that enable a person to live independently in the community, including preparing meals, accessing transportation, shopping, laundry, money management, housework, medication management, using tools and technology, and other associated tasks. ()

011. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.
For the purposes of these rules, the following definitions apply: ()

~~016.~~ **Level of Care.** A categorical assessment of the resident's functional ability in any given activity of daily living, instrumental activity of daily living or self-preservation and the degree of care required in the that areas ~~of activities of daily living, supervision, response to emergency situation, mobility, medications and behavior management~~ to sustain the resident in a daily living environment. (4-11-06)()

~~1702.~~ **Neglect.** The failure to provide food, clothing, shelter or medical care to sustain the life and health of a resident. (4-11-06)()

~~1803.~~ **Negotiated Service Agreement.** The agreement between the resident and or his representative, ~~if applicable,~~ and the home provider based on the resident's 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 provider and the resident. This agreement is also known as a plan of service. (4-11-06)()

~~19.~~ **Owner.** ~~Any recognized legal entity, governmental unit, or person having legal ownership of the certified family home as a business operation.~~ (4-11-06)

04. Personal Assistance. The provision of care to the resident by the provider of one (1) or more of the following services: ()

a. Assisting the resident with activities of daily living; ()

b. Assisting the resident with instrumental activities of daily living; ()

c. Arranging for supportive services; ()

d. Being aware of the resident's general whereabouts; and ()

e. Monitoring the activities of the resident while on the premises of the home to ensure the resident's health, safety and well-being. ()

~~205.~~ **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, Support and Spending Plan, or any other comprehensive service plan. (4-11-06)()

~~2106.~~ **PRN (Pro Re Nata).** A PRN is an abbreviation meaning "when necessary" used for 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)()

~~2207.~~ **Relative.** A person related by birth, adoption, or marriage to the first third degree, and grandparent and grandchild including spouses, parents, children, siblings, grandparents, grandchildren, aunts, uncles, nephews, nieces, great-grandparents, great-grandchildren, great-aunts, great-uncles, and first cousins. (4-11-06)()

~~2308.~~ **Resident.** An adult who lives in a ~~C~~certified ~~F~~family ~~H~~home and who requires personal assistance or 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)()

~~2409.~~ **Substitute Caregiver.** An ~~individual approved~~ adult designated 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)()

10. Supervision. An administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts and monitoring activities. ()

11. Supportive Services. The specific services that are provided to the resident in the community and that are required by the plan of service or reasonably requested by the resident. ()

12. Variance. A temporary exception not to exceed twelve (12) months issued by the Department to a certified family home allowing noncompliance with a specific standard required under these rules when the provider has shown good cause for such an exception and the variance does not endanger the health and safety of any resident. ()

13. Waiver. A permanent exception issued by the Department to a certified family home allowing noncompliance with a specific standard required under these rules when the provider has shown good cause for such an exception and the waiver does not endanger the health and safety of any resident. ()

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 provider 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~~ The home cannot be certified for more than two (2) residents. ~~An exception~~ variance may be granted by the Department as described in Section 140 of these rules. (4-11-06)()

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

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

b. A home cannot be certified as a certified family home and a children's foster home at the same time, unless a variance is granted by the Department. (4-11-06)()

c. ~~A certified family home~~ The provider, provider's relatives, and other adults living in the home may not be the legal guardian of any the resident unless the guardian provider, provider's relative, or other adult living in the home is a parent, child, sibling, or grandparent relative of the resident. A variance may be granted by the Department when determined the guardianship is in the best interest of the resident. (4-7-11)()

d. The provider may not be absent from the certified family home for more than thirty (30) consecutive days when the home has an admitted resident. Appropriate care and supervision must be provided to the resident in the provider's absence as described in Section 300 of these rules. ()

e. The provider's primary residence must be the certified family home. ()

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 the provider's family, ~~if~~ relatives, or other members of the household when deemed 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~~ other members of the household, if when the Department determines it is necessary; and including a statement from a health care professional that the provider has the ability to provide adequate care to the resident and ensure a safe living environment; (4-11-06)()

g. Proof that the provider or provider's spouse is listed on the deed, mortgage, or lease of the home; and ()

~~gh.~~ 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~~ the provider~~s~~ 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 include hands-on skills training; (4-11-06)()

c. Emergency procedures; (4-11-06)

d. Fire safety, including use and maintenance of fire extinguishers, ~~and~~ smoke alarms, and carbon monoxide alarms; (4-11-06)()

e. Completion of an approved "Assistance with Medications" course available through an Idaho Professional Technical Education Program or other course approved by the Department; and (4-11-06)()

f. Complaint investigations~~s~~ 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 Checks.** Satisfactory evidence that the applicant and all adults living in the home are of reputable and responsible character, including ~~a~~ criminal history ~~clearance and background checks~~ 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. (4-11-06)
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 applicant~~ must obtain a statement to that effect. In addition, the applicant must provide a signed statement ~~from a person in the business of servicing these systems~~ 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 ~~applicant's~~ home ~~and the resident's belongings~~. For continued certification, ~~the provider must ensure that~~ insurance ~~must be~~ ~~is~~ 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~~ ~~these rules~~. (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 rules is not provided in a timely manner, or not provided in the form requested by the Department, or both. (4-11-06)

102. -- 108. (RESERVED)

109. APPLICATION AND CERTIFICATION FEES FOR CERTIFIED FAMILY HOMES.

01. **Application Fee Amount.** An ~~provider~~ ~~applicant~~ is required to pay to the Department at the time of application a one-time non-refundable application fee of one hundred fifty (\$150) dollars. (3-21-12)()
02. **Payment of Application Fees.** The application fee is required for the following: ()
- a. Upon application to become a certified family home care provider; ()
- b. When an application is terminated or the home closes, the applicant must pay the application fee again to reapply for certification; or ()

c. When the home will be operated by a new care provider. ()

023. **Certification Fees.** A The provider is required to pay to the Department a certification fee of twenty-five (\$25) dollars per month. This amount ~~will be~~ is billed to the provider quarterly, and is due and payable within thirty (30) days of date of the invoice. ()

a. 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)~~()

b. Monthly certification fees paid in advance for the home, will be refunded when the provider operates the home for less than fifteen (15) days during any given month for which payment was received by the Department. An advanced payment refund may be paid when the provider voluntarily closes the home as provided in Section 115 of these rules, or involuntarily closes the home due to an enforcement remedy imposed by the Department. ()

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~~ expires at the end of the stated period unless it is continued in effect by the Department as provided in Subsection 1101.03.c. of these rules. ~~(4-11-06)~~()

a. The initial certificate requires a scheduled home inspection by ~~the Department~~ a certifying agent. ~~(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 upon request. ~~(4-11-06)~~()

02. **Temporary Certificate.** A temporary certificate may be issued to allow time for the provider to meet all certification requirements without a lapse in certification when the provider plans to relocate to a residence within the state and plans to continue operation of a certified family home. A temporary certificate is valid for no more than sixty (60) days from the date of approval. ()

a. At least thirty (30) days prior to moving into a new residence, the provider must notify the certifying agent for the region in which the new home will be located as listed in Section 005 of these rules. Prior to moving into the new residence, the provider must submit to the certifying agent the following: ()

i. A completed application form as required in Section 101 of these rules. An application fee is not required for only a change of location of the home; ()

ii. An electrical inspection for the new residence as required in Section 101 of these rules; ()

iii. Inspection and approval of any fuel-fired heating system in the new residence as required in Section 600 of these rules; and ()

iv. Other information requested by the Department to ensure the new residence is appropriate for use as a certified family home and safe for occupation. ()

b. The Department will issue a temporary certificate upon review and approval of the information required under Subsection 110.02 of this rule. ()

c. The provider must coordinate with the certifying agent an inspection of the new residence to occur prior to the expiration of the temporary certificate and be prepared to demonstrate compliance with this chapter of rules during the home inspection. ()

d. The Department will issue a certificate as described in Subsection 110.01 of this rule when it determines that the home is in compliance with these rules. ()

023. Provisional Certificate. A provisional certificate may be issued to ~~a~~ the home as provided in Section 909 of these rules ~~that~~ when it is not in substantial compliance with these rules ~~if~~ and the deficiencies do not adversely affect the health or safety of the resident and are not likely to continue beyond six (6) months. (4-11-06)()

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

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

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

03111. RENEWAL OF CERTIFICATE.

~~To renew the certificate,~~ The provider must submit a written request on a form provided by the Department to renew the home's certificate at least thirty (30) days prior to the expiration of the existing certificate. The completed renewal application form and any required documentation must be returned to the Department regional certifying agent where the home is located as listed in Section 005 of these rules ~~at least thirty (30) days prior to the expiration of the existing certificate.~~ (4-11-06)()

01. Home Inspection. A home inspection by a certifying agent is required the year after the initial home certification study and at least every twenty-four (24) months thereafter. The home inspection will consist of the elements of the certification study as required in Section 100 of these rules. (4-11-06)()

02. Desk Review. ~~When~~ the Department determines a home inspection is not required to renew the certificate, the Department may conduct a desk review by written notification to the provider. ~~The~~ provider must submit the renewal application to the certifying agent and copies of the following documentation ~~to renew the certificate:~~ (4-11-06)()

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

~~b.~~ Furnace, well, and fireplace inspection reports, as applicable; (4-11-06)

~~c.~~ Septic system inspection or pumping report, as applicable, when the previous inspection is older than five (5) years; ()

~~d.~~ Annual fire extinguisher inspection reports, or sales receipts for fire extinguishers in compliance with Section 600 of these rules that are less than twelve (12) months old; (4-11-06)()

~~e.~~ Fire Log of smoke ~~detector checks~~ and carbon monoxide alarm tests, fire extinguisher ~~checks~~ examinations, emergency plan reviews, and fire drill and evacuation summaries; (4-11-06)()

~~f.~~ Training logs; (4-11-06)

~~g.~~ List of individuals currently living in the home and individuals who moved in and out of the home during the year; (4-11-06)

~~h.~~ Proof that the provider or provider's spouse is listed on the deed, mortgage, or lease of the home; ()

~~i.~~ Proof of homeowner's or renter's insurance; (4-11-06)

~~viii.~~ Request for a waiver, or variance, or renewal of waiver and a variance that meets the requirements in Sections 120 through 140 of these rules as applicable; and (4-11-06)(____)

~~ix.~~ Other information as requested by the Department. (4-11-06)

~~e03.~~ **Validity of Existing Certificate.** The existing certificate, unless suspended or revoked, remains valid until the Department has acted on the renewal application renewal when the renewal application and supporting documentation is filed in a timely manner with the certifying agent. (4-11-06)(____)

~~04112.~~ **CHANGE OF OWNERSHIP PROVIDER CERTIFICATION REQUIREMENTS OR LOCATION.**

~~01.~~ **Change of Provider.** Certificates are not transferable or assignable 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 care provider occurs. (4-11-06)(____)

~~02.~~ **Change of Location.** Certificates are not transferable or assignable from one (1) location to another. When a change of location occurs, the provider's new home must be: (____)

~~a.~~ Certified using the same procedure as required in Section 100 of these rules for a new home that has never been certified; or (____)

~~b.~~ Temporarily certified by the procedure described in Section 110 of these rules. (____)

~~05113.~~ **DENIAL OF APPLICATION FOR CERTIFICATE.**

The Department may deny the application for 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 an application for a certificate include the following: (4-11-06)(____)

~~#01.~~ **False or Incomplete Information.** The applicant or provider has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (4-11-06)(____)

~~#02.~~ **Convictions.** The applicant or provider has been convicted of fraud, gross negligence, abuse, assault, battery or exploitation; (4-11-06)(____)

~~e03.~~ **Other Criminal Offense.** The applicant or provider 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)(____)

~~#04.~~ **Denial or Revocation of Health Care License.** The applicant or provider has been denied or has had revoked any health facility license, residential care or assisted living facility license, or certified family home certificate; (4-11-06)(____)

~~e05.~~ **Operation Without a License.** The applicant or provider has been convicted of operating found to have operated a health facility, residential care or assisted living facility, or certified family home without a license or certificate; (4-11-06)(____)

~~#06.~~ **Court Ordered.** 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)(____)

~~#07.~~ **Registries or Exclusion List.** 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)(____)

~~#08.~~ **Control or Influence.** The applicant or provider is directly under the control or influence of any person who is described in Subsections ~~110.05.a. through 110.05.g.~~ 113.01 through 113.07 of ~~these~~ this rules. (4-11-06)(____)

~~06.~~ **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)

~~079.~~ 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)

~~08114.~~ **FAMILY HOME OPERATING WITHOUT A CERTIFICATE.**

01. Operating Without Certificate. A person found to be operating a family home without first obtaining a certificate may be referred for criminal prosecution. ()

02. Placement or Transfer of Resident. Upon discovery of a family home operating without a certificate, the Department ~~will refer~~ may transfer residents to the appropriate placements or refer to adult protective services agency ~~if when~~: (4-11-06)()

a. There is an immediate threat to any resident's health and safety; or (4-11-06)

b. The individual operating the home does not cooperate with the Department to apply for certification, meet certification standards and obtain a valid certificate. (4-11-06)()

~~111. -- 114.~~ (RESERVED)

115. VOLUNTARY CLOSURE OF THE HOME.

When choosing to voluntarily close the home, the provider must provide written notice to the certifying agent in the region where the home is located as listed in Section 005 of these rules. The notification must include the following: ()

01. Date of Notification. ()

02. Provider's Certificate. A copy of the certificate, or information from the certificate that includes: ()

a. Provider's name; ()

b. Address of the home; and ()

c. Certificate number. ()

03. Closure Date. The written notice must include the planned closure date. The Department will not refund or prorate prepaid funds on retroactive closures. ()

04. Discharge Plans. If applicable, discharge plans for current residents must accompany the written notice. ()

~~1156.~~ **REQUIRED ONGOING TRAINING.**

~~All~~ The providers must document a minimum of eight (8) hours per year of ongoing, relevant training in the provision of supervision, services, and care. ~~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 ongoing first aid or CPR will count toward the eight (8) hour requirement. 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)()

01. Initial Provider Training. The initial provider training required in Section 100 of these rules satisfies the eight (8) hour training requirement for the first year of certification. ()

02. Type of Training. ()

a. Interactive training means the provider is able to ask questions of a live instructor and receive answers in real time. The instructor must be a professional or a recognized authority in his subject matter. At least half of the required ongoing training hours each year must consist of interactive training. ()

b. Independent study means any training not provided by a live instructor. The remaining required training hours may be independent study through books, articles, videos, online courses, and other resources. ()

03. Content of Training. ()

a. Resident specific. At least half of the required ongoing training hours each year must be devoted to the specific conditions, diagnoses and needs of admitted residents, when residents are admitted. ()

b. General topics. The remaining hours may be devoted to other topics related to care giving, health or safety. Up to two (2) hours of first aid or adult CPR training will count toward the annual requirement. ()

04. Documentation of Training. The provider must provide documentation of training. The documentation must include: ()

a. Topic of the training with a brief description; ()

b. Source of training, including instructor or author; ()

c. Number of hours; ()

d. Type and content of training; ()

i. Interactive or independent; and ()

ii. Resident specific or general. ()

1167. -- 119. (RESERVED)

120. WAIVERS.

The Department may grant permanent waivers. The decision to grant a waiver ~~in one (1)~~ for a home or provider is not a precedent or applicable to any other home or provider and has no force of effect in any other proceeding. (4-11-06)()

01. Written Request. ~~A~~ The provider must submit a written request for a waiver ~~must be submitted~~ to the ~~Department~~ regional certifying agent where the home is located as listed in Section 005 of these rules prior to any planned noncompliance with any rule under this chapter. The appropriateness of granting a waiver is determined by 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~~ for granting 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; ~~and~~ (4-11-06)()

c. ~~Written documentation~~ A signed statement from the provider that assures the resident's health and safety will not be jeopardized if the waiver is granted. ~~The statement must include an agreement to implement any special conditions the Department requires.~~ (4-11-06)()

02. Waiver Expiration Special Conditions. ~~A~~ When granting a waiver ~~may be granted for a period of no more than twelve (12) months~~, the Department may require the provider to meet special conditions while the waiver is in effect to ensure the health and safety of residents. (4-11-06)()

~~03. **Waiver Renewal.** If the provider wishes to renew a waiver, he must submit a written request to the Department. The appropriateness of renewing a waiver will be determined by the Department. (4-11-06)~~

043. Waiver Not Transferable. A waiver granted under Section 120 of this rule is not transferable to any other provider, address home, or resident. (4-11-06)()

121. GENERAL VARIANCES.

The Department may grant temporary variances that may be effective for up to twelve (12) months at a time. The decision to grant a variance for a home or provider is not a precedent or applicable to any other home or provider and has no force of effect in any other proceeding. ()

01. Written Request. The provider must submit a written request for a variance to the regional certifying agent where the home is located as listed in Section 005 of these rules prior to any planned noncompliance with any rule under this chapter. The appropriateness of granting a variance is determined by the Department. The request must include the following: ()

a. Reference to the section of the rules for which the variance is requested; ()

b. Reasons that show good cause for granting the variance, including any extenuating circumstances and any compensating factors or conditions that may have bearing on the variance, such as additional floor space or additional staffing; and ()

c. A signed statement from the provider that assures resident health and safety will not be jeopardized if the variance is granted, including an agreement to implement any special conditions the Department may require. ()

02. Special Conditions. When granting a variance, the Department may require the provider to meet special conditions while the variance is in effect to ensure the health and safety of residents. ()

03. Variance Renewal. To renew a variance, the provider must submit a written request to the regional certifying agent where the home is located as listed in Section 005 of these rules at least thirty (30) days prior to expiration of the variance. The request for renewal must include items required in Subsection 121.01 of this rule. The appropriateness of renewing a variance is determined by the Department. ()

04. Variance Not Transferable. A variance granted under Section 121 of this rule is not transferable to any other provider, home, or resident. ()

122. REVOKING A WAIVER OR VARIANCE.

The Department may revoke a waiver or variance. ()

01. Causes for Revocation. Revocation of a waiver or variance may occur when: ()

a. The provider has not met the special conditions associated with granting the exception; ()

b. Conditions within the home have changed such that an exception is no longer prudent; or ()

c. The health and safety of residents have otherwise been compromised. ()

02. Written Notice. The Department will provide written notice to the provider when a waiver or variance is revoked, including the reason for the revocation. ()

03. Time Frame to Comply. The provider must comply with the rule for which the waiver or variance is revoked according to the following time frames: ()

a. Immediately upon notification, when there is a threat to the life or safety of residents; or ()

b. Within thirty (30) days of notification, when there is no threat to the life or safety of residents. ()

12~~4~~3. -- 129. (RESERVED)

130. NURSING FACILITY LEVEL OF CARE ~~WAIVER REQUIREMENTS~~ VARIANCE.

A certified family home may care for one (1) resident who requires nursing facility level of care as defined in Section 39-1301(b), Idaho Code, without obtaining a waiver variance. A home seeking to provide care to two (2) residents who require nursing facility level of care must request a waiver variance in writing from the Department as required in ~~Section 39-3554, Idaho Code~~ Section 121 of these rules. (4-11-06)()

01. **Conditions for a Waiver Variance.** The Department ~~will~~may issue a written waiver variance permitting the arrangement when: (4-11-06)()

- a. Each of the residents provides a written statement to the Department requesting the arrangement; (4-11-06)
- b. Each of the residents making the request is competent, informed, and has not been coerced; (4-11-06)
- c. The Department finds the arrangement safe and effective. (4-11-06)

02. **Revoking a Waiver Variance.** The Department will revoke the waiver variance when: (4-11-06)()

- a. There is a threat to the life or safety of either resident; (4-11-06)
- b. One (1) of the residents leaves the home permanently; (4-11-06)
- c. One (1) of the residents notifies the Department in writing that he does not wish to live in the home with the other resident; or (4-11-06)
- d. The Department finds the arrangement is no longer safe and effective. (4-11-06)

03. **Waiver Variance Not Transferable.** A waiver variance granted under Subsection 130.01 of this rule is not transferable to any other provider, address home, or resident. (4-11-06)()

131. -- 139. (RESERVED)

140. ~~EXCEPTION~~ VARIANCE TO THE TWO RESIDENT LIMIT.

01. **Application for Exception Variance.** ~~A home~~ The provider may apply to the Department for a exception variance to the two (2) resident limit in order to care for three (3) or four (4) residents on a per resident basis prior to any new admissions. (4-11-06)()

02. **Criteria for Determination.** The Department will determine if safe and appropriate care can be provided based on residents' 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~~ egress from and ingress to the home; (4-11-06)()
- e. The number and qualifications of care givers in the home; (4-11-06)

- f. The desires of the prospective and current residents; (4-11-06)
- g. The individual and collective hours of care needed by the residents; (4-11-06)
- h. The physical layout of the home and the square footage available to meet the needs of all persons living in the home; and (4-11-06)
- i. If an ~~an exception variance~~ 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 for the variance must also include the information required in Section 130 of these rules. (~~4-11-06~~)()

03. Other Employment. ~~A Provider of who is granted a variance to admit~~ three (3) or four (4) ~~bed homes residents~~ must not have other gainful employment outside the home unless: (~~4-11-06~~)()

- a. The total direct care time for all residents, as reflected by their plans of service and assessments or, if not indicated by these documents for a publicly-funded program, the time that the program bases its payment, 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. ~~A Provider of who is granted a variance to admit~~ three (3) or four (4) ~~bed homes residents~~ must obtain additional training to meet the needs of the residents as ~~determined necessary by the Department.~~ follows: (~~4-11-06~~)()

- a. A provider who cares for three (3) residents must obtain twelve (12) hours per year of ongoing relevant training as required in Section 116 of these rules. ()
- b. A provider who cares for four (4) residents must obtain sixteen (16) hours per year of ongoing relevant training as required in Section 116 of these rules. ()

05. Exception Variance Nontransferable. An ~~exception variance~~ to care for more than two (2) residents ~~will is~~ not ~~be~~ transferable to another provider, ~~address~~ home, or resident. (~~4-11-06~~)()

06. Reassessment of Exception Variance. An ~~exception variance~~ 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~~ this rules. (~~4-11-06~~)()

07. Annual Home Inspection. A certified family home with an ~~an exception variance~~ to care for more than two (2) residents must have a home inspection by a certifying agent 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. Fire Drill Frequency. A provider who is granted a variance to admit three (3) or four (4) residents must conduct fire drills as described in Section 600 of these rules, except the frequency of the fire drills must be at least monthly. ()

141. -- 149. (RESERVED)

150. INSPECTIONS OF HOMES.

The Department will inspect each certified family homes at least every twenty-four (24) months, ~~beginning with~~ calculated from 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~~ Certifying 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. The inspector has the authority to have full access to the home and the authority to: (4-11-06)()

~~03.a.~~ Access by Inspector. ~~An inspector must have full access and authority to e~~Examine quality of care and services delivery; ()

~~b.~~ Examine home records, resident records, ~~records including and~~ any records or documents pertaining to any financial transactions between residents and the home, including resident accounts; ()

~~c.~~ Examine the physical premises, including the condition of the home, grounds and equipment, food service, water supply, sanitation, maintenance, and housekeeping practices, ~~and;~~ ()

~~d.~~ Examine any other areas necessary to determine compliance with these rules and standards; (4-11-06)()

~~ae.~~ An inspector has the authority to iInterview 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~~ are confidential and conducted privately unless otherwise specified by the resident; and (4-11-06)()

~~bf.~~ The inspector has full authority to iInspect the entire home, ~~accompanied by the provider;~~ including the personal living quarters of family members living in the home of the household, 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. The provider, substitute caregiver, or any other adult living in the home may accompany the inspector. (4-11-06)()

~~043.~~ Written Report Statement of Deficiencies. ~~Following any~~ When violations of these rules are identified through the course of an investigation or inspection, depending on the severity, the Department ~~will provide a written report~~ may send a statement of deficiencies to the provider ~~of the home~~ within thirty (30) days ~~of the completed inspection or investigation.~~ The report statement of deficiencies will include the findings of the investigation or inspection and any rules the home was found to have violated. (4-11-06)()

054. **Plan of Correction.** ~~If~~ When a statement of deficiencies ~~are identified during the investigation or inspection~~ is issued, the home provider ~~will be sent a statement of deficiencies which requires~~ must develop a plan of correction and submit it to the Department for review and approval. (4-11-06)()

a. Depending on the severity of the deficiency, the home provider 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 regional certifying agent where the home is located as listed in Section 005 of these rules. (4-11-06)()

b. An acceptable plan of correction must include; ()

~~i.~~ How the each deficiency identified in the statement of deficiencies was corrected or how it will be corrected; ()

~~ii.~~ What steps have been taken to assure that the deficiency does not recur, ~~and;~~ ()

~~iii.~~ ~~Acceptable time frames for correction of the deficiency; and~~ (4-11-06)()

~~iv.~~ ~~Signature of the provider.~~ ()

c. Follow-up inspections may be conducted to determine whether corrections to deficiencies are being made according to ~~time frames established in~~ the ~~Department approved~~ plan of correction. (4-11-06)()

d. The Department may provide consulting services to ~~a home~~ the provider, upon request, to assist in identifying and correcting deficiencies and upgrading the quality of care ~~in the home.~~ (4-11-06)()

~~05.~~ ~~List of Deficiencies. A current list of deficiencies, including plans of correction, are available to the public upon request at the home or by written request to the Department according to Section 006 of these rules.~~ ()

151. -- 159. (RESERVED)

160. COMPLAINT PROCEDURE.

Any person who believes that any rule ~~in this chapter~~ has been violated by a ~~certified family~~ home may file a complaint with the Department ~~at the address as~~ listed in Section 005 of these rules ~~or at the Department's Regional Office.~~ (4-11-06)()

01. Investigation. ()

a. The Department will investigate any complaint alleging a violation of these rules. Any complaint involving ~~the~~ abuse, neglect, or exploitation of an adult ~~must will~~ also be referred to adult protective services ~~in accordance with~~ ~~according to the Adult Abuse, Neglect, and Exploitation Act,~~ Section 39-5303, Idaho Code. (4-11-06)()

b. ~~The Department will investigate or cause to be investigated any reported critical incident affecting health and safety or change in a resident's condition, including the death of a resident, which indicates there was a violation of these rules.~~ ()

02. Investigation Method. The nature of the complaint will determine the method used to investigate the complaint. On-site investigations at the home ~~may can~~ be unannounced ~~and without prior notice.~~ (4-11-06)()

~~03.~~ ~~Written Report. Following completion of an investigation, the Department will provide a written report to the provider within thirty (30) days. The report will include the findings of the investigation.~~ ()

~~034.~~ ~~Statement of Deficiencies. If~~ When violations of these rules are identified ~~through the course of an investigation,~~ depending on the severity, the Department may send the home a statement of deficiencies ~~described in Section 150 of these rules.~~ The ~~home provider~~ must prepare ~~and submit~~ a plan of correction ~~as~~ described in ~~Subsection 150 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, inspections, 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)()

~~05.~~ ~~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 MINIMUM STANDARDS OF CARE.

~~As a condition of certification, the~~ home provider must ~~provide~~ ~~adequately care for~~ each ~~of the following to the resident without additional charge.~~ as follows: (4-11-06)()

01. Plan of Service. Provide the services required to meet the terms of the resident's plan of service as described in Section 250 of these rules, including development and implementation of the plan of service for private-pay residents and implementation of the plan of service for publicly-funded residents. ()

02. Supervision. Provide appropriate, and adequate supervision for twenty-four (24) hours each day unless according to the resident's plan of service provides for alone time. (4-11-06)()

03. Daily Living Activities and Recreation. ~~Daily activities, recreational activities, maintenance of self-help skills, assistance with~~ Provide assistance to the resident at the level of care indicated on the resident's plan of service in the areas of activities of daily living and ~~provisions for trips to social functions, special diets, and arrangements for payments~~ instrumental activities of daily living. (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 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 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)~~

~~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)~~

~~06. Activity Supplies. Activity supplies in reasonable amounts, that reflect the interests of the resident. (4-11-06)~~

~~07. 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)~~

04. Medication Management. Provide assistance and monitoring of medications as described in Sections 400 through 402 of these rules, as applicable. ()

05. Emergency Services. Provide immediate and appropriate interventions on behalf of the resident in response to an emergency, including the following: ()

a. Developing plans in advance of an emergency as described in Section 600 of these rules and

executing those plans when necessary: ()

b. Evacuating the resident from the home: ()

c. Providing first aid to the resident when seriously injured: ()

d. Administering CPR to the resident unless the resident has an order not to resuscitate: ()

e. Arranging for emergency transportation; and ()

f. Contacting 9-1-1 for involvement of law enforcement officers or the fire department when necessary for the protection of the resident. ()

06. Supportive Services. Coordinate paid services for the resident outside the home, including: ()

a. Medical appointments; ()

b. Dental appointments; ()

c. Other services in the community as identified in the plan of service or reasonably requested by the resident; and ()

d. Arrange transportation to the service location and return to the home. ()

07. Resident Rights. Protect the resident's rights as listed in Section 200 of these rules. ()

08. Safe Living Environment. Provide a physical living environment that complies with Sections 500 through 710 of these rules. ()

171. -- 174. (RESERVED)

174. ACTIVITIES AND COMMUNITY INTEGRATION.

Section 39-3501, Idaho Code, requires that a certified family home provide a homelike, family-styled living environment with a focus on integrated community living. The provider must offer the following: ()

01. Activities. Recreational activities, provisions for trips to social functions, and daily activities. ()

02. Activity Supplies. Activity supplies in reasonable amounts, that reflect the interests of the resident. ()

03. Transportation. Arrangement of transportation to and from community, recreational, and religious activities within twenty-five (25) miles of the home when requested by the resident at least twenty-four (24) hours in advance. ()

175. ROOM, UTILITIES AND MEALS.

The home must provide room, utilities and three (3) daily meals to the resident. The charge for room, utilities and three (3) daily meals must be established in the admission agreement. The following are included in the charge for room, utilities and meals: (4-11-06) ()

01. Sleeping Room. The resident sleeping room must meet the requirements of Section 700 of these rules, must be equipped with a dresser, and when requested by the resident a chair, that are both substantially constructed and in good repair. ()

02. Bed. The resident must be provided with his own bed that is 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 have box springs kept in good repair, a clean and comfortable mattress, bedspread, sheets and pillow cases, and pillow that are standard for the size of the bed. ()

03. Monitoring or Communication System. A monitoring or communication system must be provided when necessary due to the size or design of the home or the needs of the resident. The provider must hold a written agreement with the resident or resident's representative prior to using a monitoring system that may violate the resident's right to privacy. ()

04. Secure Storage. 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. ()

05. Bathroom. Access to bathing and toilet facilities that meet the requirements of Section 700 of these rules. ()

06. Common Areas. Access to a common living area that contains reading lamps, tables, comfortable chairs or sofas, and basic television. The resident must be allowed to eat with the other members of the household if he so chooses. ()

07. Supplies. Bath and hand towels; wash cloths; a reasonable supply of soap, shampoo, toilet paper, and facial tissue; and first aid supplies. ()

08. Housekeeping Service. Housekeeping and maintenance as required in Section 500 of these rules, including laundering of linens and clothing. ()

09. Water. Potable water that meets the requirements of Section 500 of these rules. ()

10. Sewer. A sewage disposal system that meets the requirements of Section 500 of these rules. ()

11. Trash. Disposal of garbage that meets the requirement of Section 500 of these rules. ()

12. Heating and Cooling. Sufficient heating and cooling to meet the requirements of Section 700 of these rules. ()

13. Electricity. Sufficient electricity to power common household and personal devices. ()

14. Telephone. Access to a telephone that meets the requirements of Section 700 of these rules. ()

15. Meals. The provider must offer breakfast, lunch, and dinner to the resident. ()

a. Food must be prepared in safe and sanitary methods that conserve nutritional value, flavor and appearance, when prepared by the provider or other member of the household. ()

b. Meals offered by the home must meet the dietary requirements or restrictions of the resident when so ordered by a health care professional. ()

176. -- ~~179.~~ (RESERVED)

180. HOURLY ADULT CARE.

Hourly adult care, also referred to as adult day health, is a supervised, structured, paid service that may be provided in the home for up to fourteen (14) hours in any twenty-four (24) hour period to adult participants who are not residents of the home. Hourly adult care encompasses health and social services, recreation, supervision, and assistance with activities of daily living needed to ensure the optimal functioning of the participant. The standards in this section do not apply if the service does not include a payment component to the provider, or the hourly adult care participant is a relative of the provider whose care is not publicly funded. Hourly adult care may be offered in the home when the following requirements are met: ()

01. Participants. No individual will be admitted to the home for hourly adult care who requires ongoing skilled nursing care or for whom the provider cannot adequately provide services and supervision. ()

02. Records. All records of services delivered by the provider must be maintained in the home for at

least five (5) years from the date of service. ()

03. Enrollment Contract. The provider maintains an enrollment contract with each hourly adult care participant that contains the following: ()

a. Full name of the participant; ()

b. The participant's date of birth; ()

c. Primary address of the participant; ()

d. Names and telephone numbers of the participant's responsible party and other emergency contacts; ()

e. Name and telephone number of the participant's primary physician; ()

f. List of medications, diets, allergies, services, and treatments prescribed for the participant and other pertinent health information regarding the participant's needs; ()

g. Services the provider must provide to the participant while in the home, which may include: activities, meals, supervision, assistance with medications, and assistance with activities of daily living, and the level of care required for each service; ()

h. The rate charged by the provider for hourly adult care services if the participant is private pay; ()

i. The number of days the provider will give written notice to the participant's primary contact in advance of terminating the enrollment contract; ()

j. The date on which hourly adult day services will commence; and ()

k. The printed name, signature, and contact information of the individual who completed the enrollment contract and the provider's printed name, signature, and contact information. Upon entering into the contract, a copy of the enrollment information must be provided to each party. ()

04. Service Logs. Service logs that identify, on a per day basis when hourly adult care services are provided in the home, the name of each participant who received services, the times of arrival to and departure from the home for each participant, and the names of staff who provided services and their arrival and departure times. ()

05. Space and Accommodations. The provider must only accept hourly adult care participants for whom the home can provide reasonable accommodations. The home must provide the following for hourly adult care participants: ()

a. Seating on cushioned chairs or sofas positioned at least thirty-two (32) inches apart in common living areas such that all residents and participants in the home may comfortably enjoy the space; ()

b. A rest area away from the common living areas to permit privacy and to isolate participants who become ill or require rest and is equipped with furniture for napping, such as a bed, lounge chair, couch, or recliner; ()

c. Access to a bathroom that meets the requirements of Section 700 of these rules; and ()

d. When caring for participants with physical or sensory impairments, a physical environment that meets the requirements of Section 700 of these rules, as applicable. ()

06. Resident's Personal Space. The personal living space of the resident, including his sleeping room

and on-suite bathroom, if equipped, must not be used by hourly adult care participants at any time. ()

07. Staffing. The provider must only accept hourly adult care participants for whom he can safely provide the level and types of service required. The provider must ensure that all staff providing hourly adult care services have been sufficiently trained in and follow universal infection control precautions and each participant's specific care plan as documented in the enrollment contract. In addition: ()

a. Each caregiver providing hourly adult care services must meet the qualifications of a substitute caregiver as described under Section 300 of these rules. ()

b. The provider must employ sufficient staff to assure safe and proper care for both residents and hourly adult care participants. Staffing must be based on: ()

i. The functional and cognitive status of each hourly adult care participant and resident; ()

ii. The size and layout of the home; and ()

iii. Staffing ratios must not fall below one (1) caregiver to four (4) residents and hourly adult care participants, combined. ()

08. Medications. Assistance with medications to hourly adult care participants must meet the requirements in Sections 400 through 402 of these rules. ()

a. The provider is responsible for safeguarding the participant's medications while the participant is receiving services at the home. ()

b. The participant's medications must not be stored at the home during hours in which the participant is not receiving hourly adult care services at the home. ()

09. Fire and Life Safety. The provider must ensure the home adheres to fire and life safety standards described in Section 600 of these rules. For fire and life safety purposes, the hourly adult care participant is counted as a "resident" when that term is used in Section 600 of these rules. When offering hourly adult care, the provider must: ()

a. Prohibit smoking or unsupervised smoking in accordance with Section 600 of these rules. ()

b. Review emergency preparedness plans as required under Section 600 of these rules with the individual who completed the enrollment contract and provide a written copy of the plans to that individual. ()

c. Conduct fire drills as required in Section 600 of these rules, except that the frequency of the drills must be at least monthly. ()

181. -- 199. (RESERVED)

200. RESIDENT RIGHTS POLICY.

~~Each certified family home will develop and implement a written resident rights policy which will~~ The provider must possess, annually review, and implement a written policy designed to protect and promote the rights of each resident as provided in this section. The written ~~description of legal~~ resident rights ~~policy~~ must include ~~a description of the protection of personal funds and~~ a statement that ~~a the~~ resident ~~or any other individual~~ may file a complaint with the Department ~~at the address as described~~ in Section ~~005~~ 160 of these rules, ~~or local Regional Office regarding resident abuse and neglect and misappropriation of resident property in the home~~ when he believes that any resident's right ~~has been violated~~. Resident rights ~~policies must~~ 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 send and receive mail unopened, either by postal service, electronically, or by other means, unless the resident's plan of service specifically calls for the provider to monitor the correspondence in order to protect the resident from abuse or exploitation; (4-11-06)()

b. 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-resident's health care professional; (4-11-06)()

c. The right to control the use of pictures and videos containing the resident's image. ()

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; and (4-11-06)()

d. The right to an environment free of illicit drug use or possession and other criminal activities. ()

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 and other individuals in the home; (4-11-06)()

b. The right to receive a response from the home provider to any request of the resident within a reasonable time; (4-11-06)()

c. Freedom from discrimination on the basis of race, color, national origin, sex, religion, age, disability, or veteran status; ~~and~~ (4-11-06)()

d. Freedom from intimidation, manipulation, and coercion, ~~and exploitation;~~ (4-11-06)()

e. The right to wear his own clothing; and (4-11-06)()

f. The right to determine his own dress and hair style; (4-11-06)()

04. **Basic Needs Allowance.** ~~Each R~~residents whose care is paid for by publicly-funded assistance must retain, for ~~their~~ his personal use, the difference between ~~their~~ his total monthly 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 and Property.** ~~Each R~~residents ~~have~~ has the right to manage ~~their~~ his personal funds and use his personal property. ()

a. ~~A home~~ The provider must not require ~~a~~ the resident to deposit his personal funds ~~with the home into an account controlled by any other person.~~ (4-11-06)()

b. Upon written authorization from the resident, or the resident's representative to the provider or provider's relative to manage the resident's personal funds, the provider must hold, safeguard, and account for the resident's personal funds as required in Section 275 of these rules. ()

c. The resident has the right to retain and use his own personal property in his own living area in order to maintain his individuality and personal dignity. The storage and use of these items by the resident must not present

a fire or life safety hazard. ()

06. Access to Resident. Each home provider and individuals living in the 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 his 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. Reasonable access to the resident's records, medications and treatments by the resident's health care professional subject to the resident's permission. ()

07. Freedom From Harm. The resident has the right to be free from: ()

a. Physical, mental, or sexual abuse; ()

b. Neglect; ()

c. Exploitation; ()

d. Corporal punishment; ()

e. Involuntary seclusion; and ()

f. Any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat a medical condition. (4-11-06)()

~~**a.** A certified family 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 home 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)~~

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 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)()

e. The right to decline treatment for any medical condition; and ()

f. When 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. ()

09. Grievance. ()

a. The resident has the right to voice or file a grievance with respect to care or service that is ~~for~~ fails to be~~y~~ furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by the ~~home~~ provider to resolve grievances the resident may have, including those with respect to the behavior of other residents. (4-11-06)()

b. The provider must provide a written response to the resident or resident's representative describing how he resolved or attempted to resolve the grievance, and maintain a copy of this written response in the resident record. ()

10. Advance Notice. The resident must receive written advance notice at least thirty (30) calendar days prior to his non-emergency transfer or discharge unless the transfer or discharge is for a reason described in Section 260, including the following: ()

a. The resident is transferred or discharged only for medical reasons,~~or for:~~ ()

b. To protect his welfare or the welfare of other ~~residents, or for~~ members of the household; ()

c. ~~#~~Nonpayment for his stay; (7-1-17)()

d. The resident violates any condition mutually established between the resident and the provider at the time of admission; or ()

e. The resident engages in unlawful delivery, production, or use of a controlled substance on the premises of the home. ()

11. Other Rights. In addition to the rights outlined in Subsections 200.01 through 200.10 of ~~these~~ this rules, the resident has the following rights: (4-11-06)

a. The resident has the right to refuse to perform services for the home except as contracted between the resident and the provider. The provider agrees to pay the resident for such services, and the provider pays the resident a wage consistent with state and federal law; (4-11-06)()

b. The resident must have access to his personal records, including those described in Section 270 of these rules, and must have the right to confidentiality of personal, medical, 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~~ to refuse routine care of a personal nature ~~from a member of the opposite sex;~~ (4-11-06)()

h. 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)
i. The resident must have any other right established by law. (4-11-06)

201. NOTICE OF LEGAL RESIDENT RIGHTS.

01. Resident Rights Notice. The ~~certified family home will~~ provider must inform the resident or his representative, verbally and in writing, at the time of admission to the home, of his legal rights during the stay at the home including date and signature. These rights are found in Section 200 of these rules. ~~4-11-06~~()

02. Annual Review of Resident Rights. The provider must review the resident rights policy with the resident or his representative at least annually including date and signature. ()

03. Documentation of Review. The provider must retain the signed and dated copy of the policy in the resident's record indicating that the resident or resident's representative has had the opportunity to review the policy. ()

202. ACCESS BY ADVOCATES AND REPRESENTATIVES.

~~A certified family home~~ The provider, substitute caregivers and adult members of the household must permit advocates and representatives of community and legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the home at reasonable times. Advocates and representatives may observe all common areas of the home. Access must be permitted in order for advocates and representatives to provide the following. ~~4-11-06~~()

01. Inform Residents of Services. Visit, talk with and make personal, social service programs and legal services available to all residents. (4-11-06)

02. Inform Residents of Rights. Inform residents of their rights and entitlements, their corresponding obligations under state, federal, and local laws by distribution of educational materials or discussion in groups and with individuals. (4-11-06)

03. Assist Residents to Secure Rights. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in other matters in which residents are aggrieved. This assistance may be provided individually, or in a group basis, and may include organizational activity, counseling, and litigation. (4-11-06)

04. Advise and Represent. Engage in other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights. (4-11-06)

05. Communicate Privately. Communicate privately and without restrictions with any resident who consents to the communication. (4-11-06)

203. -- ~~2409~~. (RESERVED)

210. REPORTING REQUIREMENTS.

The provider must report to the regional certifying agent where the home is located as listed in Section 005 of these rules or appropriate agency or individual for the following: ()

01. Serious Physical Injury or Death. The provider must report to the appropriate law enforcement agency within four (4) hours when there is reasonable cause to believe that abuse, neglect, 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. ()

02. Abuse, Neglect, or Exploitation. When the provider has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, or exploited, he must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. ()

03. Critical Incidents. The provider must notify the certifying agent when a critical incident affects the health or safety of the resident or leads to a change in the resident's condition, including serious illness, accident, elopement, death, or adult protective services or law enforcement contact and investigation. Reporting requirements are as follows: ()

- a.** Within twenty-four (24) hours of the resident's death or disappearance; and ()
- b.** Within three (3) business days following: ()
 - i.** Contact from adult protective services or law enforcement in conjunction with an investigation; ()
 - ii.** A visit to an urgent care clinic or emergency room; or ()
 - iii.** Admission to a hospital. ()

04. Report of Fire. A separate report on each fire incident occurring within the home, for which a fire extinguisher was discharged or 9-1-1 was contacted, must be submitted to the certifying agent within three (3) business days of the occurrence. The report must include: ()

- a.** Date of the incident; ()
- b.** Origin of the fire; ()
- c.** Extent of damage; ()
- d.** How the fire was extinguished; and ()
- e.** Injuries, if any. ()

05. Additional Criminal Convictions. The provider must immediately report any additional criminal convictions for himself, any other adult living in the home or a substitute caregiver to the certifying agent. ()

06. Notice of Pending Investigations or Charges. The provider must immediately report 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 to the certifying agent. ()

07. Reporting of Funds Managed by the Provider for a Deceased Resident. For funds managed under Section 275 of these rules, the following is required: ()

- a.** On the death of a private-pay resident, the provider must convey the resident's funds, with a final accounting of those funds, to the individual administering the resident's estate within thirty (30) days. ()
- b.** On the death of a publicly funded resident, the provider must convey the resident's funds, with a final accounting of those funds, to the Department within thirty (30) days. ()

~~203~~11. -- 224. (RESERVED)

225. UNIFORM ASSESSMENT REQUIREMENTS.

01. State Responsibility for ~~State Publicly~~-Funded Residents. The Department will assess ~~State-funded~~ residents ~~accessing services through a publicly funded program~~ according to ~~IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients."~~ ~~uniform criteria developed to assess all participants within that respective program. Assessment criteria may vary from one program to another, but must be uniform within the same program.~~ (4-11-06)()

02. Provider Responsibility for Private-Pay Residents. The provider will develop, identify, assess,

or direct a uniform needs assessment of each private-pay residents. ~~The Department's Uniform Assessment Instrument may be used as the uniform needs assessment as described in IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients."~~ The uniform needs assessment: (4-11-06)()

- a. Must be completed no later than fourteen (14) calendar days after admission; ()
- b. Must be reviewed when there is a change in need, or every twelve (12) months, whichever occurs first; ()
- c. Must include: ()
 - i. Identification and background information; ()
 - ii. Medical diagnosis; ()
 - iii. Medical and health needs; ()
 - iv. Prescriptions, including route of administration, and all over-the-counter medications, supplements, treatments, and special diets, if applicable; ()
 - v. Historical and current behavior patterns; ()
 - vi. Cognitive function; ()
 - vii. Psychosocial and physical needs of the resident; ()
 - viii. Functional status; ()
 - ix. Assessed level of care; and ()
 - x. A statement from the resident's health care professional indicating the resident is appropriate for certified family home care. ()
- d. May be the Department's Uniform Assessment Instrument (UAI) as described in IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients," for a private-pay resident's uniform needs assessment. Upon request by the provider, the Department will provide training in conducting uniform needs assessments. ()

03. Results of Assessment. The results of the assessment ~~may be~~ for both publicly-funded and private-pay residents is used to evaluate the ability of ~~a~~ the provider to meet the identified resident's needs. The results of the assessment may also be used to determine the need for special training or licenses or certificates that may be required to care for certain residents. (4-11-06)()

~~04. Uniform Needs Assessment for Private Pay. The uniform needs assessment used by the home for private-pay residents must include:~~ (4-11-06)

- ~~a.~~ Identification and background information; (4-11-06)
- ~~b.~~ Medical diagnosis; (4-11-06)
- ~~c.~~ Medical and health problems; (4-11-06)
- ~~d.~~ Prescription and over the counter medications; (4-11-06)
- ~~e.~~ Behavior patterns; (4-11-06)
- ~~f.~~ Cognitive function; (4-11-06)

- ~~g.~~ The psychosocial and physical needs of the resident; (4-11-06)
- ~~h.~~ Functional status; and (4-11-06)
- ~~i.~~ Assessed level of care. (4-11-06)

~~05. Time Frames for Completing the Uniform Needs Assessment for Private Pay Residents. The assessment must be completed no later than fourteen (14) calendar days after admission. The assessment must be reviewed when there is a change in need, or every twelve (12) months, whichever comes first. Upon request, the Department may provide training in conducting a uniform needs assessment. (4-11-06)~~

226. -- 249. (RESERVED)

250. PLAN OF SERVICE.

The resident must have a plan of service. The plan must identify the resident, describe the services to be provided, and describe how the services will be delivered. (4-11-06)

01. Core Elements. A resident's plan of service ~~will~~ **must** be based on the orders of the resident's health care professionals, and: (4-11-06)()

- a. Assessment; (4-11-06)
- b. Service needs for activities of daily living; (4-11-06)
- c. Need for limited nursing services; (4-11-06)
- d. Need for medication assistance; (4-11-06)
- e. Frequency of needed services; (4-11-06)
- f. Level of ~~assistance~~ care; (4-11-06)()
- g. Habilitation and training needs; (4-11-06)
- h. Behavioral management needs, including identification of situations that trigger inappropriate behavior; (4-11-06)
- i. Physician's dated history and physical; (4-11-06)
- j. Admission records; (4-11-06)
- k. Community support ~~ive systems~~ services; (4-11-06)()
- l. Resident's desires; (4-11-06)
- m.** Resident's need for supervision, including the degree; ()
- ~~#n.~~ Transfer and discharge requirement; and (4-11-06)
- ~~#o.~~ Other identified needs. (4-11-06)

02. Signature and Approval. The provider and the resident, ~~his legal guardian or his conservator~~ or the resident's representative must sign and date the plan of service upon its completion, within fourteen (14) days after the resident's admission. ~~For homes serving state-funded residents, services must be authorized by the Department prior to admission.~~ (4-11-06)()

03. Developing the Plan. The provider will consult the resident and other individuals identified by the resident in developing the plan of service. Professional staff must be involved in developing the plan if required by another program. (4-11-06)

04. Resident Choice. A resident must be given the choice and control of how and what services the provider or external vendors will provide to the extent the resident can make choices. (4-11-06)

05. Copy of the Plan. Signed copies of the plan of service must be placed in the resident's file, given to the resident, and given to his ~~legal guardian or his conservator~~ representative, if applicable, no later than fourteen (14) days after admission. For a resident receiving services through a publicly-funded program, the Department-approved plan must be in the resident's file, if applicable indicate that it has been approved by the Department. (4-11-06)()

06. Changes to the Plan. A record must be made of any changes to the plan or when the provider is unable to provide services outlined in the plan of service. (4-11-06)

07. Periodic Review. The next scheduled date of review must be documented in the plan of service. The plan of service should be reviewed as necessary but must be reviewed at least every twelve (12) months. (4-11-06)

251. - 259. (RESERVED)

260. ADMISSIONS.

According to Section 39-3507, Idaho Code, the provider must only admit or retain residents in the home for whom he has the training, appropriate skills, and time to provide adequate care to all residents living in the home. The provider must be able to provide the level of services or types of service required for each resident admitted to the home. ()

01. Prior Approval Required. The provider must obtain approval from the Department for each resident prior to the resident moving into the home. The following must be provided to the regional certifying agent where the home is located as listed in Section 005 of these rules to aid the Department in making its determination: ()

a. Name, gender and date of birth of the prospective resident; ()

b. The contemplated date of admittance of the prospective resident into the home; ()

c. The prospective resident's history and physical from his health care professional, conducted within the previous twelve (12) month period reflecting his current health status; ()

d. A list of the resident's current medications and treatments from his health care professional; ()

e. Contact information for the resident's health care professionals; ()

f. Contact information for the prospective resident's representative, if applicable; ()

g. The resident's plan of service from another health care setting, or any such plan of service conducted for the resident within the previous six (6) months, if one exists, when the resident transfers to the home from another health care setting; and ()

h. Other information requested by the Department relevant to the appropriateness of the admission and the provider's ability to provide adequate care. ()

02. Notification. Within five (5) business days of receipt of the documents listed in Subsection 260.01 of this rule, the Department will notify the provider verbally or in writing whether the proposed admission is approved or denied. When verbal notification is given, the Department will provide follow-up written communication to the provider stating the approval or denial within ten (10) business days. ()

03. Emergency Admission. The provider may not accept an emergency admission without prior approval from the Department except under the following conditions: ()

a. The provider may make a conditional admission when he reasonably believes he has the ability to provide adequate care to the resident when the request for an emergency placement occurs after normal business hours and the provider is unable to contact the Department for prior approval. The provider must notify the resident or his representative that the admission is conditional upon Department approval. ()

b. The provider must notify the regional certifying agent where the home is located as listed in Section 005 of these rules the next business day after making a conditional admission. ()

c. The provider must follow the regular admission process described in Subsection 260.01 of this rule within two (2) business days of making a conditional admission. The Department may deny the placement and require the resident to transfer when there is reasonable cause to believe the provider lacks the ability to provide adequate care. ()

04. Admission Agreement. At the time of admission to a certified family home, the provider and the resident ~~or resident's representative, if applicable,~~ must enter into an admission agreement. The agreement ~~will~~ **must** be in writing and must be signed ~~and dated~~ 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~~ **provider** must have a plan in place for steps ~~#~~ **the provider** will take if the resident is not able to carry out his own self-preservation. (4-11-06)()

c. Whether or not the provider will accept responsibility for the resident's funds; (4-11-06)

d. How a partial month's refund will be managed; (4-11-06)

e. 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; ~~and whether the insurance policy covers the resident's personal belongings;~~ (4-11-06)()

g. Written notice ~~of~~ at least thirty (30) calendar days as agreed to in the admission agreement prior to ~~discharge on the part of either party or transfer or discharge on the part of either party;~~ **when the transfer is not for medical reasons or for the resident's welfare or the welfare of others, or when the discharge is not for a situation described in Subsection 260.05.b. of this rule;** (7-1-17)()

h. Conditions under which ~~an~~ emergency ~~transfers~~ **temporary placement** will be made ~~as described under Subsection 260.06 of this rule;~~ (4-11-06)()

i. Signed permission to ~~transfer~~ **provide** 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)()

j. Responsibility to obtain consent for medical procedures including the name, address, ~~and telephone number~~ of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions; (4-11-06)()

k. Resident responsibilities as appropriate; (4-11-06)

l. Amount the ~~home~~ **provider** will charge ~~the resident~~ for room, utilities and three (3) daily meals ~~on a~~

monthly basis, and if the resident is private-pay or has a share of cost, a separately listed amount the provider will charge for care on a monthly basis; and (4-11-06)()

m. Written notice of at least fifteen (15) calendar days as agreed to in the admission agreement prior to the provider changing the charges to the resident as described in Subsection 260.04.l. of this rule; ()

n. Protections that address eviction processes and appeals comparable to those provided under Idaho landlord tenant law. The admission agreement must either: ()

i. Adopt the eviction and appeal processes as described in Title 6, Chapter 3, Idaho Code; or ()

ii. Adopt the eviction and appeal processes as described in the version of the admission agreement provided by the Department; and ()

m.o. ~~Other information as needed.~~ Additional conditions as agreed upon by both parties but consistent with the requirements of these rules. (4-11-06)()

025. Termination of Admission Agreement. The admission agreement must ~~not~~ only be terminated ~~except~~ under the following conditions: (4-11-06)()

a. ~~Giving~~ The provider or the resident, or the resident's representative, if applicable, provides the other party at least thirty (30) calendar days' written notice as agreed to in the admission agreement for any reason; or (7-1-17)()

b. ~~The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be provided in a certified family home; A three (3) day written notice may be given by the provider to the resident or the resident's representative, if applicable, when any of the following occur, subject to the appeal process required under Subsection 260.04.n. of this rule;~~ (4-11-06)()

ei. Nonpayment of the resident's bill identified in Subsection 260.04.l. of this rule; (4-11-06)()

d. ~~Emergency conditions requiring a resident to transfer out of the home without thirty (30) calendar days' written notice to protect the resident or other residents in the home from harm; and~~ (7-1-17)

ei. ~~Other~~ The resident violates written conditions as mutually established between the resident and the provider at the time of admission; or (4-11-06)()

iii. The resident engages in the unlawful delivery, production, or use of a controlled substance on the premises of the home. ()

06. Emergency Temporary Placement. The admission agreement will remain in force and effect, ~~excluding the provider's responsibility for care and the charge to the resident for such care as identified in Subsection 260.04.l. of this rule, while the resident is temporarily transferred from the home to another care setting on an emergency basis unless either party terminates the agreement as described in Subsections 260.05.a. and 260.05.b. of this rule. Reasons for an emergency temporary placement include:~~ ()

a. The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be met by the provider or reasonably accommodated by the home; or ()

b. Emergency conditions requiring the resident to transfer out of the home without thirty (30) calendar days' written notice to protect the resident or other residents, the provider, or other individuals living in the home from harm. ()

07. Discharge Procedure. The provider must immediately notify the regional certifying agent where the home is located as listed in Section 005 of these rules upon the transfer or discharge of the resident. The provider must document the return of the following items to the resident or resident's representative as agreed in the admission agreement according to Subsection 260.04.e. of this rule: ()

- a. All personal funds belonging to the resident. If the provider, his relative, or any other member of the household was managing the resident's funds, a final accounting of such must be provided; ()
- b. Any medication, supplement or treatment belonging to the resident; ()
- c. All resident belongings as indicated on his belongings inventory; and ()
- d. Any other item belonging specifically to the resident, including personal documents. ()

261. -- 269. (RESERVED)

270. RESIDENT RECORDS.

The provider must maintain records for each resident admitted to the home as provided in this rule. ()

01. Admission Records. Records required for admission to ~~a~~ the home must be maintained, ~~and~~ updated, and ~~must be~~ kept confidential. The ~~ir~~ availability of the records without the consent of the resident, subject to IDAPA 16.05.01, "Use and Disclosure of Department Records," is limited to the ~~home, professional consultants resident and resident's representative, the provider, substitute caregivers,~~ the resident's ~~physician health care professionals,~~ and representatives of the Department including certifying agents. All entries must be ~~kept current, accurate and reflect updated information as changes occur,~~ recorded legibly in ink, ~~dated,~~ signed ~~and dated,~~ and must include: (4-11-06)()

- a. The resident's full given ~~A~~n name; (4-11-06)()
- b. The resident's ~~P~~permanent address if other than the home; (4-11-06)()
- c. The resident's ~~M~~marital status and sex; (4-11-06)()
- d. The resident's ~~B~~irth place and date of birth; (4-11-06)()
- e. The name, address, and telephone number of an individual identified by the resident ~~or the resident's representative~~ who should be contacted in the event of an emergency or death of the resident; (4-11-06)()
- f. The resident's ~~P~~personal ~~physician and dentist~~ health care professionals; (4-11-06)()
- g. Admission date and name of ~~the~~ person who completed ~~the~~ admission form; (4-11-06)()
- h. Results of a history and physical ~~examination~~ performed by a ~~licensed physician or nurse practitioner within six (6)~~ health care professional reflecting the resident's current health status and conducted no earlier than twelve (12) 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)
 - j. A list of medications, treatments, and special diets, if any, prescribed for the resident and signed and dated by ~~the physician~~ his health care professional; (4-11-06)()
 - ~~k.~~ Religious affiliation if ~~the~~ resident ~~so~~ 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)
 - m. Social information, obtained by the ~~home~~ provider from the resident, ~~or resident's~~ family, service

coordinator, legal guardian or conservator, or other knowledgeable individuals. ~~The information must~~ to include the resident's social history, hobbies, and interests; (4-11-06)()

~~n.l.~~ The written admission agreement which is signed and dated by the provider and the resident, his legal guardian or his conservator as described in Section 260 of these rules; (4-11-06)()

~~m.~~ A signed copy of the resident's rights policy as specified described 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)()

~~n.~~ A copy of the resident's most current uniform needs assessment for the certified family home as described in Section 225 of these rules; (4-11-06)()

~~o.~~ A copy of the signed and dated admission plan of service that contains all elements of a plan of service between the resident, his legal guardian, or his conservator and the home as described in Section 250 of these rules; (4-11-06)()

~~p.~~ An inventory of the resident's belongings that may consist of photographs or a written descriptive list. The resident can or the resident's representative may inventory any item personal possession he so chooses and expects returned upon the resident's transfer or discharge from the home. The belongings inventory may be updated at any time but must be updated at least annually; (4-11-06)()

~~q.~~ Information about any specific health problems of the resident ~~which that~~ may be useful in a medical emergency; ~~and~~ (4-11-06)()

~~r.~~ Any other health-related, emergency, or pertinent information ~~which that~~ the resident requests the home provider to keep on record; (4-11-06)()

s. If the resident has a representative, a copy of the document giving the representative legal authority to act on behalf of the resident, including guardianship or power of attorney for healthcare decisions; ()

t. Contact name, address, and telephone number of any individual or agency providing supportive services to the resident; and ()

u. Signed copy of any care plan that is prepared for the resident by an outside service provider. ()

02. Ongoing Resident Records. Records must be kept ~~current~~ by the provider for services to the resident showing accurate and updated information as services are rendered, including: (4-11-06)()

~~a. Admission information required in Subsection 270.01 of these rules;~~ (4-11-06)

~~b. A current list of medications, diet, and treatments prescribed for the resident which is signed and dated by the physician giving the order. Current orders may be a copy of the signed doctor's order from the pharmacy;~~ (4-11-06)

~~c. 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)

~~d.a.~~ Any incident or accident occurring while the resident is living in the home; and the provider's response. If the incident or accident occurs while the resident is receiving supportive services, the provider must obtain a written report of the event from the service provider; (4-11-06)()

b. The provider's written response to any grievance as described in Section 200 of these rules; ()

~~c.~~ Notes from the licensed nurse, home health agency, physical therapist, ~~and~~ or any other service providers, documenting the services provided to the resident at each visit to the home; (4-11-06)()

~~fi.~~ Documentation of significant changes in the resident's physical, ~~or~~ mental status, ~~or both~~ and the ~~home's provider's~~ response; ~~and~~ (4-11-06)()

~~ge.~~ ~~If appropriate~~ When the provider, a relative of the provider, or an individual living in the home other than the resident manages the resident's funds, financial accounting records for such funds as described in Section 275 of these rules; (4-11-06)()

~~h.~~ ~~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)

~~i.~~ ~~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)

~~j.~~ ~~Contact name, address, phone number of individuals or agencies providing paid supports;~~ (4-11-06)

~~k.~~ ~~Signed copies of all care plans that are prepared by all outside service providers; and~~ (4-11-06)

~~l.~~ ~~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 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~~ When the 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, or an individual living in the home acts as the resident's payee, the home provider is deemed to be handling managing the resident's funds. Each home provider must develop 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 home provider will or will not manage resident funds; (4-11-06)()

b. ~~If~~ When the home manages resident funds and the resident leaves the home under any circumstances, the home can provider must; ()

~~i.~~ ~~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 the resident moving from the home, whichever is later; ()

~~ii.~~ Immediately return ~~A~~ all remaining resident funds ~~must follow~~ to the resident, or to the resident's representative; and resident funds must ()

~~iii.~~ Only be used the resident's funds for that resident's expenses until a new payee is appointed. (4-11-06)()

02. Managing Resident Funds. ~~A home that~~ The provider who manages a resident's funds must: (4-11-06)()

a. Establish a separate account at a financial institution for each resident. ~~There can be no commingling of resident funds with home funds. Borrowing between resident accounts is prohibited to which the resident's funds may be reconciled by means of a financial statement;~~ (4-11-06)()

b. ~~Prohibit commingling of the resident's funds with the funds of any other person, including borrowing funds from the resident;~~ ()

bc. Notify the resident that his funds are available for his use, including the amount in the resident's account; (4-11-06)()

ed. ~~Bill each~~ Charge the resident the amount agreed upon in the admission agreement as described in Section 260 of these rules for his certified family home care-charges services on a monthly basis from his funds; (4-11-06)()

de. ~~Document on a monthly or on a weekly basis any~~ Maintain accounting documentation, including financial statements, receipts and ledgers, for all financial transactions in excess of five dollars (\$5) ~~between the resident and the home in which the resident's funds were used.~~ A separate transaction record must be maintained for each resident; (4-11-06)()

ef. Restore funds to the resident if the home provider 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 of the home; (4-11-06)()

fg. Not require the resident to purchase goods or services from or for the home other than those designated in ~~the admission agreement~~ Section 260 of these rules; (4-11-06)()

gh. Provide the resident, his legal guardian, his representative with financial power of attorney, and conservator 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)()

hi. 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 as described in Section 210 of these rules; (4-11-06)()

ji. On the death of a ~~client of the Department~~ publicly-funded resident, convey the resident's funds, with a final accounting of those funds, to the Department within thirty (30) days as described in Section 210 of these rules. (4-11-06)()

276. -- 299. (RESERVED)

300. SHORT-TERM CARE AND SUPERVISION.

When the provider is temporarily unable unavailable 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 home to a resident from another certified family home according to the resident's original plan of service and admission agreement. ~~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.~~ The following applies to an alternate care placement; (4-11-06)()

a. The Department must approve an alternate care placement using the process described in Section 260 of these rules. The alternate caregiver must; ()

i. Not exceed the number of residents for which his home is certified to provide care; ()

ii. Comply with Section 140 of these rules when the resident receiving alternate care will be the third or fourth resident in the alternate caregiver's home; ()

iii. Comply with Section 130 of these rules when the resident receiving alternate care requires nursing facility level of care and any other resident in the alternate caregiver's home requires nursing level of care. ()

b. Upon approval from the Department, alternate care may be provided for up to thirty (30) consecutive days; and ()

c. The provider must provide or arrange for resident-specific training to the alternate caregiver, including supplying copies of the resident's current assessment, plan of service, and admission agreement. ()

02. Substitute Caregiver. A substitute caregiver must be approved an adult designated by the provider to provide care and supervision to the resident in the provider's certified family home. The following applies to the designation of a substitute caregiver: ()

a. The provider is responsible to provide or arrange for resident-specific training for the substitute caregiver- including reviewing copies of each resident's current assessment, plan of service, and admission agreement; ()

b. Staffing levels in the home must be maintained at the same level as when the provider is available to provide care and supervision; ()

c. Substitute care can be provided for up to thirty (30) consecutive days; and ()

d. ~~In addition to~~ The substitute caregiver must have the following qualifications: (4-11-06)()

i. Current certification in first aid and adult Cardio-Pulmonary Resuscitation (CPR), that meets the standards under Section 100 of these rules; (4-11-06)()

ii. A criminal history check as provided in Section 009 of these rules; and (4-11-06)

iii. ~~Completed~~ Completion of the "Assistance with Medications" course or other Department-approved training as provided in Section ~~4~~100 of these rules, ~~if they will assist the resident with medications.~~ (4-11-06)()

03. Incidental Supervision. An individual providing incidental supervision must be approved by the provider to 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~~ POLICY.

~~01. Medication Policy.~~ The ~~certified family home~~ provider must ~~develop~~ possess and implement written medication policies and procedures that outline in detail how the home will assure appropriate assistance with and handling of and safeguarding of medications. ~~This documentation~~ These policies and procedures must be maintained in the home, and include the following-; (4-11-06)()

~~02. Handling of 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 nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately unless in a Mediset, blister pack, or similar system.~~ (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. Mesisets 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)

~~c. The home is responsible to safeguard the resident's medications.~~ (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)~~

01. Following Orders. Assistance given by the provider must only be as directed by the resident's health care professionals. ()

02. Evidence of Orders. Evidence of each resident's orders must be maintained in the home, regardless of whether the resident is able to self-administer, and may consist of the following: ()

a. Written instructions from the health care professional for the medication including the dosage, expected effects, potential adverse reactions or side effects, and actions to take in an emergency; ()

b. Medisets filled and appropriately labeled by a pharmacist or licensed nurse with the name of the medications, dosage, time to be taken, route of administration, and any special instructions; ()

c. An original prescription bottle labeled by a pharmacist describing the order and instructions for use; and ()

d. If the medication, supplement, or treatment is without a prescription, it will be listed among over-the-counter medications approved by the resident's health care professional as indicated by a signed statement. Over-the-counter medications will be given as directed on the packaging. ()

03. Alteration of Orders. The provider must not alter dosage, discontinue or add medications, including over-the-counter medications and supplements, or discontinue, alter, or add treatments or special diets without first consulting the resident's prescribing health care professional and obtaining an order for the change as required under Subsection 400.01 of this rule. ()

04. Allergies. The provider must list any known food or drug allergies for each resident and take precautions to guard against the resident ingesting such allergens. ()

05. Training. Each adult assisting with resident medications must have successfully completed the "Assistance with Medications" course, or other Department-approved training as described in Section 100 of these rules. Additionally: ()

a. Each resident's orders will be reviewed by each staff person assisting residents with medications prior to offering assistance; and ()

b. Written instructions will be in place that outline who to notify if any of the following occur: ()

i. Doses are not taken; ()

ii. Overdoses occur; or ()

iii. Side effects are observed. ()

c. The provider must ensure any staff assisting with medications has reviewed each resident's known allergies and takes precautions against the resident ingesting such allergens. ()

06. Self-administration. When the provider cares for a resident who self-administers his own medications, the provider must follow the standards described under Section 401 of these rules. ()

07. Assistance with Medication. When the provider cares for a resident who needs assistance with medications, the provider must follow the standards described under Section 402 of these rules. ()

401. SELF-ADMINISTRATION OF MEDICATION.

~~03. Self-Administration of Medication.~~ If the resident is responsible for administering his own medication without assistance, the provider must ensure the following: ()

~~01. Approval.~~ The provider must obtain 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; otherwise, the provider must comply with the standards in Section 402 of these rules. ()

~~02. Evaluation.~~ The resident's record must ~~also~~ include documentation that ~~a licensed nurse or other qualified professional~~ the resident's health care professional has evaluated the resident's ability to safely self-administer medication, ~~and has found that the resident~~ The evaluation must include verification of the following: (4-11-06)()

a. The resident ~~U~~ understands the purpose of ~~the~~each medication; (4-11-06)()

b. The resident is oriented to time and place and ~~K~~ knows the appropriate dosage and times to take the medication; (4-11-06)()

c. The resident ~~U~~ understands the expected effects, adverse reactions, or side effects, and knows what actions to take in case of an emergency; and (4-11-06)()

d. The resident ~~f~~ is able to take the medication without assistance or reminders. (4-11-06)()

~~03. Change in Condition.~~ Should the condition of the resident change such that it brings into question his ability to safely continue self-administration of medications, the provider must have a reevaluation and approval of the resident to self-administer as required in Subsections 401.01 and 401.02 of this rule. ()

~~04. Safeguarding Medication.~~ The provider must ensure that the medications of a resident who self-administers are safeguarded, including providing a lockable storage cabinet to the resident as described in Section 175 of these rules. Notwithstanding, the resident must be allowed to maintain his medications under his own control and possession. ()

402. ASSISTANCE WITH MEDICATION.

~~04. Assistance with Medications.~~ The ~~certified family home~~ provider must ~~provide~~ offer assistance with medications to residents who need assistance; however, only a ~~licensed nurse or other licensed~~ health care professional may administer medications. Prior to assisting residents with medication, the provider must ensure the following conditions must be are in place: (4-11-06)()

~~#01. Training.~~ Each person assisting with resident medications must be an adult who successfully completed and follows the "Assistance with Medications" course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. ~~Family members previously exempted from this requirement must complete this course before July 1, 2006.~~ (4-11-06)()

~~#02. Condition of the Resident.~~ The resident's health condition is stable; (4-11-06)()

~~e03. Nursing Assessment.~~ 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; unless the provider is a health care professional. (4-11-06)()

~~#04. Containers and Labels.~~ The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container. ()

a. Each medication must be packaged separately unless in a Mediset, blister pack, or similar system. ()

b. ~~or the m~~Medication ~~has been~~ may be placed in a unit container by a licensed nurse when the container is appropriately labeled with the name of the medications, dosage, time to be taken, route of administration, and any special instructions. ()

~~c.~~ Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; ~~(4-11-06)~~ ()

~~e.~~ ~~Written and oral instructions from the licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person;~~ ~~(4-11-06)~~ ()

~~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. Safeguarding Medications. The provider must take adequate precautions to safeguard the medications of each resident for whom he provides assistance. Safeguarding consists of the following: ()

a. Storing each resident's medications in an area or container designated only for that particular resident including a label with the resident's name, except for medications that must be refrigerated; ()

b. Keeping the designated area or container for the resident's medications under lock and key when either of the following apply: ()

i. The resident's medications include a controlled substance; or ()

ii. Any resident in the home or other member of the household has drug-seeking behaviors. ()

c. Ensuring each resident's designated area or container is clean and kept free of contamination, including disposal of loose pills in accordance with Subsection 402.08 of this rule; and ()

d. Dispensing only one (1) resident's set of medications from its designated area or container at one (1) time, so as to mitigate medication errors. ()

~~056. Administration of Medications.~~ Only a ~~licensed 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, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." Some ~~services~~ procedures are of such a technical nature that they must always be performed by, or under the direct supervision of, a ~~licensed nurse or other licensed~~ health ~~care~~ professional. These ~~services~~ procedures are outlined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Section 490. ~~(4-11-06)~~ ()

07. Documentation of Assistance. Documentation of assistance with medications must be maintained by the provider. The documentation must: ()

a. Be logged concurrent with the time of assistance; and ()

b. Contain at least the following information: ()

i. The name of the resident receiving the medication; ()

ii. The name of the medication given; ()

iii. The dosage of the medication given; and ()

iv. The time and date the medication was given. ()

c. When medications, including both over-the-counter and prescription are taken on a PRN basis, the reason for taking the medication.

068. ~~Written Record of Disposal of Medication.~~ Medication that has been discontinued as ordered by the resident's health care professional, or has expired, must be disposed of by the provider within thirty (30) days of the order or expiration date. A written record of all disposal of drugs must be maintained in the home and ~~will~~ **must** include: (4-11-06)()

a. ~~A description of the drug, including the amount~~ **The name of the medication;** (4-11-06)()

b. **The amount of the medication, including the number of pills at each dosage, if applicable;** ()

~~bc.~~ The **name of the** resident for whom the medication was prescribed; (4-11-06)()

~~ed.~~ The reason for disposal; (4-11-06)

e. **The date on which the medication was disposed;** ()

~~ff.~~ The method of disposal; and (4-11-06)

~~eg.~~ **Signatures of responsible home personnel and a witness or the resident's family** ~~A signed statement from the provider and a witness confirming the disposal of the medication.~~ **A signed statement** (4-11-06)()

~~4043.~~ -- 499. (RESERVED)

500. ENVIRONMENTAL SANITATION STANDARDS.

The ~~home~~ **provider** is responsible for disease prevention and maintenance of sanitary conditions **in the home.** (4-11-06)()

01. Water Supply. The water supply for the home must be adequate, safe, and sanitary. (4-11-06)

a. The home must use a public or municipal water supply or a Department-approved private water supply; (4-11-06)

b. If water is from a private supply, water samples must be submitted to an ~~an private~~ accredited laboratory ~~or the District Public Health Laboratory for~~ **and show an absence of** bacteriological ~~examination~~ **contamination** 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 ~~local municipality~~ **or the** Department. (4-11-06)()

03. Nonmunicipal Sewage Disposal. ()

a. For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every five (5) years thereafter, the ~~home~~ **provider** must ~~provide~~ **obtain** proof that the septic tank has been pumped or that pumping was not necessary, ~~or that the system is otherwise in good working condition.~~ **In addition, at the time of initial certification:** (4-7-11)()

~~ab.~~ ~~The home must obtain a statement from the local health district indicating that the sewage disposal system meets local requirements. The statement must be kept on file at the home; or~~ **The Department may require the provider to obtain a statement from the local or area health district indicating that the sewage disposal system meets local requirements. The statement must be kept on file at the home.** (4-11-06)()

~~b.~~ ~~If the local health district does not issue these statements, the home must obtain a statement to that effect from the health district. The statement must be kept on file at the home.~~ (4-11-06)

- 04. Garbage and Refuse Disposal.** Garbage and refuse disposal must be provided by the home. (4-11-06)
- a.** Garbage containers outside the home used for storage of garbage and refuse must be constructed of durable, nonabsorbent materials and ~~must not leak or absorb liquids. Containers must~~ be provided with tight-fitting lids. (4-11-06)()
- b.** Garbage containers must be maintained in good repair ~~and must not leak or absorb liquids.~~ ()
- c.** Sufficient containers must be available to hold all garbage and refuse ~~which that~~ accumulates between periods of removal from the premises. ()
- d.** Storage areas must be kept ~~clean and sanitary~~ free of excess refuse and debris. (4-11-06)()
- 05. Insect and Rodent Control.** The home must be maintained free from infestations of insects, rodents and other pests. ~~Chemicals (Pesticides)~~ used in the control program must be selected, stored, and used safely. (4-11-06)()
- a.** The ~~chemical~~ pesticide 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 provider~~ must take ~~the~~ necessary precautions to protect ~~the~~ residents from obtaining toxic chemicals, ~~as appropriate for his functional and cognitive ability.~~ (4-11-06)()
- 06. Yard.** The yard surrounding the home must be safe and maintained. (4-11-06)
- 07. Linen-Laundry Facilities and Services.** A washing machine and dryer must be ~~provided readily available~~ for the proper and sanitary washing of linen and other washable goods. ~~Laundry services must be offered on at least a weekly basis, or more frequently when soiled linens or clothing create a noticeable odor.~~ (4-11-06)()
- 08. Housekeeping and Maintenance.** Sufficient housekeeping and maintenance must be provided to maintain the interior and exterior of the home in a clean, safe, and orderly manner. (4-11-06)
- a.** ~~A Resident~~ sleeping rooms must be thoroughly cleaned including the bed, bedding, ~~and~~ furnishings, walls, and floors. ~~Cleaning must occur on at least a weekly basis and immediately~~ 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.** ~~Cleaners and chemicals must be stored and used appropriately and safely. The provider must take necessary precautions to protect the resident from obtaining toxic chemicals, as appropriate for his functional and cognitive ability.~~ ()
- 501. -- 599. (RESERVED)**
- 600. FIRE AND LIFE SAFETY STANDARDS.**
~~Certified family~~ Each home~~s~~ 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 debris~~, rubbish, ~~and clutter~~. (4-11-06)()

02. Fire and Life Safety Requirements. (4-11-06)

a. Smoke ~~detectors~~ ~~alarms~~ must be installed in sleeping rooms, hallways, 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 when: ()

i. The home is equipped with gas or other fuel-burning appliances or devices; or ()

ii. An enclosed garage is attached to the home. ()

c. Unvented combustion devices of any kind are prohibited from use inside the home. ()

~~bd.~~ 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)()

~~ee.~~ An electric Pportable heating devices ~~of any kind are prohibited~~ must only be used under the following conditions: (4-11-06)()

i. The unit is maintained in good working order and without obvious damage or fraying of the cord; ()

ii. The heating element does not exceed two hundred twelve degrees Fahrenheit (212°F); ()

iii. The user complies with safety labels, which are to remain on the unit; ()

iv. The unit is equipped with automatic shut-off protection when tipped over; and ()

v. The unit is operated under direct supervision and at least thirty-six (36) inches away from combustibles including furnishings, bedding, and blankets. ()

~~ff.~~ Homes that use fuel-fired stoves must provide adequate railings or other approved protection designed to prevent ~~the residents~~ from coming into contact with the stove surfaces, as appropriate for his functional and cognitive ability. (4-11-06)()

~~eg.~~ Each resident's sleeping room ~~will~~ must have at least one (1) door or window that can be easily opened from the inside and leads directly to the outside. If a window is used as a means of egress/ingress, the following conditions must be met: ()

i. The window sill height must not be more than forty-four (44) inches above the finished floor; ()

ii. The ~~W~~indow openings must be at least twenty-~~two~~ (22) inches in width and twenty-four (24) inches in height; and (4-11-06)()

iii. If the sleeping room is in a below-ground basement, the window must open into a window well through which the resident can easily exit. ()

~~fh.~~ Flammable or highly combustible materials must ~~not~~ be stored ~~in the home;~~ safely. The provider must take necessary precautions to protect the resident from obtaining flammable materials as appropriate for his functional and cognitive ability. (4-11-06)()

~~g.i.~~ Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; ~~(4-11-06)()~~

~~h.j.~~ ~~A P~~portable fire extinguishers must be mounted ~~throughout on each level of~~ the home ~~according to the configuration of the home.~~ ~~The L~~location of fire extinguishers is subject to Department approval. All extinguishers must be at least five (5) pound ~~dry chemical~~ multipurpose ~~2A:10B:C~~ type ~~and~~; ~~(4-11-06)()~~

~~h.k.~~ Electrical installations and equipment must comply with the applicable local and state electrical codes; ~~(4-11-06)()~~

~~h.l.~~ ~~Solid f~~uel-fired heating devices must be approved by the local ~~building/~~ heating/-venting/air conditioning (HVAC) board. ~~Openings in all solid fuel heating devices must have a door constructed of heat tempered glass or other approved material;~~ ~~(4-11-06)()~~

~~h.m.~~ Exits must be free from obstruction; ~~(4-11-06)()~~

~~h.n.~~ ~~Doorways in the p~~aths of travel to ~~an~~ exits and all exit doorways must be at least twenty-eight (28) inches wide; ~~(4-11-06)()~~

~~h.o.~~ The door into each bathroom ~~and sleeping room~~ must unlock from ~~the outside both sides, if equipped with a lock,~~ in case of an emergency. ~~(4-11-06)()~~

03. Smoking. Smoking is a fire hazard. The ~~home provider~~ may choose to allow or not allow smoking. If the ~~home provider~~ chooses to allow smoking, ~~he~~ must reduce the risk of fire by: ~~(4-11-06)()~~

a. Prohibiting smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; (4-11-06)

b. Prohibiting residents from smoking in bed; and (4-11-06)

c. Prohibiting unsupervised smoking by ~~the~~ residents unless unsupervised smoking is ~~specifically~~ allowed in ~~the his~~ plan of service. ~~(4-11-06)()~~

04. Emergency Preparedness. Each ~~certified family home will~~ ~~provider must~~ develop and implement a ~~written emergency preparedness~~ plan. ~~for emergencies including~~ ~~The provider must review the emergency plan with the resident(s), or his representative, at admission and at least every six (6) months thereafter. The plan must address the following:~~ ()

~~a.~~ ~~e~~vacuation of the home-, ~~including:~~ ~~The emergency plan must be reviewed with residents at admission and at least every six (6) months thereafter. This review must be documented in each resident's individual file.~~ ~~(4-11-06)()~~

~~i.~~ ~~A floor plan of the home depicting at least two (2) routes of escape from each room;~~ ()

~~ii.~~ ~~A designated meeting area indicated on the floor plan where all members of the household will congregate upon evacuation of the home; and~~ ()

~~iii.~~ ~~The person responsible to take a head-count at the designated meeting area and relay information to firefighters regarding the probable whereabouts in the home of missing individuals.~~ ()

~~b.~~ ~~Emergency situations in which people are confined to the home for a period of at least seventy-two (72) hours and considering adequate food, water, and medications during that time;~~ ()

~~c.~~ ~~Emergency situations in which people are ordered evacuated from the home, including pre-arranged plans to shelter within the local community and in a town outside the local community, and considering the necessary supplies that will be kept in a state of preparedness for quick evacuation; and~~ ()

- d.** Procedures for any situation in which the provider is incapacitated and unable to provide services. ()
- 05. Fire Drills.** ~~Homes~~ The provider must conduct and document fire drills at least quarterly. ()
- a.** The provider must demonstrate the ability to evacuate all persons from the home to a point of safety outside the home within three (3) minutes. ()
- b.** Residents who are physically medically 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)()
- c.** Documentation, which may consist of video recordings or written logs, must include the following: ()
- i.** The date and time of the drill; ()
- ii.** The length of time for all persons able to participate in the drill to evacuate from the home; ()
- iii.** The name or likeness of each caregiver who participated in the drill; and ()
- iv.** The name or likeness of each resident and whether the resident participated in the drill. ()
- 06. Report of Fire.** A separate report on each fire incident occurring within the home must be submitted to the Department ~~within thirty (30) calendar days of the occurrence~~ as described in Section 210 of these rules. 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 ~~home~~ provider will must assure that all equipment is properly maintained. (4-11-06)()
- a.** ~~The s~~Smoke detectors and carbon monoxide alarms must be tested at least monthly and a written record of the test results maintained on file. (4-11-06)()
- b.** If the smoke or carbon monoxide alarm has replaceable batteries, replacement of the batteries must occur at least every six (6) months or as indicated by a low battery, whichever occurs first. ()
- c.** A smoke or carbon monoxide alarm must be replaced at the end of its useful life as indicated by the manufacturer. ()
- d.** ~~bd.~~ Portable fire extinguishers must be serviced annually by an outside servicing agency or when the quarterly examination reveals issues with the extinguisher as described under Subsection 600.07.e. of this rule. Fire extinguishers purchased in the last twelve (12) months are exempt from annual service if the home provider has a dated receipt on file. ()
- e.** All portable fire extinguishers must be examined at least quarterly by the provider or a knowledgeable ~~family~~ member of the household, as indicated by his initials and date on a log, 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 and the 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, such as leaks; and (4-11-06)()

v. ~~Inspecting tags on each extinguisher show at least the initials of the person making the quarterly examinations and the date of the examinations.~~ The nozzle is unobstructed; and (4-11-06)()

vi. Chemicals are prevented from settling and clumping by repeatedly tipping the extinguisher upside down and right-side up. ()

ef. Fuel-fired heating systems must be inspected for safe operation, serviced if necessary, 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 a 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 the 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 either be a landline telephone ~~in the home that is accessible to all residents. The resident must have adequate privacy while using the telephone. The telephone must be immediately available in case of an emergency. Emergency numbers must be posted near the telephone.~~ or an enhanced 911-compliant cell phone available to the resident. (4-11-06)()

a. If the home provides a cell phone for the resident's use, the provider must obtain documentation from the service carrier that the cell phone is enhanced 911-compliant. ()

b. The telephone or cell phone must: ()

i. Be immediately available in case of an emergency; ()

ii. Be functional and operational at all times, including having dependable service; ()

iii. Be programmed with general emergency phone numbers and the emergency contacts for the resident, or alternatively, such numbers must be posted near the telephone; and ()

iv. Be accessible to the resident throughout the day, including night hours, with unlimited usage and adequate privacy. ()

04. **Toilet Facilities and Bathrooms.** ~~Each certified family~~ The home must 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 shower or bathroomsing facilities must be separated from all rooms by solid walls or partitions; (4-11-06)()

c. ~~All~~ Each room containing a toilet, shower, or facilities and ~~bathrooms~~ must have either a window that is easily opened to the outside, 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 designated for the resident's use must not require ~~a resident~~ him to pass through another person's sleeping room ~~to reach the toilet or bath.~~ (4-11-06)()
- 05. Accessibility for Residents with Physical and Sensory Impairments.** Homes A provider choosing to provide services to a residents who have has difficulty with mobility or who have has sensory impairments must assure the physical environment meets the needs of the resident and maximizes independent mobility and use of appliances, bathroom facilities, and living areas. The home must provide necessary accommodations that meet the "American With Disabilities Act Accessibility Guidelines--Standards for Accessible Design (SFAD)," as incorporated by reference in Section 004 of these rules and as described below according to the individual resident's needs: (4-11-06)()
- a. A ramp that complies with ~~the Americans with Disabilities Act Accessibility Guidelines (ADAAG) 4.8~~ Section 405 of the SFAD. Elevators or lifts that comply with Sections 409 and 410, respectively, may be utilized in place of a ramp; (4-11-06)()
- b. ~~Bathrooms and a~~ Doorways large enough to allow easy passage of a wheelchair and that comply with the ~~ADAAG 4.13~~ Subsection 404.2.3 of the SFAD; (4-11-06)()
- c. Toilet and bathing facilities that comply with ~~the ADAAG 4.16 and 4.23~~ Sections 603 and 604 of the SFAD; (4-11-06)()
- d. Sinks that comply with ~~the ADAAG 4.24~~ Section 606 of the SFAD; (4-11-06)()
- e. Grab bars in resident toilet facilities and bathrooms that comply with ~~the ADAAG 4.26~~ Section 609 of the SFAD; (4-11-06)()
- f. Bathtubs and or shower stalls that comply with ~~ADAAG 4.20 and 4.21~~ Sections 607 and 608 of the SFAD, respectively; (4-11-06)()
- g. Non-retractable faucet handles that comply with ~~the ADAAG 4.19 and 4.27~~ Section 309.4 of the SFAD. Self-closing valves are not allowed; (4-11-06)()
- h. Suitable handrails on both sides of all stairways leading into and out of the home that comply with ~~the ADAAG 4.9.4~~ Section 505 of the SFAD; and (4-11-06)()
- i. Smoke and carbon monoxide alarms that comply with Section 702 of the SFAD. ()
- 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 home must be well ventilated and the provider must take precautions to prevent offensive odors. (4-11-06)
- 09. Heating and Cooling.** The temperature in the ~~certified family~~ home must be maintained at between seventy sixty-five degrees Fahrenheit (~~70~~65°F) or more and seventy eighty degrees Fahrenheit (80°F) during waking hours when residents or adult hourly care participants 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, if applicable. (4-11-06)()

10. **Plumbing.** All plumbing in the home must be in good working order and comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. (4-11-06)()

11. **Resident Sleeping Rooms.** (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. ()

b. The resident's sleeping rooms may be in a below-ground basement or an upstairs room 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~~ The resident is able to independently recognize an emergency and self-evacuate from his sleeping room without physical assistance or verbal cueing as assessed and indicated in his plan of service; or (4-11-06)()

ii. The provider's sleeping room or the sleeping room of another responsible and able-bodied individual living in the home is located on the same level with the resident's sleeping room; and ()

iii. The ~~basement must have~~ level of the home on which the resident's sleeping room is located has floors, ceilings, and walls which that 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)

~~bc.~~ Walls must run from floor to ceiling and doors must be solid. (4-11-06)()

~~ed.~~ The resident must not occupy the same bedroom as the provider. The resident must not occupy the same bedroom as ~~the provider's family~~ a relative of the provider unless the resident relative is also a family member sibling of the resident. (4-11-06)()

~~de.~~ The Ceiling heights in the sleeping rooms must be at least seven feet, six inches (7'6") ; (4-11-06)()

~~ef.~~ The Ssleeping rooms must have a closets equipped with a doors if the resident so chooses. ()

i. Closet space shared by two (2) residents ; must have a substantial divider separating each resident's space. ()

ii. Free-standing closets space must be deducted from the square footage in the sleeping room ; ~~and.~~ (4-11-06)()

~~fg.~~ The Ssleeping 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. (4-11-06)()

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: (4-7-06)()

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. (4-7-06)()

b. The manufactured or modular home meets the adopted standards and requirements of the local

jurisdiction in which the home is located. (4-7-06)()

c. Recreational vehicles, commercial coaches, unregulated or unapproved modifications or additions to approved manufactured housing or modular buildings; ~~and will not be approved by the Department.~~ ()

d. ~~M~~Manufactured housing constructed prior to June 15, 1976, ~~are is~~ prohibited for use as a certified family home without ~~DHW~~ assessment and approval ~~by the Department.~~ (4-7-06)()

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~~ the homes must comply with the following site requirements: (4-11-06)()

01. **Fire District.** The home must be in a lawfully constituted fire district. (4-11-06)

02. **Accessible Road.** The 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 home must be accessible to emergency medical services ~~within thirty (30) minutes driving time; and.~~ (4-11-06)()

04. **Accessible to Services.** The home must be accessible ~~within thirty (30) minutes driving time~~ to necessary social, medical, and rehabilitation services. (4-11-06)()

05. **House Number.** The house number must be prominently displayed and plainly visible from the street. ()

711. -- 899. (RESERVED)

900. **EMERGENCY POWERS OF THE DIRECTOR.**

In the event of an emergency endangering the life or safety of a resident, the Director may summarily suspend or revoke any certified family home certificate. As soon thereafter as practical, the Director will provide an opportunity for a hearing in accordance with the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)

901. **ENFORCEMENT PROCESS.**

If the Department finds that ~~a home~~ the provider does not meet, 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 ~~home's~~ provider's compliance history, ~~change of ownership complaints,~~ and 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 in accordance with~~ Section 910 of these rules; (4-11-06)()

b. Ban on admissions of residents with certain diagnosis; ~~see in accordance with~~ Section 911 of these rules; (4-11-06)()

c. Summarily suspend the certificate and transfer residents; ~~see in accordance with~~ Section 912 of these rules; (4-11-06)()

d. Issue a provisional certificate; ~~see in accordance with~~ ~~Subsection 110.02909~~ of these rules; ~~or and~~ (4-11-06)()

e. Revoke the home's certificate, ~~see in accordance with~~ Section 913 of these rules. (4-11-06)()

02. Notice of Enforcement Remedy. The Department will give the home provider written notice of an enforcement remedy by certified mail or by personal service upon its decision. The notice will include the decision, the reason for the Department's decision, and how to appeal the decision subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)()

902. FAILURE TO COMPLY.

The Department may ~~institute an action to~~ revoke the home's provider's certificate when ~~the Department it~~ determines ~~the home is out of compliance.~~ any of the following conditions exist: (4-11-06)()

01. Out of Compliance. ~~A home~~ The provider has not complied with ~~a program requirement~~ any part of these rules 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 home~~ The provider has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted the home's provider's plan of correction. (4-11-06)()

903. REPEATED NONCOMPLIANCE.

When the Department ~~makes a~~ determinations of that a provider has repeated noncompliance with ~~respect to a home~~ any of these rules, the Department it may impose any of the enforcement remedies listed in Sections 909 through 913 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 homes and that it will remain in compliance.~~ (4-11-06)()

904. -- 909. (RESERVED)

909. ENFORCEMENT REMEDY OF PROVISIONAL CERTIFICATION.

When the Department finds that the provider is unable to meet a standard required under these rules because of conditions that are not anticipated to continue beyond six (6) months and do not jeopardize the health or safety of the residents, the Department may grant a provisional certificate to the provider as described under Section 110 of these rules. ()

01. Conditions of Provisional Certification. The Department, at its discretion, may impose conditions upon the provider, which will be included with the notice of provisional certification, if so imposed. Conditions are imposed to ensure the provider achieves compliance with the requirements of these rules and to aid the Department in monitoring the provider's performance during the provisional certification period. ()

02. Failure to Meet Conditions of Provisional Certification. Failure by the provider to meet the conditions of a provisional certificate is cause for the Department to revoke the provider's certificate. ()

03. Certification or Revocation. The Department, upon review of the provider's performance during the course of the provisional certification period, may either issue a certificate to the provider when the Department finds that the provider has achieved substantial compliance with these rules, or revoke the provider's certificate if the provider has failed to comply. ()

910. ENFORCEMENT REMEDY OF BAN ON ALL ADMISSIONS.

All admissions to the home are banned pending satisfactory correction of all deficiencies. Bans will remain in effect until the Department determines that the home provider has achieved full compliance with all program requirements of these rules, 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 into the home any resident with a specific diagnosis is banned when the Department has determined the provider lacks the skill to provide adequate care to such a resident. A ban may be imposed for all prospective residents, both state publicly and privately funded, and will prevent the home from

admitting ~~the kinds of~~ residents with a specific diagnosis for whom ~~#~~ the provider has shown an inability to provide adequate care as 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 home's~~ the provider'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 home provider is not in substantial compliance with ~~this chapter~~ these rules. (4-11-06)()

02. Causes for Revocation of the Certificate. The Department may revoke any certificate ~~to include~~ for any of the following causes: (4-11-06)()

- a. The ~~certificate holder~~ provider has willfully misrepresented or omitted any of the following: ()
 - ~~i. Information on the application or other documents pertinent to obtaining a certificate pertaining to his certification; or~~ (4-11-06)()
 - ii. Information obstructing an investigation. ()
- 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 certified family home; (4-11-06)()
- f. The provider has violated any of the conditions of a provisional certificate; (4-11-06)
- g. The home provider 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~~ inadequate care; (4-11-06)()
- i. Repeat violations of any requirement of these rules or of the Idaho Code; (4-11-06)
- j. The home provider lacks the ability to properly 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 home provider is not in substantial compliance with the provisions for services, resident rights, or admissions; (4-11-06)()
- l. ~~Certificate holder~~ The provider refuses to allow the certifying agent or other representative of the Department or ~~P~~ protection and ~~A~~ advocacy agencies full access to the home ~~environment,~~ home records, or the residents; (3-21-12)()
- ~~m. Any condition exists in the home which endangers the health or safety of any resident; or~~ (3-21-12)

~~#m.~~ The provider fails to pay the certification fee as specified in ~~Sub~~section 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 the following grounds:

~~(4-11-06)~~()

01. Violation of Rules. As a result of a violation of a provision of these rules or standards, the home provider 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~~ these rules, or applicable rules or standards, results in conditions that present an immediate jeopardy.

(4-11-06)

916. -- 949. (RESERVED)

950. RIGHT TO SELL.

Nothing contained in these rules limits the right of any home owner to sell, lease, mortgage, or close any certified family home in accordance with all applicable laws.

~~(4-11-06)~~()

951. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
16.05.03 – RULES GOVERNING CONTESTED CASE PROCEEDINGS
AND DECLARATORY RULINGS

DOCKET NO. 16-0503-1701

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 16-107, 56-133, 56-135, 56-202, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code, 42 CFR Sections 431.221, 431.22, and 431.224.

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 20, 2017.

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

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

These rule changes are being made to: meet court-ordered settlement agreements for expedited hearings and grievance processes for the Jeff D settlement agreement, comply with federal regulations, and provide benefits to consumers to use technological advances for filing of appeals for certain divisions, and to provide other needed internal appeals processes for divisional administrative reviews. Several changes are being made to remove and update obsolete language.

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking because most of the changes being made are either required by court order, federal regulations, or need to be updated for technology and add divisional appeal processes. The diversity of these changes made it not feasible to hold negotiated rulemaking around the Department's internal appeal processes.

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 Heidi Graham at (208) 334-5617.

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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0503-1701
(Only Those Sections With Amendments Are Shown.)

005. ADMINISTRATIVE PROCEDURES SECTION.

01. Petitions. Petitions for adoption of rules; and petitions for declaratory rulings; ~~and appeals~~ must be filed with: Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036. Phone: (208) 334-5564; FAX: (208) 639-5741; email: APS@dhw.idaho.gov. (4-11-06)()

02. Appeals. Appeals may be filed with the Division, Program, or the Administrative Procedures Section, as provided on the decision notice or in these rules. ()

006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

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

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. (4-11-06)

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

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

05. Internet Website. The Department's internet website at <http://www.healthandwelfare.idaho.gov/>. (4-11-06)

06. Administrative Procedures Section (APS). The following is the contact information for the Administrative Procedures Coordinator: ()

a. Telephone No.: (208) 334-5564; ()

b. FAX No.: (208) 639-5741; and ()

c. E-Mail Address: APS@dhw.idaho.gov. ()

(BREAK IN CONTINUITY OF SECTIONS)

[SECTION 124 HAS BEEN MOVED AND RENUMBERED TO PROPOSED SECTION 008]

124008. REPRESENTATION ACCESS TO RECORDS OF INDIVIDUALS WITH DEVELOPMENTAL OR MENTAL DISABILITIES.

~~Unless an individual, authorized representative or attorney provides a written declaration to the contrary, eligible individuals with developmental disabilities or mental illness are deemed to be represented by~~ The state Protection and Advocacy System established under 42 USC ~~6041~~ 15041, et seq., and 42 USC 10801 et seq., 29 USC 794e, et seq., and 42 USC 300d as designated by the Governor. ~~The protection and advocacy system~~ has access to records of ~~such~~ individuals who are clients of the system maintained by any program or institution of the Department if the individual has authorized or is unable to authorize the system to have such access, or does not have a legal guardian, conservator or other legal representative. ~~Service of documents will be made on the protection and advocacy system~~

~~and the individual. Unless the protection and advocacy system provides written notification to the Department that it will not be representing the individual, the system is an authorized representative.~~ (4-11-06)()

~~008.~~—009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter, the following definitions and abbreviations apply. ()

01. Administrative Review. An informal review by a Division Administrator or designee, to determine whether a Department decision is correct. (5-8-09)

02. Appellant. A person or entity who files an appeal of Department action or inaction. (3-30-01)

03. Board. The Idaho Board of Health and Welfare. (3-30-01)

~~04.~~ **Complainant.** A person or individual who has a grievance regarding Youth Empowerment Services (YES). ()

~~05.~~ **Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. ()

~~06.~~ **Cost Settlement.** Final determinations of payment, based on cost reports, to a Medicaid-enrolled provider. ()

~~047.~~ **Department.** The Idaho Department of Health and Welfare. (3-30-01)

~~058.~~ **Director.** The Director of the Department of Health and Welfare. (3-30-01)

~~069.~~ **Hearing Officer.** The person designated to preside over a particular hearing and any related proceedings. (3-30-01)

~~107.~~ **IPV.** Intentional program violation. (3-30-01)

~~0811.~~ **Intervenor.** Any person, other than an appellant or the Department, who requests to be admitted as a party in an appeal. (3-30-01)

~~12.~~ **Managed Care Entity (MCE).** An entity contracted by Medicaid to administer Medicaid services, which may be a Prepaid Ambulatory Health Plan (PAHP), Prepaid Inpatient Health Plan (PIHP), or other Managed Care Organization (MCO) as defined in 42 CFR 438.2. As used in these rules, the term does not include service brokers or entities providing non-emergency medical transportation (NEMT) services. ()

~~0913.~~ **Party.** An appellant, the Department and an intervenor, if intervention is permitted. (3-30-01)

~~14.~~ **Youth Empowerment Services (YES) Program Participant.** A YES program participant, is an Idaho resident with a Serious Emotional Disturbance who: ()

~~a.~~ Is under the age of eighteen (18); ()

~~b.~~ Has a mental health condition described in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) and diagnosable by a qualified professional operating within the scope of his practice as defined by Idaho state law; and ()

~~c.~~ Has a substantial functional impairment that is measured by and documented through the use of a standardized instrument conducted or supervised by a qualified clinician. ()

~~d.~~ A substance use disorder or development disorder alone does not constitute an eligible diagnosis, although one (1) or more of these conditions may coexist with an eligible mental health diagnosis. ()

(BREAK IN CONTINUITY OF SECTIONS)

101. FILING OF APPEALS.

01. Appeals. Appeals must be filed in writing and state the appellant's name, address and phone number, and the remedy requested, ~~except that appeals of action relating to Food Stamps may be made verbally to Department staff by an individual or representative~~ unless otherwise provided in these rules. Appeals should be accompanied by a copy of the decision notice that is the subject of the appeal and state the reason for disagreement with the Department's action. ()

02. Time Limits for Filing Appeal. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision have twenty-eight (28) days from the date the decision is mailed to file an appeal. An appeal is filed when it is received by the Department or postmarked within the time limits ~~set forth~~ provided in the decision notice, or in these rules. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

103. PREHEARING CONFERENCE.

01. Prehearing Conference. The hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference ~~to~~. The purpose of the prehearing conference is to: ()

- a.** ~~F~~ormulate or simplify the issues; ()
- b.** ~~O~~btain admissions or stipulations of fact and documents; ()
- c.** ~~I~~dentify whether there is any additional information that had not been presented to the Department with good cause; ()
- d.** ~~A~~rrange for exchange of proposed exhibits or prepared expert testimony; ()
- e.** ~~L~~imit the number of witnesses; ()
- f.** ~~D~~etermine the procedure at the hearing; and ~~to~~ ()
- g.** ~~D~~etermine any other matters which may expedite the orderly conduct and disposition of the proceeding. (3-30-01)()

02. Exception to Prehearing Conference. ~~The prehearing conference cannot be mandatory for any Division of Welfare benefit programs. The following apply:~~ ()

- a.** ~~Participation in the prehearing conference is optional for individuals seeking to appeal for any benefit through the Division of Welfare; and~~ ()
- b.** ~~A default order may not be entered for cases in which an individual does not participate in the prehearing conference involving benefits through the Division of Welfare.~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

106. DEFAULT.

If a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer ~~must~~ may enter

a proposed default order against that party. The default order must be set aside if, within fourteen (14) days of the date of mailing, that party submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

122. FILING OF DOCUMENTS IN AN APPEAL.

All documents intended to be used as exhibits must be filed with the hearing officer. Such documents will be provided to every party at the time they are filed with the hearing officer, in person, ~~or~~ by first class mail, or as otherwise ordered by the hearing officer. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties will accompany all documents when they are filed with the hearing officer. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

[SECTION 124 HAS BEEN MOVED AND RENUMBERED TO PROPOSED SECTION 008]

150. REVIEW OF PRELIMINARY ORDERS BY DEPARTMENT.

Unless otherwise provided in these rules, ~~for~~ cases under the jurisdiction of the Department, either party may file a request for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request must identify all legal and factual bases of disagreement with the preliminary order. The Director or designee must allow for briefing by the parties and determines whether oral argument will be allowed. The Director or designee determines whether a transcript of the hearing is needed and if so, one will be provided by the party who requests review of the preliminary order. The Director or designee must exercise all of the decision-making power he would have had if he had presided over the hearing. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

199. SPECIFIC CONTESTED CASE PROVISIONS.

The following sections set forth of this chapter provide special requirements of various Department divisions or programs, which that supersede the general provisions of these rules insofar as to the extent that they are different ~~or inconsistent. Sections 200 through 254 pertain to the programs in the Division of Welfare; Sections 300 and 301 pertain to the Division of Medicaid; and Sections 400 through 402 pertain to the Division of Health.~~ (3-30-01)()

200. DIVISION OF WELFARE: APPEALS.

The provisions of ~~this s~~ Sections 200 through 299 of these rules govern the conduct of individual benefit hearings to determine eligibility for benefits or services in the Division of Welfare, ~~including IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho," IDAPA 16.03.04, "Rules Governing the Food Stamp Program in Idaho," IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program (ICCP)," IDAPA 16.04.14, "Rules Governing the Low Income Energy Assistance Program," IDAPA 16.04.02, "Idaho Telecommunication Service Assistance Program Rules," IDAPA 16.04.12, "Rules Governing the Individual and Family Grant Program," and IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children."~~ and its programs. (5-8-09)()

01. Division of Welfare Programs. The following programs are covered under the following chapter of rules: ()

a. IDAPA 16.03.01. "Eligibility for Health Care Assistance for Families and Children"; ()

b. IDAPA 16.03.03. "Rules Governing Child Support Services"; ()

- c. IDAPA 16.03.04, “Rules Governing the Food Stamp Program in Idaho”: ()
 - d. IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)”: ()
 - e. IDAPA 16.03.08, “Rules Governing Temporary Assistance for Families in Idaho”: ()
 - f. IDAPA 16.04.14, “Rules Governing the Low Income Energy Assistance Program”: ()
 - g. IDAPA 16.04.02, “Idaho Telecommunication Service Assistance Program Rules”: ()
 - h. IDAPA 16.04.12, “Rules Governing the Individual and Family Grant Program”; and ()
 - i. IDAPA 16.06.12, “Rules Governing the Idaho Child Care Program (ICCP).” ()
02. **Methods for Filing Appeals.** Requests for appeals may be made with the Division of Welfare as provided in Section 006 of these rules, using any one (1) of the following listed in this subsection: ()
- a. Via the Department internet website: ()
 - b. By telephone: ()
 - c. Via mail: ()
 - d. In person; and ()
 - e. Other commonly available electronic means. ()

201. DIVISION OF WELFARE: TIME FOR FILING APPEAL.

A decision issued by the Department in a Division of Welfare benefit program will be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps has ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified in the particular program within thirty (30) days after the action would have been taken if the Department had acted in a timely manner. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

203. DIVISION OF WELFARE: WITHDRAWAL OF AN APPEAL.

An appellant or representative may withdraw an appeal upon written request to the hearing officer using any one (1) of the methods listed in Section 200 of these rules. (5-8-09)()

204. DIVISION OF WELFARE: TIME LIMITS FOR COMPLETING HEARINGS.

The Department must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received, unless as provided in Subsections 204.01 through 204.03 of this rule. ()

01. Community Spouse Resources Allowance. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing will be held within thirty (30) days from the date the hearing request is received. ()

02. Food Stamps. When the hearing relates to Food Stamps, the hearing, the decision of the hearing, and the notice regarding the outcome of the hearing will be completed within sixty (60) days from the date the hearing request is received. ()

03. Expedited Hearings. The Department will expedite hearing requests from appellants *such as* for the following reasons: ()

a. ~~M~~Migrant farm workers who are planning to move before the hearing decision would normally be reached; ~~or~~ (5-8-09) ()

b. Individuals requesting an expedited fair hearing will be provided a hearing as required according to 42 CFR 431.224. ()

(BREAK IN CONTINUITY OF SECTIONS)

298. DIVISION OF WELFARE: ~~BUREAU OF~~ CHILD SUPPORT SERVICES.

~~A notice of license suspension becomes final and effective unless~~ In a child support enforcement proceeding, an individual or a representative ~~files an appeal within twenty one (21) days from the date the decision is mailed~~ may request a hearing after being served notice of license suspension or notice of an asset withholding order from the Financial Institution Data Match (FIDM) process. (5-8-09) ()

01. Time Limits for Requesting a Hearing. ()

a. License Suspension. The licensee has twenty-one (21) days from the date of service of the notice either by personal service or certified mail, to request a hearing by filing with the Department to contest the suspension of license or licenses. A timely request for a hearing stays the suspension of the license or licenses through the issuance of the order by the Department. The Department will notify the licensing authority if the suspension is vacated or stayed. ()

b. Financial Institution Data Match (FIDM). The obligor or co-owner has fourteen (14) days from the date of mailing the notice of asset withholding order to request a hearing in writing to contest the asset being withheld. Upon receiving a timely request for hearing, the Department will notify the financial institution that it must continue to hold the asset until an order is issued and the Department provides instructions for the disposition of the asset. If the obligor or co-owner does not file a timely request for hearing, the Department will notify the financial institution to promptly surrender the amount of the asset that has been frozen to the Department. ()

02. Time Limits for Completing Hearings. The Department will hold an administrative hearing within thirty (30) days from the day the Department receives the request for hearing to contest asset withholding from the FIDM process. ()

03. Default. ()

a. Licensing Authority. If the licensee fails to make a timely request for a hearing or fails to appear at the hearing without good cause, the Department will issue an order of Default suspending the license or licenses. On receipt of the final order from the Department, the licensing authority will suspend the license effective the date the order became final, without additional review or hearing. ()

b. Financial Institution. If the obligor or co-owner of the asset fails to appear at the hearing without good cause, the Department will issue an order of Default upholding the asset withholding order. On receipt of the final order from the Department, the financial institution will promptly surrender the amount of the asset that has been frozen to the Department. ()

04. Time for Filing an Appeal. An order of suspension or asset withholding order issued by a hearing officer of the Department will be final and conclusive between the parties unless a petition for review is filed within twenty-eight (28) days with the district court. ()

299. (RESERVED)

300. DIVISIONS OF MEDICAID ~~AND LICENSING AND CERTIFICATION~~: ~~REQUEST FOR ADMINISTRATIVE REVIEWS~~ FOR PROVIDERS AND FACILITIES.

01. Written Request. An action relating to ~~licensure or certification, billing or reimbursement~~ audited cost reports or Medicaid cost settlement calculations required by administrative rule is final and effective unless the provider or facility requests in writing an administrative review within ~~twenty-eight~~ thirty (2830) days after the notice is mailed. The request must: ()

- a. ~~Be~~ Be signed by the licensed administrator of the facility or by the provider; ()
- b. ~~Identify~~ Identify the challenged decision, ~~and~~; ()
- c. ~~State~~ State specifically the grounds for its contention that the decision was erroneous; ~~and~~ ()
- d. Include copies of any documentation on which the facility or provider intends to rely to support its position. ()

02. Review Conference. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within ~~twenty-eight~~ thirty (2830) days after the request for the administrative review is received. The thirty (30) day requirement may be extended when both parties agree in writing to a specified later date. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled within thirty (30) days of the initial conference. This second session date may be extended when both parties agree in writing to a specified later date. ()

03. Department Decision. The Department will provide a written decision to the facility or provider. (5-8-09)()

301. DIVISIONS OF MEDICAID ~~AND LICENSING AND CERTIFICATION~~: SCOPE OF APPEAL HEARING.

If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review will be admissible in the appeal hearing. (4-11-06)()

302. DIVISION OF MEDICAID: APPEALS PROCESS FOR MEDICAID PARTICIPANTS.

01. Medicaid Participant Appeals. Medicaid participants whose appeals are not related to services delivered through a Managed Care Entity (MCE), as defined in Section 010 of these rules, must use the appeals process provided in Sections 101 through 108 of these rules. ()

02. Medicaid Participant Appeals Related to Services Delivered Through Managed Care Entity. ()

a. Participants whose appeals are related to services delivered through a managed care entity must utilize the complaint, grievance, and appeal process required by the Department and the managed care contractor. ()

b. Participants whose appeals are related to services delivered through a Managed Care Entity (MCE) must follow the appeals process in 42 CFR 438.402 through 42 CFR 438.408. ()

03. Expedited Fair Hearings for Medicaid Participants. The Department will provide a process for expedited fair hearings for Medicaid participants in accordance with the provisions of 42.CFR 438.410. ()

3023. -- 399. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

504. -- ~~959~~. (RESERVED)

600. DIVISION OF LICENSING AND CERTIFICATION: REQUEST FOR ADMINISTRATIVE REVIEW.

01. Written Request. An action relating to licensure or certification is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must: ()

a. Be signed by the licensed administrator of the facility, or by the provider; ()

b. Identify the challenged decision; and ()

c. State specifically the grounds for its contention that the decision was erroneous. ()

02. Review Conference. An administrative review conference must be held within twenty-eight (28) days of receipt of the request for the administrative review. The twenty-eight (28) day requirement may be extended when both parties agree in writing to a specified later date. The parties must clarify and attempt to resolve the issues during the administrative review conference. If the Department determines additional documentation is needed to resolve the issues, a second session of the review conference may be scheduled. ()

03. Department Decision. The Department will provide a written decision to the facility or provider within thirty (30) days of the conclusion of the administrative review conference. ()

601. -- 699. (RESERVED)

700. DIVISION OF BEHAVIORAL HEALTH: REQUEST FOR ADMINISTRATIVE REVIEW.

01. Written Request. An action relating to program approval is final and effective unless the provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request must: ()

a. Be signed by the program administrator of the facility; ()

b. Identify the challenged decision; and ()

c. State specifically the grounds for its contention that the decision was erroneous. ()

02. Review Conference. The parties must clarify and attempt to resolve the issues at the review conference, which must be held within twenty-eight (28) days after the request for the administrative review. The twenty-eight (28) day requirement may be extended when both parties agree in writing to a specified later date. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. ()

03. Department Decision. The Department will provide a written decision to the facility or provider within thirty (30) days of the conclusion of the administrative review conference. ()

701. -- 749. (RESERVED)

750. DIVISION OF BEHAVIORAL HEALTH: YOUTH EMPOWERMENT SERVICES (YES).

Contested case proceedings for non-Medicaid Youth Empowerment Services (YES) are governed by the general provisions of this chapter, unless otherwise specified in Section 751 of these rules. ()

751. DIVISION OF BEHAVIORAL HEALTH: YOUTH EMPOWERMENT SERVICES (YES) GRIEVANCE PROCESS.

01. Grievance. Individuals, family members, or legal guardians may choose to submit a written

request to participate in this grievance process regarding non-Medicaid matters related to YES services. A grievance is a statement of dissatisfaction about any matter other than an adverse benefit determination. ()

02. Grievance Content. A grievance must include: ()

a. The full name, mailing address, phone numbers, and e-mail contact for the individual who is the complainant using YES services; ()

b. The full name, mailing address, phone numbers, and e-mail contact of the person submitting the grievance on behalf of the complainant; ()

c. A detailed explanation of the decision or non-Medicaid matter related to YES services that is being contested from the perspective of the complainant; and ()

d. Any steps that have already been taken to resolve the issue. ()

03. Department Response to Grievance. The Department will respond to the complainant within sixty (60) days of receipt of the grievance on its findings. The grievance process may include gathering additional information from involved parties and may run concurrent to the fair hearing process. ()

a. The Department will address concerns related to dissatisfaction with a process or a provider at the lowest or most appropriate organizational level possible. ()

b. The Department will document the filing of the grievance and the outcome in its response to the complainant. ()

04. Expedited Hearings. The Division of Behavioral Health will provide expedited hearings for non-Medicaid eligible YES individuals in compliance with 42 CFR 431 or 438, as applicable. ()

752. -- 999. (RESERVED)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.06.01 – CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1702

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that proposed rulemaking procedures have been initiated. The action is authorized pursuant to the following: 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; 45 CFR 1356.21-22, 45 CFR 1356.30, 45 CFR 233.90(b)(2); Sections 471, 472, and 479B of the Social Security Act; and Sections 403, 431, and 432 of the Personal Responsibility Work Opportunity Reconciliation Act.

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

PUBLIC HEARING
Wednesday, September 20, 2017 – 9:00 a.m.

DHW Central Office
450 West State Street
5th Floor, Conference Room A
Boise, ID 83720

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

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

This rulemaking aligns the requirements for Title IV-E funding for children in foster care with current CFR and federal law.

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was determined not feasible as these rules are simply being aligned with federal requirements in 45 CFR 1356.21 (Foster care maintenance payments program implementation requirements) and Section 472 of the Social Security Act (Foster Care Maintenance Payments Program), so there is nothing to negotiate.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Carissa Decker at (208) 334-0692.

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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0601-1702
(Only Those Sections With Amendments Are Shown.)

425. ~~AID TO FAMILIES WITH DEPENDENT CHILDREN -- FOSTER CARE (AFDC-FC)~~ TITLE IV-E ELIGIBILITY.

~~A child is eligible for Aid To Families With Dependent Children Foster Care (AFDC-FC) if the child would have been eligible to receive AFDC aid payments except that he was removed, by court order, from the home of a parent(s) or other caretaker relative(s) and placed in foster care. AFDC-FC is also available to eligible children voluntarily placed in foster care by a parent(s). The caretaker relative(s) is the relative(s) who exercises day-to-day physical custody of the child prior to the court action or voluntary placement. The child may qualify for AFDC payments as a child living with a relative. Eligibility for AFDC-FC is determined by Family and Community Services. The state will claim Title IV-E funding for a foster child who meets the following criteria:~~ (4-6-05)()

01. Physical or Constructive Removal of the Child. The child was physically or constructively removed from the home: ()

a. Under a voluntary placement agreement; or ()

b. As the result of a judicial determination that: ()

i. Remaining in the home would be contrary to the child's welfare; or ()

ii. Placement in foster care would be in the best interest of the child. ()

c. The determination that a situation is contrary to the child's welfare must be made in the first court ruling that sanctions, even temporarily, the removal of a child from the home. ()

02. Child's Residence. The child has been living in the home of a parent or other relative specified at 45 CFR 233.90(c)(1)(v) either in the month of, or within six (6) months prior to the month: ()

a. Removal court proceedings were initiated; or ()

b. The voluntary placement agreement was signed. ()

03. AFDC Eligibility. The child was AFDC (Aid to Families with Dependent Children) eligible in the removal home during the month of the initiation of court proceedings that initiated the removal or the month the voluntary placement agreement is signed. AFDC eligibility is based upon the standards found in the State's IV-A Plan on July 16, 1996. ()

04. "Removal From" and "Living With" Requirements. The "removal from" (01. of this rule) and "living with" (02. of this rule) requirements must be satisfied by the same specified relative who meets AFDC eligibility (03. of this rule). ()

05. Judicial Determination. A judicial determination was obtained regarding reasonable efforts to prevent a child’s removal from the home no later than sixty (60) days from the child’s foster care entry date. When there is a judicial determination of “aggravated circumstances,” the court order must state that no reasonable efforts to reunify the family are required. ()

06. Agency with Placement Care and Responsibility. The IV-E agency, or another public agency or Tribe that has a plan approved under 42 U.S.C. 671 in accordance with 42 U.S.C. 679c with which the Title IV-E agency has a written agreement in effect, has placement and care responsibility. ()

07. Child in Foster Care or Childcare Institution. The child is in a fully licensed or approved foster family home, or childcare institution. ()

08. Compliance with Safety Requirements. Compliance with the safety requirements was documented for the prospective foster family home or childcare institution. ()

09. Child’s Age. The child is under the age of eighteen (18), or up to age nineteen (19) if the youth is a full-time student in a secondary school or its equivalent level of vocational or technical training and is expected to complete the educational program before reaching age nineteen (19). ()

10. Child’s Citizenship Status. The child is a US citizen or qualified immigrant under Sections 403, 431, and 432 of the Personal Responsibility Work Opportunity Reconciliation Act (P.L. 104-193). ()

426. AFDC-FC ELIGIBILITY REQUIREMENTS: (RESERVED)

A child is eligible for AFDC-FC if he meets each of the eligibility requirements listed in Table 426.

AFDC-FC ELIGIBILITY REQUIREMENTS — TABLE 426	
CONDITION	DESCRIPTION
01. <u>Financial Need.</u>	<i>A child is in financial need if, in the month court action to remove him from his home was initiated, or the month the voluntary out-of-home placement agreement is signed: He was receiving AFDC; He would have been eligible to receive AFDC if an application had been filed on his behalf; or He lived with his parent(s) or other caretaker relative(s) at some time within six (6) prior months and would have qualified for AFDC in the month of court action or voluntary placement if an application had been filed and he lived with a parent(s) or other specified relative(s) in that month.</i>
02. <u>Voluntary Placement in Foster Home or Voluntary Relinquishment.</u>	<i>A foster care placement is voluntary if the parent(s) has a written voluntary services agreement with the Department to place the child in foster care. The parent retains parental rights and may terminate the agreement at any time. A voluntary relinquishment is not a voluntary placement. A voluntary relinquishment occurs when parent(s) permanently gives up rights to a child. A court order is required for a voluntarily relinquished child to qualify for AFDC-FC.</i>
03. <u>Age, Residence, Citizenship, and Deprivation.</u>	<i>The other AFDC requirements the child must meet are: Age; Residence; Citizenship; Deprivation; and The AFDC resource limit.</i>

AFDC-FC ELIGIBILITY REQUIREMENTS—TABLE 426	
CONDITION	DESCRIPTION
04. Court-Ordered Removal.	<p>A child not voluntarily placed must have been removed from the parent(s) or other caretaker relative(s) by court order.</p> <p>The initial court order must state remaining in the home would be “contrary to the welfare” of the child.</p> <p>For children removed on or after October 1, 1983, the court order must include a determination that reasonable efforts were made to prevent or eliminate the need for removal of the child. This judicial determination must be made within sixty (60) days of removal of the child from his home.</p> <p>The court order must state what reasonable efforts were made considering the family’s circumstances and the safety of the child when the child is removed from the home in an emergency.</p> <p>When there is a judicial determination of Aggravated Circumstances, the court order must state that no reasonable efforts to reunify the family are required.</p>
05. Custody and Placement.	<p>The child’s placement and care are the Department’s responsibility. The child must live in a licensed foster home, licensed institution, licensed group home, or in a licensed relative’s home.</p>

(5-8-09)

427. DETERMINATION OF ELIGIBILITY FOR ADC-FC TITLE IV-E.

The family services workers must initiate submit an application to ensure that eligibility for ADC-FC is made, or that the child is clearly ineligible because of family resources. The worker must maintain documentation of the eligibility determination or ineligibility in the case record of the child, and arrangements for parental support the Child Welfare Funding Team to evaluate for Title IV-E eligibility. If the child is ineligible for AFDC-FC Title IV-E, the family services worker must Child Welfare Funding Team will determine whether the child qualifies for Medicaid as a Title XIX foster child. (5-8-09)(____)

428. CUSTODY AND PLACEMENT.

The child’s placement and care are the Department’s responsibility. The child must live in a licensed foster home, licensed institution, licensed group home, or in a licensed relative’s home. (3-30-01)

01. Interstate Placements. In interstate placements, a child may be placed with an approved unlicensed relative when delaying the placement would be harmful to the child’s well-being. In those cases, a subsequent request for foster care licensure will be made through the Interstate Compact on the Placement of Children. However, in these instances, a child is ineligible for Title IV-E until the placement is licensed. (3-30-07)(____)

02. Intrastate Placements That Become Interstate Placements. If a foster care placement that was initially intrastate becomes an interstate placement because the family with whom the child is placed relocates to another state, a request for foster care licensure will be made through the Interstate Compact on the Placement of Children immediately upon the decision to move the child. If the state to which the family has moved accepts the family’s Idaho foster care license as effective, the placement is considered licensed until a determination is made that the family is in compliance with the licensing and other applicable laws of the state to which the family has moved. (3-30-07)

429. EFFECTIVE DATE.

AFDC-FC eligibility can Claims for Title VI-E maintenance may begin as early as the first day of placement in the month in which all initial Title VI-E eligibility factors are met, with the following exceptions: A child cannot receive AFDC and AFDC-FC or SSI and AFDC-FC in the same month; and AFDC-FC cannot begin until the month after the last month the child’s needs were included in an AFDC grant or the child received SSI Title IV-E foster maintenance payments during the same time period. (3-30-01)(____)

430. ONGOING ELIGIBILITY.

To continue eligibility for ~~AFDC-FC~~ Title IV-E, a child must meet ~~each of the eligibility~~ the following conditions listed in ~~Table 430.~~

CONTINUING ELIGIBILITY CONDITIONS, TABLE 430	
CONDITION	DESCRIPTION
01. Financial Need.	The child's own income, after any applicable AFDC income exclusions and disregards, must not exceed the foster care need standard established for him by the Department.
02. AFDC Factors.	The child must continue to meet the following AFDC eligibility factors: Age; Residence; Citizenship; Resource limits; and Deprivation. (A child who has been removed from the home of a caretaker relative who is not his parent, meets the deprivation requirement without review.)
03. Ongoing Custody and Placement.	The child must remain in the Department's custody through either a current court order or a voluntary placement agreement that has not been in effect more than one hundred and eighty (180) days. They must continue to live in a licensed foster home, licensed institution, licensed group home, or a licensed relative's home.
04. Redetermination.	<p>The child's eligibility for AFDC-FC must be redetermined at least once every six (6) months.</p> <p>A redetermination, rather than an initial eligibility determination, is used for a child who left foster care, was placed in a non-AFDC-FC living situation such as a hospital or detention center, did not return home, remained in the Department's custody throughout his absence, and returned to foster care. Any return home other than a visit requires a new judicial determination or a new agreement and a new determination of eligibility based on current circumstances.</p> <p>Annual Review: An annual redetermination is required to assure that the court has determined that the Department has made reasonable efforts to finalize a permanent plan for the child. This is done at the Permanency Hearing held every twelve (12) months from the date of removal until the child is either adopted or placed in legal guardianship.</p> <p>The foster care payment standard is also the child's eligibility income limit for determining continued eligibility for AFDC-FC.</p>
05. Other Eligibility Considerations.	<p>The following must be considered for AFDC-FC eligibility:</p> <p>A child's eligibility does not depend on the availability of a home to which he can return;</p> <p>The Department must provide services designed to allow the child to return home, where not possible, the family's worker must aggressively pursue other permanent options for the child;</p> <p>A child receiving AFDC-FC who becomes available for adoption, remains eligible to receive AFDC-FC until he is legally adopted. The child must otherwise qualify for AFDC-FC;</p> <p>The child must not receive AFDC-FC and SSI, or AFDC-FC and AFDC, in the same month.</p>

(4-6-05)

01. Child's Age. The child is under the age of eighteen (18), or up to age nineteen (19) if the youth is a

full-time student in a secondary school or its equivalent level of vocational or technical training and is expected to complete the educational program before reaching age nineteen (19). ()

02. Department Custody. The child must remain in the Department's custody through either a current court order or a voluntary placement agreement that has not been in effect more than one hundred and eighty (180) days. ()

03. Child's Residence. They must continue to live in a licensed foster home, licensed institution, licensed group home, a licensed relative's home, or with a specified relative during a court-ordered home visit. ()

04. Redetermination. A redetermination is used for a child who: ()

a. Left foster care; ()

b. Was placed in a Title IV-E ineligible living situation such as: unlicensed placement, a hospital, or a detention center; ()

c. Exceeded one hundred eighty (180) days in a voluntary placement agreement in which there was no judicial determination of "best interests." The child's Title IV-E eligibility ceases on the 181st day; and ()

d. Is on a home visit that exceeds the time specified in the court order signed by the Judge without a new judicial determination granting an extension. ()

05. Annual Redetermination. Annual redetermination is required to assure that the court has determined that the Department has made reasonable efforts to finalize a permanency plan for the child within twelve (12) months of the date the child is considered to have entered foster care and at least once every twelve (12) months thereafter while the child is in foster care. ()

431. AFDC-FC AND SSI ELIGIBILITY. (RESERVED)

~~When a child is eligible for both AFDC-FC and SSI, the caretaker relative(s) or the family services worker, in consultation with the child's family, must choose the type of payment the child will receive.~~ (5-3-03)

432. TITLE XIX FOSTER CHILD.

~~A foster child residing in a foster home, children's agency or children's institution approved by the Department is eligible for Title XIX Medicaid if he satisfies all of the following conditions: For Title XIX Medicaid eligibility for a foster child, please refer to IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children," Section 536.~~ (5-8-09)()

~~**01. Eligibility Conditions.** A foster child is eligible if:~~ (3-30-01)

~~**a.** He is under age twenty-one (21);~~ (3-30-01)

~~**b.** He is not a recipient of AFDC-FC or SSI;~~ (3-30-01)

~~**c.** A Departmental program other than the Medical Assistance or Welfare Programs has assumed full or partial financial responsibility for him;~~ (3-30-01)

~~**d.** His countable resources do not exceed the AFDC resource limit. In addition to the AFDC resource exclusions, the child may have an additional amount up to five thousand dollars (\$5,000) excluded if held in trust for him;~~ (3-30-01)

~~**e.** After applying the applicable AFDC income exclusions and earned income disregards, an additional income disregard of seventy dollars (\$70) is deducted; and~~ (3-30-01)

~~**f.** Total income must not exceed two hundred thirteen dollars (\$213) monthly.~~ (3-30-01)

~~02. Ongoing Eligibility. If a foster child is determined eligible to receive Title XIX Medicaid, the following provisions apply. (3-30-01)~~

~~a. His eligibility must be redetermined at least once every six (6) months. (3-30-01)~~

~~b. His eligibility must cease and other funding sources for medical care must be utilized if the foster home's license is revoked or expires and an application for license renewal is not on file, or if the child returns to his own home even if the Department retains legal custody of such child. (3-30-01)~~

~~03. Hospitalized Foster Child. Where a child who is otherwise eligible for Title XIX Medicaid as a foster child is placed in a hospital prior to being physically placed in foster care, the child is considered to be living in a licensed foster care situation if the regional team appointed to review hospitalization of foster children certified in writing that the plan for the child is to place him in foster care immediately upon discharge from the hospital. The certification must include the estimated date on which the child will enter foster care. (3-30-01)~~

433. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.

On behalf of the child and with the assistance of RDU CWFT staff, family services workers ~~is~~ are required to identify and apply for income or benefits from (one (1) or) every available source including Social Security, ~~veterans' benefits~~, tribal benefits, or estates of deceased parents. The address of the payee must be DHW-FACS-RDU CWFT, 450 West State Street, P. O. Box 83720 Boise, ID 83720-0036. (5-8-09)()

434. FORWARDING OF BENEFITS.

01. Home Visit. If the Department is receiving benefits and the child is returned to the home of the parent(s) or legal guardian(s) or relatives for a trial visit, Child Support Services must be notified by memo from a family services worker giving the name and address of the person ~~to whom these benefits are to be forwarded~~ in order to discontinue accrual of child support owed to the State. (5-8-09)()

02. Return to Alternate Foster Care. If the child returns to alternate foster care, the Department's Child Support Unit must be notified immediately of the correct payee. (5-8-09)()

~~02. Review After Six Months. If an alternative care placement continues for a period of six (6) months, a careful review must be initiated to determine if a change of payee must be accomplished. (3-18-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

437. ACCOUNTING AND REPORTING.

The Department's Division of Family and Community Services, Resource Development Unit Child Welfare Funding Team must account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized. (5-8-09)()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.15 – BEHAVIORAL HEALTH PROGRAMS

DOCKET NO. 16-0715-1701

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 31, Idaho Code, 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 20, 2017.

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 updates these rules to clarify that an individual who has lived experience and is seeking to provide services as a peer, but whose Department Criminal History Check was denied, may apply for a Behavioral Health Waiver described in IDAPA 16.07.15, “Behavioral Health Programs.”

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change simply adds clarification language that the Behavioral Health waiver process is used for peers wanting to provide peer services.

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 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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0715-1701
(Only Those Sections With Amendments Are Shown.)

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." (7-1-16)

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. (7-1-16)

a. An individual is allowed to work or have access to participants only under supervision until the criminal history and background check is completed. (7-1-16)

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. (7-1-16)

03. Waiver of Criminal History and Background Check Denial. A ~~certified or uncertified~~ individual who ~~is seeking to provide Peer Support Specialist, Family Support Partner, or Recovery Coach services~~ that receives an unconditional denial or a denial after an exemption review by the Department's Criminal History Unit, may apply for a Behavioral Health 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. (7-1-16)()

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: (7-1-16)

- a.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (7-1-16)
- b.** Incest, as defined in Section 18-6602, Idaho Code; (7-1-16)
- c.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (7-1-16)
- 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; (7-1-16)
- e.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (7-1-16)
- f.** Rape, as defined in Section 18-6101, Idaho Code; (7-1-16)
- g.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (7-1-16)
- h.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; (7-1-16)

- i. Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (7-1-16)
- 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; (7-1-16)
- k. Any felony punishable by death or life imprisonment; or (7-1-16)
- 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. (7-1-16)

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. (7-1-16)

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. (7-1-16)

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. (7-1-16)

08. Factors Considered During Administrative Review. During the administrative review, the following factors may be considered: (7-1-16)

- a. The severity or nature of the crimes or other findings; (7-1-16)
- b. The period of time since the incidents occurred; (7-1-16)
- c. The number and pattern of incidents being reviewed; (7-1-16)
- d. Circumstances surrounding the incidents that would help determine the risk of repetition; (7-1-16)
- e. The relationship between the incidents and the position sought; (7-1-16)
- 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. (7-1-16)
- g. A pardon that was granted by the Governor or the President; (7-1-16)
- h. The falsification or omission of information on the self-declaration form and other supplemental forms submitted; and (7-1-16)
- i. Any other factor deemed relevant to the review. (7-1-16)

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. (7-1-16)

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. (7-1-16)

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. (7-1-16)

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. (7-1-16)

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. (7-1-16)

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.17 – SUBSTANCE USE DISORDERS SERVICES

DOCKET NO. 16-0717-1701

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 31, Idaho Code, and Section 56-1003, 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 20, 2017.

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

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

The Division of Behavioral Health promulgated rules effective July 1, 2016, that removed the process for the Department's Criminal History and Background Checks from this chapter and added them into IDAPA 16.07.15, "Behavioral Health Programs." The unintended consequence of this action has been that providers of Recovery Support Services (RSS) only are unable to access the Behavioral Health waiver process established in rule when a Department Criminal History Check clearance is denied for an individual wanting to provide peer services.

This rule change reinstates the Behavioral Health waiver process for "Recovery Support Services only" providers that are providing peer services. The Legal Authority section of these rules is being updated for statutes necessary for this requirement.

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change adds reference language for the Behavioral Health waiver process for peers providing Recovery Support Services when a criminal history clearance is denied. Providers and affected parties have requested the Department reinstate this process that was previously available.

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 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 27, 2017.

DATED this 4th day of August, 2017.

Tamara Prisock
Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0717-1701
(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 establish and enforce rules for a comprehensive and coordinated program for the treatment of substance use disorders. This authority is found in the Alcoholism and Intoxication Treatment Act, Title 39, Chapter 3, ~~and~~. The Director of the Department is authorized to administer rules to promote health, safety, and services dealing with substance use disorders under Sections 56-1003, 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code.

(7-1-16)()

(BREAK IN CONTINUITY OF SECTIONS)

007. -- 0098. (RESERVED)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. All providers of substance use disorder recovery support services may be subject to the Department enhanced clearance as defined in IDAPA 16.05.06, "Criminal History and Background Checks," Section 010. ()

a. Recovery Support Services providers that are subject to the Department enhanced clearance must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks," Section 126, for applicants receiving a Department enhanced clearance. ()

b. For the purpose of processing background checks for these individuals, a recovery support services program will be considered a Behavioral Health Program as that class of individuals is described in IDAPA 16.05.06, "Criminal History and Background Checks," Section 126. ()

02. Availability to Work or Provide Service. 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. ()

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 have a Behavioral Health waiver granted under the provisions in Subsection 009.03 of this rule, must 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. A certified or uncertified individual who is seeking to provide Peer Support Specialist, Family Support Partner, or Recovery Coach services that receives an unconditional denial or a denial after an exemption review by the Department's Criminal History Unit, may apply for a Behavioral Health waiver as described in IDAPA 16.07.15 "Behavioral Health Programs," Section 009. ()

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.30 – BEHAVIORAL HEALTH COMMUNITY CRISIS CENTERS

DOCKET NO. 16-0730-1701

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 31, Idaho Code, and Sections 39-3133, 39-3140, 56-1003, 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 20, 2017.

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 clarifies that the Behavioral Health waiver process is for individuals who have lived experience and are seeking to provide services as a peer, but whose Department Criminal History Check was denied. The waiver process in this chapter is being removed as being redundant and these rules refer to the Behavioral Health Waiver described in IDAPA 16.07.15, “Behavioral Health Programs.”

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change simply adds reference language for the Behavioral Health waiver process for peers in another chapter of rules.

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 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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0730-1701
(Only Those Sections With Amendments Are Shown.)

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 a behavioral health community crisis center. (7-1-14)

03. Waiver of Criminal History and Background Check Denial. ~~An~~ certified or uncertified individual who is seeking to provide Peer Support Specialist, Family Support Partner, or Recovery Coach services that receives an conditional or unconditional denial for a or a denial after an exemption review by the Department's eCriminal hHistory and background check Unit, may apply for a Behavioral Health waiver ~~to provide direct care or services, or serve in a position that requires regular contact with clients accessing adult mental health services through the Department. 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~~ as described in IDAPA 16.07.15 "Behavioral Health Programs." Section 009. (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.** Foreible 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 choose 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 are 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)~~

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.33 – ADULT MENTAL HEALTH SERVICES

DOCKET NO. 16-0733-1701

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 39-3133, and 56-1003, 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 20, 2017.

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 clarifies that the Behavioral Health waiver process is for individuals who have lived experience and are seeking to provide services as a peer, but whose Department Criminal History Check was denied. The waiver process in this chapter is being removed as being redundant and these rules refer to the Behavioral Health Waiver described in IDAPA 16.07.15, "Behavioral Health Programs."

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change simply adds reference language for the Behavioral Health waiver process for peers in another chapter of rules.

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 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 27, 2017.

DATED this 4th day of August, 2017.

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
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0733-1701
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

The Idaho Legislature has delegated to the Department of Health and Welfare, as the state mental health authority, the responsibility to ensure that mental health services are available throughout the state of Idaho to individuals who need such care and who meet certain eligibility criteria under the Regional Mental Health Services Act, Title 39, Chapter 31, Idaho Code. Under Section 39-3133, Idaho Code, the Department is authorized to promulgate rules to carry out the purposes and intent of the Regional Mental Health Services Act. Under Sections 56-1003(3)(c), 56-1004, 56-1004A, 56-1007, and 56-1009, Idaho Code, the Director is authorized to adopt rules to supervise and administer a mental health program. ~~(5-8-09)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

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 accessing adult mental health services through the Department. (7-1-14)

03. Waiver of Criminal History and Background Check Denial. ~~An~~ certified or uncertified individual who is seeking to provide Peer Support Specialist, Family Support Partner, or Recovery Coach services that receives an conditional or unconditional denial or a denial after an exemption review for a ~~by the Department's~~ Criminal History and Background Check Unit, may apply for a Behavioral Health waiver ~~to provide direct care or services, or serve in a position that requires regular contact with clients accessing adult mental health services through the Department. 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 as described in IDAPA 16.07.15 "Behavioral Health Programs."~~ Section 009. ~~(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.** Foreible 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)~~

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.07.50 – MINIMUM STANDARDS FOR NONHOSPITAL, MEDICALLY-MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS

DOCKET NO. 16-0750-1701

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, 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 20, 2017.

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 to update these rules to allow an individual who has lived experience and is seeking to provide services as a peer, but whose Department Criminal History Check was denied, to apply for a Behavioral Health Waiver described in IDAPA 16.07.15, “Behavioral Health Programs.”

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

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

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted. The Department determined it was not feasible to do negotiated rulemaking as this rule change simply adds reference language for the Behavioral Health waiver process for peers in another chapter of rules.

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 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 27, 2017.

DATED this 4th day of August, 2017.

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. 16-0750-1701
(Only Those Sections With Amendments Are Shown.)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. Each detox/mental health diversion unit must comply with the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Criminal history and background checks must be completed on the owner, employees, applicants, transfers, reinstated former employees, student interns, contractors, and volunteers who provide care or services, or have access to clients in a detox/mental health diversion unit. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. (3-29-10)

02. Availability to Work. Any individual hired or contracted with, who has direct client access, must self-disclose all arrests and convictions before having access to clients. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any client. An individual is allowed to work only under supervision until the criminal history and background check is completed. (3-29-10)

03. Waiver of Criminal History and Background Check Denial. A certified or uncertified individual who is seeking to provide Peer Support Specialist, Family Support Partner, or Recovery Coach services that receives an unconditional denial, or a denial after an exemption review by the Department's Criminal History Unit, may apply for a Behavioral Health waiver described in IDAPA 16.07.15, "Behavioral Health Programs," Section 009. ()

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.02 – INSURANCE POLICY TITLES

DOCKET NO. 18-0102-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 existing rule consists of one sentence barring the approval of any life insurance policy bearing a name which is misleading or confusing. Such policies are already prohibited by section 41-1813, Idaho Code. IDAPA 18.01.02 is not necessary as it does not add anything of value in understanding or effectuating section 41-1813, Idaho Code, or other provisions of Title 41, Idaho Code. This rulemaking proposes to repeal this rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 60](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wes Trexler, weston.trexler@doi.idaho.gov (208) 334-4315. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250 / Fax: (208) 334-4398

IDAPA 18.01.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.08 – FILING OF LIFE POLICY FORMS

DOCKET NO. 18-0108-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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, which was originally adopted in 1962, calls for life policy forms to be submitted to the Department “in duplicate.” Policy forms have long been submitted electronically through the System for Electronic Rate and Form Filings (SERFF). IDAPA 18.01.08 is not necessary for the effectuation of Title 41, Idaho Code. Other provisions of this rule related to filing of rating formulas and specimens are also unnecessary because filings are made per Idaho Code §§ 41-1812 and 41-1813 and in light of substantive provisions in Title 41, Chapter 19, Idaho Code. This rulemaking proposes to repeal this rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 61](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wes Trexler, weston.trexler@doi.idaho.gov (208) 334-4315. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250 / Fax: (208) 334-4398

IDAPA 18.01.08 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.20 – CANCELLATION OF, OR REFUSAL TO RENEW AUTOMOBILE INSURANCE POLICIES

DOCKET NO. 18-0120-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

Idaho Code Section 41-2502 requires that insurers offer uninsured and underinsured auto coverage to Idaho consumers and also provides that a consumer can reject such coverage in writing when the policy is first purchased. Subsection (3) of this section also provides that the insurer provide a statement approved by the Director of the Department of Insurance explaining both types of coverage and the types of underinsured coverage that might be available in Idaho. The department fulfilled this directive initially by publishing Bulletin 08-08. Recently there has been discussion about whether consumers are adequately protected under the status quo. In 2017, there were three bills (H0163, S1048, and S1078) that considered proposing amendments to Idaho Code Sections 41-2502 or 41-2503 (the latter section containing definitions). Legislators suggested that the Director meet with industry to consider alternatives that might better serve Idahoans. Pursuant to negotiated rulemaking, a public meeting was held and written comments were received resulting in this proposed rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 62](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom 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 either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 2nd day of August, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720, Boise, ID 83702-0043
Phone: (208) 334-4250 / Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0120-1701
(Only Those Sections With Amendments Are Shown.)

IDAPA 18
TITLE 01
CHAPTER 20

18.01.20 - ~~CANCELLATION OF, OR REFUSAL TO RENEW~~ AUTOMOBILE INSURANCE POLICIES

000. LEGAL AUTHORITY.

Title 41, Chapter 25, Idaho Code; Title 67, Chapter 52, Idaho Code.

(7-1-93)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as Idaho Department of Insurance Rules, IDAPA 18.01.20, "Automobile Insurance Policies." ()

~~012.~~ **Purpose.** The purpose of this Rule is to provide guidelines that will assist in the implementation and uniform interpretation of the following Sections of the Idaho ~~Insurance Laws that were recently enacted by the Fortieth Session of the Idaho State Legislature and which became effective May 26, 1969, at 8 pm~~ Code. (7-1-93) ()

a. Section 41-2506 - Cancellation of Policies - Definitions. (7-1-93)

b. Section 41-2507 - Cancellation of Policies - Grounds. (7-1-93)

c. Section 41-2508 - Notice of Cancellation or Intention not to Renew. (7-1-93)

d. Section 41-2509 - Cancellations and Non-Renewals - Exceptions. (7-1-93)

e. Section 41-2502 – Uninsured motorist and underinsured motorist coverage for automobile insurance – Exceptions. ()

~~002. — 003.~~ (RESERVED)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. ()

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General - General Provisions." ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated in this chapter of rule. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. ()

04. Web Site Address. The department's website is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with this rule are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, as well as applicable exemptions. ()

~~0057.~~ -- ~~0409.~~ (RESERVED)

~~00410.~~ DEFINITIONS.

The Idaho Department of Insurance adopts the definitions set forth in Title 41, Chapter 25, Idaho Code. In addition, the following terms are defined as used in this chapter. ()

01. The Act. For the purpose of this Rule, the term "the Act" shall, unless otherwise noted, refer to Sections 41-2506, 41-2507, 41-2508, 41-2509, 41-2510, 41-2511, 41-2512 of the Idaho Insurance Laws, otherwise known as the Insurance Code. (7-1-93)

~~02. Section 41-2506 Terms.~~ *The terms defined under Section 41-2506 of the Insurance Code shall bear the same meaning when used in this Rule.* (7-1-93)

032. Non-Payment of Premium. The provisions of Section 41-2506(1)(d), Definitions - Non-Payment of Premium, shall be interpreted as follows: Non-Payment of Premium shall mean the failure of the named insured, or his legal representative, to discharge when due any of his obligations in connection with the payment of any premiums or installment premiums on a policy as defined in the Act, or any membership fees due an association or organization, other than an insurance association or organization, which by its by-laws requires the payment of such membership fees by the member prior to his obtaining or continuing insurance in force through such an association or organization. The term "non-payment of premium" as referred to in the Act shall also apply when the named insured or his legal representative is obligated to pay such premium or membership fee directly to the insurer, its agent or representative, or indirectly under any premium finance plan or extensions of credit. However, if the agent or other representative of the insurer extends credit to the insured, orally or otherwise, and said agent or representative terminates such credit arrangement with the insured because of non-payment, said agent or representative, with the knowledge and consent of the insurer, shall then mail or deliver, or cause to be mailed or delivered, to the named insured or his legal representative written notice of cancellation which states, in effect, that the insurance provided by the policy upon which such credit was granted shall cease on a given time and date. This time and date shall be no earlier than ten (10) days after the date such notice was mailed or delivered, the date of mailing considered to be the first day and the tenth day being considered to be ended at midnight, standard time, at the last known address of the named insured. Nothing in this rule shall be construed to permit any agent or other representative of the insurer to cancel any policy without the concurrence of the insurer or for any private debt between the agent and the insured. Also, nothing in the section shall be construed to prohibit a policy from being canceled effective as of any date that is mutually acceptable to the insured, the insurer and the lienholder, if any. Furthermore, a prior existing policy shall terminate on the effective date of any other policy procured by the insured with respect to any automobile designated in both policies and containing duplicate insurance coverage. (7-1-93)

043. Sixty Day Period. The sixty (60) day period referred to in Subsection (2) of Section 41-2506, CANCELLATION OF POLICIES - DEFINITIONS, is intended to provide to insurers a reasonable period of time, if desired, to thoroughly investigate a particular risk while extending coverage during the period of investigation. Should an insurer, after such investigation, conclude that it does not wish to remain on the risk, it may decline to

continue such policy in force provided that its action conforms with the provisions of Section 41-2506(2) of the Act. Therefore, the provisions of this section shall be interpreted to mean that an insurer may deliver notice of cancellation or mail notice of cancellation concerning any new automobile policy on or before the sixtieth (60th) day after inception date of the policy, the inception date being considered to be the first day and the sixtieth (60th) day being considered to be ended at midnight, standard time, at the last known address of the named insured. The policy shall thus remain in force from the date the notice of cancellation is mailed to the usual date the cancellation is effective as required by the terms and conditions of the policy, without the policy being considered to be subject to the provisions of the Act. For the purpose of this rule, the term "inception date" shall mean that date and time that the policy goes into effect and the protection furnished by the policy commences. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

016. STANDARD STATEMENT REGARDING UNINSURED AND UNDERINSURED MOTORIST COVERAGE.

The form set forth below is the standard statement approved by the director of the department of insurance pursuant to Section 41-2502, Idaho Code, and carriers must begin using the new form no later than January 1, 2019. Carriers may make non-substantive changes to this form, for example, including inserting company letterhead, and carriers must file their standard statement forms with the director prior to use. ()

0167. SEVERABILITY.

If any provision of this rule shall be held invalid, the remainder of the rule shall not be affected thereby. (7-1-93)

0178. -- 999. (RESERVED)

APPENDIX A
(UNINSURED/UNDERINSURED MOTORIST DISCLOSURE)

IDAHO UNINSURED MOTORIST AND UNDERINSURED MOTORIST DISCLOSURE -- Do not sign until you read

Idaho law requires that every auto liability insurance policy include **Uninsured Motorist (UM)** bodily injury coverage and **Underinsured Motorist (UIM)** bodily injury coverage, unless a named insured (you) has rejected these coverages in writing, which may be in electronic format.

These coverages can protect you and your passengers by paying damages, up to the UM/UIM policy limits you have chosen, when an at-fault person does not have any or enough liability coverage.

- **UM** coverage may pay damages for bodily injuries caused by an at-fault motorist who has no insurance, or from a hit-and-run vehicle where the at-fault party is unknown.
- **UIM** coverage may pay damages for bodily injuries if the at-fault motorist does not have enough liability insurance to cover your costs. UIM coverage is offered in different types by different insurers, and insurers are not required to offer more than one type of UIM coverage. The most common available type of UIM coverage is "Difference in Limits" (or "Offset") Coverage. Some insurers may offer "Excess" Coverage. **Please refer to the attached examples to see how the different types of UIM coverage may impact your level of protection.**

You have the option to purchase both UIM and UM coverage in varying amounts at or above the minimum liability requirements in Idaho, which are \$25,000 per person, \$50,000 for two or more persons in any one accident. By signing below, you acknowledge that the insurance company has explained the following UM/UIM coverages that are available as part of your policy:

Insurer: _____ **UIM Type:** Difference in Limits (Offset) Excess

I have read the above explanation of Uninsured Motorist and Underinsured Motorist coverages. I understand that I have the option to reject either or both coverages.

Named Insured (print name) **Signature of Named Insured** **Date**

UNINSURED AND UNDERINSURED MOTORIST COVERAGE – OPTION TO REJECT

I understand that, by signing below, I am informing my insurer that I choose to reject the UM/UIM coverage(s) under my automobile liability policy, or under any renewal or replacement of my policy.

I **reject** and **do not** wish to purchase *Uninsured* Motorist Coverage (UM).

Signature of Named Insured (only if rejecting) **Date**

I **reject** and **do not** wish to purchase *Underinsured* Motorist Coverage (UIM).

Signature of Named Insured (only if rejecting) **Date**

This general explanation is NOT an insurance agreement. All auto insurance policies have terms and conditions that control your rights and obligations as a policyholder. For a more detailed explanation of these coverages, refer to your policy, agent or the insurer. The Idaho Department of Insurance can also provide assistance with insurance related questions. Call 800-721-3272 (Idaho only) or 208-334-4250 or visit the Department's website at www.doi.idaho.gov.

	"Difference in Limits" (or "Offset") UIM	"Excess" UIM
Definition of the type of UIM coverage	Your UIM coverage limits are reduced or eliminated by any amounts recovered from another party's insurance.	Your UIM coverage limits are above and beyond what is paid by another party's insurance.

Example 1		
At-fault motorist and you have the same bodily injury/UIM coverage limits		
	"Difference in Limits" (or "Offset") UIM	"Excess" UIM
Bodily Injury liability limit of at-fault motorist	\$25,000	\$25,000
Your Underinsured Motorist (UIM) Coverage limit	\$25,000	\$25,000
Maximum available for your bodily injury	\$25,000	\$50,000
Example 1 explanation	Your UIM coverage doesn't provide additional coverage above the at-fault motorist's coverage because they have the same limit	Your UIM coverage increases the available Bodily Injury coverage above the at-fault motorist's coverage limit

Example 2		
At-fault motorist has lower bodily injury coverage limits than your UIM		
	"Difference in Limits" (or "Offset") UIM	"Excess" UIM
Bodily Injury Liability limit of at-fault motorist	\$25,000	\$25,000
Your Underinsured Motorist (UIM) Coverage limit	\$100,000	\$100,000
Maximum available for your bodily injury	\$100,000	\$125,000
Example 2 explanation	Your UIM coverage covers any deficiency in the at-fault motorist's Bodily Injury coverage, as if the at-fault motorist had Bodily Injury coverage at your UIM limit	Your UIM coverage increases the available Bodily Injury coverage above the at-fault motorist's coverage limit

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.22 – SALE OF INSURANCE BY VENDING MACHINES

DOCKET NO. 18-0122-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 dates back to 1979. It is not currently monitored by the DOI, no licenses currently exist, nor are any expected. The fee for vending machine licenses is not addressed or included in the Department's general fee rule, IDAPA 18.01.44. Internet options replace this mode of accessibility for the public, along with provisions on credit cards for limited travel insurance. Recent legislative change removes retail licensing requirements for travel insurance. IDAPA 18.01.22 is not necessary for effectuating Title 41, Idaho Code. This rulemaking proposes to repeal this rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 63](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom 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 either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250 / Fax: (208) 334-4398

IDAPA 18.01.22 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.25 – TITLE INSURANCE AND TITLE INSURANCE AGENTS AND ESCROW OFFICERS

DOCKET NO. 18-0125-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

Amends language to make title insurance policy cancellation fees permissive rather than mandatory because there are various scenarios where it seems inappropriate to charge a cancellation fee, and title insurance agents would not charge cancellation fees but for the current rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 64](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom 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 either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this July 31, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0125-1701
(Only Those Sections With Amendments Are Shown.)

004. PREMIUM RATES AND THEIR APPLICATION.

01. Schedule of Premium Rates. Each title insurer shall file its schedule of premium rates (including both the taxable risk portion and the service portion) for title insurance charged the public for all policies, which premium rates shall commence with the lowest rate and shall advance by one thousand dollars (\$1,000) increments. The rate schedule shall include owner's, standard mortgagee and extended coverage mortgagee policies, and may include other rates. In addition, any charges made for special endorsements shall be listed and the type of policy to which applicable. Filed rates shall provide that where a preliminary report is issued, the order for the policy may be canceled prior to closing. ~~upon The applicant being may be~~ required to pay a cancellation ~~fee charge of fifty percent (50%) of the premium with a minimum of fifty dollars (\$50) provided that any portion of the charge in excess of one hundred dollars (\$100) may be waived, and provided the entire charge may be canceled if it is apparent that by inadvertence or error the customer entered duplicate orders with the same or competing companies.~~ The premium rates for policies shall only include title examination and issuance of title insurance which shall be deemed to include any preliminary report, commitment to insure, binder or similar report (herein collectively called preliminary report) and the policy subsequently issued thereon. If more than one (1) chain of title is involved, an additional charge shall be made for each additional chain. An additional chain is one involving property in a different block or section or under a different ownership within the last five (5) years. (7-1-93)()

02. Rebates, Discounts, Credits. No title insurer or title insurance agent shall: (7-1-93)

a. Charge a premium for a policy in one transaction and withhold issuance of a policy thereon; (7-1-93)

b. Charge a premium for a policy in one transaction and apply the premium, or any part thereof, applicable to the first transaction to a premium charged in a subsequent transaction; provided that a title insurer may file a temporary or construction mortgagee policy rate allowing credit for such policy upon a permanent policy to the extent of the basic standard coverage charge only for the temporary policy provided that full applicable premium and fees have been charged and collected on the issuance of the first policy; and provided that a title insurer may file an owner's reissue rate under conditions prescribed by Subsection 004.06 infra; (7-1-93)

c. Provide or agree to provide closing or escrow services as a part of a title insurance premium charge for issuance of a policy; (7-1-93)

d. Issue a title insurance binder, commitment or preliminary report without an order ~~and without making a charge therefor if a policy is not issued thereon, nor apply the charge or any part thereof toward the premium of a policy on any other tract of land;~~ (7-1-93)()

e. Issue a binder commitment or preliminary report, or title insurance policy for a charge which is less than that currently filed for such risk with the Department of Insurance; or (7-1-93)

f. In connection with transaction of any title insurance business received by or directed to such insurer or agent directly or indirectly, provide, or cause to be provided, to any person any payment, property or item of value, or division of a premium or fee; provided, contracts of reinsurance when no primary liability is assumed by the reinsurer are exempt here from. (7-1-93)

03. Amount of Owner's Policy. An owner's policy shall be issued for not less than (a) the amount of the current sales price of the land and any existing improvements appurtenant thereto, or (b) if no sale is being made, the amount equal to the value of the land and any existing improvements at the time of the issuance of the policy. If improvements are contemplated, the amount may include the cost of such improvements immediately contemplated to be erected thereon with a following pending improvement clause set forth in Schedule B of said policy and the full

premium collected, which clause reduces the policy amount to the extent the improvements are not completed. The amount of policies covering leasehold estates for a term of fifty years or more shall be for the full value of the land and existing improvements, and for less than fifty years shall be for an amount at the option of the insured based on (i) the total amount of the rentals payable for the primary term but not less than five (5) years, or (ii) the full value of the land and existing improvements together with any improvements immediately contemplated to be erected thereon. The amount of policies insuring contract purchasers shall be for the full value of the principal payments. Insurance of lesser estates shall be written for the amount of the value of the estate at the time the policy is issued.

(7-1-93)

04. Amount of Mortgagee Policies. A mortgagee's policy shall be for not less than the full principal debt of the loan insured and at insured's request may include up to twenty percent (20%) in excess of the principal debt to cover interest, foreclosure costs, etc. Where the land covered represents only part of the security for the loan, the policy shall be written for the amount of the unencumbered value of the land or the amount of the loan, whichever is the lesser.

(7-1-93)

05. Simultaneous Issuance of Owner's and Mortgagee's Policy. When an owner's policy and a mortgage policy covering identical land are simultaneously issued, the owner's policy shall bear the regular owner's rate. Premium for the mortgagee policy simultaneously issued may be for an amount less than the full mortgagee rate for the amount of insurance not in excess of the owner's policy.

(7-1-93)

06. Double Sale and Reissue. No order will be held open to cover a double sale and the premium will be charged and the policy issued on each sale, unless the conveyance on resale is recorded at the same time as the original transaction. A title insurer may file an owner's reissue rate of not less than fifty percent (50%) of the basic rate which shall be applicable to any policy ordered within two (2) years of the effective date of a prior owner's or purchaser's policy naming applicant as the insured provided that the following conditions are met:

(7-1-93)

a. The prior policy or a copy thereof is presented to the issuing company and shall be retained in the issuing company's file, or in the absence thereof, reasonable proof of issuance is provided the issuing company.

(7-1-93)

b. The reissue premium shall be based on the schedule of fees in effect at the time of reissue. (7-1-93)

c. Increased liability is to be computed in accordance with the basic schedule of fees in the applicable brackets.

(7-1-93)

07. Amount on Litigation and Foreclosure Reports. Where a preliminary report is made for an owner's policy to be issued after a quiet title action or after a foreclosure of contracts of sale, deeds of trust or mortgages, the premium charge shall be that on an owner's policy and the policy will be issued following the successful completion of the litigation or the foreclosure; ~~and~~ ~~A~~ cancellation fee ~~may be~~ charged if the action is unsuccessful. ~~Such fee shall include the examination of title as well as a check immediately prior to judgment or sale on foreclosure.~~ Each such preliminary report shall bear on its face as the limit of liability of the insurer, the value upon which the premium charge is based.

(7-1-93)()

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.30 – INDIVIDUAL DISABILITY AND GROUP SUPPLEMENTAL DISABILITY INSURANCE MINIMUM STANDARDS RULE

DOCKET NO. 18-0130-1701

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 41-21 and 41-4207, 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 20, 2017.

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:

Following negotiated rulemaking, this proposed rulemaking will allow, but not require, carriers to offer return of premium or cash value benefits to covered persons for specified disease, limited benefit policies, and accident only policies in addition to the other types of policies currently permitted.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 65](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wes Trexler, weston.trexler@doi.idaho.gov (208) 334-4315.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0130-1701
(Only Those Sections With Amendments Are Shown.)

006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. ()

04. Web Site Address. The department's website is <http://www.doi.idaho.gov>. ()

007. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with this rule are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, as well as applicable exemptions. ()

~~0068.~~ -- 010. (RESERVED)

011. PROHIBITED POLICY PROVISIONS.

01. Probationary or Waiting Period. Except as provided in Subsection 004.10 pertaining to the definition of a preexisting condition, a policy shall not contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy. Accident policies shall not contain probationary or waiting periods. (3-30-01)

02. Additional Coverage as Dividend. A policy or rider for additional coverage may not be issued as a dividend unless an equivalent cash payment is offered as an alternative to the dividend policy or rider. A dividend policy or rider for additional coverage shall not be issued for an initial term of less than six (6) months. (3-30-01)

a. The initial renewal subsequent to the issuance of a policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional. (3-30-01)

03. Return of Premium or Cash Value Benefit. A disability income policy, accident only policy, limited benefit policy, specified disease policy or hospital confinement indemnity policy may contain a "return of premium" or "cash value benefit" so long as the return of premium or cash value benefit is not reduced by an amount greater than the aggregate of claims paid under the policy, and the insurer demonstrates that the reserve basis for the policies is adequate. No other policy subject to this rule shall provide a return of premium or cash value benefit, except return of unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds. ~~(3-30-01)~~()

04. Federally Operated Hospital. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government. (3-30-01)

05. Exclusions. A policy shall not limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows: (3-30-01)

a. Preexisting conditions or diseases, except for congenital anomalies of a covered dependent child; (3-30-01)

- b.** Mental or emotional disorders, alcoholism and drug addiction; (3-30-01)
 - c.** Pregnancy, except for complications of pregnancy; (3-30-01)
 - d.** Illness, treatment or medical condition arising out of: (3-30-01)

 - i. War or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxiliary to it; (3-30-01)
 - ii. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; (3-30-01)
 - iii. Aviation; (3-30-01)
 - iv. With respect to short-term nonrenewable policies, interscholastic sports; and (3-30-01)
 - v. With respect to disability income protection policies, incarceration. (3-30-01)
 - e.** Cosmetic surgery, except that “cosmetic surgery” shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child; (3-30-01)
 - f.** Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet; (3-30-01)
 - g.** Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects of it, where the interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column; (3-30-01)
 - h.** Benefits provided under Medicare or other governmental program (except Medicaid), a state or federal worker’s compensation law, employers liability or occupational disease law, or motor vehicle no-fault law; services performed by a member of the covered person’s immediate family; and services for which no charge is normally made in the absence of insurance; (3-30-01)
 - i.** Dental care or treatment; (3-30-01)
 - j.** Eye glasses, hearing aids, and examination for the prescription, or fitting of them; (3-30-01)
 - k.** Rest cures, custodial care, transportation, and routine physical examinations; and (3-30-01)
 - l.** Territorial limitations. (3-30-01)
- 06. Authority of Director to Disapprove.** Policy provisions precluded in Section 011 shall not be construed as a limitation on the authority of the Director to disapprove other policy provisions in accordance with Chapters 21, 22 and 42 of Title 41 of the Idaho Code, or that in the opinion of the Director are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy. (3-30-01)

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE
18.01.35 – GUIDELINES RESPECTING THE USE OF CLAIM FORMS
FOR DISABILITY INSURANCE CLAIMS

DOCKET NO. 18-0135-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 requires insurers to furnish, to hospitals and certain other service providers, a six month supply of paper forms for the filing of claims. Since the rule was adopted in 1980, the vast majority of claims are submitted electronically, and it is no longer necessary for providers to have a six-month supply of paper forms on hand at all times. IDAPA 18.01.35 is not necessary for the effectuation of Title 41, Idaho Code as it reflects outmoded practices. This rulemaking proposes to repeal this rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wes Trexler, weston.trexler@doi.idaho.gov (208) 334-4315. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

IDAPA 18.01.35 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE
18.01.56 – REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING
TITLE INSURANCE BUSINESS RULES

DOCKET NO. 18-0156-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

We are revising the definition of “things of value” at Subsection 010.05 and revising provisions 4.1. and 9 of Exhibit 1, requiring cancellation fees because there are various scenarios where it seems inappropriate to charge a cancellation fee, and title insurance agents would not charge cancellation fees but for the current rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 67](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom 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 either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0156-1701
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. Business of Title Insurance. “Business of title insurance” has the meaning set forth in Idaho Code, Section 41-2704 and includes in addition thereto, the performance in this state by a title entity of any service in conjunction with the issuance of any contract or policy of title insurance. (7-1-93)

02. Person. “Person” includes any natural person and any firm, association, organization, partnership, business trust, corporation or other legal entity. (7-1-93)

03. Producer of Title Business. “Producer of title business” includes any person engaged in this state in the trade, business, occupation or profession of: (7-1-93)

a. Buying or selling interest in real property; or (7-1-93)

b. Making loans secured by interest in real property; and (7-1-93)

c. Shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, subdividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing. (7-1-93)

04. Self Promotional. “Self promotional” refers to either a promotional function which is conducted by a single entity or a promotional item intended for distribution by a single entity. All benefits from the promotional function or item must accrue to the entity promoting itself. (7-1-93)

05. Things of Value. “Things of value” means anything that has a monetary value and includes, but is not limited to, tangible objects, services, use of facilities, monetary advances, extension of lines of credit, creation of compensating balances, ~~uncollected cancellation fees for issuance of title commitments~~, and all other forms of consideration. (7-1-93)()

06. Trade Association. “Trade association” means an association of persons, a majority of whom are producers of title business, or persons whose primary activity involves real property. (7-1-93)

07. Title Entity. “Title entity” includes both title insurance agents and title insurers and their employees, agents, or representatives. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

021. -- 999. (RESERVED)

EXHIBIT 1

A title entity shall not provide things of value except as provided in Sections 012, 013, 014, and 015 of this rule. The following is a partial, but not all inclusive, list of acts and practices which are considered illegal inducements prohibited by the Idaho Insurance Code:

1. A title entity shall not sponsor any activity off its premises unless the producer of title business bears the entire cost of the activity. A title entity shall not cosponsor, subsidize, contribute fees, prizes, gifts, or

otherwise provide things of value for a promotional function off the title entity's premises regardless whether the function is self-promotional or not. Off premises functions/activities include, but are not limited to, meetings, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, or related activities of producers of title business, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, motor vehicle rallies, sporting events of all kinds, gambling trips, hunting trips or outings, golf tournaments, artistic performances, and outings in recreation areas or entertainment areas. It shall be the burden of the title entity to be prepared to present documentation to the Department of Insurance that no things of value were provided.

2. A title entity shall not sponsor, subsidize, supply prizes or labor, or otherwise provide things of value for promotional activities of producers of title business. This does not prevent a title entity from attending activities of producers of title business if there is no cost to the title entity other than the title entity's own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to producers of title business.

3. A title entity shall not provide or offer to provide, either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any such person, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.

4. A title entity shall not pay or offer to pay, either directly or indirectly, with respect to any producer of title business for:

- a. The services of an outside professional whose services are required by any producer of title business to complete or structure a particular transaction;
- b. The salary of an employee of such producer of title business;
- c. The salary or any part of the salary of a relative of any producer of title business employed by a title entity, if the payment is in excess of the reasonable value of the work actually performed;
- d. A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;
- e. Services required to be performed by any producer of title business in his or her professional capacity (e. g. the drafting of documents that are required to be filed by such producer of title business with the title entity for the initiation of closing and settlement services);
- f. Any evidence of title or a copy of the contents thereof which is not produced or issued by the title entity, if the evidence or the title relates to a current transaction;
- g. The rent for all or any part of the space occupied by any producer of title business;
- h. Money, prizes, or other things of value in any kind of a contest or promotional endeavor;
- i. Any advertising effort made in the name of, for, or on behalf of any producer of title business;
- j. Any business form of any such producer of title business other than a form regularly used in the conduct of the title entity's business, which form is furnished solely for the convenience of the title entity and does not constitute a benefit to the producer of title business; or
- k. Any salary, commission, or any other consideration to any employee who is at the same time actively engaged as a real estate licensee in the real property or mortgage brokerage business or is actively engaged in any other business of a producer of title business; or
- l. ~~The cancellation fee, the fee for the preliminary title report or other~~ Any fee on behalf of any producer of title business before or after inducing such producer of title business to cancel an order with another title entity.

5. A title entity shall not furnish, or offer to furnish, all or any part of the time or productive effort of any employee of the title entity (example: office manager, escrow officer, secretary, clerk, messenger, etc.) to any producer of title business. This provision is not intended to effect the title entity's day to day business with producers of title business. It is directed at title entity employees being utilized by, or "loaned" out to a producer of title business for the self-promotional interests of the producer of title business.

6. A title entity shall not furnish, or offer to furnish, pay for, or offer to pay for, furniture, office supplies including file folders, telephones, equipment, or automobiles to any producer of title business, or pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of the aforementioned items.

7. A title entity shall not provide, or offer to provide, non title services (example: computerized bookkeeping, forms management, computer programming, trust accounting) or any similar benefit to a producer of title business, without charging for and receiving a fee commensurate for services provided (e. g. a fee for trust accounting shall be a like fee charged by state or federally chartered banks or savings and loan associations in the local area). This provision also does not prevent title entities from contracting with trade associations to provide non-title services for a profit (i.e. MLS services).

8. A title entity shall not provide gifts or other things of value in excess of fifty dollars (\$50) per year per individual in connection with congratulations or condolences to a producer of title business.

9. ~~A title entity shall not waive a cancellation fee, fail to charge for a cancellation fee, or otherwise fail to make efforts to collect a cancellation fee from the recipient of services provided by the title entity.~~ **A title entity shall not issue a title insurance binder, commitment or preliminary report without an order.**

10. A title entity shall not furnish any part of its facility (e. g. conference rooms, meeting rooms, etc.) to a producer of title business or trade association without receiving a fair rental charge commensurate with the average rental for similar facilities in the area.

11. A title entity shall not furnish reports containing publicly recorded information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property (other than as permitted in Section 012) helpful to any producer of title business, consumer, or member of the general public without making a charge that is commensurate with the actual cost of the work performed and the material furnished (e. g. "farm packages", lot book reports, tax information, title commitments).

12. Delivery service between a title entity and a producer of title business shall be conducted by the title entity's regular messenger service and shall only involve the delivery of items from a title entity to a producer of title business or from a producer of title business to a title entity.

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

18.01.73 – RULE TO IMPLEMENT THE INDIVIDUAL HEALTH INSURANCE AVAILABILITY ACT PLAN DESIGN

DOCKET NO. 18-0173-1701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 41-211 and 41-5211, 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 20, 2017.

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 provides specifics for the plan design of five individual health plans to be offered through the Idaho Individual High Risk Reinsurance Pool (Pool), per Chapter 55, Title 41, Idaho Code. Revisions to Chapter 55, effective July 1, 2017, have eliminated the requirement and the need to design specific products for the Pool, which, going forward, will likely function as a reinsurance mechanism for individuals with certain health conditions enrolled in major medical individual health insurance plans available market-wide. IDAPA 18.01.73 is no longer necessary for the effectuation of Title 41, Idaho Code as Chapter 55, Title 41, Idaho Code, no longer provides for individuals to be enrolled in unique high risk pool plans. The approximately 50 individuals grandfathered into these plans prior to the 2017 legislation will be renewed into these plans, if they desire, without modification to plan design. Therefore, rules for design of these plans are obsolete as no new such plans will be created. This rulemaking proposes to repeal this rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Volume 17-7, p. 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wes Trexler, weston.trexler@doi.idaho.gov (208) 334-4315.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before September 27, 2017.

DATED this 31st day of July, 2017.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor

P.O. Box 83720, Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

IDAPA 18.01.73 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section, 54-912 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 19.01.01.004 is being amended to delete the American Dental Association’s sedation-related documents as incorporated by reference. The rules regarding moderate sedation (19.01.01.060) are being amended by the addition of qualifying course requirements.

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 is budget neutral and has no fiscal impact to the state general fund or the Board of Dentistry’s 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 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 69](#). Comments were received and considered before initiating this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

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 27, 2017.

DATED this 10th day of August, 2017.

Susan Miller, Executive Director
Idaho State Board of Dentistry
350 N. 9th Street, Suite M100
Boise, ID 83702
P.O. Box 83720
Boise, ID 83720-0021
Phone: (208) 334-2369
Fax: (208) 334-3247
Susan.miller@isbd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1701
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Professional Standards. (3-29-12)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 8th Edition, 2012. (3-20-14)

~~**b.** American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)~~

~~**c.** American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)~~

~~**d.** American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)~~

eb. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

fc. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

gd. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

he. American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

060. MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

01. Requirements for a Moderate Enteral Sedation Permit. To qualify for a moderate *enteral* sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed *in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 in these rules* by the Board within the five (5) year period immediately prior to the date of application for a

moderate sedation permit. The five (5) year requirement regarding the required training for a moderate ~~enteral~~ sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. ~~To obtain a moderate enteral sedation permit, a dentist must provide verification of~~ Qualifying training courses must be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or be approved by the Board of Dentistry. The training program shall include the following: (4-11-15)()

~~a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and~~ (4-7-11)

~~b. Current certification in Advanced Cardiac Life Support.~~ (4-11-15)

~~02. Requirements for a Moderate Parenteral Sedation Permit. To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall:~~ (4-7-11)

~~a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and~~ (4-5-00)

~~b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and~~ (4-7-11)

~~c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received.~~ (3-18-99)

~~d. In addition, the dentist must maintain current certification in Advanced Cardiac Life Support or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated.~~ (3-29-17)

a. Course objectives: ()

i. List and discuss the advantages and disadvantages of moderate sedation; ()

ii. Discuss prevention, recognition and management of complications associated with moderate sedation; ()

iii. Administer moderate sedation to patients in a clinical setting in a safe and effective manner; ()

iv. Discuss the abuse potential, occupational hazards and other untoward effects of the agents utilized to achieve moderate sedation; ()

v. Describe and demonstrate the technique of intravenous access, intramuscular injection and other parenteral techniques; ()

vi. Discuss the pharmacology of the drug(s) selected for administration; ()

vii. Discuss the precautions, indications, contraindications and adverse reactions associated with the

- drug(s) selected: ()
- vii. Administer the selected drug(s) to dental patients in a clinical setting in a safe and effective manner: ()
- ix. List the complications associated with techniques of moderate sedation; ()
- x. Describe a protocol for management of emergencies in the dental office and list and discuss the emergency drugs and equipment required for the prevention and management of emergency situations; ()
- xi. Discuss principles of advanced cardiac life support or an appropriate dental sedation/anesthesia emergency course equivalent; ()
- xii. Demonstrate the ability to manage emergency situations; and ()
- xiii. Demonstrate the ability to diagnose and treat emergencies related to the next deeper level of anesthesia than intended. ()
- c. Course Content:** ()
- i. Historical, philosophical and psychological aspects of anxiety and pain control; ()
- ii. Patient evaluation and selection through review of medical history taking, physical diagnosis and psychological considerations; ()
- iii. Use of patient history and examination for ASA classification, risk assessment and pre-procedure fasting instructions; ()
- iv. Definitions and descriptions of physiological and psychological aspects of anxiety and pain; ()
- v. Description of the sedation anesthesia continuum, with special emphasis on the distinction between the conscious and the unconscious state; ()
- vi. Review of pediatric and adult respiratory and circulatory physiology and related anatomy; ()
- vii. Pharmacology of local anesthetics and agents used in moderate sedation, including drug interactions and contraindications; ()
- viii. Indications and contraindications for use of moderate sedation; ()
- ix. Review of dental procedures possible under moderate sedation; ()
- x. Patient monitoring using observation and monitoring equipment, with particular attention to vital signs and reflexes related to consciousness; ()
- xi. Maintaining proper records with accurate chart entries recording medical history, physical examination, informed consent, time-oriented anesthesia record, including the names of all drugs administered including local anesthetics, doses, and monitored physiological parameters; ()
- xii. Prevention, recognition and management of complications and emergencies; ()
- xiii. Description and use of moderate sedation monitors and equipment; ()
- xiv. Discussion of abuse potential; ()
- xv. Intravenous access: anatomy, equipment and technique; ()

xvi. Prevention, recognition and management of complications of venipuncture and other parenteral techniques; ()

xvii. Description and rationale for the technique to be employed; and ()

xviii. Prevention, recognition and management of systemic complications of moderate sedation, with particular attention to airway maintenance and support of the respiratory and cardiovascular systems. ()

d. Hours of instruction: ()

i. For a moderate enteral sedation permit, the applicant must provide proof of training with a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation. ()

ii. For a moderate parenteral sedation permit, the applicant must provide proof of training with a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route. ()

03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. *The Board adopts the standards incorporated by reference in Section 004.01.e. and Section 004.01.d. of these rules as set forth by the American Dental Association.* (4-11-15) ()

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; (4-11-15)

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)

vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and (4-11-15)

- viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. (4-11-15)
- ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope or end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. (3-29-17)
- b.** Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)
- i. The operator; and (10-1-87)
- ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
- iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-11-15)
- c.** Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: (4-11-15)
- i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; (4-11-15)
- ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)
- iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)
- iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)
- d.** Patient Monitoring. Patients shall be monitored as follows: (4-11-15)
- i. Patients must be continuously monitored using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; (3-29-17)
- ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; (4-11-15)
- iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party; (4-11-15)
- iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)
- v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. (4-11-15)

f. Permit Renewal. Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled due to failure to renew within the prescribed time is subject to the provisions of Paragraph 060.03.g. of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: (3-29-17)

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support; (4-11-15)

ii. For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support. (3-20-14)

g. Reinstatement. A dentist may make application for the reinstatement of a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's cancellation or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit was canceled or surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (3-29-17)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1702
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 examination rules will be amended to distinguish between written and clinical examination results and to clarify the clinical examination requirements. The dental assistant rule regarding authorization to place a rubber dam will be revised to reflect current nomenclature. The unprofessional conduct rule regarding prescription drugs will be revised for clarification.

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 is budget neutral and has no fiscal impact to the state general fund or the Board of Dentistry's 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 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 70](#). Comments were received and considered before initiating this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

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 27, 2017.

DATED this 10th day of August, 2017.

Susan Miller, Executive Director
Idaho State Board of Dentistry
350 N. 9th Street, Suite M100
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Boise, ID 83720-0021
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1702
(Only Those Sections With Amendments Are Shown.)

010. EXAMINATIONS (RULE 10).

Examinations may be completed solely by the Board or, at its discretion, the Board may participate in and accept an examining agent. **Clinical Examination** results will be valid for Idaho licensure by examination for a period of five (5) years from the date of successful completion of the examination. ~~(3-29-17)~~()

(BREAK IN CONTINUITY OF SECTIONS)

014. EXAMINATION FOR GENERAL DENTAL LICENSES (RULE 14).

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations of such duration and character and upon such subjects in dentistry as the Board shall determine to thoroughly test the fitness and ability of the applicant to practice dentistry in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any exam conducted by the Board may include: (7-1-93)

01. Written Examination. Evidence of passing the National Board examination may be required of all candidates applying for a license to practice dentistry. Any other written examination will be specified by the Board. (7-1-93)

02. Clinical Examination. All applicants for license to practice general dentistry shall be required to pass a Board-approved clinical examination, ~~which includes a periodontal examination.~~ ~~(3-29-17)~~()

(BREAK IN CONTINUITY OF SECTIONS)

035. DENTAL ASSISTANTS - PRACTICE (RULE 35).

01. Direct Supervision. A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)

- a.** Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
- b.** Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
- c.** Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
- d.** Expose and process radiographs; (4-6-05)
- e.** Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (3-20-14)
- f.** Record diagnostic bite registration; (4-6-05)
- g.** Record bite registration for fabrication of restorations; (4-6-05)

- h. Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
 - i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
 - j. Placement and removal of arch wire; (4-6-05)
 - k. Placement and removal of orthodontic separators; (4-6-05)
 - l. Placement and removal of ligature ties; (4-6-05)
 - m. Cutting arch wires; (4-6-05)
 - n. Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
 - o. Adjust arch wires; (4-6-05)
 - p. Etching of teeth prior to placement of restorative materials; (4-6-05)
 - q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
 - r. Placement and removal of ~~rubber~~ dental dam; (~~4-6-05~~)()
 - s. Placement and removal of matrices; (4-6-05)
 - t. Placement and removal of periodontal pack; (4-6-05)
 - u. Removal of sutures; (4-6-05)
 - v. Application of cavity liners and bases; (4-6-05)
 - w. Placement and removal of gingival retraction cord; and (3-20-14)
 - x. Application of topical fluoride agents. (3-20-14)
- 02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)
- a. Definitive diagnosis and treatment planning. (4-6-05)
 - b. The intraoral placement or carving of permanent restorative materials. (3-20-14)
 - c. Any irreversible procedure using lasers. (3-20-14)
 - d. The administration of any general or local injectable anesthetic. (3-20-14)
 - e. Any oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus). (3-20-14)
 - f. Use of an air polisher. (3-20-14)
 - g. Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)
 - h. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)

- i. Fabrication and placement of temporary crowns; (4-6-05)
- ii. Perform the mechanical polishing of restorations; (7-1-93)
- iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (4-7-11)
- iv. Application of pit and fissure sealants; (7-1-93)
- v. Coronal polishing (removal of plaque biofilm and stains from the teeth using an abrasive agent with a rubber cup or brush). (3-20-14)
- vi. Use of a high-speed handpiece only for the removal of orthodontic cement or resin. (3-20-14)

03. Expanded Functions Qualifications. A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.h. upon satisfactory completion of the following requirements: (3-29-17)

a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)

- i. Current certification by the Dental Assisting National Board; or (7-1-93)
- ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or (3-29-12)
- iii. Successfully challenging the fundamentals course. (7-1-93)

b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

04. Curriculum Approval. Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its course curriculum. Before approving such curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. (3-29-17)

05. Other Credentials. Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

040. UNPROFESSIONAL CONDUCT (RULE 40).

A dentist or dental hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (3-20-14)

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

- 02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)
- 03. Unlawful Practice.** Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)
- 04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)
- a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)
- b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)
- 05. Prescription Drugs.** Prescribing or administering prescription drugs not reasonably necessary for, or within the scope of, providing dental services for a patient. ~~In prescribing or administering prescription drugs, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases.~~ A dentist may not prescribe ~~prescription drugs for~~ or administer ~~controlled substances~~ **prescription drugs** to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing prescription drugs. ~~(3-29-17)()~~
- 06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)
- 07. Discipline in Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)
- 08. Altering Records.** Alter a patient's record with intent to deceive. (7-1-93)
- 09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)
- 10. Abandonment of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)
- 11. Use of Intoxicants.** Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)
- 12. Mental or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)
- a.** Mental illness; (7-1-93)
- b.** Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)

- 13. Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)
- 14. Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)
- 15. Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)
- 16. Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)
- 17. Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)
- 18. Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. (3-29-12)
- 19. Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)
- 20. Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)
- 21. Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)
- 22. Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)
- 23. Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)
- 24. Compliance With Dentist Professional Standards.** Failure by a dentist to comply with professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. (3-29-12)
- 25. Compliance With Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. (3-29-12)
- 26. Failure to Provide Records to a Patient or Patient's Legal Guardian.** Refusal or failure to provide a patient or patient's legal guardian legible copies of dental records. Failure to provide a patient or patient's legal guardian with records under Subsection 040.26 within five (5) business days shall be considered unprofessional conduct. A patient or patient's legal guardian may not be denied a copy of his records for any reason, regardless of whether the person has paid for the dental services rendered. A person may be charged for the actual cost of providing the records but in no circumstances may a person be charged an additional processing or handling fee or any charge in addition to the actual cost. (3-20-14)
- 27. Failure to Cooperate With Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, willful failure to provide information upon request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (3-20-14)
- 28. Advertising.** Advertise in a way that is false, deceptive, misleading or not readily subject to verification. (3-29-17)

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1703
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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

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

A new section (19.01.01.066) will be added to further define parameters for teledental services authorized under the Idaho Telehealth Access Act.

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 is budget neutral and has no fiscal impact to the state general fund or the Board of Dentistry's 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 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 71](#). Comments were received and considered before initiating this proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, (208) 334-2369.

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 27, 2017.

DATED this 10th day of August, 2017.

Susan Miller, Executive Director
Idaho State Board of Dentistry
350 N. 9th Street, Suite M100
Boise, ID 83702
P.O. Box 83720
Boise, ID 83720-0021
Phone: (208) 334-2369
Fax: (208) 334-3247
Susan.miller@jsbd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1703
(Only Those Sections With Amendments Are Shown.)

028. VOLUNTEER DENTAL HYGIENE SERVICES (RULE 28).

A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care ~~program~~ setting without being issued an extended access dental hygiene license endorsement under the following circumstances: (3-30-07)()

01. Extended Access Oral Health Care ~~Program~~ Setting. The dental hygiene services must be performed in an extended access oral health care ~~program~~ setting under the supervision of a dentist ~~who is employed, retained by, or is a volunteer for the program~~ who has issued written orders to the dental hygienist; (3-20-14)()

02. Dental Hygiene Services Performed. The dental hygiene services performed shall be limited to oral health screening and patient assessment, preventive and oral health education, preparation and review of health history, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventive agents including fluoride, the application of pit and fissure sealants with recommendation that the patient will be examined by a dentist; (3-20-14)

03. Volunteers. The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and (3-30-07)

04. Volunteer Time Limit. The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month. (3-30-07)

029. DENTAL HYGIENISTS - LICENSE ENDORSEMENTS (RULE 29).

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, the Board may grant license endorsements to qualified dental hygienists as follows: (4-6-05)

01. Extended Access Dental Hygiene Endorsement. Upon application, the Board may grant an extended access dental hygiene endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that all of the following requirements are met: (3-20-14)

a. The person has been licensed as a dental hygienist during the two (2) year period immediately prior to the date of application for an extended access dental hygiene endorsement; (4-6-05)

b. For a minimum of one thousand (1000) total hours within the previous two (2) years, the person has either been employed as a dental hygienist in supervised clinical practice or has been engaged as a clinical practice educator in an approved dental hygiene school; (4-6-05)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under general supervision in an extended access oral health care ~~program~~ setting; and (3-20-14)()

d. Any person holding an unrestricted active status dental hygienist's license issued by the Board who is employed as a dental hygienist in an extended access oral health care ~~program~~ setting in this state shall be granted an extended access dental hygiene endorsement without being required to satisfy the experience requirements specified in this rule. (3-30-07)()

02. Extended Access Dental Hygiene Restorative Endorsement. Notwithstanding any other provision of these rules, a qualified dental hygienist holding an extended access dental hygiene restorative endorsement may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care ~~program~~ setting. Permissible restorative functions under this endorsement shall be limited to

the placement of a restoration into a tooth prepared by a dentist and the carving, contouring and adjustment of the contacts and occlusion of the restoration. Upon application, the Board may grant an extended access dental hygiene restorative endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: (3-30-07)()

a. The person has successfully completed the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board; or (3-30-07)

b. The person holds an equivalent restorative permit in another state as of the date of endorsement application which required successful completion of the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board for its issuance; and (3-30-07)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under in an extended access oral health care ~~program~~ setting. (3-30-07)()

03. Renewal. Upon payment of the appropriate license fee and completion of required continuing education credits specified for a dental hygiene license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene shall also be entitled to renewal of a dental hygiene license endorsement for the effective period of the license. An endorsement shall immediately expire and be cancelled at such time as a person no longer holds an unrestricted active status dental hygienist's license issued by the Board or upon a person's failure to complete the required continuing education credits. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

066. TELEHEALTH SERVICES (RULE 66).

Definitions applicable to these rules are those definitions set forth in the Idaho Telehealth Access Act and in Section 54-5703, Idaho Code. ()

01. Licensure and Location. Any dentist or dental hygienist who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Dentistry for their applicable practice. Dentists who provide any telehealth services must physically practice within seventy-five (75) miles of the patient's location. ()

02. Additional Requirements. 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 Dentistry who is providing telehealth services shall: ()

a. Verify the location and identity of the patient; ()

b. Disclose to the patient the provider's identity, their current location and telephone number and Idaho license number; ()

c. 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 ()

03. 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 in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. ()

04. 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: ()

- a. Verification. Identification of the patient, the provider and the provider's credentials: ()
- b. 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: ()
- c. 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: ()
- d. Potential Information Loss. Disclosure that information may be lost due to technical failures. ()

IDAPA 21 – DIVISION OF VETERANS SERVICES

21.01.01 – RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE

DOCKET NO. 21-0101-1701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 65-202 and 65-204, Idaho Code.

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

This rulemaking is necessary to be in compliance with the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services. CMS recently updated regulations for long-term care facilities as set forth in Code of Federal Regulations, Title 42, Chapter IV, Part 483. The Idaho Division of Veterans Services is currently abiding by 42 CFR 483.15(a)(2)(iii). However, to be in full compliance with this Code of Federal Regulations, Rule Section 203 of this Chapter needs removed.

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 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 72-73](#).

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:

This rulemaking has an estimated fiscal impact to the dedicated and federal funds in the amount of \$20,000 annually for all three State Veteran Homes. No impact on the state general fund is expected.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Tracy Schaner, Deputy Administrator, (208) 780-1320.

DATED this 7th day of August, 2017.

Tracy Schaner, Deputy Administrator
Division of Veterans Services
351 Collins Road
Boise, ID 83702
Phone: (208) 780-1320
Fax: (208) 780-1301

IDAPA 23 – BOARD OF NURSING

23.01.01 – RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404(13), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 Board of Nursing rule that addresses when limited licenses are appropriate and how they are processed is not as clear as it should be and needs streamlining to eliminate an unwarranted step. Furthermore, the existing rule places an unnecessary restriction on otherwise qualified faculty members in nursing educational programs. Board of Nursing Rule 132 will be amended to clarify that, in applicable cases, such as disability due to substance use disorder or mental health disorder, the existing license may be converted to a limited license for a period not to exceed five (5) years, rather than the current process of requiring that the nurse first voluntarily surrender the existing license for the limited license to then be issued. The rulemaking will also amend Board Rules 640 and 643 to clarify requirements for nursing program faculty and remove an unneeded restriction currently imposed on would-be nursing program faculty.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, page 74](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, at (208) 577-2482 or at sandra.evans@ibn.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 27, 2017.

DATED this 28th day of July, 2017.

Sandra Evans, M.A.Ed., R.N., Executive Director
Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
P. O. Box 83720
Boise, ID 83720-0006
Phone: (208) 577-2482 / Fax: (208) 334-3262
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 23-0101-1701
(Only Those Sections With Amendments Are Shown.)

132. LIMITED LICENSES.

Limited licenses may be issued to qualified individuals in four (4) categories: post-discipline, non-practicing status, restricted status, and substance use and mental health disorders. Failure to comply with the terms and conditions of a limited license will be cause for summary suspension. (3-24-17)

01. Following Disciplinary Action. (3-30-07)

a. After evaluation of an application for licensure reinstatement, the Board may issue a limited license to a nurse whose license has been revoked. (3-15-02)

b. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. (3-15-02)

02. Non-Practicing Status. (3-15-02)

a. Individuals who are prevented from engaging in the active practice of nursing may be issued a limited license. (3-15-02)

b. The Board shall specify that the license being issued does not entitle the licensee to engage in the active practice of nursing. The non-practicing status shall be noted on the license. (3-15-02)

c. The non-practicing limitation may be removed by the Board following receipt and evaluation of evidence satisfactory to the Board confirming that the licensee's physical or mental health status no longer prevents the individual from engaging in the active practice of nursing. (3-15-02)

03. Restricted Status. (3-15-02)

a. Individuals whose disabilities restrict or inhibit their ability to provide a full range of nursing services may be issued a limited license. (3-15-02)

b. In order to determine the appropriate limitations, the Board may evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers and consider input from the applicant for the limited license. (3-15-02)

c. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. The conditions may include, but are not limited to: (3-15-02)

i. Notifying the Board of changes in employment status. (3-15-02)

ii. Submission of regular reports by the employer or by such other entities or individuals as the Board may desire. (3-15-02)

iii. Meeting with Board representatives. (3-15-02)

iv. Specific parameters of practice, excluding the performance of specific nursing functions. (3-15-02)

d. The conditions of limited practice may be removed by the Board following receipt and evaluation of satisfactory evidence confirming that the health status of the licensee no longer restricts or inhibits the person's ability to provide a full range of nursing services. (3-15-02)

- 04. Disability Due to Substance Use Disorder or Mental Health Disorder.** (3-24-17)
- a.** Individuals whose practice is or may be impaired due to substance use disorder or to mental health disorder may qualify for issuance of a limited license as an alternative to discipline. (3-24-17)
- b.** The executive director may ~~issue a limited~~ **restrict the** license ~~for a period not to exceed five (5) years to~~ of an individual who ~~voluntarily surrenders his license by reason of~~ **has** a substance use disorder or ~~relating to~~ mental health disorder ~~for a period not to exceed five (5) years~~ and who: ~~(3-24-17)()~~
- i.** Holds a current license to practice in Idaho as a registered nurse, advanced practice registered nurse, or licensed practical nurse, or is otherwise eligible, and is in the process of applying for licensure; (3-24-17)
- ii.** Has a demonstrated or diagnosed substance use disorder or mental health disorder such that ability to safely practice is, or may be, impaired; (3-24-17)
- iii.** Sign a written statement admitting to all facts which may constitute grounds for disciplinary action or demonstrate impairment of the safe practice of nursing, and waiving the right to a hearing and all other rights to due process in a contested case under the Idaho Administrative Procedures Act and the Nursing Practice Act; and (3-15-02)
- iv.** Submit reliable evidence, satisfactory to the executive director, that he is competent to safely practice nursing ~~before being authorized to return to active practice.~~ ~~(3-15-02)()~~
- c.** If required, the applicant shall satisfactorily complete a treatment program accepted by the Board. (3-30-07)
- d.** The applicant must agree to participation in the Board's monitoring program to include: (3-15-02)
- i.** Evaluation and diagnosis of the disorder; (3-24-17)
- ii.** Approval of treatment program regimen; (5-21-89)
- iii.** Monitoring of progress; (5-21-89)
- iv.** Determination of when return to the workplace will be allowed. (7-1-96)
- e.** Admission to the Program for Recovering Nurses or issuance of a limited license, or both, may be denied for any reason including, but not limited to the following: (3-15-02)
- i.** The applicant diverted controlled substances for other than self-administration; or (3-15-02)
- ii.** The applicant creates too great a safety risk; or (3-15-02)
- iii.** The applicant has been terminated from this, or any other, alternative program for non-compliance. (3-15-02)
- f.** Upon satisfactory compliance with all of the terms of the limited license, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall ~~reinstate lift~~ the ~~renewable nursing license voluntarily surrendered~~ **restriction imposed.** ~~(3-30-07)()~~
- 05. Compliance Required.** Limited licensure shall be conditioned upon the individual's prompt and faithful compliance with terms and conditions, which may include: (3-24-17)
- a.** Satisfactory progress in any required continuing treatment or rehabilitation program. (3-15-02)
- b.** Regular and prompt notification to the Board of changes in name and address of self or any employer. (7-1-96)

- c.** Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96)
- d.** Continuing participation in, and compliance with all recommendations and requirements of, the approved treatment or rehabilitation program, and obtaining of reports of progress submitted by the person directing the treatment or rehabilitation program at specified intervals and at any time upon request. (7-1-96)
- e.** Submission of self-evaluations and personal progress reports at specified intervals and at any time upon request. (3-24-17)
- f.** Submission of reports of supervised random alcohol/drug screens at specified intervals and at any time upon request. Participant is responsible for reporting as directed, submitting a sufficient quantity of sample to be tested, and payment for the screening. (7-1-96)
- g.** Meeting with the Board's professional staff or advisory committee at any time upon request. (3-24-17)
- h.** Working only in approved practice settings. (7-1-96)
- i.** Authorization by licensee of the release of applicable records pertaining to assessment, diagnostic evaluation, treatment recommendations, treatment and progress, performance evaluations, counseling, random chemical screens, and after-care at periodic intervals as requested. (7-1-93)
- j.** Compliance with all laws pertaining to nursing practice, all nursing standards, and all standards, policies and procedures of licensee's employer relating to any of the admitted misconduct or facts as set out in the written statement signed by licensee, or relating to the providing of safe, competent nursing service. (3-24-17)
- k.** Compliance with other specific terms and conditions as may be required by the executive director. (3-15-02)
- 06. Summary Suspension - Lack of Compliance.** (3-30-07)
- a.** Summary Suspension. Any failure to comply with the terms and conditions of a limited license shall be deemed to be an immediate threat to the health, safety, and welfare of the public and the executive director shall, upon receiving evidence of any such failure, summarily suspend the limited license. (3-30-07)
- i.** Summary suspension of a limited license may occur if, during participation in the program, information is received which, after investigation, indicates the individual may have violated a provision of the law or Board rules governing the practice of nursing. (3-30-07)
- ii.** Upon summary suspension of a limited license, the executive director shall provide prompt written notice to the licensee stating the reason for the suspension, setting forth the evidence relied upon and notifying the licensee of his right to a hearing upon request at the earliest possible date in accordance with Section 54-1413(3)(a), Idaho Code. (3-30-07)
- b.** Right to Hearing. An individual whose limited license has been summarily suspended by the executive director may request a hearing regarding the suspension by certified letter addressed to the Board. If the individual fails to request a hearing within twenty (20) days after service of the notice of suspension by the executive director, the right to a hearing is waived. If a hearing is timely requested, after the hearing the Board shall enter an order affirming or rejecting summary suspension of the limited license and enter such further orders revoking, suspending, or otherwise disciplining the nursing license as may be necessary. The above provisions do not limit or restrict the right of Board staff to bring any summary suspension order before the Board for further proceedings, even if the licensee has not requested a hearing. (4-2-08)
- c.** Other Orders. The Board may, for good cause, stay any order of the executive director or may modify the terms and conditions of a limited license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

640. FACULTY QUALIFICATIONS.

01. Programs for Unlicensed Assistive Personnel. Primary instructors shall be approved by the Board and shall have: (4-5-00)

- a. A current unencumbered license to practice as a registered nurse in this state; (4-5-00)
- b. Evidence of three (3) years experience working as a registered nurse; (4-5-00)
- c. Evidence of two (2) years experience in caring for the elderly or chronically ill of any age; and (4-5-00)
- d. Evidence of completion of a course in methods of instruction or a Train-the-Trainer type program. (4-5-00)

e. Licensed practical nurses with a minimum of two (2) years experience in caring for the elderly or chronically ill of any age may assist with skills supervision under the supervision of an approved primary instructor. (4-5-00)

02. Practical Nurse Program Faculty Qualifications. Nursing faculty who have primary responsibility for planning, implementing, and evaluating curriculum in a program leading to licensure as a practical nurse shall have: (4-5-00)

- a. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- b. A minimum of a baccalaureate degree with a major in nursing; and (4-5-00)
- c. Evidence of nursing practice experience. (4-5-00)

03. Registered Nurse Program Faculty Qualifications. There shall be sufficient faculty to achieve the purpose of the program. (4-5-00)

a. Nursing faculty who have primary responsibility for planning, implementing, and evaluating curriculum in a program leading to licensure as a registered nurse shall have: (4-5-00)

- i. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- ii. A minimum of a master's degree with a major in nursing; and (4-5-00)
- iii. Evidence of nursing practice experience. (4-5-00)

b. Additional support faculty necessary to accomplish program objectives shall have: (4-5-00)

- i. A current, unencumbered license to practice as a registered nurse in this state; (4-5-00)
- ii. A minimum of a baccalaureate degree with a major in nursing; and (4-5-00)
- iii. A plan approved by the Board for accomplishment of the master's of nursing within three (3) years of appointment to the faculty position. (4-5-00)

04. Advanced Practice Registered Nurse Program Faculty Qualifications. There shall be sufficient faculty to achieve the purpose of the program. Faculty who have primary responsibility for planning, implementing

and evaluating curriculum in a program preparing individuals to license as an advanced practice registered nurse program shall have: ~~(4-5-00)~~()

- a. A current, unencumbered license to practice as a registered nurse in this state; and (4-5-00)
- b. A ~~master's~~ graduate degree ~~and an earned doctoral or post-graduate~~ degree, ~~one (1) of which is~~ in nursing; ~~or~~ ~~(4-5-00)~~()
- c. ~~A master's degree with a major in nursing and a~~ An appropriate advanced practice registered nurse ~~credential license and national certification~~ if responsible for courses in a specific advanced practice registered nurse ~~category~~ role and population; and ~~(4-5-00)~~()
- d. Evidence of advanced registered nursing practice experience. ~~(4-5-00)~~()

05. Non-clinical Nursing Courses Faculty Qualifications. Interprofessional faculty teaching non-clinical nursing course shall have advanced preparation appropriate for the content being taught. ()

056. Clinical Preceptors in Registered Nurse, Practical Nurse, and Advanced Practice Registered Nurse Programs. Clinical preceptors may be used to enhance clinical learning experiences. (3-29-17)

- a. Clinical preceptors in registered and practical nurse programs shall be licensed for nursing practice at or above the license role for which the student is preparing. (3-29-17)
- b. Clinical preceptors in advanced practice registered nurse programs shall be licensed to practice as an advanced practice registered nurse (APRN), a physician (MD or DO), or a physician assistant (PA) in an area of practice relevant to the educational course objectives. (3-29-17)
- c. Student-Preceptor ratio shall be appropriate to accomplishment of learning objectives; to provide for patient safety; and to the complexity of the clinical situation. (4-5-00)
- d. Criteria for selecting preceptors shall be in writing. (4-5-00)
- e. Functions and responsibilities of the preceptor shall be clearly delineated in a written agreement between the agency, the preceptor, and the educational program. (4-5-00)
- f. The faculty shall be responsible to: (4-5-00)
 - i. Make arrangements with agency personnel in advance of the clinical experience, providing information such as numbers of students to be in the agency at a time, dates and times scheduled for clinical experience, faculty supervision to be provided, and arrange for formal orientation of preceptors. (4-5-00)
 - ii. Inform agency personnel of faculty-defined objectives and serve as a guide for selecting students' learning experiences and making assignments. (4-5-00)
 - iii. Monitor students' assignments, make periodic site visits to the agency, evaluate students' performance on a regular basis with input from the student and from the preceptor, and be available by telecommunication during students' scheduled clinical time. (4-5-00)
- g. Provide direct supervision, by either a qualified faculty person or an experienced registered nurse employee of the agency, during initial home visits and whenever the student is implementing a nursing skill for the first time or a nursing skill with which the student has had limited experience. (4-5-00)

067. Continued Study. The parent institution will support and make provisions for continued professional development of the faculty. (7-1-91)

(BREAK IN CONTINUITY OF SECTIONS)

643. ADMINISTRATOR RESPONSIBILITIES AND QUALIFICATIONS.

01. Administrator Responsibilities. The administrator provides the leadership and is accountable for the administration, planning, implementation, and evaluation of the program. The administrator's responsibilities include, but are not limited to: (4-5-00)

- a. Development and maintenance of an environment conducive to the teaching and learning processes; (4-5-00)
- b. Liaison with and maintenance of the relationship with administrative and other units within the institution; (4-5-00)
- c. Leadership within the faculty for the development and implementation of the curriculum; (4-5-00)
- d. Preparation and administration of the program budget; (4-5-00)
- e. Facilitation of faculty recruitment, development, performance review, promotion, and retention; (4-5-00)
- f. Liaison with and maintenance of the relationship with the Board; and (4-5-00)
- g. Facilitation of cooperative agreements with practice sites. (4-5-00)

02. Administrator Qualifications. The administrator of the program shall be a licensed registered nurse, with a ~~current~~ unencumbered license to practice in this state, and with the additional education and experience necessary to direct the program. (~~4-5-00~~)()

- a. Programs for Unlicensed Assistive Personnel. Meet institutional requirements. (4-5-00)
- b. Practical Nurse Administrator. The administrator in a program preparing for practical nurse licensure shall: (4-5-00)
 - i. Hold a minimum of a ~~master's~~ graduate degree with a major in nursing; and (~~4-5-00~~)()
 - ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)
- c. Registered Nurse Administrator. The administrator in a program preparing for registered nurse licensure shall: (4-5-00)
 - i. Hold a minimum of a ~~master's~~ graduate with a major in nursing and meet institutional requirements; and (~~4-5-00~~)()
 - ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)
- d. Advanced Practice Registered Nurse Administrator. The administrator in a program preparing for advanced practice registered nursing shall: (4-5-00)
 - i. Hold a ~~master's~~ graduate and ~~an earned doctoral~~ post-graduate degree, one of which is in nursing; and (~~4-5-00~~)()
 - ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

03. Numbers of Administrators Needed. There shall be at least one (1) qualified nursing administrator for each nursing education department or division. In institutions that offer nursing education programs for more than one (1) level of preparation and where the scope of administrative responsibility so requires, there shall be an individual administrator for each nursing education program. (4-7-11)

IDAPA 35 – STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1702

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(2), 63-3624(a), 63-3635, 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 27, 2017.

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 013 – Road And Paving Contractors. We are proposing to add some examples to this rule to clarify when taxes are owed.

Rule 044 – Trade-ins, Trade-downs And Barter. We are proposing to change this rule to conform to 2017, HB 156. The main change is to replace park trailer with park model recreational vehicle. This rule is also amended to include a reference to Rule 35.01.02.048 regarding how to treat trade-ins of Park Model Recreational Vehicles. Some technical and grammar changes are also proposed.

Rule 048 – Manufactured Homes (Mobile Homes) And Modular Buildings. We are proposing to change to conform to 2017, HB 156. The changes are to replace park trailer with park model recreational vehicle. This change will add a new paragraph to define New Park Model Recreational Vehicles and clearly state that these are taxed at 100% of the sales price. The way in which used Park Model Recreational Vehicles are taxed will also be addressed. This rule is also being amended to reflect how trade-ins are to be treated. Some technical and grammar changes are also proposed.

Rule 061 – Transportation, Freight, And Handling Charges. We are proposing to change this rule to conform to the 2017, HB 156. In the negotiated process we discussed what changes were necessary. Since HB 156 modified code section 63-3613 to specifically include those costs in a Park Model Recreational Vehicle, no changes were needed within the rule. The statute reference was added to the title. Some technical and grammar changes are also proposed.

Rule 079 – Production Exemption. We are proposing to change this rule to conform to the 2017, HB 156. HB 156 added Park Model Recreational Vehicles to 63-3622HH(4) as a type of vehicle that is not eligible for the production exemption. Rule 35.01.02.079.05.m. and 05.n. are being modified to reflect this treatment for Park Model Recreational Vehicles. Some technical and grammar changes are also proposed.

Rule 099 – Occasional Sales. We are proposing to change this rule to conform to 2017, HB 156. Rule 35.01.02.099.09 lists items that do not qualify for the occasional sales exemption and are therefore always taxable. Park Model Recreational Vehicles is being added to that list. Some technical and grammar changes are also proposed.

Rule 107 – Vehicles And Vessels – Gifts, Military Personnel, Nonresident, New Resident, Tax Paid To Another State, Sales To Family Members, Sales To American Indians, And Other Exemptions: It was decided in the negotiated rule-making process that referencing the statutes would be the only necessary change to meet the requirements of 2017, HB156 regarding the Park Model RV statute. This rule is also being changed to reflect the law change allowing the nonresident use of a vehicle in Idaho from 60 to 90 days. Some technical and grammar changes are also proposed.

Rule 128 – Certificates For Resales And Other Exemption Claims. We are proposing to change this rule to conform to the 2017, HB 156. Park Model Recreational Vehicles will be added to the list of nonexempt items under the production exemption in Rule 35.01.02.128.07. Some technical and grammar changes are also proposed.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 82-83](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or tom.shaner@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 27, 2017.

DATED this 8th day of August, 2017.

Tom Shaner
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
Phone: (208) 334-7531 / Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1702
(Only Those Sections With Amendments Are Shown.)

013. ROAD AND PAVING CONTRACTORS (RULE 013).
[Sections 63-3609 & 63-3615, Idaho Code](#)

01. In General. This rule illustrates the application of Idaho sales and use tax to specific activities of road and paving contractors. The general principles stated in Rule 012 of these rules apply equally to road and paving contractors. (7-1-96) ()

02. Road or Paving Contractor. A road or paving contractor is a contractor improving real property. The use of materials over which he exercises right or power in the course of performing the contract is subject to tax. This is true even if an exempt entity, such as a government agency, owns the material. It is also true if the contractor does the work under the full or partial supervision of the person for whom the contractor is performing the contract. (7-1-96) ()

03. Examples. Here are some examples of taxable materials contractors use in paving and road contracts: ()

a. Example 1: A contractor is hired to pave a road for a city. The materials the contractor will use are taxable, regardless of ownership, and include rock, sand, asphalt oil, chemicals, bonding agents, or any other like materials which become the aggregate pavement. ()

b. Example 2: A contractor is hired to chip seal a local road. The chip seal includes a layer of liquid asphalt or similar material applied to the road with an immediate layer of rock chips applied on top of the wet asphalt.

A roller sets the rock chips in place. Once this dries, the surface is cleaned and another oil seal or like product is applied. These three items and any other materials used to form the aggregate chip seal are subject to tax. ()

c. Example 3: A contractor is hired to perform landscaping for the barrow pits and shoulders of a new highway. The highway district provides the grass seed and some bushes for the project. The contractor provides labor to sow the seed, plant the bushes, and labor and materials to provide erosion control, land leveling, contouring, etc. The contractor owes sales or use tax on all materials consumed, including those provided by the highway district. ()

d. Example 4: A contractor is hired to install a new bridge and provide drainage for a new freeway interchange. The highway district provides the bridge components and culverts needed for the project, and the contractor provided all of the remaining materials and the labor for the project. The contractor will owe sales or use tax on all materials he consumes including the bridge components and culverts provided by the highway district, as well as on the materials the contractor purchased for use on the project. ()

e. Example 5: A contractor is hired to install traffic control lights, signage, and roadway illumination for a rebuilt section of roadway. The highway district provides the traffic control signals and the permanent signage for the highway so that all signage will be consistent throughout the highway district. The contractor owes use tax on the value of the traffic signals and signage provided by the highway district as well as on the cost of electrical wiring, signal wiring, and the lights and light poles, etc., purchased and consumed by the contractor. ()

034. Materials. The sale or use of materials which are extracted and crushed is taxable. Use tax does not apply to the use of natural materials that are secured on site and used without significant change. (7-1-96)

045. Rock Crushing. The application of the sales or use tax to rock crushing operations depends upon the circumstances of the case. (7-1-96)

a. A sale of crushing only is a sale of a taxable processing service. In this circumstance the crusher obtains raw material owned by another, crushes the rock, and stockpiles it for subsequent use either by the owner or a third party. Unless an exemption applies, the crusher must charge tax on all such sales. (7-1-96)

b. A contractor who applies crushed rock to the highway pursuant to a contract is a person engaged in improving real property. If the contractor applying the crushed rock purchases the rock, the purchase price will be subject to a sales or use tax. If the contractor applies rock owned by another party, the contractor will be responsible for a use tax on the value of the rock, unless the other party paid a sales tax upon its acquisition. This is true even if a government agency supplied the rock. If a recent retail acquisition of the crushed rock exists, the retail price shall be presumed to be the value of the material. If a recent retail sales price does not exist, then value shall be determined by the current acquisition cost of like material from the same or a similar source. For purposes of this section, a retail acquisition within one (1) year of the time of the performance of the contract shall be presumed to be a recent sales price. (7-1-96)

c. A contractor whose contract calls for him to both crush and apply rock to a road is also subject to sales or use tax on the value of the rock whether the contract is performed for a governmental or private contractee. The value shall be determined by the royalty or similar charge for raw materials. If a royalty or similar charge does not exist, then the value will be determined as the royalty fee or value of like material from a similar source. If the contractor chooses to have the rock crushed by a subcontractor, the measure of the use tax is on the crushed value. (7-1-96)

d. A sale of rock crushing services to a retailer who will sell the rock is an exempt sale. The sale of crushed rock to a consumer is a taxable sale unless an exemption applies. (7-1-96)

056. Production Exemption. (7-1-96)

a. Since a contractor improving real property is defined as the consumer of materials incorporated into realty, he is not producing an article for resale. Therefore, the production exemption does not apply to the use of equipment used by contractors to produce asphalt or concrete which are used to complete paving contracts. (7-1-96)

b. A business which is primarily devoted to producing crushed rock, asphalt, or concrete which is ultimately sold at retail will qualify for the production exemption. See Idaho Administrative Sales Tax Rules 079 and 082. (7-1-96)

(BREAK IN CONTINUITY OF SECTIONS)

044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).

Section 63-3613, Idaho Code

01. Trade-Ins. A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

02. Trade-In Allowance. When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. (4-4-13)

a. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500). (4-4-13)

03. Trade-Downs. A trade-down is a transaction in which a vendor accepts a trade-in from the customer that equals or exceeds the value of the merchandise sold to the customer. The taxable sales price is reduced to zero (0) and no sales tax is due on the transaction. (4-4-13)

04. Disallowed Trade-In ~~Deductions~~ Allowances. ()

a. **Private Party Transactions.** A trade-in ~~deductions are~~ allowance is not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale. (3-30-01)()

~~a.i.~~ Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

~~b.ii.~~ Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000). (7-1-93)

b. Manufactured Homes (Mobile Homes), New Park Model Recreational Vehicles, and Modular Buildings. Trade-in allowances are not allowed on the sale of manufactured homes, new park model recreational vehicles, and modular buildings. See IDAPA 35.01.02.048 of these rules. ()

05. Insurance Settlements. An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (3-30-01)

06. Core Charges. Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part

for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

07. Trade-In for Rental/Lease Property. When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

a. The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

b. The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

c. A combination of the two (2) methods, above. (7-1-93)

d. Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000). (3-30-01)

i. Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment. (3-30-01)

ii. Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. (3-30-01)

iii. Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly. (3-30-01)

08. Rental/Lease Property Traded-In. When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the sales price subject to tax may be reduced by the difference between the total trade-in amount and residual buyout. (3-30-01)

a. Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax. (3-30-01)

b. Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000). (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

**048. MANUFACTURED HOMES (MOBILE HOMES), PARK MODEL RECREATIONAL VEHICLES,
AND MODULAR BUILDINGS (RULE 048).**
Sections 49-117, 63-3613, & 63-3069, Idaho Code

01. Manufactured Homes. ()

~~01.a.~~ **a.** New Manufactured Home. When a manufactured home is sold at retail for the first time, it is subject to sales tax on fifty-five percent (55%) of the purchase sales price. The purchase sales price of a new manufactured home shall include all component parts. Set up and transportation fees charged by the dealer shall be included in the purchase sales price. No trade-in allowance is permitted. (7-1-93)()

b. Used Manufactured Homes. Only the sale of a new manufactured home is subject to sales tax. After the first sale at retail of a manufactured home, any subsequent retail sale of the unit shall be a sale of a used manufactured home. The sale of a used manufactured home is exempt from tax, whether or not the original retail sale was subject to sales taxes and without regard to whether the sale is made for use within or without Idaho or whether sold by a dealer. A dealer who sells both new and used manufactured homes must maintain adequate records to establish which sales are taxable and which are exempt for sales tax audit purposes. ()

02. Park Model Recreational Vehicles. ()

a. New Park Model Recreational Vehicle. When a park model recreational vehicle is sold at retail it is subject to sales tax on one hundred percent (100%) of the sales price. The sales price of a new park model recreational vehicle shall include all component parts. Set up and transportation fees charged by the dealer shall be included in the sales price subject to sales tax. No trade in allowance is permitted. ()

b. Used Park Model Recreational Vehicle. The sale of a used park model recreational vehicle is subject to sales tax on one hundred percent (100%) of the sales price. Set up and transportation fees charged by a dealer shall be included in the sales price subject to sales tax. ()

c. The sale of a used park model recreational vehicle that meets the following criteria is not subject to sales tax if it has become real property. See IDAPA 35.01.02.067 of these rules. To become real property the used park model recreational vehicle must: ()

i. Be permanently attached to a foundation; or ()

ii. Have an attached building addition; or ()

iii. Have been substantially modified and no longer meet the definition of a park model recreational vehicle in section 49-117, Idaho Code. ()

023. Modular Building. ()

a. New Modular Buildings. When a modular building is sold at retail, it is subject to sales tax on fifty-five percent (55%) of the purchase sales price. The sales price of a new modular building shall include all component parts. No trade-in allowance is permitted. (5-3-03)()

b. Used Modular Buildings. The sale of a used modular building is not subject to sales tax, whether or not the original retail sale was subject to sales taxes and without regard to whether the sale is made for use within or without Idaho or whether sold by a dealer. A dealer who sells both new and used modular buildings must maintain adequate records to establish which sales are taxable and which are exempt for sales tax audit purposes. ()

~~03. Used Manufactured Home. Only the sale of a new manufactured home is subject to sales tax. After the first sale at retail of a manufactured home, any subsequent retail sale of the unit shall be a sale of a used manufactured home. The sale of a used manufactured home is exempt from tax, whether or not the original retail sale was subject to sales taxes and without regard to whether the sale is made for use within or without Idaho or whether sold by a dealer. A dealer who sells both new and used manufactured homes must maintain adequate records to establish which sales are taxable and which are exempt for sales tax audit purposes.~~ (5-3-03)

04. ~~Sale of Office Trailer~~. An office trailer does not qualify as a manufactured home, because it is not designed for use as a dwelling, nor does it qualify as a modular building, because it is not designed to be affixed to real property. When an office trailer is sold at retail, it is subject to sales tax on one hundred percent (100%) of the ~~purchase sales~~ price, including all furniture, fixtures, and appliances, whether the office trailer is new or used. (7-1-93)()

05. **Component Parts**. Component parts include items incorporated by the manufacturer which remain unchanged at the time of the original retail sale, such as sinks, cabinetry, closet doors, central heating and cooling, garbage disposals, water heaters, and carpeting. Refrigerators, ranges, draperies, and wood burning stoves placed in the unit by the manufacturer are considered to be component parts. (7-1-93)

06. **Noncomponent Parts**. All fixtures, furniture, furnishings, appliances, and attachments not incorporated as a component part of ~~a manufactured home, park model recreational vehicle, a new modular building or manufactured home~~ shall be subject to tax separately and distinctly from the sales price of such ~~modular building or~~ manufactured home, ~~park model recreational vehicle, or modular building~~. Such items shall be separately stated on the sales invoice and tax shall be assessed on the separately stated items on their full retail value. (7-1-93)()

07. **Repairs**. ()

a. Repairs to Tangible Personal Property. A repair to or a renovation of any park model recreational vehicles that have not become real property is a repair of tangible personal property. A repair to or a renovation of any office trailer is a repair of tangible personal property. ()

i. Repairs normally require both material and labor. Persons engaged in the business of repairing, renovating or altering tangible personal property owned by others are required to collect sales tax upon the parts or materials required in the repair or renovation of the property. ()

b. Repairs to Real Property. ()

i. Repairs to or renovations of used modular buildings or manufactured homes are repairs to real property, whether or not the unit is affixed to real property and whether or not the unit is held for resale. Materials used to repair or renovate a used modular building or manufactured home shall be subject to sales tax at the time of purchase or use tax at the time of use. (7-1-93)()

ii. A repair to or a renovation of any park model recreational vehicle that has become real property is a real property improvement. A contractor or property owner who purchases materials to be installed into real property must pay a sales or use tax on those materials. See IDAPA 35.01.02.012. ()

(BREAK IN CONTINUITY OF SECTIONS)

061. TRANSPORTATION, FREIGHT, AND HANDLING CHARGES.
Section 63-3613, Idaho Code

01. **In General**. Whether or not transportation and handling charges are separately stated, the sales price includes any charges made for delivery of goods to the seller. Charges for transportation and handling of goods to the consumer are not included as a part of the sales price regardless of when title passes. (7-1-97)

02. **Charges Not Separately Stated**. Regardless of other provisions of this rule, transportation and handling charges which are not separately stated are included in the sales price subject to tax. (7-1-97)

03. **Example 1: Charges for Delivery to the Seller**. A customer orders goods from a retailer. The goods are shipped to a catalog store where the customer picks them up. A charge to the customer for delivery to the store is a charge for delivery to the seller and is included in the sales price subject to sales tax. (7-1-97)

04. Example 2: Freight-In Taxable. A seller of construction equipment orders a part for a customer. The seller separately states on the invoice charges for freight-in to the seller and freight-out to the consumer. The charges for freight-in are part of the sales price subject to sales tax. The charges for freight-out are not subject to sales tax. (7-1-97)

05. Example 3: Delivery by Retailer. A consumer orders building materials from a retailer. The retailer delivers the goods to the purchaser by means of the retailer's delivery van. The retailer separately states the charge for transportation and handling of the building materials. Since the charge is for delivery to the consumer, it is not subject to sales tax. (7-1-97)

06. Example 4: Use of Transportation Charges as a Means of Avoiding Sales Tax. Seller offers to give away merchandise worth approximately twenty dollars (\$20) if the purchaser pays shipping of nineteen dollars and ninety-five cents (\$19.95). The entire price of nineteen dollars and ninety-five cents (\$19.95) is subject to sales or use tax. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

079. PRODUCTION EXEMPTION (RULE 079).
Sections 63-3622, & 63-3622D, & [63-3622HH](#), Idaho Code.

01. In General. Section 63-3622D, Idaho Code, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (5-8-09)

a. A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property that it will sell and is intended to be ultimately sold at retail. (5-8-09)

b. The following types of businesses may also qualify for the exemption, even though they perform services and do not actually sell tangible personal property: (5-8-09)

i. The business of custom farming or operating a farm or ranch for profit. (7-1-93)

ii. The business of contract mining or operating a mine for profit. (6-23-94)

iii. Businesses devoted to processing tangible personal property for use as fuel for the production of energy. (5-8-09)

02. Qualifying Businesses. The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

a. For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

b. The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

c. To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. (5-8-09)

03. Exempt Purchases. As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following tangible personal property are exempt, except as limited by other subsections of this rule: (4-11-06)

- a. Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)
 - b. Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)
 - c. Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)
 - d. Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)
 - e. Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)
 - f. Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)
 - g. Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)
 - h. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)
 - i. Equipment used primarily to fabricate production equipment. (7-1-93)
 - j. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (3-29-17)
- 04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. See Rule 083 of these rules regarding farming. (3-29-17)
- 05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)
- a. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)
 - b. Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)
 - c. Office equipment and supplies. (7-1-93)
 - d. Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)
 - e. Equipment and supplies used in selling and distribution activities. (7-1-93)
 - f. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)
 - g. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

- h. Transportation equipment and supplies. (7-1-93)
- i. Aircraft of any type and supplies. (7-1-93)
- j. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)
- k. Other incidental items not directly used in production. (7-1-93)
- l. Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)
- m. ~~Recreation related vehicles regardless of use. Recreation related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all terrain vehicles (ATVs), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth wheel travel type trailers designed to provide temporary living quarters; motor homes; buses and van type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply~~ Recreation-related vehicles as defined in 63-3622HH, Idaho Code, regardless of use. (7-1-93)()
- n. Parts to repair recreation-related vehicles. (7-1-93)
- o. Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

06. Real Property. The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. The production exemption does not apply to equipment and materials primarily used to improve real property. (3-20-14)

07. Change in Primary Use of Property. If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

08. Transportation Activities. Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

a. Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

b. Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

09. Exemption Certificate. To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

10. Special Rules. Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

099. OCCASIONAL SALES (RULE 099).
Sections 63-3622K, & 63-3622HH, Idaho Code

01. Occasional Seller. Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

a. If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-98)

b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108TR to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (3-25-16)

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Rule 020 of these rules. (3-15-02)

02. Change in the Form of Doing Business. A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

03. Bulk Sale -- Sale of an On-Going Business. The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale exemption if: (7-1-98)

a. The purchaser continues the same type of business operation; and (7-1-93)

b. Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)

c. Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

04. Sale of a Motor Vehicle Between Family Members. Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

a. Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

b. Example 2: A mother sells her automobile to her son for five thousand dollars (\$5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. (7-1-93)

05. Transfers Between Related Parties. The transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders stockholders, when the transfer is made only in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made only in exchange for stock or securities. (4-11-06)

a. Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

b. Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

c. Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

06. Sales and Rentals to Related Parties. The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (4-11-06)

a. Sales to family members, but only if all parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-98)

b. Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

07. Motor Vehicles. Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, the purchaser must complete an appropriate exemption claim form prior to applying for an Idaho motor vehicle title. See Rule 107 of these rules regarding sales of licensed motor vehicles that do not qualify as occasional sales and the appropriate exemption claim form. (4-11-06)

08. Sales of Business Assets. Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

09. Taxable Sales of Aircraft, Boats, and Recreation Related Vehicles. The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

a. Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

b. Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be legally operated on public roadways and highways. (7-1-93)

c. All-terrain vehicles, ATVs, but not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

d. Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

e. Camping, ~~park~~, travel, ~~and~~ fifth-wheel travel-type trailers ~~which are~~ and park model recreational vehicles designed to provide temporary living quarters. (7-1-93)()

f. Motor homes. (7-1-93)

g. Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing at least four (4) of the following facilities: cooking; refrigeration or icebox; self-contained toilet; heating or air conditioning; a portable water supply system including a faucet and sink; and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

h. Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Rule 037 of these rules regarding other exemption provided for aircraft. (3-15-02)

i. Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

10. Exempt Sales of Aircraft, Boats, and Recreation-Related Vehicles. Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 099.02 or 099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-98)

11. Exclusion from the Occasional Sale Exemption. Section 63-3622K, Idaho Code, excludes from the occasional sale exemption the use of tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property. This exclusion applies only to building materials and fixtures that will be incorporated into real property. Sales of construction equipment such as loaders, backhoes, and excavators may still be included within the definition of “occasional sale” if the seller meets all the other requirements of the exemption. (4-11-06)

a. Example. A contractor enters into a contract to fabricate and install a wrought iron gate. The contractor fabricates the gate but prior to installation the building owner decides to install the gate himself and purchases it from the contractor. The building owner’s purchase does not qualify for the occasional sale exemption. (4-11-06)

b. Example. A contractor has a backhoe that he uses in his contracting business. He sells the backhoe to another contractor. If the seller is not a retailer, as defined by statute, the sale can still qualify as an exempt occasional sale. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

Sections [49-117](#), [49-121](#), [49-122](#), [63-3606B](#), & [63-3622R](#), & [67-7101](#), [Idaho Code](#)

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

02. Gifts of Motor Vehicles. When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

ii. The title may be marked as a gift and signed by the donor. (3-4-10)

03. Nonresidents. (3-30-07)

a. A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning

one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

b. For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-29-12)

c. A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)

04. New Residents. A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (4-11-15)

a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

b. A personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an individual or individuals. (4-11-15)

05. Military Personnel. (4-11-15)

a. Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

b. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (4-11-15)

06. Tax Paid to Another State. When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the six hundred dollars (\$600) tax due Idaho. The assessor will collect three hundred dollars (\$300) tax. (4-11-15)

c. Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

d. Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

e. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

f. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

g. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho. (5-3-03)

a. Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs),

specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: (3-25-16)

i. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (3-25-16)

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than ~~sixty (60)~~ ninety (90) days in any twelve-month period. (3-25-16)()

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, paddleboards, inflatable boats, or similar watercraft regardless of length when sold without a motor. (3-29-17)

d. For purposes of Subsection 107.10 of this rule, ATV, UTV, and specialty off-highway vehicle have the same meaning given to them in Section 67-7101, Idaho Code. (3-25-16)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, paddleboards, inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, inflatable boat, or similar watercraft is sold together with attached motor. (3-29-17)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either “trailer” or “utility trailer” found in Sections 49-117, 49-121, and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers defined in Sections 49-117, and 49-121(6)(a) through 49-121(6)(~~g~~), Idaho Code. (4-2-08)()

g. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

11. Motor Vehicles and Trailers Used in Interstate Commerce. The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. Related Party Transfers and Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

(BREAK IN CONTINUITY OF SECTIONS)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).
Sections 63-3622, & 63-3622HH, Idaho Code

01. In General. This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. Burden of Proof. All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

03. Qualified Buyers for Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

04. Qualified Buyers for Purposes of Resale. The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

a. A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. Description and Proper Execution of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. (4-4-13)

a. To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)

i. Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

ii. Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. (4-4-13)

iii. Example. A grocery store describes the primary nature of its business as selling groceries. It then

buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ~~ST-103, or ST-104~~) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (~~3-6-00~~) ()

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)

d. Sales Tax Exemption on Lodging Accommodations Claimed by Employees Using A Qualifying Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or Idaho local government agency or other organization granted an exemption under Section 63-3622O, Idaho Code. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-25-16)

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate -- Vehicle/Vessel, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-25-16)

g. Sales Tax Exemption Certificate -- Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-25-16)

h. Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. (3-25-16)

i. Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

j. Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

06. Seller's Responsibility -- Purchases for Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

a. Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

c. Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-4-10)

a. A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- i.** Maintenance and janitorial equipment and supplies; (3-6-00)
- ii.** Office equipment and supplies; (3-6-00)
- iii.** Selling and distribution equipment and supplies; (3-6-00)
- iv.** Property used in transportation activities; (3-6-00)
- v.** Equipment or other property used to make repairs; (3-6-00)
- vi.** Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- vii.** Licensed motor vehicles; (3-6-00)

- viii. Aircraft; and (3-6-00)
- ix. Recreational-related vehicles as defined in Section 63-3622HH, Idaho Code. ~~(3-6-00)~~()

b. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer must collect the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (3-25-16)

c. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

d. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

e. In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

NATURE OF BUSINESS

BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (3-4-10)

f. Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)

08. Purchaser's Responsibility. A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally

makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

a. Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

b. Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. (3-4-10)

09. Timely Acceptance of Certificates. A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

a. Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

c. Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

d. When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

IDAPA 35 – STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1703

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(2), 63-3624(a), 63-3635, 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 20, 2017.

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:

Sales Tax Rule 028 – Hotels, Motels And Campgrounds. We are proposing changing this rule to include the terms introduced by 2017, HB 216, the Short-term or Vacation Rental Act. Some technical and grammar changes are also proposed.

Sales Tax Rule 103 – Hand Tool, Component, And Unit Price. We are proposing deleting this rule because of statute changes that have made this obsolete. The \$100 exemption to the production exemption has been repealed.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 84-85](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or tom.shaner@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 27, 2017.

DATED this 8th day of August, 2017.

Tom Shaner
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
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Boise, ID 83722-0410
Phone: (208) 334-7531
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1703
(Only Those Sections With Amendments Are Shown.)

028. HOTELS, MOTELS AND CAMPGROUNDS (RULE 028).
Section 63-3612(2), Idaho Code

01. Fees. Fees charged for providing hotel, motel, and campground accommodations are subject to the state sales tax, the Idaho Travel and Convention taxes and may be subject to the Greater Boise Auditorium District sales tax. This includes fees collected for short-term rentals and vacation rentals even when the sale is facilitated by a short-term rental marketplace. These taxes are explained in IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." (7-1-93)()

02. Purchases by Hotels, Motels, Lodging Operators, Short-Term Rentals, Vacation Rentals, and Campgrounds. ~~Effective July 1, 1988, Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds may purchase tangible personal property for consumption by their customers without paying tax if the tangible personal property is included in the fee charged to the customer and is directly consumed by the customer in such a way that it cannot be reused. Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds must provide a resale certificate to their vendor when purchasing such items for resale. Examples include:~~ (7-1-93)()

- a. Facial tissue, toilet tissue, toilet sanitation tissues, disposable laundry pickup bags, and paper napkins. (7-1-93)
- b. Soaps, hair shampoo, hair conditioners, and lotions. (7-1-93)
- c. Disposable plastic drinking glasses, disposable plastic utensils, disposable shoe shine cloths, and disposable shower caps. (7-1-93)
- d. Candies, beverages, meals, and newspapers furnished with the room. (7-1-93)
- e. Room stationery, envelopes, notepads, and matches. (7-1-93)

03. Tangible Personal Property Subject to Tax. Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. Tangible personal property subject to tax includes property which is ~~NOT~~ not directly consumed by the customer, property that is nondisposable in nature, or property that is depreciated in the books and records of the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. The hotel, motel, lodging operator, short-term rental, vacation rental, or campground is the user and consumer of such supplies and equipment and will pay sales tax on the purchase of such items. Examples include: (7-1-93)()

- a. Bath towels, bath mats, linens, and bedding. (7-1-93)
- b. Glassware, silverware, and china. (7-1-93)
- c. Furniture and fixtures. (7-1-93)
- d. Bibles, room service menus, and directories. (7-1-93)
- e. Toilet sanitary rings and garbage can liners. (7-1-93)
- f. Any tangible personal property available to the general public. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

~~103. HAND TOOL, COMPONENT, AND UNIT PRICE (RULE 103).~~

~~Sections 63-3622S, 63-3622T, 63-3622W, & 63-3622JJ, Idaho Code~~

~~01. Exempt Hand Tools. The Idaho sales tax law exempts hand tools with a unit price of over one hundred dollars (\$100) if the hand tools are used directly and primarily in any of the following operations: (7-1-93)~~

- ~~a. Broadcasting, Section 63-3622S, Idaho Code; (7-1-93)~~
- ~~b. Certain newspaper publishing, Section 63-3622T, Idaho Code; (7-1-93)~~
- ~~c. Agricultural irrigation, Section 63-3622W, Idaho Code; (7-1-93)~~
- ~~d. Logging, Section 63-3622JJ, Idaho Code. (7-1-93)~~

~~02. Unit. A unit, as applied to hand tools, means a single, distinct part or object which can be used by itself to perform a specific function. For example, a screwdriver can be used by itself to tighten or loosen a screw. When units, such as screwdrivers, are sold in sets to a manufacturer who will use the tools primarily and directly in the production process, i.e., to assemble product, a per unit price must be computed to determine if the purchase qualifies for the over one hundred dollars (\$100) per unit exemption. When a manufacturer purchases a set of twenty (20) wrenches for one hundred twenty five dollars (\$125) to be used in product assembly, the purchase is taxable because the per unit price of the hand tools is less than one hundred dollars (\$100). (7-1-93)~~

~~03. Component. A unit may be composed of two (2) or more components. A component is a distinct part which must be physically attached to another part to perform a specific function. A component alone has no utility. For example, a drill bit must be physically attached to a drill in order for the bit or the drill to have utility. Together they become a unit which can perform a specific function. Single components or sets of components, sockets, drill bits, etc., are taxable unless they will be physically joined to another component, ratchet, drill, etc., to form a unit which exceeds one hundred dollars (\$100) in cost. For example, drill bits which are physically attached to a five hundred dollar (\$500) drill press to perform a specific function in a production process are exempt from the tax. (7-1-93)~~

~~04. Unit Price. The total amount extended on a purchase invoice for multiple units is not the unit price. The unit price must be computed to determine whether the hand tool exceeds one hundred dollars (\$100) and qualifies for a given exemption. (7-1-93)~~

IDAPA 35 – STATE TAX COMMISSION

35.01.05 – IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-1702

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, and Section 63-2442A, 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 20, 2017.

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 Fuel Tax Rule 420, Documentation for IFTA Licensee Reporting and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle. This rule gives records requirements for International Fuel Tax Agreement (IFTA) licensees and other taxpayers claiming nontaxable fuel use. Changes will be made to IFTA requirements so the rule conforms to IFTA. All other records requirements will be removed so only IFTA requirements remain.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule was amended to comply with Subsection 63-2442A(9), Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact the undersigned using the contact information below.

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 27, 2017.

DATED this 6th day of September, 2017.

Don Williams
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
Phone: (208) 334-7855
Fax: (208) 334-7846
Don.williams@tax.idaho.gov

FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0105-1702

420. DOCUMENTATION FOR IFTA LICENSEE REPORTING ~~AND SPECIAL FUELS USERS CLAIMING NONTAXABLE USE OF SPECIAL FUELS IN A MOTOR VEHICLE~~ (RULE 420).

Sections 63-2439, Idaho Code

01. **Records Required for Idaho IFTA Licensee ~~and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle~~.** Records are required to verify the accuracy of any tax report or worksheet filed with the State Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a temporary permit; ~~or a special fuels user claiming nontaxable use of tax paid special fuels in a motor vehicle using a Form 75, shall~~ **must** retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. ~~(3-15-02)()~~

02. **Fuel Records.** In order for the IFTA licensee ~~or other special fuels user seeking a refund for the nontaxable use of special fuels in its motor vehicle~~ to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained ~~by the special fuels user~~ showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but **is** not **be** limited to, the following: ~~(3-15-02)()~~

a. The date of each receipt of fuel; (7-1-98)

b. The name and address of the person from whom purchased or received; (7-1-98)

c. The number of gallons received; (7-1-98)

~~d. Both taxable and nontaxable usage of fuel; (7-1-98)~~

~~ed.~~ The type of fuel; (7-1-98)

~~fe.~~ The specific vehicle ~~or equipment~~ into which the fuel was placed; **and** ~~(7-1-98)()~~

~~gf.~~ Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; **and** ~~(4-6-05)()~~

~~h.~~ *Documents necessary to substantiate volume, time or weight for power take off and auxiliary engine allowances described in Rule 292 of these rules.* ~~(3-30-01)~~

03. **Mileage Records.** ~~Non-IFTA special fuels users who qualify to use one (1) of the "Standard MPG's" found in Rule 290 of these rules need only record and report Idaho taxable miles.~~ All IFTA licensees ~~and all other special fuels users seeking a fuels tax refund for nontaxable special fuels used in a motor vehicle shall~~ **must** maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records ~~shall~~ **must** contain, but not be limited to: ~~(3-15-02)()~~

a. Total trip miles, including vicinity miles; ~~except for non-IFTA motor vehicle(s) using one (1) of the "standard miles per gallon" (MPG) found in Rule 290 of these rules;~~ ~~(3-30-01)()~~

b. Miles traveled for taxable and nontaxable use; ~~Only taxable miles traveled are required for non-IFTA motor vehicles using one (1) of the "standard miles per gallon" found in Rule 290 of these rules;~~ ~~(3-30-01)()~~

c. Mileage ~~recaps for each vehicle. IFTA licensees are required to keep mileage recaps for each~~ **totaled by** jurisdiction in which the IFTA vehicle operated; ~~(3-15-02)()~~

- d. Starting and ending dates of trips; (7-1-98)
- e. Trip origin, ~~interim stops~~ and destination; (7-1-98)()
- f. Hubometer or odometer readings from the beginning and ending of each trip ~~and at the crossing of each jurisdiction's border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods;~~ (7-1-98)()
- g. Complete routes of travel, ~~that~~ ~~includes~~ ~~interim stops such as~~ pick up and delivery locations; ~~and~~ (7-1-98)()
- h. Vehicle license number or unit number; ~~and~~; (4-6-05)()
- ~~i. Driver's name. (7-1-98)~~
04. **Additional Records Requirements.** Other records may be ~~required~~ ~~requested~~, such as: (7-1-98)()
- a. Bills of lading or manifest documents; (7-1-98)
- b. Vehicle dispatch ledgers; (7-1-98)
- c. Accounts payable and receivable; (7-1-98)
- d. Lease agreements; (7-1-98)
- e. Driver pay records; (7-1-98)
- f. Driver logs; (7-1-98)
- g. Fuel use trip permits; and (7-1-98)
- h. Other documents used in preparing fuel tax reports. (7-1-98)
05. **Trip Summaries.** Individual trips ~~shall~~ ~~must~~ be accumulated into monthly, ~~quarterly, or annual~~ summaries ~~in total and by jurisdiction~~. These summaries ~~shall~~ ~~must~~ be used as the basis for the miles submitted on the IFTA quarterly or annual reports, ~~and on the worksheet submitted with the Form 75.~~ (7-1-98)()
06. **Computer ~~Printout~~ Support.** ~~Hard copies of summary~~ ~~e~~Computer ~~printouts~~ summaries must be supported by trip sheets or logs verifying mileage traveled. (7-1-98)()
07. **Mileage Information.** Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. ~~Non-IFTA special fuels users who qualify to use a "Standard MPG" need only record and report taxable miles in Idaho.~~ (3-15-02)()
08. **Records Retention.** ~~The records required in this rule shall be retained for the greater of three (3) years for Idaho special fuels users or the time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return.~~ Records ~~shall~~ ~~must~~ be retained for four (4) years for IFTA license holders. (7-1-98)()
09. **U.S./Metric Conversion.** The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:

One (1) Liter = .2642 gallons

One (1) Gallon = 3.785 liters
One (1) Mile = 1.6093 kilometers
One (1) Kilometer = .62137 miles

(7-1-98)

10. Mileage Disputes. Whenever a mileage dispute arises between the taxpayer and the State Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction will be used to resolve the point-to-point mileage differences. (4-6-05)

IDAPA 35 – STATE TAX COMMISSION

35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-1701

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(2), 63-3624(a), 63-3612(2)(g), 67-4718, and 67-4917C, 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 20, 2017.

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 001 – Title And Scope. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

Rule 011 – No change will be made to Rule 011. It was determined in the negotiated rule process that it is not necessary to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act to this rule.

Rule 018 – Returns. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

Rule 019 – Penalties, Collections And Enforcement. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 94-95](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or tom.shaner@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 27, 2017.

DATED this 8th day of August, 2017.

Tom Shaner
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd, Plaza IV
P.O. Box 36
Boise, ID 83722-0410
Phone: (208) 334-7531
Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0106-1701
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE (RULE 001).

~~These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds. These rules shall also impose a retail sales tax upon the user or occupant of a hotel or motel room which is located in the Greater Boise Auditorium District (7-1-93)~~
Sections 67-4711, 67-4718, 67-4917B & 63-1801 through 63-1804, Idaho Code

01. Title. These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." ()

02. Scope. These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority for: ()

a. Accommodations. The imposition of a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, campgrounds, lodging providers, and short-term rental marketplaces. ()

b. Greater Boise Auditorium Tax. The imposition of a retail sales tax upon the user or occupant of a hotel/motel room, short-term rental, or vacation rental located in the Greater Boise Auditorium District. ()

c. Short-Term Rental Marketplaces. The imposition of a registration requirement for short-term rental marketplaces for the collection, reporting, and payment of taxes due from a lodging operator on any lodging transaction facilitated by the short-term rental marketplace. ()

d. Sales Tax. These rules explain the application of the state sales tax to hotel/motel room charges but do not undertake a comprehensive explanation of state sales and use taxes as they may apply to such businesses. See the Tax Commission's rules relating to the Idaho Sales Tax Act for detailed statutory and regulatory provisions. See specifically, Sales Tax Rule, IDAPA 35.01.02.028. ()

(BREAK IN CONTINUITY OF SECTIONS)

018. RETURNS (RULE 018).

01. Filing Returns. Each hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace providing accommodations subject to the room sales tax shall file with the State Tax Commission on forms prescribed by the State Tax Commission monthly or quarterly returns showing the amount of tax required to be paid ~~by the hotel, motel, or campground~~ to the State Tax Commission and such other information as the State Tax Commission shall require. The return, together with the remittance shown to be due thereon, must be received by the State Tax Commission or postmarked on or before the twentieth (20th) day of the month following the period to which the return relates. All charges subject to tax actually charged to the user or occupant shall be reported on the return for the period during which such use or occupancy occurred without regard to whether the charge was a cash or credit transaction. (7-1-93)()

~~02. Allocation of Revenue.~~ ~~Because revenue from the statewide Travel and Convention tax must be allocated to the area of the state from which it is collected, taxpayers who operate more than one (1) hotel, motel or campground within the state must report the tax relating to each hotel, motel or campground on a separate return.~~ (7-1-93)

019. DEFICIENCIES, COLLECTIONS, AND ENFORCEMENT (RULE 019).
Sections 63-3629, & 63-3634, Idaho Code

01. Remittance of Taxes. In the event that taxes required to be collected and remitted by a hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace are not remitted to the State Tax Commission together with a return in a timely manner or in the event that the Commission finds any deficiency in the amount of tax reported to or remitted to the State Tax Commission, the State Tax Commission shall issue a Notice of Deficiency Determination pursuant to the provisions of the Idaho Sales Tax Act and IDAPA 35.01.02 ~~the Tax Commission's rules relating thereto~~. A hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace to which such a Notice of Deficiency Determination ~~may be~~ has been issued may file a written protest ~~the notice and seek~~ requesting a redetermination ~~thereof~~ of the deficiency pursuant to the provisions of IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 121. (7-1-93)()

02. Penalties. In the event that any deficiency in reporting or remitting taxes by a hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace is due to negligence, failure to comply with this Commission's rules, or fraud, or in the event that any hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace required to file a return with the State Tax Commission fails to do so, the penalties provided in the Idaho Income Tax Act as applicable to the Idaho Sales Tax Act shall apply to the room sales tax. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule ~~410~~ 410. (7-1-93)()

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

**39.02.02 – RULES GOVERNING VEHICLE AND VESSEL DEALER
LICENSE REQUIREMENTS - MOTOR VEHICLES**

DOCKET NO. 39-0202-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 21, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 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 20, 2017.

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 is being initiated based on the passage of House Bill 131a (2017) which amended Section 49-1602, Idaho Code. The change being made eliminates section 400 of IDAPA 39.02.02, which addresses penalties for violation of dealer rules or Idaho Code. Section 49-1602, Idaho Code, now provides and defines the penalties and length of dealer and salesman license denials and suspensions.

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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of House Bill 131a (2017) which went into effect July 1, 2017.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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 impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brian Goeke, Dealer Licensing/Investigations Program Supervisor, at (208) 334-8684.

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 27, 2017.

DATED this 25th day of July 2017.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
ramon.hobdey-sanchez@itd.idaho.gov
Phone: (208) 334-8810

Idaho Transportation Department
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0202-1701
(Only Those Sections With Amendments Are Shown.)

302. -- ~~399~~. (RESERVED)

~~400. PENALTIES.~~

~~01. License Suspension. Any person who violates this rule is subject to a license suspension or the non-issuance of a license for a period of not less than thirty (30) days and no more than six (6) months. (9-14-92)~~

~~02. Hearing Requests. Prior to a license suspension or the non-issuance of a license, persons may request a hearing as provided for by Section 49-1618, Idaho Code. (9-14-92)~~

~~03. Unlicensed Person. Any unlicensed person who violates this rule is subject to penalty under Chapter 16, Title 49, Idaho Code. (12-26-90)~~

~~401. 999. (RESERVED)~~

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.02.71 – RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM

DOCKET NO. 39-0271-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 21, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 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 20, 2017.

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 is being initiated based on the passage of Senate Bill 1019 (2017) that established a new traffic infraction and created a new section to Idaho Code, Section 49-652. The change being made adds a new traffic infraction to the list of moving traffic convictions or violations point count table, or both, for failure to obey a school safety patrol.

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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of Senate Bill 1019 (2017) which went into effect July 1, 2017.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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 impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact David Metcalf, Driver License Program Supervisor, at (208) 334-8709.

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 27, 2017.

DATED this 25th day of July, 2017.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
ramon.hobdey-sanchez@itd.idaho.gov
Phone: (208) 334-8810

Idaho Transportation Department
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0217-1701
(Only Those Sections With Amendments Are Shown.)**

200. LIST OF MOVING TRAFFIC CONVICTIONS AND/OR VIOLATIONS POINT COUNT.

Idaho Code	Convictions Reported by Court	Point Count
49-603	Starting Parked Vehicle	two (2)
49-604	Limitations On Backing	one (1)
49-605	Driving Upon Sidewalk	three (3)
49-606	Coasting Prohibited	two (2)
49-612	Obstruction To Driver's View Or Driving Mechanism	three (3)
49-614	Stopping When Traffic Obstructed	one (1)
49-615	Drivers To Exercise Due Care	three (3)
49-616	Driving Through Safety Zone Prohibited	two (2)
49-619	Slow Moving Vehicles	two (2)
49-623(4)	Authorized Emergency Or Police Vehicles	three (3)
49-624	Duty Upon Approaching A Stationary Police Vehicle Or An Emergency Vehicle Displaying Flashing Lights	three (3)
49-625	Operation Of Vehicles On Approach Of Authorized Emergency Or Police Vehicles	three (3)
49-626	Following Fire Apparatus Prohibited	three (3)
49-627	Crossing Fire Hose	one(1)
49-630	Drive On Right Side Of Roadway - Exceptions	three (3)
49-631	Passing Vehicles Proceeding In Opposite Directions	two (2)
49-632	Overtaking A Vehicle On Left	three (3)
49-633	When Passing On The Right Is Permitted	two (2)
49-634	Limitations On Overtaking On The Left	three (3)
49-635	Further Limitations On Driving On Left Of Center Of Highway	three (3)
49-636	One-way Highways	one (1)
49-637	Driving On Highways Laned For Traffic	one (1)
49-638	Following Too Closely	three (3)
49-639	Turning Out Of Slow Moving Vehicles	two (2)
49-640	Vehicles Approaching Or Entering Unmarked Or Uncontrolled Intersection	three (3)
49-641	Vehicle Turning Left	three (3)

Idaho Code	Convictions Reported by Court	Point Count
49-642	Vehicle Entering Highway	three (3)
49-643	Highway Construction And Maintenance	three (3)
49-644	Required Position And Method Of Turning	three (3)
49-645	Limitations On Turning Around	three (3)
49-648	Obedience To Signal Indicating Approach Of Train	four (4)
49-649	Compliance With Stopping Requirement At All Railroad Grade Crossings	four (4)
49-650	Moving Heavy Equipment At Railroad Grade Crossings	three (3)
49-651	Emerging From Alley, Driveway Or Building	three (3)
<u>49-652</u>	<u>School Safety Patrols – Failure to Obey Unlawful</u>	<u>three (3)</u>
49-654	Basic Rule And Maximum Speed Limits	three (3) four (4)
49-655	Minimum Speed Regulation	three (3)
49-656	Special Speed Limitations	three (3) four (4)
49-657	Work Zone Speed Limits	four (4)
49-658	School Zone Speed Limit	three (3)
49-663	Restricted Use Of Neighborhood Electric Vehicles On Highways	two (2)
49-673(3)&(4)	Safety Restraint Use	Exempt
49-702	Pedestrians' Right Of Way In Crosswalks	three (3)
49-706	Blind And/Or Hearing Impaired Pedestrian Has Right-of-Way	three (3)
49-707	Pedestrians' Right-of-Way On Sidewalks	three (3)
49-801	Obedience To And Required Traffic Control Devices	three (3)
49-802	Traffic Control Signal Legend	three (3)
49-804	Flashing Signals	three (3)
49-806	Lane Use Control Signals	three (3)
49-807(2)	Stop Signs	three (3)
49-807(3)	Failure To Yield – Signed Intersection	three (3)
49-808	Turning Movements And Required Signals	three (3)
49-1302	Duty To Give Information In Accident Involving Damage To A Vehicle	four (4)
49-1303	Duty Upon Striking Unattended Vehicle	four (4)
49-1304	Duty Upon Striking Fixtures Upon Or Adjacent To A Highway	four (4)
49-1401(3)	Inattentive Driving	three (3)
49-1401A	Texting While Driving	Exempt
49-1419	Obedience To Traffic Direction	two (2)
49-1421(1)	Driving On Divided Highways	one (1)

Idaho Code	Convictions Reported by Court	Point Count
49-1421(2)	Restricted Access	one (1)
49-1422	Overtaking And Passing School Bus	four (4)
49-1424	Racing On Public Highways	four (4)

~~(1-1-14)~~(7-21-17)T

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

39.03.10 – RULES GOVERNING WHEN AN OVERLEGAL PERMIT IS REQUIRED

DOCKET NO. 39-0310-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 21, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 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 20, 2017.

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 is being initiated based on the passage of Senate Bill 1043a (2017) that amended Section 49-1010, Idaho Code. The change being made amends Section 300.03 in order to clarify when there is an emergency movement of implements of husbandry and provides that verbal approval of the movement may be allowed on official state holidays and weekends in lieu of a written permit.

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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of Senate Bill 1043a (2017) which went into effect March 24, 2017.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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 impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Reymundo Rodriguez, Compliance Program Manager, at (208) 334-4426.

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 27, 2017.

DATED this 25th day of July, 2017.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
ramon.hobdey-sanchez@itd.idaho.gov
Phone: (208) 334-8810

Idaho Transportation Department
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0310-1701
(Only Those Sections With Amendments Are Shown.)**

300. WAIVER OF LIMITATIONS FOR EMERGENCY MOVEMENTS.

Notwithstanding other provisions of these rules, the Idaho Transportation Board may waive existing permit policy limitations in the event of an emergency, subject to such limitations or special requirements as the Board may impose. (8-25-94)

01. Military Emergency Affecting National Security. Any movement by or for a military or other government agency which is in excess of permit policy maximum limits of weight or size or which is otherwise outside established rules must be certified as a military necessity involving national security before receiving any special consideration to provide any waiver of normal permit rules. Certification of military necessity must be made by an official designated as having such authority by the Department of Defense Directory, issued by the Office of the Chief of Transportation, Department of Army. All applications for military emergency movements must be channeled through the Vehicle Size and Weight Specialist, Idaho Transportation Department. (8-25-94)

02. Emergencies Endangering the Public Health, Safety or Welfare Including but Not Limited to Fire, Flood, or Earthquake. During an emergency endangering the public health, safety or welfare, there may be an urgent and immediate need for equipment and it will not be in the public interest to require that an overlegal permit be in the vehicle prior to an over legal movement. Verbal approval to proceed without an overlegal permit in the vehicle may be obtained from the Overlegal Permit Office or an Idaho Port-of-Entry. Once the emergency movement is completed, formal application for an Overlegal Permit must be submitted to the Overlegal Permit Office. (4-2-08)

03. Emergency Movement of Implements of Husbandry. It shall be considered an emergency when an implement of husbandry being operated on an official state holiday or a weekend ~~(the Overlegal Permit Office is closed on weekends and holidays for hours of Permit Office operation see IDAPA 39.03.09, "Rules Governing Overlegal Permits General Conditions and Requirements")~~ breaks down and a dealer brings replacement equipment to the farmer that exceeds ~~the annual permit maximum width of fourteen (14) feet six (6) inches~~ **legal height, length and weight**. Verbal approval to proceed without an overlegal permit in the vehicle may be obtained from ~~an Idaho Port of Entry~~ **the Overlegal Permit on-call staff**. That verbal authorization ~~will~~ **may** include escort vehicle requirements based on the route of travel and ~~width~~ **dimensions** of load. Once the emergency movement is completed, the permittee shall make formal application for a permit to the Overlegal Permit Office on the first working day after the occurrence. ~~(4-4-13)~~ **(7-21-17)T**

04. Economic Emergencies. When a circumstance occurs in which an economic hardship is expected to result due to the application of existing rules or limitations, the Transportation Board may consider a petition for the temporary waiver of those rules or limitations which are perceived as being the cause of such economic hardship. (8-25-94)

05. Emergency Movements After Dark or Weekends. Any overwidth load moving after dark or on weekends on a red coded route of the Pilot/Escort Vehicle and Travel Time Requirements Map must be preceded by an escort vehicle displaying a rotating or flashing amber light to warn other traffic of the presence of the hazard. Any overwidth load moving after dark on black coded routes, if width exceeds ten (10) feet, must also be preceded by such a pilot/escort vehicle. All overwidth loads moved after dark shall have the extreme dimensions marked by lights as required by IDAPA 39.03.12, "Rules Governing Safety Requirements For Overlegal Permits." Self-propelled vehicles utilized to clear the travelway of snow or debris are exempt from the provisions listed in this Subsection. (4-2-08)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.03.16 – RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE
VEHICLES AND/OR LOADS
DOCKET NO. 39-0316-1701

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 21, 2017.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 40-312 and 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 20, 2017.

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 is being initiated based on the passage of Senate Bill 1043a (2017) that amended Section 49-1010, Idaho Code. The change being made addresses the movement of implements of husbandry and when such movement must be permitted or is allowed to move without an overlegal permit. Language has been modified to exempt equipment dealers moving implements of husbandry larger than legal size to or from a farm to a dealer for repair, rental, lease or purchase.

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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of Senate Bill 1043a (2017) which went into effect March 24, 2017.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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 impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Craig Roberts, Compliance Program Supervisor, at (208) 334-8292.

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 27, 2017.

DATED this 25th day of July, 2017.

Ramon S. Hobdey-Sanchez
Governmental Affairs Program Specialist
ramon.hobdey-sanchez@itd.idaho.gov
Phone: (208) 334-8810

Idaho Transportation Department
3311 W. State Street
P.O. Box 7129
Boise, ID 83707-1129

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0316-1701
(Only Those Sections With Amendments Are Shown.)**

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 agents, including without limitation, equipment dealers is transporting implements of husbandry and equipment for the purpose of: ~~(3-29-12)~~(7-21-17)T

a. The repair or maintenance of such implements of husbandry and equipment when traveling between to or from a farm ~~and~~ to a repair or maintenance facility during daylight hours; or ~~(3-29-12)~~(7-21-17)T

b. The purchase, ~~or~~ sale, lease or rental 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)~~(7-21-17)T

03. Farm Permits. Single trip permits must be ordered at the permit office. 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. (3-25-16)

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~~ or from 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). ~~(3-29-12)~~(7-21-17)T

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 50 – IDAHO COMMISSION OF PARDONS AND PAROLE

50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-1701

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 20-223, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

PUBLIC MEETING
Wednesday, September 13th, 2017
1:00 pm to 2:00 pm

3056 W. Elder Street
Boise, ID 83705

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

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following: Submit questions in writing relating to proposed changes only prior to hearing.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The Commission of Pardons and Parole is updating its administrative rules to reflect current operating processes and legislation passed in the 2016- 2017 session amending IC20-210, 20-213A, IC20-223 and IC20-229B. The rules will be updated to:

- a) reflect statutory language regarding expansion of the commission to seven members, increase commissioner compensation, the number of commissioners required for violation hearings;
- b) create a procedure to be used with firearm restoration applications, including the use of an executive session for deliberation;
- c) update language regarding parole decisions;
- d) implement statutory changes regarding sanctions;
- e) address technical advancements used in the hearing process;
- f) define the term commissioner as well as terms used in the SIPR process; and
- g) clarify victims services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text contact Mary Schoeler, 3056 Elder St. Boise, Idaho 83705. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the commission web site at the following web address: <https://parole.idaho.gov>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 13, 2017.

DATED this 25th day of August, 2017.

Mary Schoeler, Legal Assistant
Phone: (208) 334-2520

3056 Elder Street
Boise, Idaho 83705

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1502

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 Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: 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 22, 2017. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the November 16, 2017, meeting of the Idaho Board of Environmental Quality (Board).

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to update DEQ's existing hardness dependent criteria by using EPA's 2007 304(a) copper criteria. This update is a Reasonable and Prudent Alternative identified in National Oceanic and Atmospheric Administration's (NOAA) biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life.

The toxicity of copper to aquatic life is highly variable depending on physicochemical factors within a water body. The effect of hardness on metal toxicity has long been acknowledged as one such factor and is reflected in DEQ's current hardness dependent criteria, whereby the acute and chronic criteria are determined based on the total hardness of the receiving water body. However, DEQ's current hardness dependent criteria do not take into account the effects of other physicochemical properties of the receiving water body which affect toxicity, leading to DEQ's current criteria being either over- or under-protective of aquatic life.

This action is identified in NOAA's BiOp on Idaho's criteria for toxic substances to support aquatic life. This BiOp concluded that the current copper criteria were not always protective of aquatic life and would result in adverse modification of critical habitat. NOAA's recommendation is to use EPA's 2007 304(a) copper criteria, which uses other physicochemical properties of the water (e.g., pH, dissolved organic carbon, etc.) to predict water-body specific criteria known as the Biotic Ligand Model (BLM). NOAA has called for state adoption and EPA approval or EPA promulgation of these criteria by May 2017. Because of this, DEQ's 2014 triennial review identified revision of the aquatic life criteria for copper as a high priority. By adopting a copper criterion based on the BLM, DEQ will be able to use the most current state of the science to ensure that the criteria are more precise and are neither unnecessarily burdening dischargers nor increasing risk to aquatic life.

This proposed rule replaces the existing hardness dependent criteria for copper with a similar, albeit more detailed, modeled approach. Additionally, the proposed rule references the "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" which details procedures for implementing the criteria including determining minimum data requirements for BLM inputs and guidance for estimating protective criteria when data are incomplete or absent.

Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board on November 16, 2017, for adoption of a pending rule. The rule is expected to become final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](#)). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>

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:

EPA national recommended criteria, “[Aquatic Life Ambient Freshwater Quality Criteria – Copper](#)”: EPA-822-R-07-001 (February 2007), is incorporated by reference in the proposed rule. This document provides guidance for calculating aquatic life criteria for copper using the Biotic Ligand Model software. Incorporation by reference benefits the regulated community by ensuring that the state rule is consistent with the EPA guidance. The alternative to incorporating by reference is to restate the document in the rule, which would be impractical and costly.

NEGOTIATED RULEMAKING: The text of the proposed rule was 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 October 2015 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Nine negotiated rulemaking and guidance development meetings were held between October 28, 2015, and July 18, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. For comments that were not incorporated into the draft rule, DEQ’s response to those comments is included in the negotiated rulemaking summary. At the conclusion of the negotiated rulemaking process, DEQ formatted the final 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, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0102-1502.

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 questions concerning this rulemaking, contact Jason Pappani at Jason.Pappani@deq.idaho.gov, (208) 373-0515.

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 6, 2017.

Dated this 6th day of September, 2017

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
E-mail: paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1502
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

Codes, standards and regulations may be incorporated by reference in these rules pursuant to Section 67-5229, Idaho Code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in these rules. Copies of the codes, standards or regulations adopted by reference throughout these rules are available in the following locations: (8-24-94)

01. ~~Department~~ **Guidance and Technical Support Documents.** Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255, www.deq.idaho.gov; ~~and~~ (4-5-00)()

~~02.~~ **Law Library.** ~~State Law Library, 451 W. State Street, Boise, Idaho 83720.~~ (7-1-93)

~~032.~~ **Federal Documents Code of Federal Regulations.** Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, www.ecfr.gov, and ~~State Law Library, 451 W. State Street, Boise, Idaho 83720.~~ (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)

a. Columns B1 and B2 of the following table apply to waters designated for aquatic life use. (3-25-16)

b. Column C2 of the following table applies to waters designated for primary or secondary contact recreation use. (3-25-16)

c. Column C1 of the following table applies to waters designated for domestic water supply use.

A		B Aquatic life			C Human health for consumption of:		
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)	
		B1	B2		C1	C2	
1 Antimony	7440360				5.2 c	190 c	
2 Arsenic	7440382	340 e	150 e	Y	10 dfq	10 dfq	
<p>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in 1996 Idaho Administrative Code (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</p>							
3 Beryllium	7440417				h	h	
4 Cadmium	7440439	1.3 i	0.6 i		h	h	
5a Chromium III	16065831	570 i	74 i		h	h	
5b Chromium VI	18540299	16 e	11 e		h	h	
6 Copper ¹	7440508	17 i	11 i		1,300 q		
<p>¹Effective for CWA purposes. The CMC, CCC, and footnote are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.</p>							
6 Copper ²	7440508	17 i <u>12.3</u> r	11 i <u>7.6</u> r		1,300 q		
<p>²Not yet effective for CWA purposes. The CMC, CCC, and footnote are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.</p>							
7 Lead	7439921	65 i	2.5 i		h	h	
8a Mercury	7439976	g	g				
<p>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</p>							
8b Methylmercury	22967926					0.3 mg/kg p	
9 Nickel	7440020	470 i	52 i		58 c	100 c	
10 Selenium	7782492	20 f	5 f		29 c	250 c	

A		B Aquatic life			C Human health for consumption of:		
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)
		B1	B2		C1		C2
11 Silver	7440224	3.4 i					
12 Thallium	7440280				0.017 c	0.023 c	
13 Zinc	7440666	120 i	120 i		870 c	1,500 c	
14 Cyanide	57125	22 j	5.2 j		3.9 c	140 c	
15 Asbestos	1332214				7,000,000 fibers/L q		
16 2, 3, 7, 8-TCDD Dioxin	1746016			Y	1.8E-08 cl	1.9E-08 cl	
17 Acrolein	107028				3.2 c	120 c	
18 Acrylonitrile	107131			Y	0.60 cl	22 cl	
19 Benzene	71432				3.0 cl	28 c	
20 Bromoform	75252			Y	62 cl	380 cl	
21 Carbon Tetrachloride	56235			Y	3.6 cl	15 cl	
22 Chlorobenzene	108907				89 c	270 c	
23 Chlorodibromomethane	124481			Y	7.4 cl	67 cl	
24 Chloroethane	75003				h	h	
25 2-Chloroethylvinyl Ether	110758				h	h	
26 Chloroform	67663				61 c	730 c	
27 Dichlorobromomethane	75274			Y	8.8 cl	86 cl	
28 1,1-Dichloroethane	75343				h	h	
29 1,2-Dichloroethane	107062			Y	96 cl	2,000 cl	
30 1,1-Dichloroethylene	75354				310 c	5,200 c	
31 1,2-Dichloropropane	78875			Y	8.5 cl	98 cl	
32 1,3-Dichloropropene	542756			Y	2.5 cl	38 cl	
33 Ethylbenzene	100414				32 c	41 c	
34 Methyl Bromide	74839				130 c	3,700 c	
35 Methyl Chloride	74873				h	h	
36 Methylene Chloride	75092				38 c	960 c	
37 1,1,2,2-Tetrachloroethane	79345			Y	1.4 cl	8.6 cl	
38 Tetrachloroethylene	127184				15 c	23 c	

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
39	Toluene	108883				47	c	170	c
40	1,2-Trans-Dichloroethylene	156605				120	c	1,200	c
41	1,1,1-Trichloroethane	71556				11,000	c	56,000	c
42	1,1,2-Trichloroethane	79005			Y	4.9	cl	29	cl
43	Trichloroethylene	79016				2.6	c	11	c
44	Vinyl Chloride	75014			Y	0.21	cl	5.0	cl
45	2-Chlorophenol	95578				30	c	260	c
46	2,4-Dichlorophenol	120832				9.6	c	19	c
47	2,4-Dimethylphenol	105679				110	c	820	c
48	2-Methyl-4,6-Dinitrophenol	534521				1.6	c	8.6	c
49	2,4-Dinitrophenol	51285				12	c	110	c
50	2-Nitrophenol	88755					h		h
51	4-Nitrophenol	100027					h		h
52	3-Methyl-4-Chlorophenol	59507				350	c	750	c
53	Pentachlorophenol	87865	20 m	13 m	Y	0.11	cl	0.12	cl
54	Phenol	108952				3,800	c	85,000	c
55	2,4,6-Trichlorophenol	88062				1.5	c	2.0	c
56	Acenaphthene	83329				26	c	28	c
57	Acenaphthylene	208968					h		h
58	Anthracene	120127				110	c	120	c
59	Benzidine	92875			Y	0.0014	cl	0.033	cl
60	Benzo(a)Anthracene	56553			Y	0.0042	cl	0.0042	cl
61	Benzo(a)Pyrene	50328			Y	0.00042	cl	0.00042	cl
62	Benzo(b)Fluoranthene	205992			Y	0.0042	cl	0.0042	cl
63	Benzo(ghi)Perylene	191242					h		h
64	Benzo(k)Fluoranthene	207089			Y	0.042	cl	0.042	cl
65	Bis(2-Chloroethoxy) Methane	111911					h		h

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
66	Bis(2-Chloroethyl)Ether	111444			Y	0.29	cl	6.8	cl
67	Bis(2-Chloroisopropyl) Ether	108601				220	c	1,200	c
68	Bis(2-Ethylhexyl) Phthalate	117817			Y	1.2	cl	1.2	cl
69	4-Bromophenyl Phenyl Ether	101553					h		h
70	Butylbenzyl Phthalate	85687				0.33	c	0.33	c
71	2-Chloronaphthalene	91587				330	c	380	c
72	4-Chlorophenyl Phenyl Ether	7005723					h		h
73	Chrysene	218019			Y	0.42	cl	0.42	cl
74	Dibenzo (a,h) Anthracene	53703			Y	0.00042	cl	0.00042	cl
75	1,2-Dichlorobenzene	95501				700	c	1,100	c
76	1,3-Dichlorobenzene	541731				3.5	c	4.8	c
77	1,4-Dichlorobenzene	106467				180	c	300	c
78	3,3'-Dichlorobenzidine	91941			Y	0.29	cl	0.48	cl
79	Diethyl Phthalate	84662				200	c	210	c
80	Dimethyl Phthalate	131113				600	c	600	c
81	Di-n-Butyl Phthalate	84742				8.2	c	8.3	c
82	2,4-Dinitrotoluene	121142			Y	0.46	cl	5.5	cl
83	2,6-Dinitrotoluene	606202					h		h
84	Di-n-Octyl Phthalate	117840					h		h
85	1,2-Diphenylhydrazine	122667			Y	0.25	cl	0.65	cl
86	Fluoranthene	206440				6.3	c	6.4	c
87	Fluorene	86737				21	c	22	c
88	Hexachlorobenzene	118741			Y	0.00026	cl	0.00026	cl
89	Hexachlorobutadiene	87683			Y	0.031	cl	0.031	cl
90	Hexachloro-cyclopentadiene	77474				1.3	c	1.3	c
91	Hexachloroethane	67721				0.23	c	0.24	c

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
92	Ideno (1,2,3-cd) Pyrene	193395			Y	0.0042	cl	0.0042	cl
93	Isophorone	78591			Y	330	cl	6,000	cl
94	Naphthalene	91203					h		h
95	Nitrobenzene	98953				12	c	180	c
96	N-Nitrosodimethylamine	62759			Y	0.0065	cl	9.1	cl
97	N-Nitrosodi-n-Propylamine	621647			Y	0.046	cl	1.5	cl
98	N-Nitrosodiphenylamine	86306			Y	3.14	cl	18	cl
99	Phenanthrene	85018					h		h
100	Pyrene	129000				8.1	c	8.4	c
101	1,2,4-Trichlorobenzene	120821				0.24	c	0.24	c
102	Aldrin	309002	3		Y	2.5E-06	cl	2.5E-06	cl
103	alpha-BHC	319846			Y	0.0012	cl	0.0013	cl
104	beta-BHC	319857			Y	0.036	cl	0.045	cl
105	gamma-BHC (Lindane)	58899	2	0.08		1.4	c	1.4	c
106	delta-BHC	319868					h		h
107	Chlordane	57749	2.4	0.0043	Y	0.0010	cl	0.0010	cl
108	4,4'-DDT	50293	1.1	0.001	Y	9.8E-05	cl	9.8E-05	cl
109	4,4'-DDE	72559			Y	5.5E-05	cl	5.5E-05	cl
110	4,4'-DDD	72548			Y	0.00042	cl	0.00042	cl
111	Dieldrin	60571	2.5	0.0019	Y	4.2E-06	cl	4.2E-06	cl
112	alpha-Endosulfan	959988	0.22	0.056		7.0	c	8.5	c
113	beta-Endosulfan	33213659	0.22	0.056		11	c	14	c
114	Endosulfan Sulfate	1031078				9.9	c	13	c
115	Endrin	72208	0.18	0.0023		0.011	c	0.011	c
116	Endrin Aldehyde	7421934				0.38	c	0.40	c
117	Heptachlor	76448	0.52	0.0038	Y	2.0E-05	cl	2.0E-05	cl
118	Heptachlor Epoxide	1024573	0.52	0.0038	Y	0.00010	cl	0.00010	cl
119	Polychlorinated Biphenyls PCBs:	n		0.014 n	Y	0.00019	clo	0.00019	clo

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
120	Toxaphene	8001352	0.73	0.0002	Y	0.0023	cl	0.0023	cl
121	Chlorine		19 k	11 k					
122	1,2,4,5-Tetrachlorobenzene	95943				0.0093	c	0.0094	c
123	2,4,5-Trichlorophenol	95954				140	c	190	c
124	Bis (Chloromethyl) Ether	542881			Y	0.0015	cl	0.055	cl
125	Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721				82	c	130	c
126	Chlorophenoxy Herbicide (2,4-D)	94757				1,000	c	3,900	c
127	Dinitrophenols	25550587				13	c	320	c
128	Hexachlorocyclohexane (HCH)-Technical	608731			Y	0.027	cl	0.032	cl
129	Methoxychlor	72435				0.0054	c	0.0055	c
130	Pentachlorobenzene	608935				0.035	c	0.036	c
Table Footnotes									
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.									
b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.									

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)
		B1	B2		C1	C2
<p>c. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</p> $AWQC = RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>Where: AWQC = Ambient water quality criterion (mg/L)</p> <p>BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</p> <p>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> $RSD = \frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}} \text{ (mg/kg-day), chemical specific value, see TSD}$ <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p>						
d. Inorganic forms only.						
e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.						
f. Criterion expressed as total recoverable (unfiltered) concentrations.						
g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.						
h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.						

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)
		B1	B2		C1	C2
i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).						
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.						
k. Total chlorine residual concentrations.						
l. EPA guidance allows states to choose from a range of 10 ⁻⁴ to 10 ⁻⁶ for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 ⁻⁵ risk.						
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)						
n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.						
o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).						
p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD - (RSCxRfD)}] / Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.						
q. This criterion is based on the drinking water Maximum Contaminant Level (MCL).						
<i>r. Aquatic life criteria for copper shall be derived in accordance with Subsection 210.03.c.v. For comparative purposes only, the example values displayed in this table correspond to the Biotic Ligand Model output based on the following inputs: temperature = 14.9°C, pH = 8.16, dissolved organic carbon = 1.4 mg/L, humic acid fraction = 10%, calcium = 44.6 mg/L, magnesium = 11.0 mg/L, sodium = 11.7 mg/L, potassium = 2.12 mg/L, sulfate = 46.2 mg/L, chloride = 12.7 mg/L, alkalinity = 123 mg/L CaCO3, and sulfide = 1.00 x 10⁻⁸ mg/L.</i>						

(3-25-16)()

Footnote r. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.

02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

- a. $CMC = WER \exp\{mA[\ln(\text{hardness})] + bA\}$ X Acute Conversion Factor. (5-3-03)
- b. $CCC = WER \exp\{mc[\ln(\text{hardness})] + bc\}$ X Chronic Conversion Factor.

Metal	mA	bA	mc	bc	aAcute Conversion Factor	aChronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	0.8367	-3.560	0.6247	-3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
<i>The values for calculating hardness dependent metal criteria for copper, set out in the Copper row above, are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved. The Copper row will be deleted upon EPA approval.</i>						
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Note to table: The term "exp" represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium

Acute: $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$ NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic: $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic): $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

b. Not applicable

c. No chronic criteria are available for silver.

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

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

- a. For all waters for which the Department has determined mixing zones to be applicable, the toxic

substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (3-25-16)

b. Low flow design conditions. Water quality-based effluent limits and mixing zones for toxic substances shall be based on the following low flows in perennial receiving streams. Numeric chemical criteria may be exceeded in perennial streams outside any applicable mixing zone only when flows are less than these values:

Aquatic Life		Human Health	
CMC (“acute” criteria)	1Q10 or 1B3	Non-carcinogens	Harmonic mean flow
CCC (“chronic” criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(3-25-16)

i. Where “1Q10” is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where “1B3” is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where “4B3” is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant’s acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e.,

EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf. (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

v. Copper Criteria for Aquatic Life. ()

(1) Aquatic life criteria for copper shall be derived using: ()

(a) Biotic Ligand Model (BLM) software that calculates criteria consistent with the “Aquatic Life Ambient Freshwater Quality Criteria – Copper”: EPA-822-R-07-001 (February 2007); or ()

(b) An estimate derived from BLM outputs that is based on a scientifically sound method and protective of the designated aquatic life use. ()

(2) To calculate copper criteria using the BLM, the following parameters from each site shall be used: temperature, pH, dissolved organic carbon (DOC), calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. The BLM inputs for humic acid (HA) as a proportion of DOC and sulfide shall be based on either measured values or the following default values: 10% HA as a proportion of DOC, 1.00×10^{-8} mg/L sulfide. Measured values shall supersede any estimate or default input. ()

(3) BLM input measurements shall be planned to capture the most bioavailable conditions for copper. ()

(4) A criterion derived using BLM software shall supersede any estimated criterion. Acceptable BLM software includes the "US EPA WQC Calculation" for copper in BLM Version 3.1.2.37 (October 2015). ()

(5) Implementation Guidance for the Idaho Copper Criteria for Aquatic Life. The "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" describes in detail methods for implementing the aquatic life criteria for copper using the BLM. This guidance, or its updates, will provide assistance to the Department and the public for determining minimum data requirements for BLM inputs and how to estimate criteria when data are incomplete or unavailable. The "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at www.deq.idaho.gov/58-0102-1502. ()

Subsection 210.03.c.v is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.

d. Application of toxics criteria. (3-25-16)

i. Frequency and duration for aquatic life toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years. (3-25-16)

ii. Frequency and duration for human health toxics criteria. Columns C1 and C2 criteria are not to be exceeded based on an annual harmonic mean. (3-25-16)

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. "Technical Support Document for Water Quality-Based Toxics Control." EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

05. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

- iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)
- iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

- i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)
- ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10^{-5} for carcinogens shall be utilized. (3-25-16)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1502

NOTICE OF MEETING OF THE IDAHO BOARD OF ENVIRONMENTAL QUALITY

NOTICE OF PUBLIC MEETING: Notice is hereby given that on November 16, 2017, the Idaho Department of Environmental Quality (DEQ) will present Rule Docket No. 58-0102-1502 to the Idaho Board of Environmental Quality (Board) for adoption as a pending rule.

BOARD MEETING SCHEDULE: The Board will convene as follows:

**Thursday, November 16, 2017
9:00 am (MST)**

**DEQ State Office
1410 N. Hilton Street
(Conference Rooms A & B)
Boise, ID 83706**

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned. The Board meeting agenda will be available on November 2, 2017, at <http://www.deq.idaho.gov/about-deq/board-of-environmental-quality/meetings/>.

DESCRIPTIVE SUMMARY: Proposed Rule Docket No. 58-0102-1502 was published in the Idaho Administrative Bulletin on September 6, 2017, **Vol. 17-9**, and is available at www.deq.idaho.gov/58-0102-1502. The written comment deadline for Docket No. 58-0102-1502 is October 6, 2017. After consideration of public comments, DEQ intends to present the final proposal to the Board on November 16, 2017, for adoption of a pending rule. The public will have an opportunity to provide oral comments on the proposed rule during the Board meeting. The rule is expected to become final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

Dated this 6th day of September, 2017.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208)373-0418 / Fax: (208)373-0481
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IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1701

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 Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: 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 22, 2017. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the November 16, 2017, meeting of the Idaho Board of Environmental Quality (Board).

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to update the selenium criteria for aquatic life use. This proposed update is identified as a Reasonable and Prudent Alternative (RPA) in the National Oceanic and Atmospheric Administration's (NOAA) biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life. This BiOp concluded that the current selenium criterion was likely to adversely affect endangered species and would result in adverse modification of critical habitat. The NOAA recommendation is to use EPA's 2016 304(a) selenium criterion based on fish-tissue concentrations. NOAA has called for state adoption and EPA approval or EPA promulgation of this criterion by May 2018. In order to avoid EPA promulgating a federal selenium standard for Idaho, DEQ initiated this rulemaking for a revised selenium aquatic life criterion in Idaho's water quality standards. DEQ's 2014 triennial review identified revision of the aquatic life criteria for selenium as a medium priority.

Although selenium may cause acute toxicity at high concentrations, the most detrimental effect on aquatic organisms is due to its bioaccumulative properties. Aquatic organisms exposed to selenium accumulate it primarily through their diets and not directly through water. In fish, selenium toxicity occurs primarily through transfer to the eggs, reducing reproductive success and survival. Current criteria derived from water column concentrations do not take into account the effects of selenium bioaccumulation in aquatic systems and are generally under-protective of aquatic life. The proposed criterion is derived from the allowable concentration of selenium in fish tissue found to be protective of aquatic life. The fish-tissue concentration, in conjunction with site-specific bioaccumulation factors, can be used to determine the allowable concentration of selenium in ambient water. Aquatic communities are expected to be protected by this chronic criterion from any potential acute effects of selenium. By adopting the fish-tissue-derived criterion, DEQ will ensure that its criterion neither unnecessarily burdens dischargers nor increases risk to aquatic life.

This proposed rule replaces the existing water column based criteria for selenium with a four-part criterion. The recommended elements are (1) a fish egg-ovary element, (2) a fish whole-body and/or muscle element, (3) a water column element which includes one value for lentic (still water) and one value for lotic (running water) aquatic systems, and (4) a water column intermittent element to account for potential chronic effects from short-term exposures (one value for lentic and one value for lotic aquatic systems).

This proposed rule also includes the addition of Section 287, Site-Specific Aquatic Life Criteria for Selenium. Subsections 287.01 through 287.04 were negotiated in response to proposals for site-specific selenium criteria submitted by Nu-West Industries, Inc., and J.R. Simplot Company. Subsections 287.01 and 287.02 set out site-specific selenium criteria for Upper Blackfoot River and Georgetown Creek Watersheds. Subsections 287.03 and 287.04 set out the site-specific selenium criteria for Hoopes Spring, Sage Creek, and Crow Creek near the Smoky Canyon Mine. The negotiated rulemaking also included site-specific selenium criteria for portions of Idaho (Subsection 287.05). This proposed rule applies to all waters of the state except the main stems of the Kootenai, Salmon, and Snake Rivers within the historic range of white sturgeon, as well as subbasins flowing directly into the aforementioned rivers and those designated as critical salmonid habitat or bull trout habitat. Information regarding the site-specific selenium criteria includes (1) Nu-West Industries' Proposal for Site-Specific Selenium Criteria: Upper Blackfoot River and Georgetown Creek Watersheds; (2) J.R. Simplot Company's Proposed Site-Specific

Selenium Criterion for Hoopes Spring, Sage Creek, and Crow Creek near the Smoky Canyon Mine; and (3) DEQ's Justification for Site-Specific Selenium Criterion for Aquatic Life in Portions of Idaho. These documents are available at www.deq.idaho.gov/58-0102-1701.

Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board on November 16, 2017, for adoption of a pending rule. The rule is expected to become final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see **40 CFR 131.21**). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the April 2017 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on April 27, June 13, and July 25, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. For comments that were not incorporated into the draft rule, DEQ's response to those comments is included in the negotiated rulemaking summary. At the conclusion of the negotiated rulemaking process, DEQ formatted the final 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, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0102-1701.

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 questions concerning this rulemaking, contact Stephanie Jenkins at stephanie.jenkins@deq.idaho.gov or (208) 373-0407.

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 6, 2017.

Dated this 6th day of September, 2017

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0102-1701
(Only Those Sections With Amendments Are Shown.)

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

01. **Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)
- a. Columns B1 and B2 of the following table apply to waters designated for aquatic life use. (3-25-16)
 - b. Column C2 of the following table applies to waters designated for primary or secondary contact recreation use. (3-25-16)
 - c. Column C1 of the following table applies to waters designated for domestic water supply use.

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)
		B1	B2		C1	C2
1 Antimony	7440360				5.2 c	190 c
2 Arsenic	7440382	340 e	150 e	Y	10 dfq	10 dfq

Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in [1996 Idaho Administrative Code](#) (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

A		B Aquatic life				C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)		b CCC (µg/L)		Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)	
		B1	B2	B1	B2		C1		C2	
3	Beryllium	7440417						h		h
4	Cadmium	7440439	1.3 i	0.6 i				h		h
5a	Chromium III	16065831	570 i	74 i				h		h
5b	Chromium VI	18540299	16 e	11 e				h		h
6	Copper	7440508	17 i	11 i			1,300	q		
7	Lead	7439921	65 i	2.5 i				h		h
8a	Mercury	7439976								
<p>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</p>										
8b	Methylmercury	22967926							0.3 mg/kg	p
9	Nickel	7440020	470 i	52 i			58	c	100	c
10	Selenium ¹	7782492	20 f	5 f			29	c	250	c
10	Selenium ²	7782492	20 _s f	5 _r f			29	c	250	c
<p>²Not yet effective for CWA purposes. CMC footnote s, and CCC footnote r, are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.</p>										
11	Silver	7440224	3.4 i							
12	Thallium	7440280					0.017	c	0.023	c
13	Zinc	7440666	120 i	120 i			870	c	1,500	c
14	Cyanide	57125	22 j	5.2 j			3.9	c	140	c
15	Asbestos	1332214					7,000,000 fibers/L	q		
16	2, 3, 7, 8-TCDD Dioxin	1746016				Y	1.8E-08	cl	1.9E-08	cl
17	Acrolein	107028					3.2	c	120	c

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
18	Acrylonitrile	107131			Y	0.60	cl	22	cl
19	Benzene	71432				3.0	cl	28	c
20	Bromoform	75252			Y	62	cl	380	cl
21	Carbon Tetrachloride	56235			Y	3.6	cl	15	cl
22	Chlorobenzene	108907				89	c	270	c
23	Chlorodibromomethane	124481			Y	7.4	cl	67	cl
24	Chloroethane	75003					h		h
25	2-Chloroethylvinyl Ether	110758					h		h
26	Chloroform	67663				61	c	730	c
27	Dichlorobromomethane	75274			Y	8.8	cl	86	cl
28	1,1-Dichloroethane	75343					h		h
29	1,2-Dichloroethane	107062			Y	96	cl	2,000	cl
30	1,1-Dichloroethylene	75354				310	c	5,200	c
31	1,2-Dichloropropane	78875			Y	8.5	cl	98	cl
32	1,3-Dichloropropene	542756			Y	2.5	cl	38	cl
33	Ethylbenzene	100414				32	c	41	c
34	Methyl Bromide	74839				130	c	3,700	c
35	Methyl Chloride	74873					h		h
36	Methylene Chloride	75092				38	c	960	c
37	1,1,2,2-Tetrachloroethane	79345			Y	1.4	cl	8.6	cl
38	Tetrachloroethylene	127184				15	c	23	c
39	Toluene	108883				47	c	170	c
40	1,2-Trans-Dichloroethylene	156605				120	c	1,200	c
41	1,1,1-Trichloroethane	71556				11,000	c	56,000	c
42	1,1,2-Trichloroethane	79005			Y	4.9	cl	29	cl
43	Trichloroethylene	79016				2.6	c	11	c
44	Vinyl Chloride	75014			Y	0.21	cl	5.0	cl
45	2-Chlorophenol	95578				30	c	260	c

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
46	2,4-Dichlorophenol	120832				9.6	c	19	c
47	2,4-Dimethylphenol	105679				110	c	820	c
48	2-Methyl-4,6-Dinitrophenol	534521				1.6	c	8.6	c
49	2,4-Dinitrophenol	51285				12	c	110	c
50	2-Nitrophenol	88755					h		h
51	4-Nitrophenol	100027					h		h
52	3-Methyl-4-Chlorophenol	59507				350	c	750	c
53	Pentachlorophenol	87865	20 m	13 m	Y	0.11	cl	0.12	cl
54	Phenol	108952				3,800	c	85,000	c
55	2,4,6-Trichlorophenol	88062				1.5	c	2.0	c
56	Acenaphthene	83329				26	c	28	c
57	Acenaphthylene	208968					h		h
58	Anthracene	120127				110	c	120	c
59	Benzidine	92875			Y	0.0014	cl	0.033	cl
60	Benzo(a)Anthracene	56553			Y	0.0042	cl	0.0042	cl
61	Benzo(a)Pyrene	50328			Y	0.00042	cl	0.00042	cl
62	Benzo(b)Fluoranthene	205992			Y	0.0042	cl	0.0042	cl
63	Benzo(ghi)Perylene	191242					h		h
64	Benzo(k)Fluoranthene	207089			Y	0.042	cl	0.042	cl
65	Bis(2-Chloroethoxy) Methane	111911					h		h
66	Bis(2-Chloroethyl)Ether	111444			Y	0.29	cl	6.8	cl
67	Bis(2-Chloroisopropyl) Ether	108601				220	c	1,200	c
68	Bis(2-Ethylhexyl) Phthalate	117817			Y	1.2	cl	1.2	cl
69	4-Bromophenyl Phenyl Ether	101553					h		h
70	Butylbenzyl Phthalate	85687				0.33	c	0.33	c
71	2-Chloronaphthalene	91587				330	c	380	c

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
72	4-Chlorophenyl Phenyl Ether	7005723				h		h	
73	Chrysene	218019			Y	0.42	cl	0.42	cl
74	Dibenzo (a,h) Anthracene	53703			Y	0.00042	cl	0.00042	cl
75	1,2-Dichlorobenzene	95501				700	c	1,100	c
76	1,3-Dichlorobenzene	541731				3.5	c	4.8	c
77	1,4-Dichlorobenzene	106467				180	c	300	c
78	3,3'-Dichlorobenzidine	91941			Y	0.29	cl	0.48	cl
79	Diethyl Phthalate	84662				200	c	210	c
80	Dimethyl Phthalate	131113				600	c	600	c
81	Di-n-Butyl Phthalate	84742				8.2	c	8.3	c
82	2,4-Dinitrotoluene	121142			Y	0.46	cl	5.5	cl
83	2,6-Dinitrotoluene	606202					h		h
84	Di-n-Octyl Phthalate	117840					h		h
85	1,2-Diphenylhydrazine	122667			Y	0.25	cl	0.65	cl
86	Fluoranthene	206440				6.3	c	6.4	c
87	Fluorene	86737				21	c	22	c
88	Hexachlorobenzene	118741			Y	0.00026	cl	0.00026	cl
89	Hexachlorobutadiene	87683			Y	0.031	cl	0.031	cl
90	Hexachloro-cyclopentadiene	77474				1.3	c	1.3	c
91	Hexachloroethane	67721				0.23	c	0.24	c
92	Ideno (1,2,3-cd) Pyrene	193395			Y	0.0042	cl	0.0042	cl
93	Isophorone	78591			Y	330	cl	6,000	cl
94	Naphthalene	91203					h		h
95	Nitrobenzene	98953				12	c	180	c
96	N-Nitrosodimethylamine	62759			Y	0.0065	cl	9.1	cl
97	N-Nitrosodi-n-Propylamine	621647			Y	0.046	cl	1.5	cl
98	N-Nitrosodiphenylamine	86306			Y	3.14	cl	18	cl

A		B Aquatic life			C Human health for consumption of:			
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)	
		B1	B2		C1		C2	
99	Phenanthrene	85018				h		h
100	Pyrene	129000			8.1	c	8.4	c
101	1,2,4-Trichlorobenzene	120821			0.24	c	0.24	c
102	Aldrin	309002	3		2.5E-06	cl	2.5E-06	cl
103	alpha-BHC	319846		Y	0.0012	cl	0.0013	cl
104	beta-BHC	319857		Y	0.036	cl	0.045	cl
105	gamma-BHC (Lindane)	58899	2	0.08	1.4	c	1.4	c
106	delta-BHC	319868				h		h
107	Chlordane	57749	2.4	0.0043	0.0010	cl	0.0010	cl
108	4,4'-DDT	50293	1.1	0.001	9.8E-05	cl	9.8E-05	cl
109	4,4'-DDE	72559			5.5E-05	cl	5.5E-05	cl
110	4,4'-DDD	72548			0.00042	cl	0.00042	cl
111	Dieldrin	60571	2.5	0.0019	4.2E-06	cl	4.2E-06	cl
112	alpha-Endosulfan	959988	0.22	0.056	7.0	c	8.5	c
113	beta-Endosulfan	33213659	0.22	0.056	11	c	14	c
114	Endosulfan Sulfate	1031078			9.9	c	13	c
115	Endrin	72208	0.18	0.0023	0.011	c	0.011	c
116	Endrin Aldehyde	7421934			0.38	c	0.40	c
117	Heptachlor	76448	0.52	0.0038	2.0E-05	cl	2.0E-05	cl
118	Heptachlor Epoxide	1024573	0.52	0.0038	0.00010	cl	0.00010	cl
119	Polychlorinated Biphenyls PCBs:	n		0.014 n	0.00019	clo	0.00019	clo
120	Toxaphene	8001352	0.73	0.0002	0.0023	cl	0.0023	cl
121	Chlorine		19 k	11 k				
122	1,2,4,5-Tetrachlorobenzene	95943			0.0093	c	0.0094	c
123	2,4,5-Trichlorophenol	95954			140	c	190	c
124	Bis (Chloromethyl) Ether	542881			0.0015	cl	0.055	cl

A		B Aquatic life			C Human health for consumption of:				
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)		Fish only (µg/L)		
		B1	B2		C1		C2		
125	Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721				82	c	130	c
126	Chlorophenoxy Herbicide (2,4-D)	94757				1,000	c	3,900	c
127	Dinitrophenols	25550587				13	c	320	c
128	Hexachlorocyclohexane (HCH)-Technical	608731			Y	0.027	cl	0.032	cl
129	Methoxychlor	72435				0.0054	c	0.0055	c
130	Pentachlorobenzene	608935				0.035	c	0.036	c
Table Footnotes									
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.									
b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.									

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)
		B1	B2		C1	C2
<p>c. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</p> $AWQC = RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>Where: AWQC = Ambient water quality criterion (mg/L)</p> <p>BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</p> <p>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> $RSD = \frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}} \text{ (mg/kg-day), chemical specific value, see TSD}$ <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p>						
d. Inorganic forms only.						
e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.						
f. Criterion expressed as total recoverable (unfiltered) concentrations.						
g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.						
h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.						

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	a CAS Number	b CMC (µg/L)	b CCC (µg/L)	Carcinogen?	Water & fish (µg/L)	Fish only (µg/L)
		B1	B2		C1	C2
i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).						
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.						
k. Total chlorine residual concentrations.						
l. EPA guidance allows states to choose from a range of 10 ⁻⁴ to 10 ⁻⁶ for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 ⁻⁵ risk.						
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)						
n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.						
o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).						
p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD - (RSCxRfD)}] / Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.						
q. This criterion is based on the drinking water Maximum Contaminant Level (MCL).						
L						

<u>Chronic</u>				<u>Short-term</u>	
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>		<u>Water Column (µg/L)</u>		<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>	<u>Water Lentic</u>	<u>Water Lotic</u>	<u>Water</u>
<u>15.1¹</u>	<u>8.5²</u>	<u>11.3²</u>	<u>1.5 (30 day average)³</u>	<u>3.1 (30 day average)³</u>	<u>Intermittent Exposure Equation^{3,4}</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>					

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species.

2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual.

3. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016).

4. Intermittent Exposure Equation=

$$\frac{WQC - C_{bkgrnd}(1 - f_{int})}{f_{int}}$$

where WQC is the water column element, for either lentic or lotic waters; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

s. There is no specific acute criterion for aquatic life; however, the aquatic life criterion is based on chronic effects of selenium on aquatic life and is expected to adequately protect against acute effects

Footnotes r. and s. are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.

(3-25-16)()

02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a. $CMC = WER \exp\{mA[\ln(\text{hardness})] + bA\}$ X Acute Conversion Factor. (5-3-03)

b. $CCC = WER \exp\{mc[\ln(\text{hardness})] + bc\}$ X Chronic Conversion Factor.

Metal	mA	bA	mc	bc	aAcute Conversion Factor	aChronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	0.8367	-3.560	0.6247	-3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997

Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Note to table: The term “exp” represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from “Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth.” The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium

Acute: $CF = 1.136672 - [(\ln \text{hardness}) (0.041838)]$ NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic: $CF = 1.101672 - [(\ln \text{hardness}) (0.041838)]$

Lead (Acute and Chronic): $CF = 1.46203 - [(\ln \text{hardness}) (0.145712)]$

b. Not applicable

c. No chronic criteria are available for silver.

(3-29-10)

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

a. For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (3-25-16)

b. Low flow design conditions. Water quality-based effluent limits and mixing zones for toxic substances shall be based on the following low flows in perennial receiving streams. Numeric chemical criteria may be exceeded in perennial streams outside any applicable mixing zone only when flows are less than these values:

Aquatic Life		Human Health	
CMC (“acute” criteria)	1Q10 or 1B3	Non-carcinogens	Harmonic mean flow
CCC (“chronic” criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(3-25-16)

i. Where “1Q10” is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where “1B3” is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where “4B3” is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant’s acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf. (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

d. Application of toxics criteria. (3-25-16)

i. Frequency and duration for aquatic life toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years. (3-25-16)

ii. Frequency and duration for human health toxics criteria. Columns C1 and C2 criteria are not to be exceeded based on an annual harmonic mean. (3-25-16)

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

a. “Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria,” EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. “Guidance Document on Dynamic Modeling and Translators,” EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. “Guidance Document on Clean Analytical Techniques and Monitoring,” EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. “Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,” EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. “Technical Support Document for Water Quality-Based Toxics Control.” EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

05. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA

recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)

- iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10⁻⁵ for carcinogens shall be utilized. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

287. SITE-SPECIFIC AQUATIC LIFE CRITERIA FOR SELENIUM.

Site-specific water column values (30-day average) are based on dissolved total selenium in water and are derived using a performance-based approach from fish tissue values via either the mechanistic modeling or empirical bioaccumulation factor (BAF) method in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016). ()

01. Subsection of Blackfoot Subbasin. *Blackfoot River - confluence of Lanes and Diamond Creeks to Blackfoot Reservoir (unit US-10), and all tributaries thereof. The site-specific criterion for these water bodies is set out in the following table.*

<u>Chronic</u>			<u>Short-term</u>	
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>		<u>Water Column (µg/L)</u>	<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>	<u>Water Lotic</u>	<u>Water</u>
<u>24.5¹</u>	<u>12.5²</u>	<u>12.8²</u>	<u>6.3^{3,4,5}</u>	<u>Intermittent Exposure Equation^{3,4,5,6}</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>				

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species.

2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual.

3. Water column values are derived using the empirical BAF method. For comparative purposes only, the example value displayed in this table represents the lotic water column value for Sheep Creek based on the average BAF for Cutthroat Trout among all sampling locations and years.

4. Lotic Water Column Equation=

$$\frac{\text{Tissue}_{\text{criterion}}}{\text{BAF}}$$

where Tissue_{criterion} is the fish tissue element (whole-body), and BAF is the bioaccumulation factor derived by dividing site-specific field-collected samples of fish tissue (whole-body) by site-specific field-collected samples of water.

5. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, surface water from the fishless waters and fish tissue from the nearest downstream waters are used for bioaccumulation modeling. Fish tissue supersedes any site-specific water column values when fish are sampled downstream of fishless waters.

6. Intermittent Exposure Equation=

$$\frac{WQC - C_{\text{bkgnd}}(1 - f_{\text{int}})}{f_{\text{int}}}$$

where WQC is the lotic water column element; C_{bkgnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

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02. Subsection of Bear Lake Subbasin, Georgetown Creek - source to mouth (unit B-22), and all tributaries thereof. The site-specific criterion for these water bodies is set out in the following table.

<u>Chronic</u>			<u>Short-term</u>	
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>		<u>Water Column (µg/L)</u>	<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>	<u>Water Lotic</u>	<u>Water</u>
<u>21.0¹</u>	<u>12.5²</u>	<u>12.8²</u>	<u>3.4^{3,4,5}</u>	<u>Intermittent Exposure Equation^{3,4,5,6}</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>				

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species.

2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual.

3. Water column values are derived using the empirical BAF method. For comparative purposes only, the example displayed in this table represents the lotic water column value for Georgetown Creek, upstream of the intermittent reach, based on the average BAF for Brook Trout in all sampling locations and years.

4. Lotic Water Column Equation=

$$\frac{\text{Tissue}_{\text{criterion}}}{\text{BAF}}$$

where $\text{Tissue}_{\text{criterion}}$ is the fish tissue element (whole-body), and BAF is the bioaccumulation factor derived by dividing site-specific field-collected samples of fish tissue (whole-body) by site-specific field-collected samples of water.

5. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, surface water from the fishless waters and fish tissue from the nearest downstream waters are used for bioaccumulation modeling. Fish tissue supersedes any site-specific water column values when fish are sampled downstream of fishless waters.

6. Intermittent Exposure Equation=

$$\frac{WQC - C_{\text{bkgrnd}}(1 - f_{\text{int}})}{f_{\text{int}}}$$

where WQC is the lotic water column element; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

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03. Subsection of Salt Subbasin — Sage Creek. Sage Creek – source to mouth (unit US-9) including, Hoopes Spring channel downstream of the spring complex, South Fork Sage Creek downstream of the spring complex, Sage Creek downstream of the confluence of Hoopes Spring with Sage Creek to its confluence with Crow Creek, North Fork Sage Creek and tributaries (including Pole Canyon Creek). The site-specific criterion for these water bodies is set out in the following table.

Chronic		Short-term	
Egg-Ovary (mg/kg dw)	Fish Tissue (mg/kg dw)	Water Column (µg/L)	Water Column (µg/L)
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Water Lotic</u>	<u>Water</u>
19.9 ¹	13.6 ²	16.2 ³	<u>Intermittent Exposure Equation^{3,4}</u>
<i>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</i>			

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species.
2. Fish tissue supersedes water column element when both fish tissue (whole-body) and water concentrations are measured. Fish tissue elements are expressed as a single arithmetic average of tissue concentrations from at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual.
3. Water column values are derived using the empirical BAF method. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance.
4. Intermittent Exposure Equation=

$$\frac{WQC - C_{bkgrnd}(1 - f_{int})}{f_{int}}$$
where WQC is the lotic water column element; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

()

04. Subsection of Salt Subbasin — Crow Creek. Crow Creek – Downstream of Sage Creek confluence to Wyoming state line (US-8). The site-specific criterion for these water bodies is set out in the following table.

<u>Chronic</u>			<u>Short-term</u>
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>	<u>Water Column (µg/L)</u>	<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Water Lotic</u>	<u>Water</u>
<u>19.9¹</u>	<u>13.6²</u>	<u>4.1³</u>	<u>Intermittent Exposure Equation^{3,4}</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>			

1. Egg-ovary supersedes any whole-body or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species.
2. Fish tissue supersedes water column element when both fish tissue (whole-body) and water concentrations are measured. Fish tissue elements are expressed as a single arithmetic average of tissue concentrations from at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual.
3. Water column values are derived using the empirical BAF method. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance.
4. Intermittent Exposure Equation=

$$\frac{WQC - C_{bkgrnd}(1 - f_{int})}{f_{int}}$$
where WQC is the lotic water column element; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

()

05. Portions of Idaho. ()

a. This site-specific criterion applies in the HUC subbasins set out in the following table. ()

<u>HUC</u>	<u>Subbasin</u>	<u>HUC</u>	<u>Subbasin</u>
<u>16010102</u>	<u>Central Bear</u>	<u>17040207</u>	<u>Blackfoot</u>
<u>16010201</u>	<u>Bear Lake</u>	<u>17040208</u>	<u>Portneuf</u>
<u>16010202</u>	<u>Middle Bear</u>	<u>17040209</u>	<u>Lake Walcott</u>
<u>16010203</u>	<u>Little Bear-Logan</u>	<u>17040210</u>	<u>Raft</u>
<u>16010204</u>	<u>Lower Bear-Malad</u>	<u>17040211</u>	<u>Goose</u>
<u>16020309</u>	<u>Curlew Valley</u>	<u>17040214</u>	<u>Beaver-Camas</u>
<u>17010103</u>	<u>Yaak</u>	<u>17040215</u>	<u>Medicine Lodge</u>
<u>17010302</u>	<u>South Fork Coeur d Alene</u>	<u>17040216</u>	<u>Birch</u>
<u>17010306</u>	<u>Hangman</u>	<u>17040218</u>	<u>Big Lost</u>
<u>17010308</u>	<u>Little Spokane</u>	<u>17040220</u>	<u>Camas</u>
<u>17040104</u>	<u>Palisades</u>	<u>17040221</u>	<u>Little Wood</u>
<u>17040105</u>	<u>Salt</u>	<u>17050104</u>	<u>Upper Owyhee</u>
<u>17040201</u>	<u>Idaho Falls</u>	<u>17050105</u>	<u>South Fork Owyhee</u>
<u>17040202</u>	<u>Upper Henrys</u>	<u>17050106</u>	<u>East Little Owyhee</u>
<u>17040203</u>	<u>Lower Henrys</u>	<u>17050107</u>	<u>Middle Owyhee</u>
<u>17040204</u>	<u>Teton</u>	<u>17050108</u>	<u>Jordan</u>
<u>17040205</u>	<u>Willow</u>	<u>17060109</u>	<u>Rock</u>
<u>17040206</u>	<u>American Falls</u>		

b. The site-specific criterion for the water bodies identified in Subsection 287.05.a. is set out in the following table.

<u>Chronic</u>			<u>Short-term</u>		
<u>Egg-Ovary (mg/kg dw)</u>		<u>Fish Tissue (mg/kg dw)</u>	<u>Water Column (µg/L)</u>		<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>	<u>Water Lentic</u>	<u>Water Lotic</u>	<u>Water</u>
<u>19.0¹</u>	<u>9.5²</u>	<u>13.1²</u>	<u>1.7³</u>	<u>3.4³</u>	<u>Intermittent Exposure Equation^{3,4}</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>					

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species.

2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual.

3. Water column values are derived using the empirical BAF method. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance.

4. Intermittent Exposure Equation=

$$\frac{WQC - C_{bkgrnd}(1 - f_{int})}{f_{int}}$$

where WQC is the water column element, for either lentic or lotic waters; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

()

Section 287 is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1701

NOTICE OF MEETING OF THE IDAHO BOARD OF ENVIRONMENTAL QUALITY

NOTICE OF PUBLIC MEETING: Notice is hereby given that on November 16, 2017, the Idaho Department of Environmental Quality (DEQ) will present Rule Docket No. 58-0102-1701 to the Idaho Board of Environmental Quality (Board) for adoption as a pending rule.

BOARD MEETING SCHEDULE: The Board will convene as follows:

**Thursday, November 16, 2017
9:00 am (MST)**

**DEQ State Office
1410 N. Hilton Street
(Conference Rooms A & B)
Boise, ID 83706**

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned. The Board meeting agenda will be available on November 2, 2017, at <http://www.deq.idaho.gov/about-deq/board-of-environmental-quality/meetings/>.

DESCRIPTIVE SUMMARY: Proposed Rule Docket No. 58-0102-1701 was published in the Idaho Administrative Bulletin on September 6, 2017, **Vol. 17-9**, and is available at www.deq.idaho.gov/58-0102-1701. The written comment deadline for Docket No. 58-0102-1701 is October 6, 2017. After consideration of public comments, DEQ intends to present the final proposal to the Board on November 16, 2017, for adoption of a pending rule. The public will have an opportunity to provide oral comments on the proposed rule during the Board meeting. The rule is expected to become final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

Dated this 6th day of September, 2017.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208)373-0418 / Fax: (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61.01.08 – RULES GOVERNING THE ADMINISTRATION OF IDAHO'S INDIGENT DEFENSE DELIVERY SYSTEMS – RULE DEFINITIONS

DOCKET NO. 61-0108-1701

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 19-850(1) and 19-862A, 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 27, 2017.

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.

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.

Upon the 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. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

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

This rule chapter will serve as a single location to incorporate documents and define terms used in all rules promulgated by the PDC. Documents and terms defined will be used in rules and standards that help improve the provision of indigent defense services in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text (if available), contact Kimberly Simmons at (208) 332-1735. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the State Public Defense Commission web site at the following web address: <https://pdc.idaho.gov>.

DATED this 2nd day of August, 2017

Kimberly Simmons, Executive Director
State Public Defense Commission
816 W. Bannock St., Suite 201
Boise, ID 83702
(208) 332-1725

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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 20, 2016 unless otherwise noted.
Public hearing request deadline is September 27, 2016 unless otherwise noted.
(Temp & Prop) indicates the rule is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002

01.01.01 - Idaho Accountancy Rules

01-0101-1701, Incorporates by reference the 2016 Statements on Standards for Continuing Professional Education (CPE).

01-0101-1702, Conforms rule to statutory changes to clarify that the Board is permitted to consider a licensee's conviction of or a guilty plea to any crime involving moral turpitude, even in cases with withheld judgments or other expungement orders; clarifies those rehabilitation factors the Board may consider in evaluating a current licensee or candidate for licensure.

01-0101-1703, Clarifies the information required on documentation supporting reported credit hours for CPE.

01-0101-1704, Provides consistency between the statute and rule and clearly defines for a licensee those services considered peer reviewable that require participation in a peer review program.

IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

02.02.14 - Rules for Weights and Measures

02-0214-1701, Updates the specifications incorporated by reference for automotive spark engine fuel, diesel fuel and biodiesel fuel blends.

02-0214-1702, Adds definitions for Liquefied and Compressed Natural Gas, Diesel Gallon Equivalent (DGE), Gasoline Gallon Equivalent (GGE), and their metric equivalents; adds provision allowing GGE and DGE units as an acceptable sale method for compressed and liquefied natural gas motor fuel.

02-0602-1701, Rules Pertaining to the Idaho Commercial Feed Law. Incorporates by reference the updated 2018 Official Publication of the Association of American Feed Control Officials (AAFCO) pertaining to the methodology and practice of conducting regulatory commercial feed registration and label review.

02-0612-1701, Rules Pertaining to the Idaho Fertilizer Law. Incorporates by reference the updated 2018 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) pertaining to the methodology and practice of conducting regulatory fertilizer registration and label review.

02-0621-1701, Rules for Voluntary Public Services of the Idaho Department of Agriculture Laboratories. Repeal of chapter.

02-0641-1701, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001. Incorporates by reference the updated 2018 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) pertaining to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

IDAPA 07 – DIVISION OF BUILDING SAFETY
1090 E. Watertower St., Ste. 150, Meridian, ID 83542

07-0106-1701, Rules Governing the Use of National Electrical Code. Amends the 2017 National Electric Code (NEC) to permit, in certain circumstances, the installation of disconnects grouped in one- and two-family dwelling units where multiple feeders enter the building; provides exceptions to several articles of the NEC addressing the installation of submersible well pumps in swimming and marine areas, and the electrical equipment used in such installations.

07-0204-1701, Rules Governing Plumbing Safety Inspections. Clarifies that plumbers and inspectors need reference only the Cross Connection Control Manual rather than two code books.

07-0206-1701, Rules Concerning Idaho State Plumbing Code. Amend the Idaho State Plumbing Code (ISPC) to remove a requirement that sanitary yard hydrants be protected by a non-removable hose bibb-type backflow preventer; eliminate the need to install an additional tracer wire in a trench in situations where the electrical wiring for the pump is also installed in the same trench.

07-0301-1701, Rules of Building Safety. Adds several provisions to the residential code (IRC) that address “Tiny Homes” including definitions, provisions related to ceiling height, lofts, stairways and ladders, and escape and rescue roof access windows; also limits the required length of reinforcement lap splices for allowable stress design of masonry.

07-0311-1701, Rules Governing Manufactured/Mobile Home Industry Licensing. Changes Board name to “Factory Built Structure Board”; would require installers of manufactured homes, or retailers who are also installers, to complete 8 hours of continuing education during a 3-year period prior to licensure renewal, not the current 4 hours annually.

07-0312-1701, Rules Governing Manufactured or Mobile Home Installations. Incorporates by reference the 2018 edition of the Idaho Manufactured Home Installation Standard; inspectors of manufactured home installations would be required to complete 8 hours of training every 3 years, not the current 4 hours annually.

07-0401-1701, Rules Governing Safety Inspections – General. Amends outdated statutory provisions; updates the adopted safety standards for safety inspections the Division conducts on state-owned buildings or those of a political subdivision; eliminates unnecessary references to elevator and boiler programs that are no longer administered through this Division safety program; updates certain requirements for public employers to ensure a safe workplace; updates annual inspection process the Division uses when inspecting state facilities.

07-0402-1701, Safety Rules for Elevators, Escalators, and Moving Walks. Incorporates by reference the most recent editions of the safety codes governing the installation and inspection of elevators, escalators, moving walks, and other conveyances in the state of Idaho.

07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems

07-0701-1701, Deletes an amendment to a mechanical provision (section M1502.4.2) of the International Residential Code related to System Design that is no longer necessary.

07-0701-1702, Requires all mechanical inspectors employed by the state or a local government to hold either a commercial or residential mechanical inspector certification; requires mechanical inspectors to obtain their certification from the International Association of Plumbing and Mechanical Officials (IAPMO), the International Code Council (ICC), or another professional certifying body as approved by the HVAC Board.

07-0901-1701, Safety and Health Rules for Places of Public Employment. Repeal of chapter.

07-1001-1701, Rules Governing the Damage Prevention Board. (Temp & Prop) Defines “hand digging” and “soft digging”; establishes training programs and processes for improving technology and facility owners’ internal performance measures; establishes procedural requirements for filing claims and complaints related to damaged underground facilities and excavator downtime; establishes civil penalties for violations.

**IDAPA 15 – OFFICE OF THE GOVERNOER
OFFICE ON AGING – 341 W. Washington, Boise, ID 83702**

15-0103-1701, Rules Governing the Ombudsman for the Elderly Program. Clarifies that disclosure of records must conform to the Older Americans Act and HIPPA regulations; clarifies when an ombudsman can access certain facilities for investigation; changes term from “substate” to “local” ombudsman.

**IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED
PO Box 83720, Boise, ID 83720-0012**

15-0202-1701, Vocational Rehabilitation Services. Changes comply with the Workforce Innovation and Opportunity Act by establishing an order of selection for federal funds received through the agency; adds a definition for “Most Significant Disability.”

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

***16-0104-1701, Emergency Medical Services (EMS) – Account III Grants.** (*PH) Chapter rewrite updates the processes for EMS grant applications and other requirements for the approval of these grants.

***16-0204-1701, Rules Governing Emergency Medical Services Account III Grants.** (*PH) Repeal of chapter.

16-0212-1701, Procedures and Testing to be Performed on Newborn Infants. Mandates that all newborns receive a Critical Congenital Heart Defect screening shortly after birth; adds CCHD screening information to birth certificate system in Vital Records; allows Idaho Newborn Screening Program to monitor screening compliance and provide assistance to families.

16-0319-1701, Rules Governing Certified Family Homes. Revises and updates the admission process, adult hourly care, assessments, certification limitations, changes in location, definitions, elements of care, enforcement actions, eviction process, fire and life safety standards, medication policy, ongoing training requirements, physical home standards, plan of service, reporting and investigation of incidents and accidents, resident funds and finances, resident records, resident rights, variances and waivers, and voluntary home closures.

16-0503-1701, Rules Governing Contested Case Proceedings and Declaratory Rulings. Changes meet court-ordered settlement agreements for expedited hearings and grievance processes for the Jeff D settlement agreement, comply with federal regulations, and provide benefits to consumers to use technological advances for filing of appeals for certain divisions; and to provide other needed internal appeals processes for divisional administrative reviews.

***16-0601-1702, Child and Family Services.** (*PH) Aligns the requirements for Title IV-E funding for children in foster care with current federal law and regulations.

The proposed changes to the following rule chapters address the same subject matter for each of the following dockets:

16-0715-1701, Behavioral Health Programs;

16-0717-1701, Substance Use Disorders Services;

16-0730-1701, Behavioral Health Community Crisis Centers;

16-0733-1701, Adult Mental Health Services;

16-0750-1701, Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units.

Changes clarify that an individual who has lived experience and is seeking to provide services as a peer, but whose Department Criminal History Check was denied, may apply for a Behavioral Health Waiver described in IDAPA 16.07.15, “Behavioral Health Programs.”

**IDAPA 18 – DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043**

18-0102-1701, Insurance Policy Titles. Repeal of chapter.

18-0108-1701, Filing of Life Policy Forms. Repeal of chapter.

18-0120-1701, Cancellation of, or Refusal to Renew Automobile Insurance Policies. Requires insurers to use a standard statement form approved by the Director of the Department of Insurance that explains uninsured and underinsured motorist coverage to Idaho consumers and coverage options that might be available in Idaho.

18-0122-1701, Sale of Insurance by Vending Machines. Repeal of chapter.

18-0125-1701, Title Insurance and Title Insurance Agents and Escrow Officers. Makes title insurance policy cancellation fees permissive rather than mandatory.

18-0130-1701, Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule. Allows carriers to offer return of premium or cash value benefits to covered persons for specified disease, limited benefit policies, and accident only policies in addition to the other types of policies currently permitted.

18-0135-1701, Guidelines Respecting the Use of Claim Forms for Disability Insurance Claims. Repeal of chapter.

18-0156-1701, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules. Removes “uncollected cancellation fees for issuance of title commitments from the definition of “things of value” to no longer allow collection of cancellation fees.

18-0173-1701, Rule to Implement the Individual Health Insurance Availability Act Plan Design. Repeal of chapter.

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
PO Box 83720, Boise, ID 83720-0021**

19.01.01 – Rules of the Idaho State Board of Dentistry

19-0101-1701, Deletes American Dental Association sedation-related documents that are incorporated by reference; adds qualifying course requirements to the moderate sedation rules.

19-0101-1702, Amends exam rule to distinguish between written and clinical exam results and to clarify the clinical exam requirements; revises terminology; and clarifies unprofessional conduct rule regarding prescription drugs.

19-0101-1703, Further defines parameters for teledental services authorized under the Idaho Telehealth Access Act.

**IDAPA 23 – IDAHO STATE BOARD OF DENTISTRY
PO Box 83720, Boise, ID 83720-0021**

23-0101-1701, Rules of the Idaho State Board of Nursing. Clarifies that, in applicable cases, the existing license may be converted to a limited license for a period not to exceed 5 years; clarifies requirements for nursing program faculty and removes an unneeded restriction.

**IDAPA 35 - IDAHO STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**

35.01.02 - Sales and Use Tax Administrative Rules.

35-0102-1702, Clarifies when taxes are owed by road and paving contractors; replaces “park trailer” with “park model” recreational vehicle for trade-in purposes; defines “new park model recreational vehicles” and clearly states that they are taxed at 100% of the sales price; park model recreational vehicles are not eligible for the production exemption; allows the nonresident use of a vehicle in Idaho for 90 days; adds park model recreational vehicles to the list of nonexempt items.

35-0102-1703, Adds lodging operators, short-term rentals, and vacation rentals to the Hotel, Motel and Campgrounds tax rule; removes Hand Tool, Component, and Unit Price tax rule.

35-0105-1702, Idaho Motor Fuels Tax Administrative Rules. Amends the records requirements for International Fuel Tax Agreement (IFTA) licensees and other taxpayers claiming nontaxable fuel use.

35-0106-1701, Hotel/Motel Room and Campground Sales Tax Administrative Rules. Conforms rule to HB 216 (2017) by including the terms from the Short-Term and Vacation Rental Act.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39-0202-1701, Rules Governing Vehicle and Vessel Dealer License Requirements - Motor Vehicles. (Temp & Prop) Removes the penalties for violation of dealer rules or statute that is now provided for in 49-1602, Idaho Code.

39-0271-1701, Rules Governing Driver's License Violation Point System. (Temp & Prop) Adds failure to obey a school safety patrol to the list of moving traffic convictions and violations point count table.

39-0310-1701, Rules Governing When An Overlegal Permit Is Required. (Temp & Prop) Clarifies when movement of implements of husbandry is considered an emergency and provides that verbal approval of the movement may be allowed on official state holidays and weekend in lieu of a written permit.

39-0316-1701, Rules Governing Oversize Permits for Non-Reducible Vehicles and/or Loads. (Temp & Prop) Addresses the movement of implements of husbandry and when an overlegal permit is required and who is exempt.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255**

58.01.02 - Water Quality Standards

58-0102-1502, Replaces the existing hardness dependent criteria for copper with a similar modeled approach; references the "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life," which details procedures for implementing the criteria including determining minimum data requirements for BLM inputs and guidance for estimating protective criteria when data are incomplete or absent.

58-0102-1701, Replaces existing water column based criteria for selenium with a four-part criterion. The recommended elements are (1) a fish egg-ovary element, (2) a fish whole-body and/or muscle element, (3) a water column element, and (4) a water column intermittent element; sets out site-specific selenium criteria for specific areas in Idaho.

NOTICES OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKINGS

IDAPA 15 – OFFICE OF THE GOVERNOR - DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

15-0401-1701, Rules of the Division of Human Resources and Idaho Personnel Commission (contact agency for meeting schedule)

IDAPA 50 – COMMISSION OF PARDONS AND PAROLE

50-0101-1701, Rules of the Commission of Pardons and Parole (See Bulletin for meeting scheduled)

IDAPA 61 – STATE PUBLIC DEFENSE COMMISSION

61-0108-1701, Rules Governing the Administration of Idaho's Indigent Defense Delivery Systems – Rule Definitions (to participate respond by 9/27/17)

Please refer to the Idaho Administrative Bulletin, [September 6, 2016, Volume 17-9](#), for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at adminrules.idaho.gov.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306
Phone: 208-332-1820; 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 and Active Rulemakings)

*Office of the Administrative Rules Coordinator
Idaho Department of Administration*

March 29, 2017 — September 6, 2017

(eff. PLR) - Final Effective Date Is Pending Legislative Review

(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 all active rulemakings.)

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- 01-0101-1702** Proposed Rulemaking, Bulletin Vol. 17-9
- 01-0101-1703** Proposed Rulemaking, Bulletin Vol. 17-9
- 01-0101-1704** Proposed Rulemaking, Bulletin Vol. 17-9

IDAPA 02 -- IDAHO DEPARTMENT OF AGRICULTURE

02.01.01, Idaho Rules of Practice and Procedure of the Department of Agriculture

- 02-0101-1701** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 17-7
- 02-0101-1702*** Proposed Rulemaking (Chapter Rewrite), Bulletin Vol. 17-7 (*Changes chapter name to "Rules of Procedure")

02.02.14, Rules for Weights and Measures

- 02-0214-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0214-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0214-1703** Proposed Rulemaking, Bulletin Vol. 17-7
- 02-0214-1701** Proposed Rulemaking, Bulletin Vol. 17-9
- 02-0214-1702** Proposed Rulemaking, Bulletin Vol. 17-9

02.04.14, Rules Governing Dairy Byproduct

- 02-0414-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0414-1702** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

- 02-0602-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0602-1701** Proposed Rulemaking, Bulletin Vol. 17-9

02.06.12, Rules Pertaining to the Idaho Fertilizer Law

- 02-0612-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0612-1701** Proposed Rulemaking, Bulletin Vol. 17-9

02.06.17, Rules Governing the Disposal of Cull Onions and Potatoes

- 02-0617-1701** Adoption of Temporary Rule, Bulletin Vol. 17-3 (eff. 2-8-17)T
- 02-0617-1701** Notice of Rescission of Temporary Rule, Bulletin Vol. 17-5 (Rescission effective 4-17-17)

02.06.21, Rules for Voluntary Public Services of the Idaho Department of Agriculture Laboratories

- 02-0621-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0621-1701** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 17-9

02.06.22, Noxious Weed Rules

- 02-0622-1701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 17-5

02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001

- 02-0641-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7
- 02-0641-1701** Proposed Rulemaking, Bulletin Vol. 17-9

02.08.01, Sheep and Goat Rules of the Idaho Board of Sheep Commissioners

- 02-0801-1701** Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-8

IDAPA 07 -- DIVISION OF BUILDING SAFETY***07.01.06, Rules Governing the Use of National Electrical Code***

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07.02.04, Rules Governing Plumbing Safety Inspections

07-0204-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

07-0204-1701 Proposed Rulemaking, Bulletin Vol. 17-9

07.02.06, Rules Concerning the Idaho State Plumbing Code

07-0206-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

07-0206-1701 Proposed Rulemaking, Bulletin Vol. 17-9

07.03.01, Rules of Building Safety

07-0301-1701 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 17-3

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07-0311-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

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07.03.12, Rules Governing Manufactured or Mobile Home Installations

07-0312-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

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07.04.01, Rules Governing Safety Inspections - General

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07-0401-1701 Proposed Rulemaking, Bulletin Vol. 17-9

07.04.02, Safety Rules for Elevators, Escalators, and Moving Walks

07-0402-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

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07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems

07-0701-1701 Proposed Rulemaking, Bulletin Vol. 17-9

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07.08.17, Idaho Minimum Safety Standards and Practices for Logging -- Cable Assisted Logging Systems

07-0817-1701 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 17-6 (eff. 5-1-17)T

07.09.01, Safety and Health Rules for Places of Public Employment

07-0901-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

07-0901-1701 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 17-9

07.10.01, Rules Governing the Damage Prevention Board

07-1001-1701 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 17-3

07-1001-1701 Temporary and Proposed Rulemaking, Bulletin Vol. 17-9 (eff. 9-1-17)T

***IDAPA 08 -- IDAHO STATE BOARD OF EDUCATION
AND STATE DEPARTMENT OF EDUCATION******08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools***

08-0111-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

08.01.13, Rules Governing the Idaho Opportunity Scholarship Program

08-0113-1701 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-5

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08-0202-1708 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

08-0202-1709 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-7

08.02.03, Rules Governing Thoroughness

08-0203-1612 Adoption of Temporary Rule, Bulletin Vol. 16-12 (eff. 10-20-16)T

08-0203-1701 Adoption of Temporary Rule, Bulletin Vol. 17-2 (eff. 12-15-16)T

08-0203-1702 Notice of Intent to Promulgate a Rule - Negotiated Rulemaking, Bulletin Vol. 17-4

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08-0203-1612 OAR Omnibus Notice of Legislative Action - Extension of Temporary Rule by SCR 121, Bulletin Vol. 17-5

08-0203-1701 OAR Omnibus Notice of Legislative Action - Partial Rejection of Temporary Rule by SCR 121, Bulletin Vol. 17-5

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